

to this new statutory limit. Because the Commission's rules must accurately reflect Congress's decision to adjust this contribution limit, which took effect on January 1, 2003, it is appropriate to implement this higher limit in the final rules. This provision was not discussed in the NPRM. The Commission determines that, under section 553(b)(3) of the Administrative Procedure Act, good cause exists to implement this technical and conforming change without delay. It is not necessary to seek public comment at this point when the Commission obtained and fully considered public comment on the underlying rules at 11 CFR 110.1(a) implementing the contribution limits. See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (Nov. 19, 2002). Accordingly, the Commission is issuing this final rule without notice and comment.

11 CFR 110.2 Contributions by Multicandidate Political Committees

11 CFR 110.2 sets forth contribution limits for multicandidate political committees in accordance with 2 U.S.C. 441a(a)(2). FECA, prior to BCRA, provided significantly higher limits on contributions to candidates for political committees with multicandidate status than for those without that status (\$5,000 per election versus \$1,000). BCRA raised and indexed for inflation the contribution limit for non-multicandidate committees (to \$2,000 per election). As the Commission explained in the NPRM, due to the inflation adjustment this non-multicandidate committee limit may eventually exceed the limit imposed on multicandidate committees. See 2 U.S.C. 441a(c). If this occurs, it will create a disincentive for attaining multicandidate political committee status.

In addition, BCRA increased the limit on non-multicandidate committee contributions to national party committees from \$20,000 to \$25,000 per year. Yet Congress did not similarly adjust the limit on multicandidate committee contributions to the same national party committees. That limit remains \$15,000 per year, as it was prior to BCRA. 2 U.S.C. 441a(a)(1)(B) and (2)(B). Furthermore, Congress did not index for inflation the contribution limit for multicandidate committees, which means that over time the current \$10,000 difference in the respective contribution limits to national party committees will increase. 2 U.S.C. 441a(c).

In light of these statutory changes, the Commission sought comment on

whether political committees may elect to opt out of multicandidate committee status even if they meet the three criteria of 2 U.S.C. 441a(a)(4) and 11 CFR 100.5(e)(3). Two commenters addressed this question. One commenter asserted that the language of 2 U.S.C. 441a(a)(4) clearly indicates that multicandidate status is automatically conferred when the three criteria are met. This commenter urged the Commission to adopt the changes to its regulations as proposed in the NPRM. While acknowledging the potential disadvantages of multicandidate status created by Congress through BCRA, this commenter observed that political committees may still elect to "opt out" of multicandidate status by refraining from meeting one or more of the three criteria (*i.e.*, by only contributing to 4 candidates).

On the other hand, a different commenter opposed mandatory status, arguing that the Commission should change its regulations to ensure that political committees are not forced to accept multicandidate status if they do not perceive that status as beneficial. The criteria in 2 U.S.C. 441a(a)(4), this commenter asserted, were "selected by Congress to identify committees entitled to preferred treatment" because "it believed that committees with these attributes were less likely to be employed by individuals for the purpose of circumventing the individual contribution limit." This commenter agreed with the Commission's assessment in the NPRM that post-BCRA multicandidate status could become a liability, rather than a benefit, in some circumstances. Therefore, this commenter cautioned that multicandidate status should not be mandatory unless the Commission is "extremely confident" that Congress now intends to disadvantage multicandidate committees.

The Commission notes that Congress did not take certain steps with regard to multicandidate committees that it took with regard to other political committees and individuals, such as indexing contribution limits for inflation and increasing the contribution limit to national party committees. The Senator who offered the amendment to increase the contribution limits for non-multicandidate committees explained its purpose shortly before the Senate voted to approve the BCRA in its near final form:

The Thompson-Feinstein amendment, by increasing the limit on individual and national party committee contributions to Federal candidates, will reduce the need for raising campaign funds from political action committees, PACs. Our amendment,

therefore, will reduce the relative influence of PACs, making it easier to replace PAC monies with funds raised from individual donors.

148 Cong. Rec. S2154 (daily ed. Mar. 20, 2002) (statement of Sen. Feinstein).

Accordingly, the final rules adopt the approach that best comports with the plain language of 2 U.S.C. 441a(a)(4): A political committee becomes a multicandidate committee once it has been registered with the Commission or Secretary of the Senate for a period of not less than six months, has received contributions from more than 50 persons, and has made contributions to 5 or more candidates for Federal office. Specifically, the Commission is adding a sentence to 11 CFR 110.2(a) to confirm this result. To address situations where a multicandidate political committee achieves multicandidate status through affiliation with a pre-existing multicandidate committee, the Commission is adding additional language to 11 CFR 110.2(a)(3) to specify that both affiliated committees would automatically be multicandidate committees at the time of affiliation.

It is important to note that the only "disadvantage" that multicandidate committees currently face is the lower limit on contributions to national political party committees. Notwithstanding the latter commenter's assertions that "[t]his unexplained different treatment is more likely the result of a political compromise than it is a product of a considered judgment," Congress clearly set lower limits even before BCRA for multicandidate committee contributions to national party committees than for other political committees' contributions to national party committees. The multicandidate committee contribution limits with respect to all Federal candidates, however, still remain \$3,000 per election higher than the contribution limits for other political committees. To the extent that some future disadvantage actually emerges from the fact that multicandidate committee contribution limits are not indexed for inflation, it would be for Congress to reconsider the contribution limits it established. The Commission has submitted a legislative recommendation urging Congress to do so. *FEC Annual Report 2002*, at 46. At present, the Commission implements what it deems the most straightforward reading of the language of 2 U.S.C. 441a(a)(4).

The same commenter also noted, under current law, State party committees are automatically treated as multicandidate committees regardless of whether they make contributions to five