to be filed if the original has been filed with the Commission.

[84 FR 18700, May 2, 2019]

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (52 U.S.C. 30101(17), 30116(a) AND (d), AND PUB. L. 107–155 SEC. 214(C))

Sec.

Subpart A—Scope and Definitions

§ 109.1 When will this part apply?

This part applies to expenditures that are made independently from a candidate, an authorized committee, a political party committee, or their agents, and to those payments that are made in coordination with a candidate, an authorized committee, a political party committee, or their agents. The rules in this part explain how these types of payments must be reported and how they must be treated by candidates, authorized committees, and political party committees. In addition, subpart D of part 109 describes procedures and limits that apply only to payments, transfers, and assignments made by political party committees.

§ 109.2 [Reserved]

§ 109.3 Definitions.

For the purposes of 11 CFR part 109 only, agent means any person who has actual authority, either express or implied, to engage in any of the following activities on behalf of the specified persons:

(a) In the case of a national, State, district, or local committee of a political party, any one or more of the activities listed in paragraphs (a)(1) through (a)(5) of this section:

1. To request or suggest that a communication be created, produced, or distributed.
2. To make or authorize a communication that meets one or more of the content standards set forth in 11 CFR 109.21(c).
3. To be materially involved in decisions regarding:
   (i) The content of the communication;
   (ii) The intended audience for the communication;
   (iii) The means or mode of the communication;
   (iv) The specific media outlet used for the communication;
   (v) The timing or frequency of the communication; or,

Subpart B—Independent Expenditures

§ 109.10 How do political committees and other persons report independent expenditures?

§ 109.11 When is a “non-authorization notice” (disclaimer) required?

Subpart C—Coordination

§ 109.20 What does “coordinated” mean?

§ 109.21 What is a “coordinated communication”??

§ 109.22 Who is prohibited from making coordinated communications?

§ 109.23 Dissemination, distribution, or republication of candidate campaign materials.

Subpart D—Special Provisions for Political Party Committees

§ 109.30 How are political party committees treated for purposes of coordinated and independent expenditures?

§ 109.31 [Reserved]

§ 109.32 What are the coordinated party expenditure limits?

§ 109.33 May a political party committee assign its coordinated party expenditure authority to another political party committee?

§ 109.34 When may a political party committee make coordinated party expenditures?

§ 109.35 [Reserved]

§ 109.36 Are there circumstances under which a political party committee is prohibited from making independent expenditures?

§ 109.37 What is a “party coordinated communication”??

AUTHORITY: 52 U.S.C. 30101(17), 30104(c), 30111(a)(6), 30116, 30120; Sec. 214(c), Pub. L. 107–155, 116 Stat. 81.

SOURCE: 68 FR 451, Jan. 3, 2003, unless otherwise noted.
Federal Election Commission

§ 109.10 How do political committees and other persons report independent expenditures?

(a) Political committees, including political party committees, must report independent expenditures under 11 CFR 104.4.

(b) Every person that is not a political committee and that makes independent expenditures aggregating in excess of $250 with respect to a given election in a calendar year shall file a verified statement or report on FEC Form 5 in accordance with 11 CFR 104.4(e) containing the information required by paragraph (e) of this section. Every person filing a report or statement under this section shall do so in accordance with the quarterly reporting schedule specified in 11 CFR 104.5(a)(1)(i) and (ii) and shall file a report or statement for any quarterly period during which any such independent expenditures that aggregate in excess of $250 are made and in any quarterly reporting period thereafter in which additional independent expenditures are made.

(c) For each election in which a person who is not a political committee makes independent expenditures, the person shall aggregate its independent expenditures made in each calendar year to determine its reporting obligation. When such a person makes independent expenditures aggregating $10,000 or more for an election in any calendar year, up to and including the 20th day before an election, the person must report the independent expenditures on FEC Form 5, or by signed statement if the person is not otherwise required to file electronically under 11 CFR 104.18. (See 11 CFR 104.4(f) for aggregation.) The person making the independent expenditures aggregating $10,000 or more must ensure that the Commission receives the report or statement by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $10,000 or more,
§ 109.11 When is a “non-authorization notice” (disclaimer) required?

Whenever any person makes an independent expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such person shall comply with the requirements of 11 CFR 110.11.

Subpart C—Coordination

§ 109.20 What does “coordinated” mean?

(a) Coordinated means made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate’s authorized committee, or their agents, or a political party committee or its agents; and

(v) The identification of each person who made a contribution in excess of $200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure.

(2) Verification of independent expenditure statements and reports. Every person shall verify reports and statements of independent expenditures filed pursuant to the requirements of this section by one of the methods stated in paragraph (e)(2)(i) or (ii) of this section. Any report or statement verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(i) For reports or statements filed on paper (e.g., by hand-delivery, U.S. Mail, or facsimile machine), the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by paragraph (e)(1)(v) of this section.

(ii) For reports or statements filed by electronic mail, the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer’s name immediately following the certification required by paragraph (e)(1)(v) of this section.

[68 FR 451, Jan. 3, 2003, as amended at 81 FR 34863, June 1, 2016; 83 FR 66595, Dec. 27, 2018]
§ 109.21 What is a "coordinated communication"?

(a) Definition. A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication:

(1) Is paid for, in whole or in part, by a person other than that candidate, authorized committee, or political party committee;

(2) Satisfies at least one of the content standards in paragraph (c) of this section; and

(3) Satisfies at least one of the conduct standards in paragraph (d) of this section.

(b) Treatment as an in-kind contribution and expenditure; Reporting—(1) General rule. A payment for a coordinated communication is made for the purpose of influencing a Federal election, and is an in-kind contribution under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37, is either an in-kind contribution to, or a coordinated party expenditure with respect to, the candidate or political party committee with whom or with which it was coordinated and must be reported as an expenditure made by that candidate or political party committee, unless otherwise exempted under 11 CFR part 100, subparts C or E.


§ 109.21 What is a "coordinated communication"?

(a) Definition. A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication:

(1) Is paid for, in whole or in part, by a person other than that candidate, authorized committee, or political party committee;

(2) Satisfies at least one of the content standards in paragraph (c) of this section; and

(3) Satisfies at least one of the conduct standards in paragraph (d) of this section.

(b) Treatment as an in-kind contribution and expenditure; Reporting—(1) General rule. A payment for a coordinated communication is made for the purpose of influencing a Federal election, and is an in-kind contribution under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37, is either an in-kind contribution to, or a coordinated party expenditure with respect to, the candidate or political party committee with whom or with which it was coordinated and must be reported as an expenditure made by that candidate or political party committee, unless otherwise exempted under 11 CFR part 100, subparts C or E.

(2) In-kind contributions resulting from conduct described in paragraphs (d)(4) or (d)(5) of this section. Notwithstanding paragraph (b)(1) of this section, the candidate, authorized committee, or political party committee with whom or which a communication is coordinated does not receive or accept an in-kind contribution, and is not required to report an expenditure, that results from conduct described in paragraphs (d)(4) or (d)(5) of this section, unless the candidate, authorized committee, or political party committee engages in conduct described in paragraphs (d)(1) through (d)(3) of this section.

(3) Reporting of coordinated communications. A political committee, other than a political party committee, that makes a coordinated communication must report the payment for the communication as a contribution made to the candidate or political party committee with whom or which it was coordinated and as an expenditure in accordance with 11 CFR 104.3(a) and as an expenditure under 11 CFR 104.3(b).

(c) Content standards. Each of the types of content described in paragraphs (c)(1) through (c)(5) of this section satisfies the content standard of this section.

(1) A communication that is an elec-tioneering communication under 11 CFR 100.29.

(2) A public communication, as defined in 11 CFR 100.26, that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate’s authorized committee, unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b). For a communication that satisfies this content standard, see paragraph (d)(6) of this section.

(3) A public communication, as defined in 11 CFR 100.26, that expressly advocates, as defined in 11 CFR 100.22,
§ 109.21

11 CFR Ch. I (1–1–22 Edition)

the election or defeat of a clearly identified candidate for Federal office.

(4) A public communication, as defined in 11 CFR 100.26, that satisfies paragraph (c)(4)(i), (ii), (iii), or (iv) of this section:

(i) References to House and Senate candidates. The public communication refers to a clearly identified House or Senate candidate and is publicly distributed or otherwise publicly disseminated in the clearly identified candidate’s jurisdiction 90 days or fewer before the clearly identified candidate’s general, special, or runoff election, or primary or preference election, or nominating convention or caucus.

(ii) References to Presidential and Vice Presidential candidates. The public communication refers to a clearly identified Presidential or Vice Presidential candidate and is publicly distributed or otherwise publicly disseminated in a jurisdiction during the period of time beginning 120 days before the clearly identified candidate’s primary or preference election in that jurisdiction, or nominating convention or caucus in that jurisdiction, up to and including the day of the general election.

(iii) References to political parties. The public communication refers to a political party, does not refer to a clearly identified Federal candidate, and is publicly distributed or otherwise publicly disseminated in a jurisdiction in which one or more candidates of that political party will appear on the ballot.

(A) When the public communication is coordinated with a political party and it is publicly distributed or otherwise publicly disseminated outside the clearly identified candidate’s jurisdiction, the time period in paragraph (c)(4)(i) or (ii) of this section that would apply to a communication containing only a reference to a political party applies.

(B) When the public communication is coordinated with a political party committee and it is publicly distributed or otherwise publicly disseminated during the two-year election cycle ending on the date of a Presidental general election, the time period in paragraph (c)(4)(ii) of this section applies.

(iv) References to both political parties and clearly identified Federal candidates. The public communication refers to a political party and a clearly identified Federal candidate, and is publicly distributed or otherwise publicly disseminated in a jurisdiction in which one or more candidates of that political party will appear on the ballot.

(A) When the public communication is coordinated with a candidate and it is publicly distributed or otherwise publicly disseminated in that candidate’s jurisdiction, the time period in paragraph (c)(4)(i) or (ii) of this section that would apply to a communication containing only a reference to that candidate applies.

(B) When the public communication is coordinated with a political party committee and it is publicly distributed or otherwise publicly disseminated in that clearly identified candidate’s jurisdiction, the time period in paragraph (c)(4)(i) or (ii) of this section that would apply to a communication containing only a reference to that candidate applies.

(C) When the public communication is coordinated with a political party committee and it is publicly distributed or otherwise publicly disseminated during the two-year election cycle ending on the date of a Presidental general election, the time period in paragraph (c)(4)(i) of this section applies.

(C) When the public communication is coordinated with a political party committee, the time period in paragraph (c)(4)(ii) of this section applies.

(D) Conduct standards. Any one of the following types of conduct satisfies the conduct standard of this section whether or not there is agreement or formal
collaboration, as defined in paragraph (e) of this section:

(1) Request or suggestion. (i) The communication is created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party committee; or
(ii) The communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, or political party committee assents to the suggestion.

(2) Material involvement. This paragraph, (d)(2), is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source. A candidate, authorized committee, or political party committee is materially involved in decisions regarding:
(i) The content of the communication;
(ii) The intended audience for the communication;
(iii) The means or mode of the communication;
(iv) The specific media outlet used for the communication;
(v) The timing or frequency of the communication; or
(vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

(3) Substantial discussion. This paragraph, (d)(3), is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source. The communication is created, produced, or distributed after one or more substantial discussions about the communication between the person paying for the communication, the employees or agents of the person paying for the communication, and the candidate who is clearly identified in the communication, or the candidate’s authorized committee, or a political party committee. A discussion is substantial within the meaning of this paragraph if information about the candidate’s or political party committee’s campaign plans, projects, activities, or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication.

(4) Common vendor. All of the following statements in paragraphs (d)(4)(i) through (d)(4)(iii) of this section are true:
(i) The person paying for the communication, or an agent of such person, contracts with or employs a commercial vendor, as defined in 11 CFR 116.1(c), to create, produce, or distribute the communication;
(ii) That commercial vendor, including any owner, officer, or employee of the commercial vendor, has provided any of the following services to the candidate who is clearly identified in the communication, or the candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee, or a political party committee, during the previous 120 days:
(A) Development of media strategy, including the selection or purchasing of advertising slots;
(B) Selection of audiences;
(C) Polling;
(D) Fundraising;
(E) Developing the content of a public communication;
(F) Producing a public communication;
(G) Identifying voters or developing voter lists, mailing lists, or donor lists;
(H) Selecting personnel, contractors, or subcontractors; or
(I) Consulting or otherwise providing political or media advice; and
(iii) This paragraph, (d)(4)(iii), is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the commercial vendor was obtained from a publicly available source. That commercial vendor uses or conveys to the person paying for the communication:
(A) Information about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate’s opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or
(B) Information used previously by the commercial vendor in providing
services to the candidate who is clearly identified in the communication, the candidate’s opponent, the opponent’s authorized committee, a political party committee, and that information is material to the creation, production, or distribution of the communication.

(5) Former employee or independent contractor. Both of the following statements in paragraphs (d)(5)(i) and (d)(5)(ii) of this section are true:

(i) The communication is paid for by a person, or by the employer of a person, who was an employee or independent contractor of the candidate who is clearly identified in the communication, or the candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee, or a political party committee, during the previous 120 days; and

(ii) This paragraph, (d)(5)(ii), is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the former employee or independent contractor was obtained from a publicly available source. That former employee or independent contractor uses or conveys to the person paying for the communication:

(A) Information about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate’s opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or

(B) Information used by the former employee or independent contractor in providing services to the candidate who is clearly identified in the communication, or the candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee, or a political party committee, and that information is material to the creation, production, or distribution of the communication.

(6) Dissemination, distribution, or republication of campaign material. A communication that satisfies the content standard of paragraph (c)(2) of this section or 11 CFR 109.37(a)(2)(i) shall only satisfy the conduct standards of paragraphs (d)(1) through (d)(3) of this section on the basis of conduct by the candidate, the candidate’s authorized committee, or the agents of any of the foregoing, that occurs after the original preparation of the campaign materials that are disseminated, distributed, or republished. The conduct standards of paragraphs (d)(4) and (d)(5) of this section may also apply to such communications as provided in those paragraphs.

(e) Agreement or formal collaboration. Agreement or formal collaboration between the person paying for the communication and the candidate clearly identified in the communication, or the candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee, or a political party committee, is not required for a communication to be a coordinated communication. Agreement means a mutual understanding or meeting of the minds on all or any part of the material aspects of the communication or its dissemination. Formal collaboration means planned, or systematically organized, work on the communication.

(f) Safe harbor for responses to inquiries about legislative or policy issues. A candidate’s or a political party committee’s response to an inquiry about that candidate’s or political party committee’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 paragraph (d) of this section.

(g) Safe harbor for endorsements and solicitations by Federal candidates. (1) A public communication in which a candidate for Federal office endorses another candidate for Federal or non-Federal office is not a coordinated communication with respect to the endorsing Federal candidate unless the public communication promotes, supports, attacks, or opposes the endorsing candidate or another candidate who seeks election to the same office as the endorsing candidate.

(2) A public communication in which a candidate for Federal office solicits funds for another candidate for Federal or non-Federal office, a political committee, or organizations as permitted by 11 CFR 300.65, is not a coordinated
§ 109.23 Dissemination, distribution, or republication of candidate campaign materials.

(a) General rule. The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure. The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.

(b) Exceptions. The following uses of campaign materials do not constitute a contribution to the candidate who originally prepared the materials:

(1) The campaign material is disseminated, distributed, or republished by the candidate or the candidate's authorized committee who prepared that material;

(2) The campaign material is incorporated into a communication that advocates the defeat of the candidate or party that prepared the material;

(3) The campaign material is disseminated, distributed, or republished in a news story, commentary, or editorial exempted under 11 CFR 100.73 or 11 CFR 100.132;

(4) The campaign material used consists of a brief quote of materials that demonstrate a candidate's position as...
§ 109.30 How are political party committees treated for purposes of coordinated and independent expenditures?

Political party committees may make independent expenditures subject to the provisions in this subpart. See 11 CFR 109.36. Political party committees may also make coordinated party expenditures in connection with the general election campaign of a candidate, subject to the limits and other provisions in this subpart. See 11 CFR 109.32 through 11 CFR 109.34.

§ 109.31 [Reserved]

§ 109.32 What are the coordinated party expenditure limits?

(a) Coordinated party expenditures in Presidential elections. (1) The national committee of a political party may make coordinated party expenditures in connection with the general election campaign of any candidate for President of the United States affiliated with the party.

(2) The coordinated party expenditures shall not exceed an amount equal to two cents multiplied by the voting age population of the United States. See 11 CFR 110.18. This limitation shall be increased in accordance with 11 CFR 110.17.

(3) Any coordinated party expenditure under paragraph (a) of this section shall be in addition to—

(i) Any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for President of the United States; and

(ii) Any contribution by the national committee to the candidate permissible under 11 CFR 110.1 or 110.2.

(4) Any coordinated party expenditures made by the national committee of a political party pursuant to paragraph (a) of this section, or made by any other party committee under authority assigned by a national committee of a political party under 11 CFR 109.33, on behalf of that party’s Presidential candidate shall not count against the candidate’s expenditure limitations under 11 CFR 110.8.

(b) Coordinated party expenditures in other Federal elections. (1) The national committee of a political party, and a State committee of a political party, including any subordinate committee of a State committee, may each make coordinated party expenditures in connection with the general election campaign of a candidate for Federal office in that State who is affiliated with the party.

(2) The coordinated party expenditures shall not exceed:

(i) In the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(A) Two cents multiplied by the voting age population of the State (see 11 CFR 110.18); or

(B) Twenty thousand dollars.

(ii) In the case of a candidate for election to the office of Representative from any other State, $10,000.

(3) The limitations in paragraph (b)(2) of this section shall be increased in accordance with 11 CFR 110.17.

(4) Any coordinated party expenditure under paragraph (b) of this section shall be in addition to any contribution by a political party committee to the candidate permissible under 11 CFR 110.1 or 110.2.

§ 109.33 May a political party committee assign its coordinated party expenditure authority to another political party committee?

(a) Assignment. The national committee of a political party and a State committee of a political party, including any subordinate committee of a
§ 109.37 What is a “party coordinated communication?”

(a) Definition. A political party communication is coordinated with a candidate, a candidate’s authorized committee, or agent of any of the foregoing, when the communication satisfies the conditions set forth in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) The communication is paid for by a political party committee or its agent.

(2) The communication satisfies at least one of the content standards described in paragraphs (a)(2)(i) through (a)(2)(iii) of this section.

(1) A public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate’s authorized committee, or an agent of any of the foregoing; unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b). For a communication that
satisfies this content standard, see 11 CFR 109.21(d)(6).

(ii) A public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office.

(iii) A public communication, as defined in 11 CFR 100.26, that satisfies paragraphs (a)(2)(iii)(A) or (B) of this section:

(A) References to House and Senate candidates. The public communication refers to a clearly identified House or Senate candidate and is publicly distributed or otherwise publicly disseminated in the clearly identified candidate’s jurisdiction 90 days or fewer before the clearly identified candidate’s general, special, or runoff election, or primary or preference election, or nominating convention or caucus.

(B) References to Presidential and Vice Presidential candidates. The public communication refers to a clearly identified Presidential or Vice Presidential candidate and is publicly distributed or otherwise publicly disseminated in a jurisdiction during the period of time beginning 120 days before the clearly identified candidate’s primary or preference election in that jurisdiction, or nominating convention or caucus in that jurisdiction, up to and including the day of the general election.

(3) The communication satisfies at least one of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6), subject to the provisions of 11 CFR 109.21(e), (g), and (h). 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). Notwithstanding paragraph (b)(1) of this section, the candidate with whom a party coordinated communication is coordinated does not receive or accept an in-kind contribution, and is not required to report an expenditure that results from conduct described in 11 CFR 109.21(d)(4) or (d)(5), unless the candidate, authorized committee, or an agent of any of the foregoing, engages in conduct described in 11 CFR 109.21(d)(1) through (d)(3).

(b) Treatment of a party coordinated communication. A payment by a political party committee for a communication that is coordinated with a candidate, and that is not otherwise exempted under 11 CFR part 100, subpart C or E, must be treated by the political party committee making the payment as either:

(1) An in-kind contribution for the purpose of influencing a Federal election under 11 CFR 100.52(d) to the candidate with whom it was coordinated, which must be reported under 11 CFR part 104; or

(2) A coordinated party expenditure 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, which must be reported under 11 CFR part 104.