dues-paying members will not affect the corporation's exempt status.

Two commenters expressed concern that paragraph 114.10(c)(3)(i) could be read to deny exempt status to corporations with employees or creditors, because an employee of a qualified nonprofit corporation could have a claim against the corporation for wages, and a creditor could have a claim against the corporation on a debt.

The Commission has revised this provision in accordance with these comments. Claims held by employees and creditors with no ownership interest in the corporation arise out of arms-length employment or credit relationships, rather than an equitable interest in the corporation. Consequently, they will not be treated as claims on the corporation's assets or earnings that affect the corporation's exemption from the independent expenditure prohibition.

ii. Disincentives to disassociate. Paragraph (c)(3)(ii) limits the exemption to corporations that do not offer benefits that are a disincentive for recipients to disassociate themselves with the corporation on the basis of its position on a political issue. Thus, if the corporation offers a benefit that recipients lose if they end their affiliation with the corporation, or cannot obtain unless they become affiliated, the corporation will not be a qualified nonprofit corporation. This provision ensures that the associational decisions of persons who affiliate themselves with the corporation are based exclusively on political, rather than economic, considerations.

The rule contains examples of benefits that will be considered disincentives to disassociate with the corporation. First, credit cards, insurance policies and savings plans will be considered disincentives to disassociate. Consequently, corporations that offer such things as affinity credit cards or life insurance will not be qualified nonprofit corporations.

Second, training, education and business information will be considered disincentives to disassociate from the corporation, unless the corporation provides these benefits to enable the persons who receive them to help promote the group's political ideas. This provision allows a qualified nonprofit corporation to provide its volunteers with the training and information they need to advocate its issues. However, if the corporation provides other kinds of training or information that is not needed for its issue advocacy work, the corporation will not be a qualified nonprofit corporation.

One commenter objected to paragraph (c)(3)(ii), saying that it would prevent most organizations from qualifying for the exemption. Other commenters urged the Commission to distinguish between benefits that are related to the corporation's issue advocacy work, or grow out of it, and those that are unrelated to that work, saying that only the latter should be regarded as disincentives to disassociate. These commenters also recommended that a substantiality test be used, so that benefits that are insubstantial or create an insignificant disincentive to disassociate would not disqualify the corporation.

The Commission has revised this section to address some of the concerns raised by the commenters. As indicated above, paragraph 114.10(c)(3)(ii) has been revised to say that, if a corporation provides training or education that is necessary to promote the organization's political ideas, the training will not be considered an incentive to associate or disincentive to disassociate.

However, the Commission has decided against including a substantiality test for benefits that ostensibly create a less significant disincentive to disassociate with the corporation. Any disincentive, no matter how small, can influence an individual's associational decisions, particularly where the ''cost'' to the individual of obtaining the benefit is only a small yearly donation to the corporation. For example, a corporation might offer donors access to affinity credit cards with no annual fee. Although the actual dollar value of such a benefit may be insignificant, it could easily offset the donor's annual donation to the corporation. Thus, membership levels would partially reflect the popularity of the benefit being offered, rather than exclusively reflecting the popularity of the group's political ideas.

Including a substantiality test would also force the Commission to determine which benefits are substantial enough to influence a particular individual's decision whether or not to continue associating with an organization. The Commission is reluctant to make these difficult subjective determinations if they can be avoided. Consequently, the final rule does not contain a substantiality threshold for disincentives to disassociate with the corporation.

e. Relationship with business corporations and labor organizations. The Supreme Court said that one of the reasons MCFL was exempt from the independent expenditure prohibition was that it ''was not established by a business corporation or labor union, and it is its policy not to accept contributions from such entities.'' *MCFL*, 479 U.S. at 264. This characteristic has been incorporated into paragraph (c)(4) of the final rules. The final rule has been broken down into three subparagraphs for purposes of clarity.

Paragraph (c)(4)(i) implements the first part of the Court's statement. Only corporations that were not established by a business corporation or labor organization can be eligible for an exemption from, the independent expenditure prohibition. Thus, corporations that are set up by business corporations or labor organizations cannot be qualified nonpropfit corporations.

Paragraph (c)(4)(ii) limits the exemption to corporations that do not directly or indirectly accept donations of anything of value from business corporations or labor organizations. This includes donations received directly from these entities, and donations that pass through a third organization. Thus, if a corporation accepts donations from an organization that accepts donations from these entities, the corporation will not be a qualified nonprofit corporation.

The rule also limits the exemption to corporations that can provide some assurance that they do not accept donations from business corporations or labor organizations. Under paragraph (c)(4)(iii), if the corporation can demonstrate, through accounting records, that it has not accepted any donations from business corporations and labor organizations in the past from business corporations and labor organizations in the past, it will be eligible for the exemption. If it is unable, for good cause, to make this showing, it can provide adequate assurance by showing that it has a documented policy against accepting donations from these entities. In order to be documented, this policy must be embodied in the organic documents of the corporation, the minutes of a meeting of the governing board, or a directive from the person that controls the day-to-day operation of the corporation.

Most of the commenters objected to an absolute ban on the acceptance of business corporation and labor organization donations, arguing that a ban is not necessary and is not supported by the court decisions. Several commenters argued that *MCFL's* third requirement is met when an organization is free from the influence of business corporations. Others urged the Commission to focus not on the level of donations but on whether the