

Furthermore, the Commission does not regard anticipated ignorance of a regulation as a legitimate argument against the promulgation of that regulation, particularly when the regulation will implement the Commission's statutory mandate and the holding of a Supreme Court decision.

Therefore, the Commission has included this requirement in the final rules. The Commission does not expect this requirement to impose a significant burden on qualified nonprofit corporations. For example, corporations need not say anything more than "donations to xyz organization may be used for political purposes, such as supporting or opposing candidates," or similar language, in order to satisfy this requirement. This will ensure that donors are aware of the corporation's campaign activity.

10. Non-authorization Notification

Paragraph (g) of the final rules requires qualified nonprofit corporations that make independent expenditures to comply with the disclaimer requirements in 11 CFR 110.11. Section 110.11 requires any person financing an express advocacy communication to include a statement in the communication identifying who paid for it. 11 CFR 110.11(a)(1). This statement must also identify the candidate or committee who authorized the communications, unless the communications was not authorized by any candidate or committee, in which case, it must so indicate. 11 CFR 110.11(a)(1)(iii). Thus, a qualified nonprofit corporation that finances an independent expenditure must include a disclaimer that states the name of the corporation and indicates that the communication was not authorized by any candidate or candidate's committee. The Commission received no comments on this provision.

11. Major Purpose

In *MCFL*, the Court said that "should *MCFL*'s independent spending become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee. * * * As such, it would automatically be subject to the obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns." 479 U.S. at 262 (citation omitted).

The NPRM sought comments on a number of issues related to this part of the Court's opinion. For example, the notice set out two alternative versions of a test for determining whether a

qualified nonprofit corporation's major purpose is making independent expenditures. The notice also specifically sought comments on whether these tests should turn on whether independent expenditures are "a" major purpose or "the" major purpose of the corporation. As discussed above, the notice also contained proposed requirements for reporting the information that the Commission would need for these tests. Several commenters submitted views on these issues.

The Commission has decided not to address this part of *MCFL* in the final rules. In its administration of the Act, the Commission is applying a major purpose concept in other contexts that do not involve qualified nonprofit corporations. The Commission would prefer to promulgate a major purpose test that will govern in all of these situations. Such a rule is beyond the scope of this rulemaking.

Therefore, the Commission has decided to initiate a separate rulemaking to address this part of *MCFL* and other outstanding issues. Any further definition or refinement of the major purpose concept and the associated reporting requirements will be done in that rulemaking. The comments submitted on these issues in response to the NPRM will be considered as part of this separate rulemaking.

However, in the meantime, the Commission cautions, that, "should [a qualified nonprofit corporation's] independent spending become so extensive that [its] major purpose may be regarded as campaign activity," it will be treated as a political committee under the FECA and subject to the applicable regulations.

Certification of No Effect Pursuant to 5 U.S.C. § 605(b) [Regulatory Flexibility Act]

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that the definition of express advocacy will not have a significant economic impact on a substantial number of small entities. In addition, as anticipated by the Supreme Court in *MCFL*, there may not be a substantial number of small entities affected by the final rules. The new disclosure rules for qualified nonprofit corporations, which are small entities, are the least burdensome requirements possible under the FECA.

List of Subjects

11 CFR Part 100

Elections

11 CFR Part 106

Campaign funds
Political candidates
Political committees and parties

11 CFR Part 109

Campaign funds
Elections
Political candidates
Political committees and parties
Reporting requirements

11 CFR Part 114

Business and industry
Elections
Labor

For the reasons set out in the preamble, Subchapter A, Chapter I of Title 11 of the *Code of Federal Regulations* is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for 11 CFR Part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. 11 CFR Part 100 is amended by revising section 100.17 to read as follows:

§ 100.17 Clearly identified (2 U.S.C. 431(18)).

The term *clearly identified* means the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic presidential nominee" or "the Republican candidate for Senate in the State of Georgia."

3. 11 CFR Part 100 is amended by adding section 100.22 to read as follows:

§ 100.22 Expressly advocating (2 U.S.C. 431(17)).

Expressly advocating means any communication that—(a) Uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s),