MEMORANDUM

TO: The Commission
FROM: Thomasenia P. Duncan, General Counsel
       Rosemary C. Smith, Associate General Counsel
       Robert M. Knop, Assistant General Counsel
       Neven F. Stipanovic, Attorney

SUBJECT: Draft Notice of Proposed Rulemaking – Repeal of Millionaires’ Amendment Regulations

Attached is a draft Notice of Proposed Rulemaking (NPRM) to implement the Supreme Court’s decision in *Davis v. Federal Election Commission*. The draft NPRM proposes deleting the Commission’s regulations in Part 400, which contains the bulk of the Millionaires’ Amendment’s regulatory provisions. It also proposes to revise several regulations to conform them to the Supreme Court’s decision and to retain others that were not affected by that decision.

We request that this draft be placed on the agenda for October 2, 2008.

Attachment
FEDERAL ELECTION COMMISSION

11 CFR Parts 100-102, 104, 110, 113, 116, 400, 9001, 9003, 9031, 9033, and 9035

[Notice 2008 - ]

Increased Contribution and Coordinated Party Expenditure Limits for Candidates
Opposing Self-financed Candidates

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission ("Commission") requests comments on the proposed deletion of its rules regarding increased contribution limits and coordinated party expenditure limits for Senate and House of Representatives candidates facing self-financed opponents. These rules were promulgated to implement sections 304 and 319 of the Bipartisan Campaign Reform Act of 2002, known as the "Millionaires' Amendment." In Davis v. Federal Election Commission, the Supreme Court held that sections 319(a) and (b), regarding House of Representatives elections, were unconstitutional. The Court's holding also applies to the contribution and spending limits in section 304 regarding Senate elections. The Commission, therefore, proposes to remove its current rules that implement the Millionaires' Amendment. In addition, the Commission proposes to retain certain other rules that generally are applicable throughout the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA"). The
Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before November 21, 2008.

ADDRESSES: All comments must be in writing, must be addressed to Mr. Robert M. Knop, Assistant General Counsel, and must be submitted in either e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail to ensure timely receipt and consideration. E-mail comments must be sent to millionairerepeal@fec.gov. If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219-3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered.

The Commission will post comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Neven F. Stipanovic, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694-1650 or (800) 424-9530.
SUPPLEMENTARY INFORMATION:


I. Background

The Millionaires' Amendment of the Bipartisan Campaign Reform Act of 2002, Public Law 107-155, (March 27, 2002) ("BCRA"), increased certain contribution limits and coordinated party expenditure limits for Senate and House of Representatives candidates facing opponents who spent significant amounts of personal funds. When a self-financed opponent spent personal funds above a certain threshold amount, the Millionaires' Amendment permitted a candidate to accept individual contributions under increased contribution limits. 2 U.S.C. 441a(i) and 441a-l(a). When certain other threshold amounts were reached, the Millionaires' Amendment also allowed national and state political party committees to make unlimited coordinated party expenditures on behalf of the candidate in the general election. Id.

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1 Section 304 of BCRA added a new paragraph (i) to 2 U.S.C. 441a, which addressed Senate elections. Section 319 of BCRA added a new section 441a-l to the Act, which addressed elections for the House Representatives. The Senate provisions also added new notification and reporting requirements in 2 U.S.C. 434.
On December 19, 2002, the Commission approved interim final rules to implement the Millionaires' Amendment. See Interim Final Rules on Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates, 68 FR 3970 (Jan. 27, 2003) (“Interim Final Rules”). The Commission sought public comments on the Interim Final Rules, as well as on specific issues discussed in the Explanation and Justification. No comments were received. These Interim Final Rules were in effect during the 2004 and 2006 election cycles, and the beginning of the 2008 election cycle.

On June 26, 2008, the Supreme Court invalidated the Millionaires’ Amendment. In Davis, the Supreme Court reviewed a challenge by a self-financed candidate who triggered the Millionaires’ Amendment in the 2004 and 2006 elections for the House of Representatives. The Supreme Court held that the House of Representatives provision of the Millionaires’ Amendment was unconstitutional because it violated the plaintiff’s First Amendment rights. 128 S.Ct. at 2775. The Supreme Court invalidated the entire BCRA section 319 relating to House elections, including the increased contribution limits in 319(a) and its companion disclosure requirements in 319(b). The Court reasoned that the Millionaires’ Amendment imposed a substantial burden on the plaintiff’s exercise of his First Amendment right to use personal funds for campaign speech, and that the burden was not justified by any governmental interest in eliminating corruption or the perception of corruption. 128 S.Ct. at 2772-73.

On July 25, 2008, the Commission issued a Public Statement that, in light of the Davis decision, it would no longer enforce the Millionaires’ Amendment. See Press Release, Public Statement on the Supreme Court’s Decision in Davis v. FEC, July 25,
As of June 26, 2008, the increased contribution limits and reporting requirements were no longer in effect, and political party committees were no longer permitted to make increased coordinated party expenditures on behalf of self-financed candidates. Id.

II. Proposed Removal of Current 11 CFR Part 400 – Increased Limits for Candidates Opposing Self-Financed Candidates

The Commission proposes to delete current 11 CFR Part 400 because the statutory foundation for Part 400 has been invalidated by the Supreme Court’s decision in Davis. The Commission’s rules at 11 CFR Part 400 implement the Millionaires’ Amendment. See Interim Final Rules at 3975. The rules at Part 400: (1) provide the notification and reporting requirements for Senate and House of Representatives candidates (subpart B); (2) explain when the increased contribution limits apply (subpart C); (3) explain how to calculate the increased contribution limits (subpart D); and (4) explain how candidates’ authorized committees must dispose of excess contributions. In Davis, the Supreme Court decided that increased contribution limits and disclosure requirements for House of Representatives candidates in BCRA sections 319(a) and (b) were unconstitutional. Thus, the Commission’s rules at 11 CFR Part 400 that implement BCRA sections 319(a) and (b) are no longer valid.

The Supreme Court in Davis struck down only BCRA sections 319(a) and (b) governing House of Representatives elections. The Commission, however, believes that the Supreme Court’s analysis in Davis also precludes enforcement of the Commission’s rules implementing BCRA sections 304(a) and (b), which provide increased contribution limits and disclosure requirements for Senate elections. In Davis, the Court concluded
that increased contribution limits for a House of Representatives candidate facing a self-
financed candidate impermissibly burdened the First Amendment right of the self-
financed candidates to spend their own money for campaign speech. 128 S.Ct. at 2771.
There is no basis to conclude that the constitutional implications would be different for
similarly situated candidates in Senate elections, governed by BCRA sections 304(a) and
(b), than in the respective House of Representatives elections, governed by BCRA
sections 319(a) and (b).

The Commission's rules at Part 400 implement the Millionaires' Amendment
provisions for both House and Senate elections. The Commission, therefore, proposes to
delete 11 CFR Part 400 in its entirety.

III. Proposed Amendments To Other Provisions

A. Part 100 – Definitions

1. Proposed Removal of Current 11 CFR 100.19(g) – File, Filed, or

Filing

The Commission proposes to delete current 11 CFR 100.19(g) because the
statutory foundation for this provision has been invalidated by the Supreme Court’s
decision in Davis. Section 100.19 defines “file, filed, or filing” and specifies when a
document is considered timely filed. Paragraph (g) states that a candidate’s notification
of expenditures from personal funds under 11 CFR 400.21 and 400.22 are considered
timely filed if sent by facsimile or electronic mail to all appropriate parties within 24
hours of the time the thresholds set forth in 11 CFR 400.21 and 400.22 are exceeded,
thereby triggering the reporting requirement.
As explained above, the Commission proposes to delete current 11 CFR Part 400 in its entirety because the Supreme Court invalidated the Millionaires’ Amendment. The Commission proposes to delete paragraph (g) from section 100.19 because the candidate’s notifications under 11 CFR 400.21 and 400.22 would no longer be required.

2. Proposed Revision of 11 CFR 100.33 – Definition of “Personal Funds”

The Commission proposes to revise the definition of “personal funds” in 11 CFR 100.33 by deleting the cross-reference to current section 400.2, which the Commission intends to remove through this rulemaking. The Commission proposes to retain the remainder of section 100.33 because the definition of “personal funds” in section 100.33 applies generally to other Title 2 rules that use the term “personal funds.” See Interim Final Rules, 68 FR at 3972. The Commission also notes that the definition of “personal funds” at 11 CFR 9003.2(c)(3), which applies to Title 26 of the United States Code, would remain unchanged.

B. Proposed Revision of 11 CFR 101.1 – Candidate Designations

The Commission proposes to delete the sentence in paragraph (a) of current 11 CFR 101.1 that requires Senate and House of Representatives candidates to state, on their Statements of Candidacy on FEC Form 2 (or, if the candidate is not required to file electronically, on his or her letter containing the same information), the amount by which the candidate intends to exceed the threshold amount as defined in 11 CFR 400.9. The reporting requirements of that sentence would no longer be necessary because, as explained above, the Commission proposes to delete 11 CFR Part 400 through this rulemaking.
C. Proposed 11 CFR 102.2 – Statement of Organization: Forms and Committee Identification Number

The Commission proposes to retain and revise current 11 CFR 102.2(a)(1)(viii), which requires principal campaign committees to provide an electronic mail address and a facsimile number on FEC Form 1. Paragraph (viii) was promulgated by the Interim Final Rules to facilitate the notification of expenditures from personal funds under Part 400. See Interim Final Rules, 68 FR at 3972. Although the notifications under Part 400 would no longer be required, the electronic mail address provided by committees facilitates the exchange of information between committees and the Commission for other purposes under FECA. Continuing to require committees’ electronic mail address, therefore, would continue to benefit the committees as well as the Commission. The Commission, however, proposes to delete the requirement that committees provide their facsimile number because it does not routinely communicate with committees via facsimile machine.

Consistent with its delegated authority to require political committees to provide an “address” when filing a statement of organization under 2 U.S.C. 433(b)(1), the Commission proposes to retain the requirement that committees report their electronic mail address on FEC Form 1.

D. Proposed Removal of Current 11 CFR 104.19 – Special Reporting Requirements for Principal Campaign Committees of Candidates for Election to the United States Senate or United States House of Representatives
The Commission proposes the remove and reserve current 11 CFR 104.19 because the statutory foundation of this section was invalidated by the Supreme Court’s decision in

Davis. Current section 104.19 requires principal campaign committees of Senate and House of Representatives candidates to report information necessary to calculate their “gross receipts advantage,” which is defined at 2 U.S.C. 441a(i)(E) (Senate) and 441a-1(a)(2)(B) (House of Representatives). This reporting requirement was promulgated to ensure the candidates in the same House or Senate election have sufficient and timely information to calculate the “opposition personal funds amount” under 11 CFR Part 400.10. See Interim Final Rules, 68 FR at 3972. Because the Commission intends to delete Part 400 in response to the Supreme Court’s decision in Davis, the reporting requirements under section 104.19 would no longer be necessary.

E. Proposed Deletion of 110.5(b)(2) – Biennial Contribution Limitations

The Commission proposes to delete current paragraph (b)(2) of section 110.5 because the statutory foundation for this provision has been invalidated by the Supreme Court’s decision in Davis. Paragraph (b)(2) states the circumstances under which the individual biennial limits on contributions do not apply to contributions made pursuant to 11 CFR Part 400. As explained above, the Commission intends to remove 11 CFR Part 400 because the Davis decision invalidated the Millionaires’ Amendment. Accordingly, the exception to individual contribution limits under section 110.5(b)(2) is no longer valid. The Commission, therefore, proposes to delete 11 CFR 110.5(b)(2).

F. Proposed Retention of 11 CFR 116.11 and 116.12 – Repayment of Candidate Loans
The Commission proposes to retain sections 11 CFR 116.11 and 116.12 of the regulations concerning the repayment of candidates’ personal loans. The Commission seeks comment on this proposal in light of the Supreme Court’s decision in Davis. BCRA added a new provision prohibiting candidates and their authorized committees from using contributions made after the election to repay loans from the candidates to their authorized committees to the extent the contributions total over $250,000. See 2 U.S.C. 441a(j). These loans are referred to as “personal loans.” The Commission’s current rules at 11 CFR 116.11 and 116.12 implement 2 U.S.C. 441a(j).

Section 116.11 prohibits an authorized committee from using contributions made after an election to repay any personal loan by a candidate that exceeds $250,000. Section 116.12 addresses the repayment of candidate’s personal loans that, in the aggregate, are equal to or less than $250,000.

The Commission believes that the Davis decision did not invalidate the personal loan provision in BCRA and, thus, it proposes to retain the rules that implement that provision. The Commission does not have authority, on its own, to declare a duly enacted law to be unconstitutional.

The Court in Davis did not address the validity of the personal loan provision, and the plaintiff did not challenge that provision. Although that provision is in the same statutory subsection of BCRA section 304(a) as other provisions that the Supreme Court in Davis held to be unconstitutional, the personal loan provision is placed in a separate subsection within 2 U.S.C. 441a. This statutory provision has a wider application than other provisions of the Millionaires’ Amendment. It applies equally to all candidates and regardless of whether the Millionaires’ Amendment provisions also apply. Most notably,
while other provisions of the Millionaires’ Amendment apply only to Senate and House
of Representatives candidates, the loan repayment provision applies to candidates for all
Federal offices, including presidential candidates. Because this statutory provision has
wider application than the Millionaires’ Amendment, the Commission added new
sections 11 CFR 116.11 and 116.12 rather than include these rules in 11 CFR Part 400
with the Millionaires’ Amendment regulations. See Interim Final Rules at 3973.

The Commission’s proposal to retain sections 116.11 and 116.12 is consistent
with the approach it took in a recent advisory opinion, which was requested after Davis
invalidated the Millionaires’ Amendment. See Advisory Opinion 2008-09 (Lautenberg).
Senator Lautenberg loaned money to his principal campaign committee in connection
with his primary election. The Senator asked the Commission whether the personal loan
provision applied to his personal loan case in light of the Davis decision. The
Commission concluded that it did apply because the Davis decision did not address the
constitutionality of the personal loan provision. The Commission explained that, unlike
the BCRA provisions found to be unconstitutional in Davis, the personal loan provision
applies equally to all candidates, regardless of whether they or their opponents have
triggered the increased campaign contribution limits.

The Commission also concluded in Advisory Opinion 2008-09 that the personal
loan provision was severable from the Millionaires’ Amendment. As the Commission
explained there, BCRA section 401 provides that the invalidation of one provision of
BCRA will not affect the validity of any other provisions of BCRA nor the application of
such provisions to other persons and circumstances. 2 U.S.C. 454. It is a well-settled
principle of statutory construction that “[u]nless it is evident that the legislature would
not have enacted those provisions which are within its power, independently of that
which is not, the invalid part may be dropped if what is left is fully operative as a law.”

Commission, 286 U.S. 210, 234 (1932)). In Buckley, the Supreme Court struck down
certain provisions of FECA’s section 202, but expressly upheld other provisions within
the same subsection of the statute.

In Advisory Opinion 2008-09, the Commission found that it was not at all
“evident” from the text, function, or legislative history of the Millionaires’ Amendment
that Congress intended the personal loan provision to be inextricably tied to the increased
contribution limits of BCRA 304(a). Section 304(a) was codified in two separate
provisions of 2 U.S.C. 441a, one providing for the increased contribution limits and the
other limiting repayment of personal loans. Functionally, the personal loan provision can
operate effectively without the provisions invalidated by Davis. Because the loan
repayment provision’s operation does not depend upon the invalidated increased
contribution limits or reporting provisions, its validity is not affected by their
invalidation. Moreover, legislative history shows that Congress in several instances
addressed the loan repayment provision separately from the unconstitutional provisions
regarding increased contribution limits. See, e.g., 147 Cong. Rec. S2450-51 (daily ed.

The Commission seeks comment on its proposal to retain the current rules at
11 CFR 116.11 and 116.12 restricting the repayment of personal loans.

The Commission proposes to retain current 11 CFR 110.1(b)(3), which restricts the ability of candidates and their authorized committees to accept contributions after the election. Together with sections 116.11 and 116.12, current 11 CFR 110.1(b)(3) implements 2 U.S.C. 441a(j).

Candidates and their authorized committees cannot accept contributions after the election is over unless the candidate still has net debts outstanding from that election. 11 CFR 110.1(b)(i). This rule was promulgated long before BCRA added the loan repayment restriction in 441a(j). After the election is over, candidates and their authorized committees may accept contributions up to the amount of their “net debts outstanding,” as defined in current 11 CFR 110.1(b)(3)(ii). To conform with the fundraising restrictions in 11 CFR 116.11, the Commission added paragraph (C) to section 110.1(b)(3)(ii), which excludes the amount of personal loans that exceed $250,000 from the definition of “net debt outstanding.” See Interim Final Rules, 68 FR at 3973. The Commission proposes to retain the current rule at 11 CFR 110.1(b)(3)(ii)(C) for the same reasons it intends to retain the current rules 11 CFR 116.11 and 116.12, as explained above.

H. Proposed Retention of 11 CFR 9035.2(c) – Expenditure limitations

The Commission proposes to retain the cross-reference in current 11 CFR 9035.2(c) to the definition of “personal funds” in 11 CFR 9003.2. Section 9035.2 provides limitations on expenditures from personal or family funds when a candidate has accepted matching funds in a presidential primary election. In promulgating 11 CFR 9035.2(c), the Commission explained that it cross-referenced that section to the definition of “personal funds” in 11 CFR 9003.2 because it was more
appropriate in the context of Title 26 regulations than the Commission’s definition of
“personal funds” in 11 CFR 100.33, which applies only to FECA. See Interim Final
Rules, 68 FR at 3986-87. For the same reason, the Commission continues to believe that
the cross-reference in 11 CFR 9035.2(c) to 11 CFR 9003.2 is appropriate and, therefore,
it should be retained.

IV. Technical and Conforming Amendments to Other Regulations

A. 11 CFR 100.153 – Routine Living Expenses; 11 CFR 113.1(g)(6)(ii) –
definition of personal use

The Commission proposes to amend 11 CFR 100.153 and 113.1(g)(6)(ii) by
revising the cross-reference to the definition of “personal funds” in 11 CFR 110.10(b) to
current 11 CFR 100.33. The Commission deleted 11 CFR 110.10(b) in the Interim Final
Rules. The proposed change would reflect the Commission’s prior removal of the
“personal funds” definition from section 110.10(b) to section 100.33.

B. 11 CFR 110.5(b)(2) – Biennial Contribution Limitations

The Commission proposes to amend 11 CFR 110.5 paragraphs (b), (d), and (e),
by revising the spelling of the word “bi-annual” to “biennial.” This proposed change
would make the spelling consistent with the title of section 110.5, which uses the term
biennial.

C. 11 CFR 9001.1 – Scope; 11 CFR 9003.1 – Candidate and Committee
Agreement; 11 CFR 9031.1 – Scope; 11 CFR 9033.1 – Candidate and
Committee Agreement
The Commission proposes to make technical amendments to these sections that would update the reference to its other regulations to reflect the proposed elimination of Part 400.

V. Request for Comments

The Commission invites comments from the public concerning any of the proposals outlined above. The Commission also invites comments from the public regarding any additional changes that should be made to 11 CFR 100.33, 101.1, 102.2(a)(1)(viii), 110.1(b)(3)(ii)(C), 116.11, 116.12, 9035.2(c), or any other section of the regulations to conform with the holdings and points of law articulated in the Supreme Court's decision in Davis.

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

The Commission certifies that the attached proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by this proposed rulemaking, which applies only to Federal candidates and their campaign committees, and political committees of political parties. Such committees are not “small entities” under 5 U.S.C. 601. Candidate and party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals; rather, they rely on contributions from a variety of persons to fund the committee’s activities. The Democratic and Republican parties also have a major controlling influence within the political arena and are dominant in their field. However, to the extent that any party committees representing major or minor political parties or
any other political committees might be considered “small entities,” the number that
would be affected by this rule is not substantial.

The proposed rule also would not add new substantive provisions to the current
regulations, but rather it would remove or retain existing regulations. Therefore, the
attached proposed rule would not have a significant impact on a substantial number of
small entities.

List of Subjects

11 CFR Part 100
Elections.

11 CFR Part 101
Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 102
Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 104
Campaign funds, Political committees and parties, Reporting and recordkeeping
requirements.

11 CFR Part 110
Campaign funds, Political committees and parties.

11 CFR Part 113
Campaign funds.

11 CFR Part 116
Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

11 CFR Part 400

Campaign funds, Elections, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 9001

Campaign funds.

11 CFR Part 9003

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9031

Campaign funds.

11 CFR Part 9033

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9035

Campaign funds, Reporting and recordkeeping requirements.
For the reasons set out in the preamble, the Commission proposes to amend Subchapters A, C, E, and F of Chapter I of Title 11 of the Code of Federal Regulations as follows:

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

1. The authority citation for part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 434, 438(a)(8), and 439a(c).

2. In section 100.19, paragraph (b) would be revised by removing the reference to “(g)” and adding in its place “(f)” in both instances that “(g)” appears.

3. In section 100.19, paragraph (g) would be removed to read as follows:

§ 100.19 File, filed or filing (2 U.S.C. 434(a)).

* * * * *

(g) Candidate notifications of expenditures from personal funds. A candidate’s notification of expenditures from personal funds under 11 CFR 400.21 or 400.22 is timely filed if it is received by facsimile machine or electronic mail by each of appropriate parties as set forth in 11 CFR 400.21 and 400.22 within 24 hours of the time the threshold amount as defined in 11 CFR 400.9 is exceeded and within 24 hours of the time expenditures from personal funds are made under 11 CFR 400.21 and 400.22.

4. Section 100.33 would be revised to read as follows:

§ 100.33 Personal funds.

Personal funds of a candidate means the sum of all of the following:
(a) **Assets.** Amounts derived from any asset that, under applicable State law, at the
time the individual became a candidate, the candidate had legal right of access to or
control over, and with respect to which the candidate had—

(1) Legal and rightful title; or

(2) An equitable interest;

(b) **Income.** Income received during the current election cycle, as defined in
11 CFR 400.2, of the candidate, including:

(1) A salary and other earned income that the candidate earns from bona fide
employment;

(2) Income from the candidate’s stocks or other investments including
interest, dividends, or proceeds from the sale or liquidation of such stocks
or investments;

(3) Bequests to the candidate;

(4) Income from trusts established before the beginning of the election cycle
as defined in 11 CFR 400.2;

(5) Income from trusts established by bequest after the beginning of the
election cycle of which the candidate is the beneficiary;

(6) Gifts of a personal nature that had been customarily received by the
candidate prior to the beginning of the election cycle, as defined in
11 CFR 400.2; and

(7) Proceeds from lotteries and similar legal games of chance; and

(c) **Jointly owned assets.** Amounts derived from a portion of assets that are owned
jointly by the candidate and the candidate’s spouse as follows:
1. The portion of assets that is equal to the candidate’s share of the asset under the instrument of conveyance or ownership; provided, however,

2. If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property.

5. Section 100.153 would be revised by removing the reference to “11 CFR 110.10(b)” and adding in its place “11 CFR 100.33”.

PART 101 - CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

6. The authority citation for part 101 would continue to read as follows:

Authority: 2 U.S.C. 432(e), 434(a)(11), 438(a)(f).

7. Section 101.1(a) would be revised to read as follows:

§ 101.1 Candidate designations (2 U.S.C. 432(e)(1)).

(a) Principal Campaign Committee. Within 15 days after becoming a candidate under 11 CFR 100.3, each candidate, other than a nominee for the office of Vice President, shall designate in writing, a principal campaign committee in accordance with 11 CFR 102.12. A candidate shall designate his or her principal campaign committee by filing a Statement of Candidacy on FEC Form 2, or, if the candidate is not required to file electronically under 11 CFR 104.18, by filing a letter containing the same information (that is, the individual’s name and address, party affiliation, and office sought, the District and State in which Federal office is sought, and the name and address of his or her principal campaign committee at the place of filing specified at 11 CFR part 105). Candidates for the Senate and the House of Representatives must also state, on their Statements of Candidacy on FEC Form 2 (or, if the candidate is not required to file-
electronically under 11 CFR 104.18, on his or her letter containing the same information),
the amount by which the candidate intends to exceed the threshold amount as defined in
11 CFR 400.9. Each principal campaign committee shall register, designate a depository,
and report in accordance with 11 CFR parts 102, 103, and 104.

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PART 102 – REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY
POLITICAL COMMITTEES (2 U.S.C. 433)

8. The authority citation for part 102 would continue to read as follows:
Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

9. In section 102.2, paragraph (a)(1)(viii) would be revised to read as follows:

§ 102.2 Statement of organization: Forms and committee identification
number (2 U.S.C. 433 (b), (c)).

(a) * * *

(1) * * *

(viii) If the committee is a principal campaign committee of a candidate
for the Senate or the House of Representatives, the principal
campaign committee’s facsimile number, if available, and electronic
mail address.

* * * * *

PART 104 – REPORTS BY POLITICAL COMMITTEES AND OTHER
PERSONS (2 U.S.C. 434)
10. The authority citation for part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, 441a, and 36 U.S.C. 510.

11. Section 104.19 would be removed and reserved.

§ 104.19 [Removed and Reserved].—Special reporting requirements for principal campaigns of candidates for election to the United States Senate or United States House of Representatives.

(a) Scope. The principal campaign committees of candidates for elections to the office of United States Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress must file reports required under this section with the Commission.

(b) Timing and contents of reports:

(1) By July 15 of the year preceding the year in which the general election for the office sought is held, each principal campaign committee shall file a report that includes the following information:

(i) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate’s authorized committees that may be expended in connection with the primary election as determined as of June 30 of that year including contributions to the candidate or any of the candidate’s authorized committees received by June 30 of that year that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or redesignated for the primary election under 11 CFR 110.1(b)(5);
(ii) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the general election that have been received by June 30 of that year including contributions to the candidate or any of the candidate's authorized committees received by June 30 of that year that have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

(iii) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by June 30 of that year that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or redesignated for the primary election under 11 CFR 110.1(b)(5);

(iv) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by June 30 of that year that have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

(v) The aggregate amount described in paragraph (b)(1)(i) of this section minus the aggregate amount described in paragraph (b)(1)(iii) of this section; and
(vi) — The aggregate amount described in paragraph (b)(1)(ii) of this-

section minus the aggregate amount described in paragraph-

(b)(1)(iv) of this section.

(2) — By January 31 of the year in which the general election for the office-
sought is held, each principal campaign committee shall file a report that-
includes the following information:

(i) — The gross receipts, as defined in 11 CFR 400.8, of all of the-
candidate's authorized committees that may be expended in-
connection with the primary election as determined as of:

December 31 of the year preceding the year in which that general-
election is held including contributions to the candidate or any of-
the candidate's authorized committees received by December 31 of
the year preceding the year in which that general election is held-
that have been made or designated for the primary election under-
11 CFR 110.1(b)(2) or redesignated for the primary election under-
11 CFR 110.1(b)(5);

(ii) — The gross receipts, as defined in 11 CFR 400.8, of all of the-
candidate's authorized committees that may be expended in-
connection with the general election as determined as of December-
31 of the year preceding the year in which that general election is-
held including contributions to the candidate or any of the-
candidate's authorized committees received by December 31 of the
year preceding the year in which that general election is held that-
have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

(iii) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by December 31 of the year preceding the year in which that general election is held that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or redesignated for the primary election under 11 CFR 110.1(b)(5);

(iv) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by December 31 of the year preceding the year in which that general election is held that have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

(v) The aggregate amount described in paragraph (b)(2)(i) of this section minus the aggregate amount described in paragraph (b)(2)(iii) of this section; and

(vi) The aggregate amount described in paragraph (b)(2)(ii) of this section minus the aggregate amount described in paragraph (b)(2)(iv) of this section.
PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

12. The authority citation for part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 36 U.S.C. 510.

13. In section 110.1, paragraph (b)(3)(ii)(C) would continue to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) The amount of personal loans, as defined in 11 CFR 116.11(b), that in the aggregate exceed $250,000 per election.

* * * * *

14. In section 110.5, paragraphs (b), (d), and (e) would be revised, and paragraph (b)(2) would be removed and reserved to read as follows:

§ 110.5 Aggregate biennial contribution limitation for individuals

(2 U.S.C. 441a(a)(3)).

* * * *

(b) **Bi-annual Biennial limitations.**
In the two-year period beginning on January 1 of an odd-numbered year and ending on December 31 of the next even-numbered year, no individual shall make contributions aggregating more than $95,000, including no more than:

(i)  $37,500 in the case of contributions to candidates and the authorized committees of candidates; and

(ii) $57,500 in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees that are not political committees of any national political parties.

[Removed and Reserved] Contributions to candidates made under the increased contribution limitation under 11 CFR part 400, during periods in which such candidates may accept such contributions, are not subject to the contribution limitation of paragraph (b)(1) of this section.

Independent expenditures. The biennial limitation on contributions in this section applies to contributions made to persons, including political committees, making independent expenditures under 11 CFR part 109.

Contributions to delegates and delegate committees. The biennial limitation on contributions in this section applies to contributions to delegate and delegate committees under 11 CFR 110.14.

Section 110.10 would continue to read as follows:

§ 110.10 Expenditures by candidates.
Except as provided in 11 CFR parts 9001, et seq. and 9031, et seq., candidates for Federal office may make unlimited expenditures from personal funds as defined in 11 CFR 100.33.

PART 113 – USE OF CAMPAIGN ACCOUNTS FOR NON-CAMPAIGN PURPOSES

16. The authority citation for part 113 would continue to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

17. Section 113.1(g)(6)(ii) would be revised by removing the reference to “11 CFR 110.10(b)” and adding in its place “11 CFR 100.33”.

PART 116 – DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

18. The authority citation for part 116 would continue to read as follows:

Authority: 2 U.S.C. 433(d), 434(b)(8), 438(a)(8), 441a, 441b, and 451.

19. Section 116.11 would continue to read as follows:

§ 116.11 Restriction on an authorized committee’s repayment of personal loans exceeding $250,000 made by the candidate to the authorized committee.

(a) For purposes of this part, personal loans mean a loan or loans, including advances, made by a candidate, using personal funds, as defined in 11 CFR 100.33, to his or her authorized committee where the proceeds of the loan were used in connection with the candidate’s campaign for election. Personal loans also include loans made to a
candidate’s authorized committee that are endorsed or guaranteed by the candidate or that
are secured by the candidate’s personal funds.

(b) For personal loans that, in the aggregate, exceed $250,000 in connection with an
election, the authorized committee:

(1) May repay the entire amount of the personal loans using contributions to
the candidate or the candidate’s authorized committee provided that those
contributions were made on the day of the election or before;

(2) May repay up to $250,000 of the personal loans from contributions made
to the candidate or the candidate’s authorized committee after the date of
the election; and

(3) Must not repay, directly or indirectly, the aggregate amount of the
personal loans that exceeds $250,000, from contributions to the candidate
or the candidate’s authorized committee if those contributions were made
after the date of the election.

(c) If the aggregate outstanding balance of the personal loans exceeds $250,000 after
the election, the authorized political committee must comply with the following
conditions:

(1) If the authorized committee uses the amount of cash on hand as of the day
after the election to repay all or part of the personal loans, it must do so
within 20 days of the election.

(2) Within 20 days of the election date, the authorized committee must treat
the portion of the aggregate outstanding balance of the personal loans that
exceeds $250,000 minus the amount of cash on hand as of the day after
the election used to repay the loan as a contribution by the candidate.

(3) The candidate's principal campaign committee must report the
transactions in paragraph (c)(1) and (c)(2) of this section in the first report
scheduled to be filed after the election pursuant to 11 CFR 104.5(a) or (b).

(d) This section applies separately to each election.

20. Section 116.12 would continue to read as follows:

§ 116.12 Repayment of candidate loans of $250,000 or less.

(a) A candidate's authorized committee may repay to the candidate a personal loan, as
defined in 11 CFR 116.11(a), of up to $250,000 where the proceeds of the loan were used
in connection with the candidate's campaign for election. The repayment may be made
from contributions to the candidate or the candidate's authorized committee at any time
before, on, or after the date of the election.

(b) This section applies separately to each election.

(c) Nothing in this section shall supersede 11 CFR 9035.2 regarding the limitations on
expenditures from personal funds or family funds of a presidential candidate who accepts
matching funds.

21. In Subchapter C, part 400 would be removed.

PART 400 [Removed] INCREASED LIMITS FOR CANDIDATES OPPOSING
SELF-FINANCED CANDIDATES

PART 9001 – SCOPE
22. The authority citation for part 9001 would continue to read as follows:
   Authority: 26 U.S.C. 9009(b).

23. Section 9001.1 would be revised by removing the number “400” and adding in its place the number “300” in both instances in which “400” appears.

PART 9003 – ELIGIBILITY FOR PAYMENTS

24. The authority citation for part 9003 would continue to read as follows:
   Authority: 26 U.S.C. 9003 and 9009(b).

25. In section 9003.1, paragraph (b)(8) would be revised by removing the number “400” and adding in its place the number “300”.

PART 9031 – SCOPE

26. The authority citation for part 9031 would continue to read as follows:
   Authority: 26 U.S.C. 9031 and 9039(b).

27. Section 9031.1 would be revised by removing the number “400” and adding in its place the number “300” in both instances in which “400” appears.

PART 9033 – ELIGIBILITY FOR PAYMENTS

28. The authority citation for part 9033 would continue to read as follows:
   Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

29. In section 9033.1, paragraph (b)(10) would be revised by removing the number “400” and adding in its place the number “300”.
PART 9035 – EXPENDITURE LIMITATIONS

30. The authority citation for part 9035 would continue to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

31. In section 9035.2, paragraph (c) would continue to read as follows:

§ 9035.2 Limitation on expenditures from personal or family funds.

* * * * *

(c) For purposes of this section, personal funds has the same meaning as specified in 11 CFR 9003.2.

On behalf of the Commission,

Donald F. McGahn II
Chairman
Federal Election Commission

DATED: ____________
BILLING CODE: 6715-01-U