



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION

JUL 5 2001

JUL - 5 2001

MEMORANDUM

TO: The Commission

FROM: Lois G. Lerner *LL*  
Acting General Counsel

N. Bradley Litchfield *NBL/RS*  
Associate General Counsel

Rosemary C. Smith *RS*  
Assistant General Counsel

Mai T. Dinh *MD*  
Attorney

SUBJECT: Notice of Proposed Rulemaking on Brokerage Loans and Lines of Credit

**AGENDA ITEM**  
For Meeting of: 7-19-01

The Office of General Counsel has prepared the attached draft Notice of Proposed Rulemaking ("NPRM") seeking comments on issues surrounding loans derived from advances on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate.

**Recommendation**

The Office of General Counsel recommends that the Commission set a date for a hearing if there are sufficient requests to testify and approve the attached Notice of Proposed Rulemaking for publication in the *Federal Register*.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR parts 100 104 and 113**

3 **[NOTICE 2001 - ]**

4 **BROKERAGE LOANS AND LINES OF CREDIT**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Notice of Proposed Rulemaking.

7 **SUMMARY:** The Department of Transportation and Related Agencies  
8 Appropriations Act, 2001, amended the Federal Election  
9 Campaign Act ("FECA" or "the Act") to allow a candidate  
10 to obtain a loan derived from an advance on a candidate's  
11 brokerage account, credit card, home equity line of credit,  
12 or other line of credit available to the candidate. The  
13 Federal Election Commission ("Commission") is issuing  
14 this notice of proposed rulemaking ("NPRM") to solicit  
15 comments on its proposal to implement this amendment to  
16 the FECA. Please note that the draft rules that follow do  
17 not represent a final decision by the Commission on the  
18 issues presented by this rulemaking. Further information is  
19 provided in the supplementary information that follows.

20 **DATES:** Comments must be received on or before [Insert 30 days  
21 after date of publication in the Federal Register]. If the  
22 Commission receives sufficient requests to testify, it will  
23 hold a hearing on these proposed rules on >, at 10 a.m.

1 Persons wishing to testify at the hearing should so indicate  
2 in their written or electronic comments.

3 **ADDRESSES:**

4 All comments should be addressed to Ms. Rosemary C.  
5 Smith, Assistant General Counsel, and must be submitted  
6 in either written or electronic form. Written comments  
7 should be sent to the Federal Election Commission, 999 E  
8 Street, N.W., Washington, DC 20463. Faxed comments  
9 should be sent to (202) 219-3923, with printed copy follow-  
10 up. Electronic mail comments should be sent to  
11 [loansnprm@fec.gov](mailto:loansnprm@fec.gov). Commenters sending comments by  
12 electronic mail must include their full name, electronic mail  
13 address and postal service address within the text of their  
14 comments. Comments that do not contain the full name,  
15 electronic mail address and postal service address of the  
16 commenter will not be considered. The hearing will be  
17 held in the Commission's ninth floor meeting room, 999 E  
Street, N.W., Washington, D.C.

18 **FOR FURTHER**  
19 **INFORMATION**  
20 **CONTACT:**

21 Ms. Rosemary C. Smith, Assistant General Counsel, or Ms.  
22 Mai T. Dinh, Attorney, 999 E Street, N.W., Washington,  
D.C. 20463, (202) 694-1650 or (800) 424-9530.

1 **SUPPLEMENTARY**

2 **INFORMATION:**

As part of its 1999 legislative recommendations to

3 Congress, the Commission sought guidance "...on whether candidate committees may  
4 accept contributions which are derived from advances from a financial institution, such as  
5 advances on a candidate's brokerage accounts, credit card, or home equity line of  
6 credit..." See 1999 Fed. Election Comm. Annual Rep. at 45 (2000). The Commission  
7 recognized that, since the FECA was first enacted, financial institutions have created new  
8 financing products to allow consumers more access to credit. The Commission  
9 recommended that the FECA be amended to allow candidates to access these new forms  
10 of credit to finance their campaigns for federal office, provided that the extension of  
11 credit be done in accordance with applicable law, under commercially reasonable terms  
12 and by persons who make these loans in the normal course of their business. Id.

13 In the Department of Transportation and Related Agencies Appropriations Act,  
14 2001, Congress amended the FECA (2 U.S.C. 431(8)(B)) to exclude from the definition  
15 of contribution "a loan of money derived from an advance on a candidate's brokerage  
16 account, credit card, home equity line of credit, or other line of credit available to the  
17 candidate..." The amendment also included the three conditions contained in the  
18 Commission's legislative recommendation described above. The Department of  
19 Transportation and Related Agencies Appropriations Act, 2001, became Public Law 106-  
20 346 on October 23, 2000.<sup>1</sup>

21 The following represents the Commission's proposal to implement the  
22 amendment to the FECA allowing candidates to receive advances from their brokerage

---

<sup>1</sup> Public Law 106-346 included other statutory changes regarding reporting of independent expenditures, which are being addressed in a separate rulemaking.

1 accounts, credit cards, home equity lines of credit, or other lines of credit. In the narrative  
2 below, the Commission raises several issues associated with this NPRM. It welcomes  
3 comments on those issues as well as any additional comments that may be pertinent to  
4 this rulemaking but that have not been addressed in this NPRM.

## 5 6 **Proposed Rules**

### 7 8 11 CFR 100.7 Contribution

#### 9 A. General Provisions on Brokerage Loans and Lines of Credit

10 In order to implement this amendment to the FECA, the Commission proposes to  
11 amend 11 CFR 100.7(b) by amending the introductory language of paragraph (b)(11) and  
12 adding a new 11 CFR 100.7(b)(22) to include brokerage loans, credit card advances, and  
13 other lines of credit made to candidates as among the items that are not considered  
14 contributions. The proposed rules would track the language of the amendment to the  
15 FECA including the conditions set forth, along with some additional clarifications and  
16 guidance regarding reporting requirements.

17 The Commission recognizes that commercial banks offer various lines of credit to  
18 their customers. Because the amendment to the FECA specifically establishes different  
19 criteria for lines of credit for candidates, the Commission proposes to amend 11 CFR  
20 100.7(b)(11) to specifically exempt brokerage loans, credit card advances, and other lines  
21 of credit extended to candidates from the requirements of bank loans contained in section  
22 100.7(b)(11). The proposed rules would amend paragraph (b)(11) by adding a sentence at  
23 the end of the introductory text that states that brokerage loans, credit card advances, and

1 other lines of credit made to candidates under section 100.7(b)(22) would not be subject  
2 to section 100.7(b)(11). This exception would also include overdrafts made on personal  
3 checking or saving accounts of candidates because overdraft protection is a form of a line  
4 of credit. Thus, overdrafts made on a candidate's personal accounts would be subject to  
5 the requirements of proposed section 100.7(b)(22). It is important to note that the section  
6 100.7(b)(11) would still apply to all loans and lines of credit made to a political  
7 committee and to conventional bank loans made to a candidate.

8

9 B. Endorsers, Guarantors, and Co-signers

10 Proposed paragraph (b)(22) would contain the three statutory requirements for  
11 obtaining a loan derived from an advance on a candidate's brokerage account, credit card,  
12 home equity line of credit, or other line of credit, which are: that the loan would be made  
13 in accordance with applicable law; that the loan would be made under commercially  
14 reasonable terms; and that the persons making the loans make such loans in the normal  
15 course of their business. This new regulation would also address situations where there  
16 are endorsers, guarantors, or co-signers of these loans. New paragraph (b)(22), like  
17 current paragraph (b)(11), would provide that an endorser, guarantor, or co-signer would  
18 be considered a contributor for the amount that the endorser, guarantor or co-signer is  
19 liable. This information would be disclosed on new schedule C-2 or C-P-2. See infra.  
20 The exception would be when the endorser, guarantor, or co-signer is the spouse of the  
21 candidate and the candidate's share of collateral used to obtain a secured loan equals or  
22 exceeds the amount of the loan. See 11 CFR 100.7(a)(1)(i)(D). Under proposed section  
23 100.7(b)(22)(ii)(B), when a spouse is an endorser, guarantor, or co-signer of an unsecured

1 loan, the spouse would not be considered a contributor if the candidate uses only one-half  
2 of the available credit in connection with the campaign. The Commission seeks  
3 comments on whether the regulations should allow the candidate to use the entire amount  
4 of the available credit in connection with a campaign in instances where the loan is in the  
5 ordinary course of business and the candidate is liable for the entire amount of the loan  
6 even though the spouse has endorsed, guaranteed, or co-signed for the loan.

7 Section 432(e)(2) of the FECA and 11 CFR 101.2 state that a candidate is an  
8 agent of the candidate's authorized committee when he or she obtains a loan in  
9 connection with a campaign. Because the amendment to FECA did not distinguish loans  
10 derived from an advance on the candidate's brokerage account, credit card, home equity  
11 line of credit, or other line of credit, from other types of loans, a candidate who obtains  
12 these loans is acting as an agent for his or her authorized committee under 2 U.S.C.  
13 432(e) and 11 CFR 101.2.

14

### 15 C. Loans for Personal Living Expenses

16 Proposed section 100.7(b)(22) also contains a provision whereby a candidate  
17 would be able to obtain a loan derived from an advance on the candidate's brokerage  
18 account, credit card, home equity line of credit, or other line of credit for personal living  
19 expenses without the loan being considered to be a contribution. Therefore, the loan  
20 would not violate 2 U.S.C. 439a or 11 CFR 113.2(d) prohibiting personal use of  
21 campaign funds. The loan, however, would have to be repaid from the candidate's  
22 personal funds.

1           It is important to note that this exception in paragraph (b)(22)(iii) is limited to  
2 loans used solely for personal living expenses. Thus, if all or part of the loan proceeds is  
3 used in connection with a campaign, the loan would need to be reported under 11 C.F.R.  
4 part 104. As an alternative to proposed paragraph (b)(22)(iii), the Commission seeks  
5 comments on whether to require the candidate's authorized committee to report loans  
6 used exclusively for the candidate's personal living expenses.

7           The exception in new paragraph (b)(22)(iii) would not apply, however, if a third  
8 party repays, guarantees, endorses, or co-signs a loan for personal living expenses, in part  
9 or in whole. The third party would be deemed to make a contribution in the amount of  
10 the endorsement, guarantee, or liability and this amount would be subject to the  
11 limitations and prohibitions of the FECA. See 11 CFR 113.1(g)(6). Thus, if a third  
12 party repays, guarantees, endorses, or co-signs the loan, the authorized committee must  
13 report the loan and the repayment under 11 CFR 104.3, 104.8 and 104.9.

14           The Commission is considering adopting a similar approach regarding the  
15 reporting of bank loans that are used solely for the candidate's personal living expenses.  
16 Please note this option is not reflected in the proposed rules that follow. Under this  
17 alternative, bank loans would not be required to be reported if: (1) no part of the loan  
18 proceeds is used in connection with a campaign; (2) the loan is repaid wholly from the  
19 candidate's personal funds; (3) the loan does not pass through the authorized committee's  
20 account and the authorized committee does not endorse, guarantee, co-sign, or pay the  
21 loan; and (4) there is no endorsement, guarantee, co-signature, or payment by a third  
22 party. The Commission seeks comments on whether it is advisable to adopt such an  
23 approach.

1 D. Repayments of Loans By Authorized Committees to Either the Candidate or the  
2 Lending Institution.

3 Under proposed section 100.7(b)(22)(iv), the candidate's authorized committee  
4 would have the option of repaying the loan directly to the lending institution or to the  
5 candidate. If the repayment is made to the candidate, however, the candidate must repay  
6 the lending institution within 30 days of receiving the committee's repayment. This is to  
7 ensure that the funds will not be available for the candidate's personal use. See 2 U.S.C.  
8 439a and 11 CFR 113.2(d).

9  
10 E. Other Amendments to 11 CFR 100.7(b)

11 The proposed rules would also delete an obsolete reference in the introductory  
12 text of 11 CFR 100.7(b)(11) to the Federal Savings and Loan Insurance Corporation  
13 (FSLC). The FSLC has been dissolved and its deposit insurance responsibilities have  
14 been transferred to the Federal Deposit Insurance Corporation pursuant to the Financial  
15 Institutions Reform, Recovery, and Enforcement Act of 1989, P.L. 101-73 (August 9,  
16 1989).

17  
18 11 CFR 100.8 Expenditure

19 Currently, 11 CFR 100.8(b)(12) exempts bank loans from the definition of  
20 "expenditure" and contains parallel language to that found in the exceptions to the  
21 definition of "contribution" in provision of section 100.7(b)(11). The Commission  
22 proposes to exempt loans derived from advances on a candidate's brokerage account,  
23 credit card, home equity line of credit, or other line of credit available to the candidate

1 from the definition of “expenditure” by amending section 100.8(b)(12) and by adding a  
2 new section 100.8(b)(24). The proposed amendments to section 100.8(b)(12) are similar  
3 to the proposed amendments to section 100.7(b)(11). Proposed section 100.8(b)(24)  
4 adopts, by reference, the language of proposed section 100.7(b)(22).

5  
6 11 CFR 104.3 Contents of reports.

7 As noted above, the Commission would require that loans derived from an  
8 advance on a candidate’s brokerage account, credit card, home equity line of credit, or  
9 other line of credit would have to be reported by the candidate’s principal campaign  
10 committee. The requirements would be set out in several sections in 11 CFR part 104. In  
11 section 104.3, the candidate’s principal campaign committee would be required to report  
12 the loan of money as a receipt under proposed paragraph (a)(3)(vii)(D). It would also be  
13 required to report any repayment of the loan as a disbursement under proposed paragraph  
14 (b)(2)(iii)(D).

15 Under the proposed rules, section 104.3(b)(4)(iii) would be amended to  
16 specifically include persons who receive repayments from a reporting committee of loans  
17 derived from an advance on a candidate’s brokerage account, credit card, or lines of  
18 credit, as among those who must be identified and itemized in the report. “Persons” in  
19 this proposed section would include candidates and lending institutions. The proposed  
20 amendment to section 104.3(b)(4)(iv) would make the same change with regard to  
21 persons who receive a repayment of a loan from a candidate.

22 Current 11 CFR 104.3(d) describes the requirements for reporting debts and  
23 obligations. The proposed rules would amend this paragraph to include loans derived

1 from advances on a candidate's brokerage account, credit card, home equity line of credit  
2 and other lines of credit. First, the introductory language of paragraph (d) would be  
3 amended to make clear that these advances must be reported if they are used for the  
4 candidate's campaign even if the advances were received before the individual became a  
5 candidate for federal office. Paragraph (d)(1) would also be changed to recognize that  
6 lines of credit established by a candidate at any lending institution would be subject to the  
7 reporting requirements of new 11 CFR 104.3(d)(4) and not the reporting requirements of  
8 current section 104.3(d)(1). The amendment would clearly state that only lines of credit  
9 obtained by political committees would be subject to the bank loan regulations.

10 The proposed rules would add a new section 104.3(d)(4) to describe the  
11 information that must be disclosed in the report. The proposed paragraph would require  
12 committees to disclose loans derived from an advance from a candidate's brokerage  
13 account, credit card, or line of credit on new schedules C-2 and C-P-2. The Commission  
14 will design these new schedules to reflect the final rules and will have them available by  
15 the effective date of the final rules.

16 Under proposed section 104.3(d)(4), committees would be required to disclose the  
17 following information: date, amount and interest rate of the loan; name and address of the  
18 lending institution; type and value of collateral or security; and each draw or advance on  
19 the credit card or line of credit. The Commission seeks comment on whether additional  
20 information is necessary.

1 11 CFR 104.8 Uniform reporting of receipts.

2 Current 11 CFR 104.8 requires that certain receipts, including loans, be disclosed  
3 on Schedule A. The proposed rules would add new paragraph (g) to section 104.8 to  
4 describe how receipt of a loan derived from an advance from a candidate's brokerage  
5 account, credit card, or line of credit would be reported on Schedule A. When the  
6 candidate's committee receives the funds directly from the lending institution, it would be  
7 reported as an itemized entry on Schedule A. If the candidate receives the funds from the  
8 lending institution and then makes a loan or a gift to the committee, then the transfer of  
9 funds from the lending institution to the candidate would be reported as a memo entry on  
10 Schedule A and the loan or gift of money from the candidate to the committee would be  
11 reported as an itemized entry on Schedule A. A cross reference to section  
12 100.7(b)(22)(iii) would also be included in new section 104.8(g) regarding the reporting  
13 of loans obtained solely for the candidate's personal living expenses.

14 The Commission is also considering expanding the scope of proposed section  
15 104.8(g) to include similar changes to the way in which bank loans obtained by  
16 candidates directly must be reported on Schedule A as memo entries if they are used in  
17 connection with a campaign. This would provide further guidance to authorized  
18 committees on the proper reporting mechanism for bank loans obtained by candidates  
19 where the funds are turned over to the committee. The Commission seeks comments on  
20 whether it is advisable to expand the scope of proposed section 104.8(g) to address bank  
21 loans received initially by the candidate.

22

1 11 CFR 104.9 Uniform reporting of disbursements

2 Current 11 CFR 104.9 requires that certain disbursements, including loan  
3 repayments, be disclosed on Schedule B. New paragraph (f) would be added to section  
4 104.9 to explain how repayments of a loan derived from an advance from a candidate's  
5 brokerage account, credit card, or line of credit would be reported on Schedule B. If the  
6 candidate's committee directly repays the lending institution, then the repayment would  
7 be an itemized entry on Schedule B. If the committee repays the candidate who, in turn,  
8 repays the lending institution, then the repayment to the candidate would be an itemized  
9 entry and the repayment to the lending institution would be a memo entry. The  
10 Commission also seeks comments on whether it is advisable to expand the scope of  
11 proposed section 104.9(f) so that the repayment of bank loans would be reported in the  
12 same manner on Schedule B.

13  
14 Alternative Approach on the Authorized Committee's Receipt of Loan Proceeds

15 Proposed 11 CFR 100.7(b)(22)(vi), 104.8(g), and 104.9(f) would permit the  
16 proceeds of the loan to be paid directly to the candidate's authorized committee and  
17 would permit the authorized committee to repay the loan directly to the lending  
18 institution. As an alternative to the approach set out in the proposed rules, the  
19 Commission is considering whether to require that the payment and repayment of the loan  
20 pass through the candidate's personal account, in order to distinguish bank loans made  
21 directly to an authorized committee from loans derived from a candidate's brokerage  
22 account, credit card, home equity line of credit, or other line of credit. In other words, the  
23 lending institution must disburse the loan to the candidate who would then loan or

1 contribute the money to the authorized committee. If the candidate loans the money to  
2 the authorized committee, the committee would be required to repay the loan to the  
3 candidate, not to the lending institution, and the candidate would then repay the lending  
4 institution.

5  
6 Alternative Reporting Approach

7 As an alternative to the foregoing reporting approach in the proposed amendments  
8 to 11 CFR 104.3, 104.8, and 104.9, the Commission seeks comment on a less extensive  
9 reporting system. A committee only would be required to report certain limited  
10 information about the sources of bank loans and loans derived from advances on  
11 brokerage accounts, credit cards, home equity lines of credit, or other lines of credit when  
12 the candidate has loaned or contributed outright such funds to the committee. This  
13 information would include the name of the institution and any applicable interest rate and  
14 the due date. Further, in the situation where the candidate has lent the funds to the  
15 committee, the committee only would be required to report repayments to the candidate,  
16 not the repayments by the candidate to the lending institution. This reporting approach  
17 would be applied to loans from banks as well as the loans derived from other sources  
18 covered by the recent statutory amendment. It would rely on the complaint and audit  
19 processes to monitor situations where the committee makes loan repayments but the  
20 candidate does not use such repayments to repay the lending institution or relies on third  
21 parties to make the repayments to the lending institution. It would involve repeal of  
22 11 CFR 104.3(d)(1)(iii) - (v), (d)(2) - (3), and the elimination of lines A through F of  
23 schedules C-1 and C-P-1.

1 11 CFR 104.18 Electronic filing of reports

2 Paragraph (h) of section 104.18 sets forth the requirements for the filing of special  
3 schedules and forms that must accompany the electronic filing of reports. These special  
4 schedules and forms generally require original signatures on them. The Commission has  
5 not yet designed schedules C-2 and C-P-2 described in proposed 11 CFR 104.3(d)(4).  
6 However, the Commission intends to require signatures on these new schedules and  
7 therefore, section 104.18(h) would be amended to include schedules C-2 and C-P-2. The  
8 proposed change is based on the proposed amended language for section 104.18(h) in the  
9 notice of proposed rulemaking entitled "Independent Expenditure Reporting." See 66  
10 Fed. Reg. (2001). The Commission seeks comments on the advantages and  
11 disadvantages of requiring the lenders' signatures on these new schedules and whether the  
12 Commission should require these signatures.

13  
14 11 CFR 113.1 Definitions

15 Under the proposed rules, the third party payments provisions of the definition of  
16 "personal use" in 11 CFR 113.1(g)(6) would be amended to include a repayment,  
17 endorsement, guarantee, or co-signature of a loan derived from a candidate's brokerage  
18 account, credit card, home equity line of credit, or other line of credit and used for the  
19 candidate's personal living expenses within the meaning of "payment". A cross reference  
20 to section 100.7(b)(22) would be included in this paragraph.

1 **Additional Issues**

2  
3 11 CFR 104.14 Formal requirements regarding reports and statements

4 Unlike the regulations for bank loans, the proposed rules would not require  
5 principal campaign committees to submit to the Commission loan agreements or similar  
6 documents that are connected with a loan derived from an advance from a candidate's  
7 brokerage account, credit card, or line of credit. The committees, however, would still be  
8 required, under current 11 CFR 104.14, to maintain records connected with these types of  
9 loans for three years. For example, committees would be required to maintain any  
10 agreements or documents that are connected with these loans, including but not limited  
11 to: the Federal Reserve Board's Form T-4 that is required to obtain a brokerage loan, any  
12 loan agreements, and any receipts or copies of a credit card company's check that are  
13 evidence of an advance from a candidate's credit card. The Commission seeks comments  
14 on whether it should require the candidate's principal campaign committee to submit loan  
15 agreements and similar documents on loans derived from an advance from a candidate's  
16 brokerage account, credit card, or line of credit when the committee files schedule C-2 or  
17 C-P-2.

18  
19 Margin Requirements

20 A loan derived from a brokerage account is obtained by opening a non-purpose  
21 credit account. Margin accounts and non-purpose credit accounts are subject to the  
22 Federal Reserve Board's Regulation T, 12 CFR part 220. Under 12 CFR 220.6(e), non-  
23 purpose credit accounts are not subject to Regulation T's margin requirements but are

1 subject to the rules of the self regulating organizations (SRO) that regulate the exchanges.  
2 Recognizing that non-purpose credit accounts contain similar inherent risks to margin  
3 accounts, the two largest SRO, the New York Stock Exchange (NYSE) and the National  
4 Association of Securities Dealers (NASD), established minimum maintenance margins  
5 for non-purpose credit accounts that are applicable to the members in their exchanges.<sup>2</sup>  
6 Generally, the minimum maintenance margin is 25 percent.<sup>3</sup> That is, a customer must  
7 maintain securities valued at 125 percent of the outstanding non-purpose credit.  
8 Individual brokerage firms may require higher maintenance margins.

9 Brokerage firms are supposed to issue a margin call if the equity in a customer's  
10 account falls below the maintenance margin. Both the NYSE and the NASD, however,  
11 allow firms not to issue a margin call if the firm is willing to take a charge against its net  
12 capital, pursuant to SEC Rule 15c3-1, for the amount the customer would have been  
13 required to deposit to meet the margin call. See NYSE Rule 431(e)(7) and NASD Rule  
14 2520(e)(7).

15 Although this practice may be considered to be in the ordinary course of business,  
16 nevertheless, the candidate would receive something of value - not having to deposit  
17 additional cash or securities into an account - for free. Essentially, the brokerage firm is  
18 providing additional collateral to the candidate without being compensated. Even though  
19 the brokerage firm may provide the same service to other customers who are not

---

<sup>2</sup> Margin is the amount of securities held or maintained in an account above the balance of outstanding credit. The maintenance margin is the minimum margin that must be held or maintained in an account. As long as the value of the equity in the customer's account exceeds the maintenance margin, the customer is not required to make payments on the loan. A margin call occurs when the value of a customer's account falls below the maintenance margin and the brokerage firm issues a demand to a customer to deposit more cash or securities into the account so that the value of the account increases to at least the maintenance margin.

1 seeking federal office, the Commission has determined that services offered free of  
2 charge by corporations in the ordinary course of business for promotional or good will  
3 purposes (if these services might otherwise have required consideration) are prohibited by  
4 2 U.S.C. 441b. See Advisory Opinions 1996-2, 1988-25, 1988-12. Moreover, by not  
5 making the margin call, the candidate has increased his or her risk exposure and may be  
6 less likely to be able to repay the loan. The Commission seeks comments on whether a  
7 brokerage firm that takes a charge against net capital may, under certain circumstances,  
8 be providing something of value to candidates which is prohibited by 2 U.S.C. 441b.

9

#### 10 Repayment and Termination

11 Loans derived from a candidate's brokerage account, credit card account, home  
12 equity line of credit, or other lines of credit, present a few repayment issues. Under  
13 2 U.S.C. 432(e)(2), a candidate is considered an agent of the authorized committee when  
14 obtaining a loan for use in connection with the candidate's campaign for federal office.  
15 As such, the authorized committee has a continuing obligation to report the loan until it is  
16 repaid. Because of the nature of brokerage loans, the Commission is unsure as when to  
17 consider a loan repaid. In practice, customers are not required to make payments on the  
18 loan unless the value of the non-purpose credit account falls below the maintenance  
19 margin. If the securities in the non-purpose credit account continually increase in value,  
20 then the customer does not have to make any payments. Thus, a candidate could maintain  
21 a loan balance well after the candidate is no longer seeking federal office.

---

<sup>3</sup> However, the SRO may change the maintenance margin with the approval of the Security Exchange Commission (SEC).

1 Normally, a committee reports the disposition of its loans before it can terminate.  
2 See infra. For purposes of determining the disposition of these loans, the Commission  
3 seeks comments on when a brokerage loan should be considered paid in full. Should the  
4 candidate be required to liquidate an amount of securities, or make a deposit, or a  
5 combination of both, equal to the amount of the outstanding brokerage loan plus any  
6 interest that may have accrued?

7 The other issue that needs to be addressed in the context of repayment of loans  
8 derived from a candidate's brokerage account, credit card account, home equity line of  
9 credit, or other lines of credit, is termination of political committees. Under 11 CFR  
10 104.11, a loan remains an outstanding debt that the candidate's authorized committee  
11 must continue to report until it is extinguished. Additionally, these loans, similar to bank  
12 loans, would not be subject to debt settlement under 11 CFR 116.4. Because a political  
13 committee cannot terminate unless all outstanding debts are satisfied, the candidate's  
14 authorized committee cannot terminate, even if the candidate is no longer seeking federal  
15 office, until the loan is paid in full. See 11 CFR 102.3. The exception is when the  
16 Commission administratively terminates a political committee under 11 CFR 102.4.  
17 Under these circumstances, a committee would be terminated even if it has outstanding  
18 debts provided that the criteria for administrative termination are met.

19 One option under consideration is requiring committees to report until the original  
20 amount of the loan plus any interest or penalty are repaid. Another option is to allow the  
21 committee to terminate if it has extinguished its debt to the candidate even if the  
22 candidate has not repaid the entire loan to the lending institution. Alternatively,  
23 committees would be allowed to terminate if it can demonstrate unique circumstances

1 that will ensure that the loan would be repaid, under commercially reasonable terms, from  
2 the candidate's personal funds. An example of unique circumstances is a brokerage loan  
3 that is subject to fixed due date and a repayment schedule.

4 The Commission seeks comments on which of these three approaches best  
5 advance the purpose of FECA. The Commission also welcomes suggestions on  
6 alternative methods of reporting outstanding debts and termination of a committee where  
7 either the candidate or the candidate has an outstanding loan that is derived from the  
8 candidate's brokerage account, credit card, home equity line of credit, or other lines of  
9 credit.

10

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

12 The attached proposed rules will not, if promulgated, have a significant economic  
13 impact on a substantial number of small entities. The proposed rules would implement  
14 the changes to the FECA expressly permitting candidates to obtain loans from a wider  
15 range of financial institutions. This would increase the flexibility that candidates would  
16 have to seek financing for their campaigns. The requirement to report loans derived from  
17 an advance from a candidate's brokerage account, credit card, or line of credit would only  
18 impact the candidates and their campaign committees. It would not have a significant  
19 economic impact on these committees because they are already required to report all  
20 loans that are made in connection with a federal campaign. In fact, the reporting  
21 requirements in the proposed rules are minimal. The Commission does not anticipate that  
22 these changes will cause committees to devote much additional time or resources to  
23 comply with the proposed reporting requirements. Therefore, the attached proposed

1 rules, if promulgated, will not have a significant economic impact on a substantial  
2 number of small entities.

3

4 **List of Subjects**

5 11 CFR Part 100

6 Elections

7 11 CFR Part 104

8 Campaign funds, Political committees and parties, Reporting and recordkeeping  
9 requirements

10 11 CFR Part 113

11 Campaign funds

1 For the reasons set out in the preamble, it is proposed to amend Subchapter A,  
2 Chapter I of title 11 of the Code of Federal Regulations as follows:

3

4 **PART 100 - SCOPE AND DEFINITIONS (2 U.S.C. 431)**

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

6 - Authority: 2 U.S.C. 431, 434(a)(11), 438 (a)(8).

7 2. 11 CFR 100.7 would be amended by revising the introductory text of paragraph  
8 (b)(11) and adding new paragraph (b)(22) to read as follows:

9 **§ 100.7. Contribution (2 U.S.C. 431(8)).**

10 \* \* \* \* \*

11 (b) \* \* \*

12 (11) A loan of money by a State bank, a federally chartered depository institution  
13 (including a national bank) or a depository institution whose deposits and  
14 accounts are insured by the Federal Deposit Insurance Corporation, ~~the~~  
15 ~~Federal Savings and Loan Insurance Corporation,~~ or the National Credit  
16 Union Administration is not a contribution by the lending institution if such  
17 loan is made in accordance with applicable banking laws and regulations and  
18 is made in the ordinary course of business. A loan will be deemed to be made  
19 in the ordinary course of business if it: Bears the usual and customary interest  
20 rate of the lending institution for the category of loan involved; is made on a  
21 basis which assures repayment; is evidenced by a written instrument; and is  
22 subject to a due date or amortization schedule. Such loans shall be reported by  
23 the political committee in accordance with 11 CFR 104.3(a) and (d). Each

1           endorser or guarantor shall be deemed to have contributed that portion of the  
2           total amount of the loan for which he or she agreed to be liable in a written  
3           agreement, except that, in the event of a signature by the candidate's spouse,  
4           the provisions of 11 CFR 100.7(a)(1)(i)(D) shall apply. Any reduction in the  
5           unpaid balance of the loan shall reduce proportionately the amount endorsed  
6           or guaranteed by each endorser or guarantor in such written agreement. In the  
7           event that such agreement does not stipulate the portion of the loan for which  
8           each endorser or guarantor is liable, the loan shall be considered a contribution  
9           by each endorser or guarantor in the same proportion to the unpaid balance  
10          that each endorser or guarantor bears to the total number of endorsers or  
11          guarantors. For purposes of this paragraph, an overdraft made on a checking or  
12          savings account shall be considered a contribution by the bank or institution  
13          unless: The overdraft is made on an account which is subject to automatic  
14          overdraft protection; the overdraft is subject to a definite interest rate which is  
15          usual and customary; and there is a definite repayment schedule. However,  
16          paragraph (b)(11) of this section shall not apply to any loan of money derived  
17          from an advance on a candidate's brokerage account, credit card, home equity  
18          line of credit, or other lines of credit described in paragraph (b)(22) of this  
19          section.

20          \*       \*       \*       \*       \*

21          (22) (i) Any loan of money derived from an advance on a candidate's  
22                brokerage account, credit card, home equity line of credit, or other line

1 of credit available to the candidate, including an overdraft made on a  
2 personal checking or savings account of a candidate, provided that:

3 (A) Such loan is made in accordance with applicable law and under  
4 commercially reasonable terms; and

5 (B) The person making such loan makes loans derived from an  
6 advance on a candidate's brokerage account, credit card, home  
7 equity line of credit, or other line of credit in the normal course  
8 of the person's business.

9 (ii) Each endorser, guarantor, or co-signer shall be deemed to have  
10 contributed that portion of the total amount of the loan derived from an  
11 advance on a candidate's brokerage account, credit card, home equity  
12 line of credit, or other line of credit available to the candidate, for  
13 which he or she agreed to be liable in a written agreement, including a  
14 loan used for the candidate's personal living expenses. Any reduction  
15 in the unpaid balance of the loan, advance, or line of credit shall  
16 reduce proportionately the amount endorsed or guaranteed by each  
17 endorser or guarantor in such written agreement. In the event that such  
18 agreement does not stipulate the portion of the loan, advance, or line of  
19 credit for which each endorser, guarantor, or co-signer is liable, the  
20 loan shall be considered a contribution by each endorser or guarantor  
21 in the same proportion to the unpaid balance that each endorser,  
22 guarantor, co-signer bears to the total number of endorsers or  
23 guarantors. However, if the spouse of the candidate is the endorser,

1 guarantor, or co-signer, the spouse shall not be deemed to make a  
2 contribution if:

3 (A) For a secured loan, the value of the candidate's share of the  
4 property used as collateral equals or exceeds the amount of the  
5 loan that is used for the candidate's campaign; or

6 (B) For an unsecured loan, the amount of the loan used in  
7 connection with the candidate's campaign does not exceed one-  
8 half of the available credit extended by the unsecured loan.

9 (iii) (A) However, a loan derived from an advance on a candidate's  
10 brokerage account, credit card, home equity line of credit, or  
11 other line of credit available to the candidate, that is used by  
12 the candidate solely for personal living expenses, is not a  
13 contribution and does not need to be reported under 11 CFR  
14 part 104 provided that the loan, advance, or line of credit is  
15 wholly repaid from the personal funds of the candidate.

16 (B) Any repayment, in part or in whole, of the loan, advance, or  
17 line of credit described in paragraph (b)(22)(iii)(A) of this  
18 section by the candidate's authorized committee constitutes the  
19 personal use of campaign funds and is prohibited by 11 CFR  
20 113.2.

21 (C) Any repayment, in part or in whole, by a third party of the loan,  
22 advance, or line of credit described in paragraph (b)(22)(iii)(A)

1 of this section is a contribution and shall be reported under 11  
2 CFR part 104.

3 (D) Each endorser, guarantor, or co-signer of a loan derived from  
4 an advance on a candidate's brokerage account, credit card,  
5 home equity line of credit, or other line of credit available to  
6 the candidate that is used by the candidate solely for personal  
7 living expenses, shall be subject to the provision of paragraph  
8 (b)(22)(ii) of this section, and the loan, advance, or line of  
9 credit and all repayments shall be reported under 11 CFR part  
10 104.

11 (iv) The candidate's authorized committee may repay a loan derived from  
12 an advance on a candidate's brokerage account, credit card, home  
13 equity line of credit, or other line of credit available to the candidate,  
14 directly to the candidate or the original lender. The amount of the  
15 repayment shall not exceed the amount of the principal used in  
16 connection with the campaign and interest that has accrued on that  
17 principal. If the candidate's authorized committee makes a repayment  
18 to the candidate, the candidate shall repay the original lender the same  
19 amount of the repayment within thirty (30) days of receipt of the  
20 repayment from the candidate's authorized committee. Failure to  
21 repay the lender within thirty (30) days constitutes the personal use of  
22 campaign funds and is prohibited under 11 CFR 113.2.

1           (v) Loans derived from an advance on a candidate's brokerage account,  
2           credit card, home equity line of credit, or other line of credit available  
3           to the candidate shall be reported by the candidate's principal  
4           campaign committee in accordance with 11 CFR part 104.

5 3. 11 CFR 100.8 would be amended by revising paragraph (b)(12) and adding new  
6 paragraph (b)(24) to read as follows:

7 **§ 100.8. Expenditures (2 U.S.C. 431(9)).**

8 \* \* \* \* \*

9 (b) \* \* \*

10           (12) A loan of money by a State bank, a federally chartered depository institution  
11           (including a national bank) or a depository institution whose deposits and  
12           accounts are insured by the Federal Deposit Insurance Corporation, the  
13           ~~Federal Savings and Loan Insurance Corporation~~, or the National Credit  
14           Union Administration is not an expenditure by the lending institution if such  
15           loan is made in accordance with applicable banking laws and regulations and  
16           is made in the ordinary course of business. A loan will be deemed to be made  
17           in the ordinary course of business if it: Bears the usual and customary interest  
18           rate of the lending institution for the category of loan involved; is made on a  
19           basis which assures repayment; is evidenced by a written instrument; and is  
20           subject to a due date or amortization schedule. Such loans shall be reported by  
21           the political committee in accordance with 11 CFR 104.3(a) and (d). Each  
22           endorser or guarantor shall be deemed to have contributed that portion of the  
23           total amount of the loan for which he or she agreed to be liable in a written

1 agreement, except that, in the event of a signature by the candidate's spouse,  
2 the provisions of 11 CFR 100.7(a)(1)(i)(D) shall apply. Any reduction in the  
3 unpaid balance of the loan shall reduce proportionately the amount endorsed  
4 or guaranteed by each endorser or guarantor in such written agreement. In the  
5 event that the loan agreement does not stipulate the portion of the loan for  
6 which each endorser or guarantor is liable, the loan shall be considered an  
7 expenditure by each endorser or guarantor in the same proportion to the  
8 unpaid balance that each endorser or guarantor bears to the total number of  
9 endorsers or guarantors. For the purpose of ~~11 CFR 100.8(b)(12)~~this  
10 paragraph, an overdraft made on a checking or savings account shall be  
11 considered an expenditure unless: The overdraft is made on an account which  
12 is subject to automatic overdraft protection; and the overdraft is subject to a  
13 definite interest rate and a definite repayment schedule. However, paragraph  
14 (b)(12) of this section shall not apply to any loan of money derived from an  
15 advance on a candidate's brokerage account, credit card, home equity line of  
16 credit, or other lines of credit described in paragraph (b)(24) of this section.

17 \* \* \* \* \*  
18 (24) Any loan of money derived from an advance on a candidate's brokerage  
19 account, credit card, home equity line of credit, or other line of credit available  
20 to the candidate, as defined in 11 CFR 100.7(b)(22).  
21

1 **PART 104 - REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)**

2 4. The authority for part 104 would continue to read as follows:

3 Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432 (i), 434, 438(a), 438(b),  
4 439a.

5 5. 11 CFR 104.3 would be amended by revising paragraphs (a)(3)(vii), (b)(2)(iii),  
6 (b)(4), the introductory text of paragraph (d), and paragraph (d)(1), and adding paragraph  
7 (d)(4) to read as follow:

8 **§ 104.3 Contents of reports (2 U.S.C. 434(b), 439(a))**

9 (a) \* \* \*

10 (3) \* \* \*

11 (vii) \* \* \*

12 (C) Any loan of money derived from an advance on a candidate's  
13 brokerage account, credit card, home equity line of credit, or  
14 other lines of credit described in 11 CFR 100.7(b)(22) and  
15 100.8(b)(24); and

16 (D) Total loans:

17 \* \* \* \* \*

18 (b) \* \* \*

19 (2) \* \* \*

20 (iii) \* \* \*

21 (C) Repayment of any loan of money derived from an advance on a  
22 candidate's brokerage account, credit card, home equity line of

1 credit, or other lines of credit described in 11 CFR 100.7(b)(22)  
2 and 100.8(b)(24); and

3 (D) Total loans:

4 \* \* \* \* \*  
5 (4) \* \* \*

6 (iii) Each person who receives a loan repayment, including a repayment of  
7 a loan of money derived from an advance on a candidate's brokerage  
8 account, credit card, home equity line of credit, or other lines of credit  
9 described in 11 CFR 100.7(b)(22) and 100.8(b)(24), from the reporting  
10 committee during the reporting period, together with the date and  
11 amount of such loan repayment;

12 (iv) Each person who receives a loan repayment, including a repayment of  
13 a loan of money derived from an advance on a candidate's brokerage  
14 account, credit card, home equity line of credit, or other lines of credit  
15 described in 11 CFR 100.7(b)(22) and 100.8(b)(24), from the  
16 candidate during the reporting period, if the proceeds of such loan  
17 were used in connection with the candidate's campaign, together with  
18 the date and amount of such loan repayment;

19 \* \* \* \* \*

20 (d) Reporting debts and obligations: Each report filed under 11 CFR 104.1 shall, on  
21 Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and  
22 obligations owed by or to the reporting committee. Loans, including a loan of money  
23 derived from an advance on a candidate's brokerage account, credit card, home equity

1 line of credit, or other lines of credit described in 11 CFR 100.7(b)(22), obtained by an  
2 individual prior to becoming a candidate for use in connection with that individual's  
3 campaign shall be reported as an outstanding loan owed to the lender by the candidate's  
4 principal campaign committee, if such loans are outstanding at the time the individual  
5 becomes a candidate. Where such debts and obligations are settled for less than their  
6 reported amount or value, each report filed under 11 CFR 104.1 shall contain a statement  
7 as to the circumstances and conditions under which such debts or obligations were  
8 extinguished and the amount paid. See 11 CFR 116.7.

9 (1) In addition, when a candidate or political committee obtains a loan from, or  
10 when a political committee establishes a line of credit at, a lending institution  
11 as described in 11 CFR 100.7(b)(11) and 100.8(b)(12), it shall disclose in the  
12 report covering the period when the loan or line of credit was obtained, next  
13 due report the following information on schedule C-1 or C-P-1:

14 \* \* \* \* \*

15 (4) When a candidate obtains a loan of money derived from an advance on the  
16 candidate's brokerage account, credit card, home equity line of credit, or other  
17 line of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24), the  
18 candidate's principal campaign committee shall disclose in the report covering  
19 the period when the loan or line of credit was obtained, the following  
20 information on schedule C-2 or C-P-2:

21 (i) The date, amount, and interest rate of the loan, advance, or line of  
22 credit;

1 (ii) The name and address of the lending institution;

2 (iii) The types and value of collateral or other sources of repayment that  
3 secure the loan, advance, or line of credit, if any; and

4 (iv) Each draw or advance on the credit card or line of credit.

5 \* \* \* \* \*

6  
7 6. 11 CFR 104.8 would be amended by adding paragraph (g) to read as follows:

8 **§ 104.8 Uniform reporting of receipts.**

9 \* \* \* \* \*

10 (g) The principal campaign committee of the candidate shall report the receipt of any  
11 loan of money derived from an advance on a candidate's brokerage account, credit card,  
12 home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and  
13 100.8(b)(24) as follows:

- 14 (1) If the loan is paid directly to the candidate's authorized committee, the amount  
15 of the loan shall be reported as an itemized entry on Schedule A;
- 16 (2) If the loan is paid to the candidate and the candidate makes a loan or a gift to  
17 the candidate's authorized committee, the money paid to the candidate shall be  
18 reported as a memo entry on Schedule A, and the candidate loan or gift to the  
19 candidate's authorized committee shall be reported as an itemized entry on  
20 Schedule A; or
- 21 (3) See 11 CFR 1007(b)(22)(iii) for special reporting rules regarding loans used  
22 for a candidate's personal living expenses.

1 7. 11 CFR 104.9 would be amended by adding paragraph (f) to read as follows:

2 **§ 104.9 Uniform reporting of disbursements.**

3 \* \* \* \* \*

4 (f) The principal campaign committee of the candidate shall report repayment of any  
5 loan of money derived from an advance on a candidate's brokerage account, credit card,  
6 home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and  
7 100.8(b)(24) as follows:

8 (1) If the candidate's authorized committee makes a repayment of the loan of  
9 money to either the candidate or the lending institution, the repayment shall be  
10 reported as an itemized entry on Schedule B; or

11 (2) If the candidate makes a repayment of the loan of money to the lending  
12 institution, regardless of whether the candidate has received a repayment from  
13 the candidate's authorized committee or repayment is from the candidate's  
14 personal funds, the repayment shall be reported as a memo entry on Schedule  
15 B.

16  
17 8. 11 CFR 104.18 would be amended by revising paragraph (h)(1) to read as follows:

18 **§ 104.18 Electronic filing of reports (2 U.S.C. 432 (d) and 434 (a)(11)).**

19 \* \* \* \* \*

20 (h) (1) \* \* \*

21 (i) Schedules C-1 and C-P-1, Loans and Lines of Credit From Lending  
22 Institutions (see 11 CFR 104.3(d)); and

- 1 (ii) Form 8, Debt Settlement Plan (see 11 CFR 116.7(e)); and  
2 (iii) Schedule C-2 and C-P-2, Loans of Money Derived from an Advance  
3 on a Candidate's Brokerage Account, Credit Card, Home Equity Line  
4 of Credit, or Other Lines of Credit (see 11 CFR 104.3(d)).

5 \* \* \* \* \*  
6  
7 **PART 113 - EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO**  
8 **SUPPORT FEDERAL OFFICEHOLDER ACTIVITIES (2 U.S.C. 439a)**

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

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

11 10. 11 CFR 113.1 would be amended by revising the introductory text in paragraph  
12 (g)(6) to read as follows:

13 **§ 113.1 Definitions (2 U.S.C. 439a)**

14 \* \* \* \* \*  
15 (g) \* \* \*

16 (6) Third party payments. Notwithstanding that the use of funds for a particular  
17 expense would be a personal use under this section, payment of that expense  
18 by any person other than the candidate or the campaign committee shall be a  
19 contribution under 11 CFR 100.7 to the candidate unless the payment would  
20 have been made irrespective of the candidacy. "Payment" includes repayment,  
21 endorsement, guarantee, or co-signature of a loan described in 11 CFR  
22 100.7(b)(22) and used for the candidate's personal living expenses. Examples

1 of payments considered to be irrespective of the candidacy include, but are not  
2 limited to, situations where—

3 \* \* \*

4  
5  
6  
7 Danny L. McDonald  
8 Chairman  
9 Federal Election Commission

10  
11 DATED: \_\_\_\_\_  
12 BILLING CODE: 6715-01-U

