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Washington, DC 20463

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MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director

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

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

**SUBMITTED LATE**

On July, 5, 2001, the Office of General Counsel (OGC) circulated to the Commission the draft Notice of Proposed Rulemaking ("NPRM"), Agenda Document No. 01-40, for the July 19, 2001 Open Session. At the suggestion of Commissioner Thomas, we are circulating several technical changes to that document. The changes also clarify that loans used for a candidate's personal living expenses are not contributions and the issue that is presented in the NPRM is whether these loans should be reported. The amendments are as follows:

1. On page 6, line 19, delete "considered to be a contribution" and replace with "reportable." Also, delete "Therefore" and replace with "Further".
2. On page 7, change line 14 to: "The Commission is considering making similar clarifications regarding the . . .". On line 16, delete the word "option". On line 17, delete "alternative" and replace with "clarification". On lines 22-23, delete "an approach" and replace with "clarifications regarding bank loans used for a candidate's personal living expenses."
3. On page 19, line 7 should read: "either the candidate or the candidate's committee has an outstanding . . .".

- 1 4. On page 24, line 9, delete "However,". Also on lines 12-13, delete "is not a  
2 contribution".  
3
- 4 5. On page 25, line 7, add an "s" to "provision".  
5
- 6 6. On page 31, line 21, add a period to "1007(b)(22)(iii)" to read "100.7(b)(22)(iii)".  
7 Also on that line, add the word "certain" after "regarding".  
8

9 Attached are the relevant pages with the changes highlighted.

10  
11 **Recommendation**

12  
13 OGC recommends that the Commission adopt the NPRM on Brokerage Loans  
14 and Lines of Credit as amended by the attached document.  
15

16  
17  
18 **Attachment**

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 reportable.~~

20 ~~Therefore~~ Further, the loan would not violate 2 U.S.C. 439a or 11 CFR 113.2(d)  
21 prohibiting personal use of campaign funds. The loan, however, would have to be repaid  
22 from the candidate's 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 ~~making adopting a similar~~ clarifications approach  
15 regarding the reporting of bank loans that are used solely for the candidate's personal  
16 living expenses. Please note this ~~option~~ is not reflected in the proposed rules that follow.  
17 Under this clarification ~~alternative~~, bank loans would not be required to be reported if: (1)  
18 no part of the loan proceeds is used in connection with a campaign; (2) the loan is repaid  
19 wholly from the candidate's personal funds; (3) the loan does not pass through the  
20 authorized committee's account and the authorized committee does not endorse,  
21 guarantee, co-sign, or pay the loan; and (4) there is no endorsement, guarantee, co-  
22 signature, or payment by a third party. The Commission seeks comments on whether it is

1 advisable to adopt such ~~an approach~~ clarifications regarding bank loans used for a  
2 candidate's personal living expenses.

3 D. Repayments of Loans By Authorized Committees to Either the Candidate or the  
4 Lending Institution.

5 Under proposed section 100.7(b)(22)(iv), the candidate's authorized committee  
6 would have the option of repaying the loan directly to the lending institution or to the  
7 candidate. If the repayment is made to the candidate, however, the candidate must repay  
8 the lending institution within 30 days of receiving the committee's repayment. This is to  
9 ensure that the funds will not be available for the candidate's personal use. See 2 U.S.C.  
10 439a and 11 CFR 113.2(d).

11  
12 E. Other Amendments to 11 CFR 100.7(b)

13 The proposed rules would also delete an obsolete reference in the introductory  
14 text of 11 CFR 100.7(b)(11) to the Federal Savings and Loan Insurance Corporation  
15 (FSLC). The FSLC has been dissolved and its deposit insurance responsibilities have  
16 been transferred to the Federal Deposit Insurance Corporation pursuant to the Financial  
17 Institutions Reform, Recovery, and Enforcement Act of 1989, P.L. 101-73 (August 9,  
18 1989).

19  
20 11 CFR 100.8 Expenditure

21 Currently, 11 CFR 100.8(b)(12) exempts bank loans from the definition of  
22 "expenditure" and contains parallel language to that found in the exceptions to the  
23 definition of "contribution" in provision of section 100.7(b)(11). The Commission

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's committee has an outstanding loan that is derived  
8 from the candidate's brokerage account, credit card, home equity line of credit, or other  
9 lines of credit.

#### 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 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~~ 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 provisions 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           (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 100.7(b)(22)(iii) for special reporting rules regarding certain  
22         loans used for a candidate's personal living expenses.

