



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton *LHN (by JAE)*
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AGENDA ITEM
For Meeting of: 4-03-03

SUBMITTED LATE

SUBJECT: Public Financing of Presidential Candidates and Nominating
Conventions: Draft Notice of Proposed Rulemaking

Attached is a draft of the Title 26 Notice of Proposed Rulemaking ("NPRM"), which addresses the public financing of presidential candidates and nominating conventions. This draft reflects discussion on these issues during the Regulations Committee meetings on February 24 and March 5, 2003.

Recommendations

The Office of General Counsel recommends that the Commission take the following actions:

1. Approve the attached Notice of Proposed Rulemaking for publication in the *Federal Register*.
2. Schedule a hearing on these proposed rules on May 19, 2003, at 10:00 AM.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 104, 107, 9003, 9004, 9008, 9032 -- 9036, and 9038**

3 **[Notice 2003 - >]**

4 **Public Financing of Presidential Candidates and Nominating Conventions**

5 **AGENCY:** Federal Election Commission.

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

7 **SUMMARY:** The Federal Election Commission requests comments on proposed
8 changes to its rules governing publicly financed presidential
9 candidates, in both the primary and general elections, and national
10 nominating conventions. These regulations implement the
11 provisions of the Presidential Election Campaign Fund Act and the
12 Presidential Matching Payment Account Act, which establish
13 eligibility requirements for presidential candidates and convention
14 committees seeking public financing and indicate how funds
15 received under the public financing system may be spent. They
16 also require the Commission to audit publicly financed committees
17 and seek repayment where appropriate. The proposed rules
18 implement the Bipartisan Campaign Reform Act of 2002, as it
19 applies particularly to the Presidential Election Campaign Fund
20 Act and the Presidential Matching Payment Account Act. The
21 proposed rules also reflect the Commission's experience in
22 administering this program during the 2000 election cycle and seek
23 to anticipate some questions that may arise during the 2004

1 presidential election cycle. No final decisions have been made by
2 the Commission on any of the proposed revisions in this Notice.
3 Further information is provided in the supplementary information
4 that follows.

5 **DATES:**

Comments must be received on or before May 9, 2003. If the
6 Commission receives sufficient requests to testify, it will hold a
7 hearing on these proposed rules on May 19, 2003, at 10:00 a.m.
8 Commenters wishing to testify at the hearing must so indicate in
9 their written or electronic comments.

10 **ADDRESSES:**

All comments should be addressed to Ms. Mai T. Dinh, Acting
11 Assistant General Counsel, and must be submitted in either
12 electronic or written form. Electronic mail comments should be
13 sent to pubfund2004@fec.gov and must include the full name,
14 electronic mail address and postal service address of the
15 commenter. Electronic mail comments that do not contain the full
16 name, electronic mail address and postal service address of the
17 commenter will not be considered. If the electronic mail
18 comments include an attachment, the attachment must be in the
19 Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed
20 comments should be sent to (202) 219-3923, with printed copy
21 follow-up to ensure legibility. Written comments and printed
22 copies of faxed comments should be sent to the Federal Election
23 Commission, 999 E Street, N.W., Washington, D.C. 20463.

1 Commenters are strongly encouraged to submit comments
2 electronically to ensure timely receipt and consideration. The
3 Commission will make every effort to post public comments on its
4 Web site within ten business days of the close of the comment
5 period. The hearing will be held in the Commission's ninth floor
6 meeting room, 999 E Street N.W., Washington, D.C.

7 **FOR FURTHER**
8 **INFORMATION**
9 **CONTACT:**

Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane
Pugh Jr., Senior Attorney, or Mr. Robert M. Knop, or Ms. Delanie
DeWitt Painter, Attorneys, 999 E Street N.W., Washington, DC
20463, (202) 694-1650 or (800) 424-9530.

13 **SUPPLEMENTARY**

14 **INFORMATION:** The Commission is considering revising parts of its regulations
15 governing the public financing of presidential campaigns, 11 CFR Parts 9001 through
16 9039, to more effectively administer the public financing program during the 2004
17 election cycle. These rules implement the provisions of the Presidential Election
18 Campaign Fund Act, 26 U.S.C. 9001 to 9013 ["Fund Act"], and the Presidential
19 Matching Payment Account Act, 26 U.S.C. 9031 to 9042 ["Matching Payment Act"]. In
20 addition, the Commission is considering how the Bipartisan Campaign Reform Act of
21 2002 ["BCRA"], Public Law 107-155, 116 Stat. 81 (Mar. 27, 2002), in its amendments to
22 the Federal Election Campaign Act of 1971, 2 U.S.C. 431 to 455 ["FECA"], along with
23 the Commission's implementing regulations related to BCRA, may affect the public

1 funding rules. The Commission publishes this Notice of Proposed Rulemaking
2 ["NPRM"] to invite comments on the proposed amendments.

3 Please note that the proposed revisions would affect primary elections, general
4 elections, and national nominating conventions. The Commission plans to seek comment
5 at a later date on issues that affect only minor and new party candidates. The
6 Commission also plans a separate rulemaking on selected issues related to all Federal
7 candidates, which may include issues related to publicly funded candidates including
8 travel, mailing lists and allocation of expenses between candidates.

9 **PRESIDENTIAL CANDIDATES**

10 I. Winding Down Costs

11 The Commission is considering several changes to its rules governing winding
12 down costs for both primary and general election candidates. Many issues that have
13 arisen in the Commission's audits of publicly funded presidential candidates have
14 involved winding down costs.

15 A. Restrictions on Winding Down Costs

16 The Commission is revisiting the issue of limiting winding down expenses. The
17 current regulations at 11 CFR 9034.4(a)(3) permit primary candidates to make
18 disbursements for winding down costs, and to receive and use matching funds to make
19 those disbursements, over an indefinite period of time after the candidate's Date of
20 Ineligibility ["DOI"]. Similarly, under 11 CFR 9004.4(a)(4), general election candidates
21 may use public funds after the end of the expenditure report period to pay for the costs of

1 winding down the general election campaign. The rules treat both primary and general
2 election winding down costs as qualified campaign expenses.

3 The Commission has permitted publicly financed candidates to use Federal funds
4 to pay for certain winding down expenses since 1976. See Informational Letter
5 Re: Advisory Opinion Request 1976-54. In 1979, the Commission stated that winding
6 down costs “although perhaps incurred after a candidate’s date of ineligibility may
7 nevertheless be considered qualified campaign expenses if they are associated with the
8 termination of the candidate’s campaign.” Explanation and Justification for the Rules
9 Governing Presidential Election Campaign Fund and Presidential Primary Matching
10 Fund, 44 Fed. Reg. 20336, 20340 (Apr. 4, 1979). In 1983, the Commission considered a
11 time limitation for winding down costs, but ultimately did not include it in the final rules
12 because of concerns raised by comments opposing the change. Explanation and
13 Justification for the Rules Governing Presidential Primary Matching Fund, 48 Fed. Reg.
14 5224, 5228 (Feb. 4, 1983).

15 The Commission again contemplated restrictions on the amount of winding down
16 costs in 1995. Explanation and Justification for the Rules Governing Public Financing of
17 Presidential Primary and General Election Candidates, 60 Fed. Reg. 31854, 31865-31866
18 (June 16, 1995). The Commission stated that winding down costs “can result in
19 additional audit fieldwork and preparation of addenda to audit reports” and that as part of
20 an “effort to streamline and shorten the audit process,” the Commission sought comment
21 on ways to reduce winding down time for campaigns. Id. The Commission considered
22 limiting winding down expenses to a dollar amount or a fixed percentage of the
23 candidate’s total expenditures during the campaign or matching funds certified to a

1 primary candidate. Id. at 31866. Alternatively, the Commission considered “a cutoff date
2 after which winding down expenses would no longer be considered qualified campaign
3 expenses.” Id. Commenters objected that campaigns need resources to respond during
4 the audit process, to defend themselves in enforcement actions and to verify the proper
5 payment of the campaign’s remaining bills. Id. Ultimately, the Commission did not add
6 new restrictions to the rules governing winding down costs, stating that it would be “quite
7 difficult to select an amount or time frame sufficient to meet reasonable expenses
8 incurred in winding down the campaign.” Id.

9 In recent election cycles, the winding down period for some candidates has
10 extended over several years, and the amount of winding down costs has increased.
11 During the audit and repayment process, presidential committees and the Commission’s
12 auditors estimate future winding down costs, and may sometimes reach substantially
13 disparate winding down estimates. Issues have arisen as to the appropriate amounts and
14 types of winding down expenses and as to the length of time committees need to wind
15 down. These disputes lengthen the audit and repayment process and can provide a basis
16 for judicial challenges to the Commission’s repayment determinations. Both actual and
17 estimated future winding down costs are included in a primary election candidate’s
18 Statement of Net Outstanding Campaign Obligations [“NOCO”] or a general election
19 candidate’s Statement of Net Outstanding Qualified Campaign Expenses [“NOQCE”].
20 Consequently, if the Commission auditors’ figures are lower than the committee’s
21 estimates, a dispute may arise in determining the candidate’s NOCO or NOQCE and any
22 remaining entitlement, surplus funds, or resulting repayment. Disallowed winding down
23 expenses can increase the amount of any surplus funds and the resulting repayment

determination, or they can reduce or eliminate a deficit and the corresponding amount of a primary candidate's entitlement to matching funds. Therefore, the Commission is again considering ways to limit winding down expenses in order to establish a fair and readily determined amount to ensure public funds are used in accordance with statutory purposes, campaigns are treated consistently with respect to winding down costs, and to provide for more expeditious completion of these matters. Thus, the proposed rules establish both an ending date and maximum amount for winding down costs.

The Commission proposes new sections governing winding down expenses at 11 CFR 9004.11 and 11 CFR 9034.11 that would delineate new restrictions on both the amount and timing of winding down costs. Publicly funded campaign committees should wind down in as quick and efficient manner as possible. The proposed restrictions are intended to contain winding down costs and periods, but allow campaigns a reasonable amount of winding down costs and a long enough winding down period to respond during the audit and repayment process and verify the payment of bills to terminate the campaign. The proposed restrictions would work in concert. Thus, candidates would be unable to continue to use public funds to pay for winding down costs if they reach the monetary limit prior to the end of their winding down period or if their winding down period ends before they reach the monetary limit.

The proposed rules at 11 CFR 9004.11 and 9034.11 include both a temporal restriction and a limitation of the total amount of winding down expenses. The proposed time restriction would permit a candidate to use public funds to pay for winding down expenses only until the end of the "winding down period." The winding down period would begin on the day after the candidate's date of ineligibility, for primary candidates

1 who do not participate in the general election, or the day after the end of the expenditure
2 report period for publicly funded general election candidates, or the day following the
3 date 30 days after the general election for candidates who participate in the general
4 election but do not receive public funds for the general election. The winding down
5 period would end no earlier than the latest of: 1) 30 days after the candidate's receipt of
6 an audit report that does not contain any repayment determinations; 2) 60 days after
7 service of notice to the candidate of the Commission's repayment determination, if the
8 committee does not dispute the repayment determination; or 3) 30 days after service of
9 notice of the Commission's repayment determination following an administrative review.

10 The proposed winding down period would allow sufficient time for campaigns to
11 seek administrative review of repayment determinations. The 30-day period following a
12 candidate's receipt of an audit report that does not contain a repayment determination
13 would allow sufficient time to complete winding down because the audit and repayment
14 process would have concluded. The 60-day period allowed for winding down after
15 service to a candidate of a repayment determination that the candidate does not dispute
16 reflects the amount of time permitted for candidates to respond to repayment
17 determinations at 11 CFR 9007.2(c)(2) and 9038.2(c)(2). If a candidate disputes any
18 repayment determination by responding and seeking administrative review, the winding
19 down period would extend to 30 days after service of notice of the Commission's
20 repayment determination following administrative review. This is consistent with
21 11 CFR 9007.2(d)(2) and 9038.2(d)(2), which require candidates to make a post-
22 administrative review repayment within 30 days after service of the Commission's post-
23 administrative review repayment determination. The Commission notes that if it is

1 unable by an affirmative vote of at least 4 of its members to make a repayment
2 determination after an administrative review, the 30-day period would run from the date
3 of service of notice of the Commission's final action concerning the administrative
4 review.

5 The proposed rules would accommodate repayment determinations related to
6 Commission audit reports, addenda to audit reports and 11 CFR 9039.3 inquiries. Thus,
7 if a candidate did not dispute a repayment determination in an audit report but did
8 subsequently dispute a repayment determination arising from an inquiry pursuant to
9 11 CFR 9039.3, the candidate's winding down period would extend until 30 days after
10 service of notice of the Commission's repayment determination upon administrative
11 review related to the 11 CFR 9039.3 investigation. In addition, the time restriction's
12 terms are "no earlier than" the expiration of the specified time period to permit the
13 Commission the administrative flexibility of choosing a convenient end point, like the
14 end of a month, and to allow for staff to estimate time for Commission approval and
15 transmittal to the committee of the audit report or repayment determination.

16 To reflect this new time restriction, the Commission also proposes revising
17 11 CFR 9004.9(a)(4) and 9034.5(b)(2) to require candidates' NOCO or NOQCE
18 Statements to break down estimated winding down costs through the end of the winding
19 down period, rather than the expected termination of the committee's political activity.

20 In addition to the temporal restriction, the proposed rules at 11 CFR 9004.4(a)(4)
21 and 9034.4(a)(3) would limit the total amount of winding down expenses that may be
22 paid for, in whole or part, with public funds. This "winding down limitation" would limit
23 the total amount of publicly funded winding down expenses for primary candidates to the

1 lesser of either: 1) 5% of the overall expenditure limitation; or 2) 5% of the total of the
2 candidate's expenditures subject to the overall expenditure limitation as of the
3 candidate's DOI, plus the candidate's expenses exempt from the overall expenditure
4 limitation as of DOI, such as fundraising, legal and accounting compliance expenses and
5 other expenses. For general election candidates, the winding down limitation would be
6 the lesser of: 1) 2.5% of the expenditure limitation; or 2) 2.5% of the total of the
7 candidate's expenditures subject to the expenditure limitation as of the end of the
8 expenditure report period, plus the candidate's expenses exempt from the expenditure
9 limitation, such as fundraising expenses, as of the end of the expenditure report period.

10 The Commission notes that the fundraising exemption for general election
11 candidates is applicable only to those candidates who may accept contributions to defray
12 qualified campaign expenses pursuant to 26 U.S.C. 9003(b)(2) or 9003(c)(2): minor party
13 candidates and major party candidates who may solicit contributions to make up a
14 deficiency in public funds received. See 11 CFR 100.152, 9003.3(b) and (c). Those
15 general election candidates who may solicit contributions may also exempt legal and
16 accounting compliance expenses from their expenditure limitations. See 11 CFR
17 100.146, 9003.3(b) and (c). Thus, the proposed rule would address the calculation of the
18 winding down limitation for those general election candidates who may solicit
19 contributions by calculating the total of their expenditures subject to the limit and their
20 exempt expenses. The winding down limitation for fully funded major party general
21 election candidates would generally be 2.5% of the expenditure limitation. For both
22 primary and general candidates, expenses for transportation of Secret Service and national
23 security staff and media transportation expenses that are reimbursed by the media do not

count against the expenditure limitations. See 11 CFR 9004.6(a), 9034.6(a). In addition, taxes on non-exempt function income such as interest, dividends and sale of property are exempt from a primary candidate's overall expenditure limitation. See 11 CFR 9034.4(a)(4).

Notwithstanding the amount determined based on these calculations, the proposed rule would permit all primary and general election candidates to spend a minimum of \$100,000 on winding down costs. The \$100,000 minimum winding down limitation is proposed to recognize that publicly funded committees face winding down expenses related to the requirements of the audit and repayment process that do not vary with the size of the committees. The Commission seeks comment on whether \$100,000 is the appropriate minimum amount and whether it should be adjusted for inflation or replaced with a percentage of the expenditure limitation.

In practice, the winding down limitation for primary candidates with large campaigns and for fully funded major party general election candidates would be the maximum winding down limitation: 5% of the overall expenditure limitation for primary candidates or 2.5% of the expenditure limitation for general election candidates. For primary candidates with smaller campaigns, the winding down limitation would equal 5% of their expenses prior to DOI. The winding down limitation for most minor party general election candidates and major party candidates who must solicit contributions to make up a deficiency in public funds would equal 2.5% of their expenses during the expenditure report period. For purposes of calculating the amount of the winding down limitation based on a primary or general candidate's expenses, a candidate's expenses would include both disbursements and accounts payable as of the DOI or the end of the

1 expenditure report period for the following categories of expenses (as listed on page 2 of
2 FEC Form 3P): operating expenses (line 23), fundraising (line 25), exempt legal and
3 accounting (line 26), and other disbursements (line 29). The following payments would
4 not be included in the expenses used to calculate the winding down limitation: transfers
5 to other authorized committees (line 24), loan repayments (line 27), or contribution
6 refunds (line 28). The winding down limitation would not include any expenditures in
7 excess of the general election candidate's expenditure limitation or the primary
8 candidate's overall expenditure limitation; thus, making expenditures or accepting in-
9 kind contributions that exceed the expenditure limits would not provide a basis for an
10 increased winding down limitation. The maximum winding down limitation would be
11 calculated based upon a percentage of the primary candidate's overall expenditure
12 limitation or the general election candidate's expenditure limitation pursuant to 26 U.S.C.
13 441a(b), similar to the calculation of the 20% fundraising exemption or the 15%
14 compliance exemption. See 11 CFR 100.146, 100.152, 9002.11(b)(5) and 9035.1(c)(1)
15 and (2).

16 All expenses incurred and paid by a candidate during the winding down period,
17 including fundraising costs, would be subject to the winding down limitation. Expenses
18 for legal and accounting compliance costs paid for with public funds would count against
19 the winding down limitation, but compliance costs paid by a GELAC would not count
20 against the winding down limitation.

21 The Commission reviewed the amounts spent for winding down costs by all
22 publicly funded candidates during the 2000 election cycle. It compared their approximate
23 winding down costs to the proposed winding down limitation. Of three publicly funded

1 general election candidates, one would have spent less than 1% of the expenditure
2 limitation, the second would have spent less than 2% of his expenditures, while the third
3 would have spent only slightly more than the 2.5% winding down limitation. That
4 committee paid some of its winding down expenses with GELAC funds, which reduced
5 its percentage to less than 2%. Ten primary candidates received matching funds in 2000.
6 Three of these primary candidates' winding down limitations would have been calculated
7 based on the maximum winding down limitation of 5% of the overall expenditure
8 limitation. Of these, one would have exceeded the winding down limitation, spending
9 more than approximately 8% of the expenditure limitation. Six primary candidates'
10 winding down limitations would have been calculated based on their expenditures. Of
11 these, four candidates would have exceeded the 5% winding down limitation, with
12 winding down costs ranging between approximately 13% and 42% of their expenditures.
13 One candidate that would have been subject to the minimum winding down limitation of
14 \$100,000 spent substantially less than that amount. Of all 13 publicly funded committees
15 in the 2000 presidential elections, five primary committees had winding down expenses
16 that would have exceeded the proposed amount limitation. One of these committees had
17 sufficient funds in its related GELAC that could have paid the excessive winding down
18 expenses. The other four committees would have received fewer matching funds after
19 their DOIs.¹

20 The proposal puts forth a lower percentage for general election campaign
21 committees than for primary campaigns for several reasons. General election candidates

¹ Of course, this comparison is hypothetical because the committees may have behaved differently had the proposed rules been in effect.

1 may pay for winding down costs with funds from the candidates' General Election Legal
2 and Accounting Compliance Fund ["GELAC"], an option not currently available for
3 primary election campaigns. General election campaigns are also shorter in length than
4 most primary campaigns and thus, may have fewer transactions and vendors to deal with
5 while terminating the campaign. The Commission also notes that the total amount of
6 public funds and expenditure limitations are larger for major party candidates who receive
7 public funds; thus, a smaller percentage of their expenditures would result in a larger
8 dollar figure.

9 Under the proposed rules, the use of public funds to pay for winding down
10 expenses in excess of these restrictions would constitute a non-qualified campaign
11 expense that may be subject to repayment. However, these restrictions would apply to the
12 use of public funds or a mixture of public and private funds for winding down costs. The
13 proposed rules would not limit the payment of winding down expenses from a
14 candidate's GELAC. The proposed rules would also allow a primary candidate who is in
15 a deficit position at the DOI to pay for winding down costs in excess of the restrictions
16 after the committee's accounts no longer contain any matching funds. See 11 CFR
17 9038.2(b)(2)(iii)(B) and (iv). Primary candidates who have a surplus at the DOI would be
18 required to make a surplus repayment to the United States Treasury before they could use
19 private funds for winding down costs in excess of the restrictions. See 11 CFR 9038.3(c).

20 The proposal includes both temporal and amount restrictions rather than just one
21 or the other so that these restrictions would work together to reinforce each other. The
22 proposed rules would not permit the use of public funds for winding down costs after
23 either: 1) the total amount of winding down expenses reach the winding down dollar

1 limitation or 2) the end of the winding down period, whichever event occurs first. The
2 proposed restrictions would prevent the pre-payment of large amounts for speculative
3 future winding down goods and services prior to the end of the winding down period.
4 They would also prevent a prolonged winding down period from extending and
5 complicating the audit process. In addition, the proposed rules are intended to reflect
6 factors that could affect the amount of winding down costs needed to terminate the
7 campaign. The proposed winding down limitation is based on a percentage of a
8 campaign's expenses to reflect that larger campaigns generally incur more expenses as
9 they terminate their activities. The calculation includes exempt expenses such as
10 fundraising and legal and accounting compliance costs to reflect the actual size of the
11 campaign that is winding down. In addition, the proposed rule would restrict the
12 expenses used to calculate the winding down limitation to the period prior to a primary
13 candidate's DOI or the end of a general election candidate's expenditure report period to
14 prevent candidates from increasing their winding down limitation by spending more for
15 winding down expenses.

16 One factor under consideration, but not included in the proposed rules that follow,
17 is the number of complaints and other compliance actions filed against a presidential
18 candidate or campaign committee. Winding down costs include, inter alia, the costs of
19 "complying with the post-election requirements of the Act," such as the audit and
20 repayment process, reporting and recordkeeping. 11 CFR 9004.4(a)(4) and 9034.4(a)(3).
21 The compliance process is separate from the required audit and repayment process and its
22 requirements are not election dependent, which raises the issue of whether such
23 compliance costs should be considered "post-election requirements of the Act."

1 Compliance matters, unlike compulsory audits and repayment determinations, are not
2 unique to candidates who receive public funds. Consequently, the proposed rule would
3 allow a publicly funded candidate to pay initial expenses for compliance matters arising
4 from the campaign with public funds as winding down costs, but the winding down
5 period would not be prolonged until enforcement matters related to the campaign have
6 closed, if the audit and repayment process has concluded. Private funds would be
7 available to general election candidates through their GELAC and to primary candidates
8 after their accounts no longer contain public funds. As discussed below, however, the
9 proposed rules would also permit a GELAC to pay the primary committee's winding
10 down expenses under certain conditions. The Commission seeks comment on whether
11 the existence of compliance matters should be considered as a factor in determining a
12 candidate's winding down period or winding down limitation.

13 The proposed new sections at 11 CFR 9004.11 (general election) and 9034.11
14 (primary election) governing winding down costs are intended to simplify and clarify the
15 rules governing winding down costs. Proposed new 11 CFR 9004.11 and 9034.11
16 contain the definition of winding down costs, moved from current sections 9004.4(a)(4)
17 and 9034.4(a)(3)(i), the proposed temporal and monetary restrictions, and proposed rules
18 governing the allocation of winding down costs between a candidate's primary election
19 and general election campaigns. In addition, the Commission proposes revisions to
20 11 CFR 9004.4(a)(4) and 9034.4(a)(3)(i) and (ii) to move provisions from those sections
21 to the new sections and to otherwise conform these sections to the proposed new rules.
22 Proposed 11 CFR 9004.4(a)(4) would state that payments may be used to defray winding
23 down costs subject to the restrictions of new 11 CFR 9004.11. Current section

1 9004.4(a)(4)(ii) would be renumbered as 9004.4(a)(5). Proposed 11 CFR 9034.4(a)(3)(i)
2 would state that winding down costs subject to the restrictions in proposed 11 CFR
3 9034.11 are qualified campaign expenses. Proposed 11 CFR 9034.4(a)(3)(ii) would
4 include a reference to proposed 11 CFR 9034.11.

5 The Commission seeks comment on the proposed winding down restrictions. Are
6 the restrictions fair to publicly funded committees? Should winding down expenses be
7 limited to a fixed dollar amount or a combination of a dollar amount and a percentage
8 rather than the proposed percentage? If so, what dollar amount would be appropriate?
9 Would it be preferable to apply a percentage or dollar cap to specific categories of
10 winding down expenses rather than the total of winding down costs? Would a shorter or
11 longer winding down period be preferable to the proposed time period? Should there be a
12 minimum winding down period, and if so, how long should the minimum winding down
13 period be?
14 Specifically, the Commission seeks comment on whether the winding down period
15 should include an additional time period or dollar allowance for candidates who seek
16 judicial review of a Commission repayment determination and if so, how long that period
17 should be. Should candidates who accept public funds for both the primary and general
18 elections be allowed to combine their primary and general election winding down
19 limitations into a joint monetary limit for the total winding down expenses of both
20 committees, with the temporal limit based on the last repayment determination received
21 by either committee? Would the proposed rule encourage candidates to attempt to extend
22 the audit process to lengthen the winding down period?

1 The Commission is also considering two alternatives to the proposed temporal
2 and monetary restrictions on winding down expenses. The first alternative would, in
3 effect, disallow the use of public funds to pay for winding down costs. Under this
4 alternative, a primary election candidate would not be permitted to use public funds to
5 pay for either: 1) all expenses incurred after the candidate's DOI or 2) all expenses for
6 goods or services to be used after the DOI even if the expenses are incurred prior to the
7 DOI. A general election candidate would not be permitted to use public funds to pay for
8 either: 1) all expenses incurred after the end of the expenditure report period or 2) all
9 expenses for goods or services to be used after the end of the expenditure report period
10 even if they are incurred during the expenditure report period.

11 This alternative would end the Commission's treatment of winding down costs as
12 qualified campaign expenses. Winding down costs are a category of qualified campaign
13 expenses recognized by the Commission that is not specifically identified in the Fund Act
14 or the Matching Payment Act. This category of qualified campaign expenses is an
15 exception to the rules requiring qualified campaign expenses to be incurred during the
16 expenditure report period, for general election candidates, 26 U.S.C. 9002(11)(B), or
17 prior to a primary candidate's DOI, 11 CFR 9032.9(a)(1); see also 26 U.S.C. 9032(6) and
18 9033(c)(2). Since winding down costs are incurred after the end of a candidate's active
19 campaign, the question arises whether they are incurred "to further" a general election
20 candidate's election to the office of President or Vice President, 26 U.S.C. 9002(11), or
21 "in connection with" a primary candidate's campaign for the nomination, 26 U.S.C.
22 9032(9). Comments are sought on whether permitting public funds to be used for
23 winding down costs may be inconsistent with these provisions or with 26 U.S.C.

1 9038(b)(3), which requires candidates to retain matching funds “for the liquidation of all
2 obligations to pay qualified campaign expenses for a period not exceeding 6 months after
3 the end of the matching payment period” and to “promptly” repay a ratio of any surplus
4 funds.

5 Disallowing the use of public funds for winding down expenses would ensure that
6 public funds are used for expenses that further a candidate’s active campaign. Under this
7 alternative, general election candidates would be able to pay for their winding down
8 expenses with GELAC funds. Primary candidates would not pay for winding down costs
9 with matching funds, but could use contributions or other private funds to pay these costs.
10 Under this approach, a primary candidate’s winding down costs would not count as
11 liabilities in determining the candidate’s net outstanding campaign obligations; thus,
12 winding down costs could not increase a primary candidate’s entitlement to Federal funds
13 or decrease a surplus.

14 Please note that this alternative is not set forth in the draft rules that follow. This
15 alternative would require the deletion of the rules governing winding down costs as well
16 as changes to other rules to delete references to winding down costs. Specifically, this
17 alternative would require deletion or revisions to: 11 CFR 9002.11(c) (expenses after the
18 last day of the candidate’s eligibility may be qualified campaign expenses if they meet the
19 provisions of 11 CFR 9004.4(a)); 9004.4(a)(4) (winding down costs as qualified
20 campaign expenses); 9004.4(b)(3) (non-qualified campaign expenses do not include
21 winding down expenses permitted by 11 CFR 9004.4(a)(4)); 9004.9(a)(1) and (4)
22 (inclusion of estimated winding down expenses in the NOCQE statement); 9032.9(c)
23 (expenses after the last day of candidate’s eligibility may be qualified campaign expenses

1 if they meet the provisions of 11 CFR 9034.4(a)); 9034.4(a)(3) (winding down costs as
2 qualified campaign expenses); 9034.4(a)(5) (bonuses are permitted until 30 days after
3 DOI); 9034.4(b)(3) (non-qualified campaign expenses do not include winding down
4 expenses permitted by 11 CFR 9034.4(a)(3)); and 9034.5(b)(1) and(2) (inclusion of
5 estimated winding down expenses in the NOCO statement). Please also note that this
6 alternative is inconsistent with some of the other proposals in this rulemaking, such as
7 dividing winding down expenses between a candidate's primary and general campaigns
8 or treating certain convention expenses of ineligible candidates as qualified campaign
9 expenses, as discussed below. The Commission seeks comment on this alternative
10 approach. Would disallowing the use of public funds for winding down costs hinder
11 candidates from responding adequately during the audit and repayment process? Would
12 this alternative serve as a disincentive for candidates to seek public funds? Is this
13 approach nonetheless required by the Fund Act and the Matching Payment Act? Should
14 primary candidates be permitted to establish a separate account of solely private funds to
15 be used for winding down expenses, similar to a general election candidate's GELAC
16 account?

17 The Commission is also considering a second alternative approach to winding
18 down costs. This alternative, which is also not set forth in the draft rules that follow,
19 would not place restrictions on the amount or timing of winding down costs but would
20 more precisely delineate the types of winding down costs that are permissible. The
21 Commission is considering various categories of permissible winding down costs
22 including staff salaries, legal and accounting services, office space rental, utilities,

1 computer services, other overhead expenses, consultants, storage, insurance, office
2 supplies and fundraising expenses.

3 The Commission seeks comment on this alternative. Disputes over winding down
4 expenses often concern the appropriate amounts spent for particular expenses, the
5 appropriate length of time a campaign should continue to need certain goods or services,
6 and whether the campaign committee has provided sufficient documentation of expenses.
7 Should a list of permissible winding down expenses provide guidance as to the
8 appropriate amounts, duration, or documentation required to support such expenses?
9 Should there be any dollar limits on any of the expenses? Would this alternative reduce
10 the amount of winding down expenses? The Commission also seeks comment on any
11 other alternative proposals for limiting winding down expenses.

12 The Commission proposes another change to clarify the rules on winding down
13 costs at 11 CFR 9034.4(b)(3). Current paragraph (a) of 11 CFR 9034.4 lists qualified
14 campaign expenses, while paragraph (b) sets forth certain non-qualified campaign
15 expenses. Paragraph (a)(1) states that, except as provided in paragraph (b)(3), all
16 contributions received by an individual from the date he or she becomes a candidate and
17 all matching payments received by the candidate shall be used only to defray qualified
18 campaign expenses. Paragraph (b)(3) states that general election and post-ineligibility
19 expenditures are not qualified campaign expenses, except to the extent permitted under
20 paragraph (a)(3), which concerns winding down and continuing-to-campaign expenses.
21 For clarity, the Commission is proposing to add a provision to paragraph (b)(3) to
22 specifically state that the winding down and continuing-to-campaign costs addressed in
23 paragraph (a)(3) and 11 CFR 9034.11 are considered qualified campaign expenses.

1 Corresponding changes would be made to the similar provision for the general election,
2 11 CFR 9004.4(b)(3).

3 Please note that the Commission is not proposing any changes at this time to
4 11 CFR 9008.10(g)(7), governing winding down costs of convention committees. The
5 Commission nonetheless welcomes comments as to whether similar restrictions should
6 apply to winding down expenses for convention committees.

7 B. Candidates Who Run in Both Primary and General Elections

8 The Commission seeks comment on proposed revisions to its rules to clarify
9 which costs constitute primary winding down costs for candidates who participate in both
10 the primary and general elections. The Commission's current regulations allow only
11 candidates who do not run in the general election to begin to incur winding down costs
12 and to treat winding down expenses for salary, overhead and computer costs as 100%
13 compliance costs beginning immediately after their DOI. See 11 CFR 9034.4(a)(3)(i) and
14 (iii). Candidates who run in the general election, whether or not they receive public funds
15 for that election, must wait until the day following the date 30 days after the general
16 election, which is the end of the expenditure report period for publicly financed general
17 election candidates, , 11 CFR 9002.12, before they may begin to incur and pay winding
18 down expenses or allocate them as 100% compliance expenses. In 1999, the Commission
19 revised 11 CFR 9034.4(a)(3)(iii) to allow primary candidates who do not run in the
20 general election to begin to treat 100% of winding down expenses for salary, overhead
21 and computer costs as 100% compliance costs beginning immediately after their DOI.

22 Explanation and Justification for the Rules Governing Public Financing of Presidential
23 Primary and General Election Candidates, 64 Fed. Reg. 49355, 49358-59 (Sept. 13,

1 1999). The wording of 11 CFR 9034.4(a)(3)(iii), however, refers to “candidates who
2 receive public funding for the general election” but does not expressly address the
3 situation of a candidate who runs in both the primary and general elections and does not
4 receive public funding for the general election. In the 2000 election, questions arose
5 about how to treat administrative expenses incurred during the general election
6 expenditure report period by a publicly funded primary election candidate who also ran in
7 the general election but did not receive public funds for the general election.

8 The Commission’s approach in 11 CFR 9034.4(a)(3)(iii) reflects its belief that
9 candidates who are actively campaigning in the general election should not be considered
10 to be terminating political activity and winding down their primary campaigns. The
11 proposal seeks to extend this concept to apply without regard to whether their general
12 election campaigns are publicly funded. Expenses incurred by such candidates during the
13 expenditure report period, for publicly funded general election candidates, or the
14 equivalent time period ending 30 days after the general election, for other general election
15 candidates, should be considered general election expenses, rather than primary winding
16 down costs. This approach prevents the use of primary matching funds for non-qualified
17 expenses related to the general election. See 11 CFR 9032.9(a) and 9034.4(b). Although
18 this approach may result in general election campaigns incurring some administrative
19 costs related to terminating the primary campaign during the general election period,
20 identifying those costs would consume resources of audited committees and the
21 Commission. This approach is also consistent with the Commission’s bright line rules
22 for allocating expenses between primary and general campaigns at 11 CFR 9034.4(e),

1 which in effect allow some primary related expenses to be paid by the general election
2 committee and vice versa.

3 The Commission proposes a new paragraph at 11 CFR 9034.11(e), which is based
4 on current 11 CFR 9034.4(a)(3)(i), with revisions to clarify this rule and to prevent any
5 future confusion. The proposed rule at 11 CFR 9034.11(e) would provide that a
6 candidate who runs in the general election must wait until the day following the date 30
7 days after the general election before using matching funds for primary winding down
8 costs, regardless of whether the candidate receives public funds for the general election.
9 This rule would also clarify that no expenses incurred prior to 31 days after the general
10 election by candidates who run in the general election may be considered primary
11 winding down costs or paid with matching funds.

12 The Commission also proposes revisions to 11 CFR 9035.1(c)(1) 4that would
13 include a revised version of current 11 CFR 9034.4(a)(3)(iii) to provide that only
14 candidates who do not run in the general election may treat 100% of salary, overhead and
15 computer expenses as compliance expenses immediately after their date of ineligibility.
16 Candidates who run in the general election must wait until the day following the date 30
17 days after the general election to treat these expenses as exempt compliance costs. The
18 Commission proposes, for greater clarity, to move this revised version of 11 CFR
19 9034.4(a)(3)(iii) into current 11 CFR 9035.1(c)(1), which concerns the legal and
20 compliance exemption to the expenditure limitations, because this paragraph concerns the
21 treatment of certain winding down expenses as 100% compliance costs.

22 The Commission seeks comment on these proposals. Should there be an
23 exception for expenses incurred during the time period prior to 31 days after the general

1 election that are solely related to winding down the primary campaign, and if so, what
2 requirements should there be to ensure that such costs are solely related to winding down
3 the primary campaign? For example, should there be an exception for fundraising
4 expenses incurred during this period to retire a primary committee's NOCO? Would
5 primary-related fundraising activities during this period also have the effect of promoting
6 the candidate's general election campaign? Would a fundraising exception encourage
7 candidates to add a solicitation to general election related events or communications
8 during this period in order to treat expenses for those activities as primary winding down
9 expenses?

10 In addition, the definition of "winding down costs" in new section 9034.11(a)
11 would include a revised version of the first sentence of current 11 CFR 9034.4(a)(3)(i) to
12 clarify that winding down costs are limited to costs associated with the termination of
13 political activity related to seeking that candidate's nomination for election. This would
14 clarify that primary election campaign winding down expenses are legally distinct from
15 general election campaign winding down expenses.

16 A related issue is how to allocate winding down expenses for candidates who run
17 in both the primary and general elections. Allocating winding down expenses between
18 the primary and general election campaigns during the period following the date 30 days
19 after the general election, can be complicated because both campaigns are winding down
20 simultaneously, often using the same staff, offices, equipment, vendors and legal
21 representatives. The Commission proposes new sections 11 CFR 9004.11(d) and
22 9034.11(d) allowing a candidate who runs in both the primary and general election to
23 divide winding down costs between the primary and general campaigns using any

1 allocation method, including allowing either the primary or the general campaign to pay
2 100% of winding down expenses.

3 This proposal would give candidates the flexibility to allocate their winding down
4 expenses based on the particular circumstances of their campaigns. Winding down
5 activity for some candidates may be largely or entirely focused on one election. For
6 example, candidates who do not receive public funds for the general election might
7 concentrate winding down activity on their publicly funded primary committee. In
8 addition, candidates might concentrate winding down efforts and expenses on the
9 committee that must address more difficult and complex issues in the audit and
10 repayment process or that has a larger potential repayment.

11 An alternative proposal for dividing winding down expenses between the primary
12 and general campaigns, which was used in some 2000 election cycle audits, would be to
13 divide expenses equally but allow committees to use an alternative allocation method if
14 they provide sufficient documentation to support that allocation. The draft rules that
15 follow do not incorporate this alternative. The Commission seeks comment as to what
16 amount or type of documentation should be considered sufficient to support allocations
17 proposed by committees. What standard would be appropriate for evaluating alternative
18 allocations proposed by committees?

19 The Commission seeks comment on any other method of allocating winding down
20 expenses between the primary and general election committees. Specifically, would
21 either of these alternative proposals result in the primary or general election campaign
22 using public funds to pay for non-qualified expenses related to the other election? Should
23 campaigns be permitted to allocate their costs to effectually reduce potential repayments?

1 Would a default allocation of 50% for each committee be equitable to differently situated
2 candidates? Finally, are these alternative approaches inconsistent with the Fund Act or
3 the Matching Payment Act?

4 C. Use of GELAC Funds to Pay Winding Down Costs

5 The Commission's rules at 11 CFR 9003.3(a) permit publicly funded major party
6 presidential candidates to establish and solicit private contributions to GELAC funds, if
7 certain conditions are met. Payments from these accounts for exempt legal and
8 accounting services are not counted against the candidate's overall expenditure limits
9 under 2 U.S.C. 441a(b) and 11 CFR 110.8. See 11 CFR 100.8(b)(15).

10 In 1995, the Commission adopted 11 CFR 9004.4(a)(4)(iii) to address the use of
11 the GELAC to pay certain winding down costs of general election candidates. This
12 paragraph states that 100% of salary, overhead and computer expenses incurred by a
13 campaign after the end of the expenditure report period may be paid from a GELAC, and
14 that such expenditures will be presumed to be solely to ensure compliance with the
15 Federal Election Campaign Act ["FECA"] and the Fund Act. 60 Fed. Reg. 31875
16 (June 16, 1995). This paragraph was included in the 1996 through 1999 editions of the
17 Code of Federal Regulations, but was inadvertently omitted from the 2000, 2001 and
18 2002 editions. The Commission intends to reinstate this important provision, with certain
19 revisions discussed below, but move it to the regulation that governs GELAC funds,
20 proposed 11 CFR 9003.3(a)(2)(i)(I).

21 The Commission is also considering whether, and to what extent, GELAC funds
22 may be used to pay for primary winding down expenses incurred after the end of the
23 expenditure report period. As noted above, the primary and general election campaigns

1 are simultaneously winding down during this period and often share salary, overhead and
2 computer expenses. The current regulations at 11 CFR 9034.4(a)(3)(iii) recognize that a
3 significant amount of winding down activity during this period is related to compliance
4 and allow primary campaigns to treat 100% of salary, overhead and computer costs
5 during this period as legal and accounting compliance expenses exempt from the
6 expenditure limitations. Permitting the GELAC to pay salary, overhead, and computer
7 costs after the end of the expenditure report period for both the primary and general
8 campaigns would allow candidates who run in both the primary and general elections to
9 choose to pay these costs from the GELAC without having to allocate them between the
10 primary and general campaign committees. In addition, the primary and general election
11 committees often share winding down expenses related to legal and accounting
12 compliance such as attorneys and accountants. Further, primary campaign committees
13 may lack sufficient funds to complete winding down activity.

14 The Commission proposes to revise the language of former 11 CFR
15 9004.4(a)(4)(iii), at proposed 11 CFR 9003.3(a)(2)(i)(I), to allow contributions to the
16 GELAC to be used for winding down expenses for legal and accounting compliance
17 activities incurred after the end of the expenditure report period by either the primary or
18 general election committee or by both committees. All salary, overhead, and computer
19 expenses after the end of the expenditure report period would be considered winding
20 down expenses for legal and accounting compliance activities payable by the GELAC.

21 The Commission seeks comments on the proposed rule. Should the GELAC be
22 allowed to pay for the primary committee's legal and accounting compliance expenses
23 during the winding down period or must the primary committee pay all primary winding

1 down expenses? The Commission also seeks comment on whether, and to what extent,
2 GELAC funds may be used to pay for primary winding down expenses other than legal
3 and accounting compliance expenses, salary, overhead and computer costs. Should the
4 rule list in more detail the types of primary winding down expenses that may be paid with
5 GELAC funds?

6 D. Convention Expenses of Ineligible Candidates

7 The Commission proposes to add a new provision to the rules to reflect its
8 decision in AO 2000-12 permitting certain convention expenses incurred by presidential
9 primary candidates after their dates of ineligibility to be considered qualified campaign
10 expenses. In AO 2000-12, the Commission determined that certain expenses related to
11 meetings and events at the national nominating conventions could be treated as qualified
12 campaign expenses by ineligible candidates. First, the Commission determined that
13 expenses for certain meetings and receptions to thank delegates and supporters could be
14 treated as qualified campaign expenses under 11 CFR 9034.4(a)(5), which specifically
15 includes gifts to "committee employees, consultants and volunteers" for "campaign-
16 related activities or services." The current rule limits this to \$150 per individual and
17 \$20,000 total for all gifts. The Commission noted that such meetings should be restricted
18 to attendees who served the campaign in the capacity of a committee employee,
19 consultant or volunteer to be considered qualified campaign expenses, and that the
20 current regulation does not allow the payment of travel expenses to attend or organize the
21 events to be considered qualified campaign expenses.

22 Second, the Commission permitted the ineligible candidates to incur qualified
23 campaign expenses related to fundraising events at the conventions. The Commission

1 stated that as long as the candidates' primary committees had remaining net outstanding
2 campaign obligations, they may continue to receive matching funds, and may use
3 matching funds to pay for fundraising expenses to retire those campaign obligations as
4 qualified campaign expenses. See 11 CFR 9034.1(b). The Commission concluded that
5 the candidates may incur qualified campaign expenses for expenses related to specific
6 fundraising events held at the nominating conventions. It stated that the candidates could
7 also use matching funds to pay the travel expenses for candidates to attend the
8 fundraising events and for campaign staff who participate in the organizing and
9 administration of the fundraising events. The Commission emphasized that the
10 fundraising expenses must be for specific fundraising events at the convention. In
11 addition, expenses allocable to participation by the candidates or their staff members in
12 any other part of the conventions would constitute non-qualified campaign expenses.
13 Finally, such expenses would be qualified campaign expenses only if, at the time of the
14 convention, the candidates had net outstanding campaign obligations. See 11 CFR
15 9034.1(b).

16 Consequently, the Commission proposes adding new 11 CFR 9034.4(a)(6) to
17 reflect its decision in AO 2000-12. The proposed rules at paragraph (a)(6)(i) provide that
18 expenses directly related to a specific fundraising event at a national nominating
19 convention to retire an ineligible candidate's debt owed by the candidate's primary
20 committee, including travel expenses for the candidate to attend the fundraising event and
21 for those campaign staff who organize and administer the fundraising event, may be
22 considered qualified campaign expenses. This paragraph provides that covered travel
23 expenses would consist of transportation, hotel or other lodging, and per diem subsistence

1 for the candidates, their spouses, campaign staff, and volunteers who organize or
2 administer the event. The proposed rule provides that expenses allocable to participation
3 by the candidate or staff in the national nominating convention itself, or in any activities
4 related to the convention, other than the fundraising event, would constitute non-qualified
5 campaign expenses. The proposed rule also states that expenses for a fundraising event at
6 the convention may be considered qualified campaign expenses only to the extent that, on
7 the date of the fundraising event, the candidate has net outstanding campaign obligations
8 pursuant to 11 CFR 9034.1(b). Proposed paragraph (a)(6)(ii) would also permit expenses
9 for events to thank campaign employees, consultants and volunteers to be considered
10 qualified campaign expenses, but would provide that travel expenses to such events
11 would not constitute qualified campaign expenses.

12 The Commission's decision in AO 2000-12 delineates a carefully circumscribed
13 exception to the Commission's general past practice that convention expenses of
14 ineligible candidates are non-qualified campaign expenses. As AO 2000-12 states, the
15 Commission has generally concluded in its audits of presidential primary campaign
16 committees that expenses associated with attending national nominating conventions
17 incurred by losing primary candidates are non-qualified campaign expenses. The opinion
18 discusses a number of audits of presidential campaigns in which the Commission
19 determined that expenses of ineligible candidates related to the national nominating
20 convention such as preparatory staff work, hotel, and airline tickets were non-qualified
21 campaign expenses. For example, the U.S. Court of Appeals for the District of Columbia
22 Circuit upheld the Commission's determination that convention-related expenses incurred
23 by an unsuccessful presidential campaign committee to attend the convention and for

1 activities to bolster the support and enthusiasm of the candidate's delegates were non-
2 qualified campaign expenses where the committee claimed that the expenses were
3 fundraising activities because the video and audio record of the candidate's attendance at
4 the convention would be used for later fundraising efforts. Robertson v. FEC, 45 F.3d
5 486, 492 (D.C. Cir. 1995). AO 2000-12 explains that while the Commission's general
6 practice is that expenses for ineligible candidates, such as travel costs, related to the
7 convention are non-qualified campaign expenses, matching funds may be used for such
8 expenses in certain limited circumstances.

9 Prior to the 1996 election cycle, the Commission sought comment on whether to
10 expand the definition of "qualified campaign expense" in 11 CFR 9032.9 to include
11 losing candidates' convention expenses. See Explanation and Justification to the Rules
12 Governing Public Financing of Presidential Primary and General Election Candidates, 60
13 Fed. Reg. 31854, 31871 (June 16, 1995). In declining to do so, however, the Commission
14 noted that the statutory definition of qualified campaign expense is limited to expenses
15 "incurred by a candidate, or by his authorized committee, in connection with his
16 campaign for nomination for election." Id.; see 26 U.S.C. 9032(9)(A). This definition
17 arguably does not apply to those no longer seeking the presidential nomination.
18 However, the 1995 Explanation and Justification cited above noted that candidates are
19 permitted to count fundraising expenses incurred after DOI, including those incurred at a
20 national nominating convention, as qualified campaign expenses as part of their winding
21 down costs, but only those expenses directly related to fundraising are qualified campaign
22 expenses. Id.

1 The Commission seeks comment on this proposed rule and on its previous
 2 treatment of these expenses. Should the Commission incorporate the exception described
 3 in AO 2000-12 into its regulations? Are there any possible adverse consequences of
 4 allowing ineligible candidates to treat these expenses as qualified campaign expenses?
 5 Should the Commission retain its general practice that convention expenses of ineligible
 6 candidates are non-qualified campaign expenses? Should the definition of "qualified
 7 campaign expense" in 11 CFR 9032.9 or the rules governing the use of funds for
 8 qualified campaign expenses in 11 CFR 9034.4 be expanded to include as qualified
 9 campaign expenses the convention expenses of ineligible primary candidates who speak,
 10 appear, serve as a delegate or retain delegates, or who are nominated as the party's vice
 11 presidential candidate, or who otherwise participate in the party's national nominating
 12 convention? How would such a change be reconciled with the requirement that qualified
 13 campaign expenses must be made "in connection with [a candidate's] campaign for
 14 nomination for election?" See 26 U.S.C. 9032(9). Should expenses of ineligible
 15 presidential primary candidates at the national convention be considered permissible
 16 winding down costs or some other type of qualified campaign expense?

17 II. Primary Expenditure Limitations and Repayments

18 A. In-kind Contributions Count Toward the Expenditure Limits (11 CFR 19 9035.1 and 9038.2)

20 The Commission proposes to clarify its rules at 11 CFR 9035.1 and
 21 9038.2(b)(2)(ii)(A) concerning attribution of expenses to the expenditure limitations for
 22 presidential primary candidates and repayments based upon expenditures in excess of
 23 those limitations. The Commission's recent rulemaking on coordinated and independent

1 expenditures implementing the requirements of BCRA delineates the rules governing
2 coordinated expenditures, coordinated communications, party expenditures, coordinated
3 party communications and the dissemination, distribution or republication of campaign
4 materials prepared by a candidate. See Explanation and Justification for the Rules
5 Governing Coordinated and Independent Expenditures, 68 Fed. Reg. 421 (Jan. 3, 2002).
6 In that rulemaking, the Commission generally defined “coordinated” for the purpose of
7 coordinated expenditures. 11 CFR 109.20. The final rules also establish particular
8 criteria for a communication to be considered a “coordinated communication.” See, e.g.,
9 11 CFR 109.21(c) (content standards) and (d) (conduct standards). In addition to these
10 general rules, the particular circumstances of political party committees are addressed,
11 and “party coordinated communications” are defined. See 11 CFR 109.37 and
12 11 CFR part 109, subpart D.

13 In establishing new rules governing coordinated expenditures, the Commission
14 recognized that some in-kind contributions arising from coordinated communications
15 made by party committees or other persons may not necessarily be received or accepted
16 by the candidate. See 11 CFR 109.21(b)(2) and 11 CFR 109.37(a)(3). The Commission
17 believes guidance would be helpful regarding the application of the coordinated and
18 independent expenditures final rules to situations involving the expenditure limitations
19 applicable to publicly funded presidential candidates. Specifically, the Commission
20 proposes to address the extent to which in-kind contributions, coordinated expenditures,
21 coordinated communications, coordinated party expenditures, and coordinated party
22 communications will count against expenditure limitations and will be included in the

1 total amount of a publicly funded candidate's expenditures subject to the limits for
2 purposes of repayment determinations.

3 The current rules at 11 CFR 9035.1(a) and 11 CFR 110.8(a) set forth the state-by-
4 state and overall expenditure limitations for candidates receiving public funds for the
5 primary election. See 2 U.S.C. 441a(b), (c), and 26 U.S.C. 9035(a). The Commission
6 has generally treated the receipt of in-kind contributions by presidential primary
7 candidates as expenditures made by those candidates and has included in-kind
8 contributions in the amount of the candidate's expenditures subject to the expenditure
9 limitations and in the calculation of repayments based on amounts in excess of the
10 candidate's expenditure limitations. For example, in a repayment determination arising
11 from an audit of a 1988 candidate, the Commission concluded that in-kind contributions
12 for testing-the-waters expenses from a multicandidate political committee "leadership
13 PAC" associated with a presidential candidate to that candidate were subject to the
14 candidate's state-by-state expenditure limitation and part of the total of the candidate's
15 expenditures subject to pro rata repayment. In addition, the Commission concluded, in
16 making that repayment determination, that Federal matching funds and private
17 contributions were commingled in a committee's accounts. The Commission considered
18 in-kind contributions to be part of this commingled pool of available funds, and thus,
19 these expenditures were included in calculating the amount in excess of the limitations
20 subject to pro rata repayment.

21 During certain audits from the 1996 and 2000 cycles, the Commission considered
22 whether some of the costs of producing and airing television advertisements during the
23 presidential primary and general election campaigns, which were paid by the national

1 party committees, should be treated as coordinated in-kind contributions to presidential
2 primary candidates, and if so, whether such costs should count against presidential
3 candidates' expenditure limitations and be included in the amount of expenditures in
4 excess of the limitations that would be subject to pro rata repayment. After considering
5 this issue, the Commission declined to make repayment determinations on this basis in
6 these audits.

7 A related issue is whether current 11 CFR 9038.2(b)(2)(ii)(A) represents a
8 permissible interpretation of the Matching Payment Act. Section 9038.2(b)(2)(ii)(A)
9 provides that one example of a Commission repayment determination for the use of funds
10 for non-qualified campaign expenses is a determination that a candidate, a candidate's
11 authorized committee(s), or agents have made expenditures in excess of the expenditure
12 limitations set out at 11 CFR part 9035. The Commission considered this issue in a
13 rulemaking proceeding prior to the 2000 election cycle, but made no changes to the
14 regulation at that time. Notice of Disposition for the Rules Governing Public Funding of
15 Presidential Primary Candidates- Repayments. 65 Fed. Reg. 15273 (Mar. 22, 2000). The
16 Notice of Disposition sets forth alternative arguments concerning whether this rule has a
17 statutory basis and states that the Commission did not change the rule because there was
18 no consensus in favor of changing the regulation. Id. at 15275. Although the
19 Commission recommended that Congress revise 26 U.S.C. 9038(b) to specifically state
20 whether repayments must be made by publicly funded primary candidates who have made
21 expenditures that exceed the spending limits, to date Congress has not acted to clarify this
22 issue. See FEC, Legislative Recommendations 2002 (May 14, 2002). At this point, the
23 Commission is considering whether to clarify that under section 9038.2(b)(2)(ii)(A), it

1 will continue to seek repayments from primary candidates who exceed the expenditure
2 limitations, including candidates who have received in-kind contributions.

3 1. Revisions to 11 CFR 9035.1

4 The Commission believes that additional guidance concerning the attribution of
5 in-kind contributions to the expenditure limitations would be beneficial. The
6 Commission proposes to revise its rules by adding a new paragraph at 11 CFR
7 9035.1(a)(3) to provide that guidance and to apply the Commission's recently
8 promulgated final rules on Coordinated and Independent Expenditures, 68 Fed. Reg. 421
9 (Jan. 3, 2003), to publicly funded presidential candidates. The proposed rules that follow
10 are intended to clarify that certain in-kind contributions will count against the presidential
11 candidate's state-by-state and overall expenditure limitations under certain conditions, as
12 explained below. Included are certain in-kind contributions received or accepted in the
13 form of coordinated expenditures pursuant to 11 CFR 109.20, coordinated
14 communications pursuant to 11 CFR 109.21, and coordinated party expenditures in
15 excess of the coordinated party expenditure limitations at 2 U.S.C. 441a(d) and
16 11 CFR 109.32(a), which would include party coordinated communications pursuant to
17 11 CFR 109.37.

18 The Commission notes that the rules treat some coordinated expenditures as made
19 by a person or party committee, but not as received or accepted by a candidate. See
20 11 CFR 109.21(b)(2) and 109.37(a)(3). Specifically, expenditures that meet the conduct
21 standards for a common vendor at 11 CFR 109.21(d)(4) or a former employee or
22 independent contractor at 11 CFR 109.21(d)(5) are not treated as received or accepted by
23 a candidate unless the candidate, authorized committee, or their agent engages in the

1 conduct described in 11 CFR 109.21(d)(1) (request or suggestion), (d)(2) (material
2 involvement), or (d)(3) (substantial discussion). Thus, only certain, specific actions taken
3 by the candidate or the candidate's authorized committee or agents, as set forth in
4 11 CFR 109.21 and 109.37, result in the receipt or acceptance of an in-kind contribution
5 arising from coordinated communication or a party coordinated communication. Only
6 these received or accepted in-kind contributions are treated as expenditures made by the
7 candidate. See 11 CFR 109.20(b) (requiring a candidate to report coordinated
8 expenditures as expenditures); 109.21(b)(1) (requiring a candidate to report received or
9 accepted coordinated communications as expenditures); 109.37(a)(3) (stating that
10 candidates are not required to report as expenditures party coordinated communications
11 that do not constitute received or accepted in-kind contributions). Coordinated
12 communications or party coordinated communications that are not in-kind contributions
13 received or accepted by the candidate, the candidate's authorized committee, or agents
14 under 11 CFR 109.21(b)(2) or 109.37(a)(3) would not be subject to the candidate's
15 expenditure limitation. The proposed rule also provides that the value of in-kind
16 contributions would be the usual and normal charge for the goods and services provided.

17 Although coordinated party expenditures are made in connection with the general
18 election campaign of a presidential candidate, they may be made prior to the date of the
19 candidate's nomination, pursuant to 11 CFR 109.34. The Commission notes that to the
20 extent coordinated expenditures are in excess of the coordinated party expenditure
21 limitation at 11 CFR 109.32(a), they may be attributable to a presidential primary
22 candidate's expenditure limitations based on the "bright line" rules at 11 CFR 9034.4(e)
23 for attributing expenditures between the primary and general election spending

1 limitations. For example, party coordinated communications broadcast prior to the date
2 of the candidate's nomination may count against the presidential candidate's primary
3 expenditure limitations. See 11 CFR 9034.4(e)(6). The Commission seeks comment on
4 whether this is an appropriate conclusion.

5 The Commission is not specifically listing in the proposed rule the dissemination,
6 distribution or republication of campaign material prepared by a candidate, which is
7 governed by 11 CFR 109.23. Section 109.23(a) provides that the candidate who prepared
8 the campaign materials does not receive or accept an in-kind contribution, and need not
9 report an expenditure, unless the dissemination, distribution, or republication of campaign
10 materials is a coordinated communication under 11 CFR 109.21 or a party coordinated
11 communication under 11 CFR 109.37. Thus, the cost of such campaign materials would
12 not count against the candidate's expenditure limitations unless the candidate receives or
13 accepts them as in-kind contributions in the form of coordinated communications or party
14 coordinated communications. Since the proposed rules in 11 CFR 9035.1(a)(3) would
15 specifically include received or accepted coordinated communications and party
16 coordinated communications, a reference to the republication of campaign materials is
17 unnecessary.

18 The Commission also notes that 11 CFR 109.32(a)(4) provides that any
19 coordinated party expenditures made under section 109.32(a), which specifies the
20 limitations for coordinated party expenditures in presidential elections, shall not count
21 against the candidate's expenditure limitations; however, any coordinated expenditures by
22 a political party in excess of the limitations at section 109.32(a) would count against the
23 candidate's expenditure limitations. Thus, the proposed rule in 11 CFR 9035.1(a)(3)

would not adversely affect the coordinated party expenditure limitations at 2 U.S.C. 441a(d)(2) because the proposed rule would only apply to amounts in excess of those limitations. The Commission seeks comment on whether this is an appropriate approach.

2. Revisions to 11 CFR 9038.2

The Commission also proposes to amend 11 CFR 9038.2(b)(2)(ii)(A) to clarify that repayment determinations for candidates who exceed the expenditure limitations will be based on expenditures made by a candidate, the candidate's authorized committees, or agents, either directly by disbursing campaign funds for expenditures, or indirectly by receiving or accepting in-kind contributions that are subject to the expenditure limitations pursuant to 11 CFR 9035.1(a)(3). The wording "receive or accept" in this section and in proposed section 9035.1(a)(3) is consistent with the terminology used in 11 CFR 109.21(b)(2), 11 CFR 109.23(a) and 11 CFR 109.37(a)(3) to ensure that any coordinated expenditures or republished campaign materials that are not considered "received or accepted" by a candidate would not count against the expenditure limitations or be subject to repayment.

B. In-kind Contributions in the Repayment Ratio (11 CFR 9038.2(b)(2)(iii))

A related issue is the calculation of the repayment ratio. The current regulations at 11 CFR 9038.2(b)(2)(iii) provide for a ratio repayment of amounts used for nonqualified campaign expenses, which includes expenditures in excess of the spending limitations. See 11 CFR 9038.2(b)(2)(ii)(A). Paragraph (b)(2)(iii) currently states that the amount of a repayment shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the candidate's total deposits, as of 90 days after the

1 candidate's date of ineligibility. "Total deposits" is defined as all deposits to all
2 candidate accounts minus transfers between accounts, refunds, rebates, reimbursements,
3 checks returned for insufficient funds, proceeds of loans and other similar amounts.
4 11 CFR 9038.3(c)(2). However, the current rules do not specifically include the value of
5 in-kind contributions received or accepted in the calculation of the repayment ratio.
6 Including in-kind contributions received or accepted in the calculation of the repayment
7 ratio would reduce the resulting ratio to more accurately reflect the amount of public
8 funds that are spent in excess of the expenditure limitations or used for other non-
9 qualified campaign expenses.

10 The Commission proposes to revise 11 CFR 9038.2(b)(2)(iii) to include both total
11 deposits and in-kind contributions received or accepted by the candidate or the
12 candidate's authorized committee or agents in the calculation of the repayment ratio for
13 non-qualified campaign expenses. In-kind contributions would be valued at the usual and
14 normal charge for the goods and services provided to the candidate. The Commission
15 requests comment on this proposed change.

16 C. Parallel Changes to General Election Rules (11 CFR 9004.4(b)(2) and
17 9007.2(b)(2))

18 The Commission is considering certain parallel changes to the rules governing the
19 expenditure limitations and repayments for general election committees at 11 CFR
20 9004.4(b)(2) and 9007.2(b)(2), but is not including specific changes in the proposed rules
21 at this time. The Commission notes that expenditures in excess of the coordinated party
22 expenditure limitations at 2 U.S.C. 441a(d) and 11 CFR 109.32(a) may be in connection
23 with the general election and attributable to a candidate's general election expenditure

1 limitation under the “bright line” rules at 11 CFR 9034.4(e). The Commission also notes
2 that general election candidates who receive the full public grant may not accept any
3 contributions, including in-kind contributions, and must repay the entire amount of any
4 in-kind contribution received. See 26 U.S.C. 9007(b)(3). The Commission seeks
5 comment on whether changes similar to those proposed for primary candidates would be
6 appropriate for general election candidates and on any other issues related to including in-
7 kind contributions in a general election candidate’s total expenditures.

8 III. GELAC Funds (11 CFR 9003.3(a))

9 A. Funds Remaining in the GELAC

10 The Commission proposes to revise its rules concerning the use of GELAC funds
11 to update the permissible uses of GELAC funds consistent with BCRA. Currently, the
12 rules at 11 CFR 9003.3(a)(2)(iv) state that if there are “excess campaign funds” after
13 payment of all expenses set out in section 9003.3(a)(2)(i), such funds may be used for any
14 purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of
15 primary election debts.

16 BCRA amended 2 U.S.C. 439a to eliminate its reference to “excess campaign
17 funds.” The Commission revised 11 CFR part 113 accordingly. See Disclaimers,
18 Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed.
19 Reg. 76962, 76978-79 (Dec. 13, 2002). The Commission proposes to replace the
20 reference to “excess campaign funds” in 11 CFR 9003.3(a)(2)(iv) with “funds remaining
21 in the GELAC” in order to clarify that only funds that are not needed for GELAC
22 expenses may be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part
23 113.

1 The Commission also proposes revisions to 11 CFR 9003.3(a)(2)(iv) to more
2 clearly state that GELAC funds must not be used for the purposes permitted under
3 2 U.S.C. 439a and 11 CFR part 113 until the completion of the audit and repayment
4 process, which includes making any repayments owed. The Commission requests
5 comments on these proposed changes.

6 B. Primary Repayments

7 The Commission is also considering whether candidates should be required to use
8 GELAC funds to make any repayments arising from their primary campaigns, if the
9 primary committee is unable to make the repayment, before the remaining funds in the
10 GELAC could be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part
11 113. Currently, GELAC funds may be used to make general election repayments.
12 11 CFR 9003.3(a)(2)(i)(D). Therefore, the Commission proposes revisions to 11 CFR
13 9003.3(a)(2)(i)(D) to specify that the GELAC may make repayments owed by the
14 candidate's primary campaign committee pursuant to 11 CFR 9038.2 and 9038.3. Under
15 this proposal, if a candidate's primary or general election committees do not have
16 sufficient funds to make a repayment, the GELAC funds must be used to make the
17 repayment before funds remaining in the GELAC may be used for the purposes permitted
18 under 2 U.S.C. 439a and 11 CFR part 113. However, the proposed rule would not require
19 that repayments must be made before other permissible uses of GELAC funds under
20 paragraphs (a)(2)(i)(A) through (H). These proposed amendments to the GELAC rules
21 are based on the Commission's interpretation of 2 U.S.C. 439a(a)(1), which permits
22 contributions to be used "for otherwise authorized expenditures in connection with the
23 campaign for Federal office of the candidate or individual." This provision is sufficiently

broad to encompass both primary repayments and the other limited purposes specified in 11 CFR 9003.3(a)(2)(i).

C. Solicitation of GELAC Funds

The Commission is also considering whether to revisit its rules regarding the solicitation and deposit of GELAC contributions prior to June 1 of the calendar year in which a presidential general election is held. The Commission is considering changing the June 1 date to an earlier date or abolishing the June 1 restriction. Under current 11 CFR 9003.3(a)(1)(i), prior to June 1 of the presidential election year, contributions may only be deposited in a GELAC if they are made for the primary election, exceed the contributor's contribution limit for the primary and are redesignated by the contributor for the GELAC pursuant to 11 CFR 110.1. In addition, contributions shall not be solicited for the GELAC before June 1 of the calendar year in which a presidential general election is held. 11 CFR 9003.3(a)(1)(i)(A). As a result of this regulation, although candidates are permitted to establish GELAC accounts at any time, they are barred from soliciting or accepting any direct contributions to the GELAC until five months before the general election.

The Commission revised this section in 1999 to establish the June 1 time limit. See Explanation and Justification to the Rules Governing Public Financing of Presidential Primary and General Election Candidates, 64 Fed. Reg. 49355, 49356-57 (Sept. 13, 1999). In the 1999 rulemaking, the Commission considered changes to "address problems that have arisen when primary candidates established GELACs relatively early in the primary campaign but subsequently failed to win their party's nomination." *Id.* at 49356. One problem was that candidates who do not receive their party's nomination

1 must refund contributions received by the GELAC, but difficulties arose if GELAC funds
2 had been used to defray overhead or GELAC fundraising expenses. Id. Another problem
3 was ensuring that the GELAC is not improperly used to make primary election
4 expenditures. Id. After considering several alternative approaches, the Commission
5 decided to continue to permit GELACs to be established at any time but added the June 1
6 starting date for deposits other than excessive primary contributions and solicitations of
7 contributions to the GELAC. Id. The Commission explained that it selected the June 1
8 date because "barring unforeseen circumstances, this is the point when a party's
9 prospective nominee can be reasonably assured that he or she will need to raise funds for
10 a GELAC" and the date gives prospective nominees "sufficient time to raise the funds
11 that will be needed." Id. The effective date of these regulatory amendments was June 1,
12 2000, which meant that the pre-June 1 solicitation prohibition was not operative for the
13 2000 election cycle.

14 The Commission seeks comment on whether it should delete this restriction or
15 continue to use June 1 of the presidential election year as the starting date for GELAC
16 solicitations and most deposits to a GELAC. Would an earlier date in the election year
17 such as May 1 or April 1 be preferable, given that many presidential primaries have been
18 moved to earlier dates? Should an earlier date be used for presidential candidates who
19 run unopposed in the primaries or who have a reasonable certainty prior to June 1 of the
20 election year that they will become their party's nominee? Should the starting date be
21 eliminated? Are these restrictions required by, or consistent with, the FECA and the
22 Fund Act?

1 D. Redesignation of Excessive Contributions and GELACs

2 In addition, the Commission proposes to revise the rules at 11 CFR 9003.3(a)(1)
3 governing the sources of GELAC funds to reflect the Commission's recent changes to its
4 rules at 11 CFR 110.1(b)(5)(ii)(B) concerning the redesignation of excessive
5 contributions. See Explanation and Justification for the Rules Governing Contribution
6 Limitations and Prohibitions, 67 Fed. Reg. 69928, 69930-32 (Nov. 19, 2002). The
7 Commission revised 11 CFR 110.1(a)(5)(ii)(B) to allow authorized committees to
8 redesignate primary contributions that would otherwise be excessive to the general
9 election without obtaining a signed written document under certain circumstances. Id. at
10 69930. Specifically, the Commission simplified the redesignation of certain excessive
11 contributions to a candidate's authorized committee made before a primary election, but
12 not designated in writing for a particular election. Id. The Commission allowed the
13 candidate's committee to presume that the contributor of such excessive contributions
14 intended to contribute any excessive amount to that candidate's general election, without
15 obtaining written permission from the contributor for the redesignation. Id. The
16 Commission set forth several requirements for a committee to designate contributions by
17 this presumption, including that the candidate's committee must be permitted to accept
18 general election contributions. Id. The Commission explained that "if a presidential
19 candidate's authorized committee accepts public funding in the general election, the
20 presumption is available to any such committees only to the extent they are permitted to
21 accept contributions to a general election legal and accounting compliance fund." Id. at
22 69930-31.

1 Thus, 11 CFR 110.1(b)(5)(ii)(B) now allows the treasurer of the recipient
2 candidate committee to treat all or part of an excessive primary contribution as made with
3 respect to the general election, as long as it meets the following requirements: 1) the
4 contribution was made before the primary election; 2) the contribution was not designated
5 for a particular election; 3) the contribution would exceed the primary election
6 contribution limitations if it were treated as a primary contribution; 4) the redesignation
7 would not cause the contributor to exceed the contribution limitations; and 5) the
8 treasurer provides a written notification to the contributor within 60 days of receipt of the
9 contribution of the amount that was redesignated and that the contributor may request a
10 refund.

11 Therefore, the Commission proposes to revise 11 CFR 9003.3(a)(1)(i),
12 (a)(1)(i)(C) and (a)(1)(v) to permit publicly funded presidential candidates to presume
13 that excessive contributors to primary campaigns would consent to the redesignation of
14 their contributions to the candidate's GELAC. The proposed changes provide that
15 excessive contributions may be placed in the GELAC if they are lawfully redesignated for
16 the GELAC pursuant to 11 CFR 110.1. The rule at 11 CFR 9003.3(a)(1)(i)(C) would
17 provide that a contribution that meets the requirements of 11 CFR 110.1(b)(5)(ii)(B)
18 would be considered designated for the GELAC. The proposed reference to 11 CFR
19 110.1(b)(5)(ii)(B) would incorporate the requirements of that section. The Commission
20 notes that presumptively redesignated contributions to the GELAC, like all other
21 contributions accepted for the GELAC, must be refunded within 60 days of a candidate's
22 DOI if the candidate does not become the nominee. See 11 CFR 9003.3(a)(1)(i)(A). The

1 recordkeeping requirements in 11 CFR 110.1(l) are separately addressed in section
2 9003.3(a)(1)(ii)(A)(4).

3 A related proposal, which is not included in the proposed rules that follow, would
4 be to revise 11 CFR 9003.3 to expressly allow excessive contributions to a GELAC to be
5 presumptively redesignated to a presidential candidate's authorized committee for the
6 primary election, based on the conditions delineated at 11 CFR 110.1(b)(5)(ii)(C) for
7 redesignation of excessive general contributions to a candidate's primary election. The
8 Commission's rules at 11 CFR 110.1(b)(5)(ii)(C), like the rule for presumptive
9 redesignations for a general election, allow authorized committees to redesignate general
10 election contributions that would otherwise be excessive for the primary election without
11 obtaining a signed written document under certain circumstances. See 67 Fed. Reg.
12 69931. Such presumptively redesignated contributions would be included in the
13 calculation of a presidential primary candidate's NOCO but could not be submitted for
14 matching because they are redesignated for a different election and the contributor lacked
15 the donative intent to influence the primary election. See 11 CFR 9034.3(e) and (k).

16 The Commission seeks comment on these proposals. Should a different rule
17 apply for redesignation of excessive contributions to or from a GELAC than for
18 redesignations to or from the general election of candidates who do not accept public
19 funds? Should such presumptive redesignations be subject to additional restrictions than
20 those delineated at 11 CFR 110.1(b)(5)(ii)?

1 IV. Other Presidential Candidate Issues

2 A. Quarterly and Monthly Reporting Requirements (11 CFR 104.5(b)(2))

3 The Commission made a number of changes to its rules governing reporting when
4 implementing BCRA's new reporting requirements. Explanation and Justification for the
5 Rules Governing Bipartisan Campaign Reform Act of 2002 Reporting, 68 Fed. Reg. 404
6 (Jan. 3, 2003). One of these changes was revising 11 CFR 104.5(a) to set forth a new
7 reporting schedule for principal campaign committees of House of Representatives and
8 Senate candidates following BCRA's requirements that such candidates must file
9 quarterly reports in non-election years. Id. at 408 and 418. BCRA did not change the
10 reporting schedule for the principal campaign committees or other authorized committees
11 of presidential candidates; thus, 11 CFR 104.5(b)(2) was not changed. Id. Currently,
12 principal campaign committees of presidential candidates may file campaign reports in
13 non-election years on either a monthly or a quarterly basis. 2 U.S.C. 434(a)(3)(B);
14 11 CFR 104.5(b)(2) and 9006.2. However, the current rules do not explain how
15 presidential candidates may change their reporting frequency during a non-election year
16 from monthly to quarterly or vice versa. The rules governing unauthorized committees at
17 11 CFR 104.5(c) set forth requirements for such committees to change their reporting
18 frequency, such as notifying the Commission of the change. The Commission is
19 considering similar requirements for principal campaign committees of presidential
20 candidates.

21 The Commission proposes to revise the rules at section 104.5(b)(2) to allow a
22 principal campaign committee ("PCC") of a presidential candidate to change its filing
23 schedule in a non-election year only after notifying the Commission in writing of its

1 intention at the time it files a required report under its current filing frequency. The PCC
2 would then be required to file the next required report under its new filing frequency. In
3 addition, a PCC could change its filing frequency no more than once in a calendar year.
4 This approach is consistent with the requirements for unauthorized committees at 11 CFR
5 104.5(c). The Commission notes that presidential PCCs are not permitted to change their
6 filing frequency during election years under 2 U.S.C. 434(a)(3)(A), except that a PCC that
7 files quarterly reports shall begin filing monthly reports at the next reporting period after
8 it receives contributions or makes expenditures in excess of \$100,000. The Commission
9 requests comments on this proposal.

10 B. Election Cycle Reporting – Matching Fund Submissions (11 CFR
11 9036.1(b)(1)(ii) and 9036.2(b)(1)(v))

12 In 2000, the Commission revised its rules at 11 CFR 104.3 to require authorized
13 committees to aggregate, itemize, and report all receipts and disbursements on an
14 election-cycle basis rather than on a calendar-year-to-date basis. 65 Fed. Reg. 42619
15 (July 11, 2000). The new rules, which reflect a 1999 amendment to 2 U.S.C. 434(b)
16 (Pub. L. No. 106-58, § 641, 113 Stat. 430, 477 (1999)), apply to reporting periods
17 beginning on or after January 1, 2001. 65 Fed. Reg. 70644 (Nov. 27, 2000). Under these
18 regulations, an election cycle begins on the first day after the date of the previous general
19 election for the office the candidate seeks and ends on the date of the next general
20 election for that office. The election cycle is thus four years for presidential candidates.

21 The Commission's rules regarding threshold submissions for matching funds
22 currently require candidates to submit a contributor list including occupation and name of
23 employer information on the basis of contributions aggregating in excess of \$200 per

1 calendar year. 11 CFR 9036.1(b)(1)(ii). Similarly, the rules for subsequent submissions
 2 at 11 CFR 9036.2(b)(1)(v) provide that the occupation and employer information need
 3 not be disclosed on the contributor list for contributions made by individuals aggregating
 4 in excess of \$200 per calendar year, but such information is subject to the recordkeeping
 5 and reporting requirements. The Commission is proposing to revise 11 CFR
 6 9036.1(b)(1)(ii) and 9036.2(b)(1)(v) to specify that the matching fund submission and
 7 recordkeeping requirements include occupation and employer information for those who
 8 contribute more than \$200 in an election cycle, rather than in a calendar year, to reflect
 9 the statutory change.

10 C. Billing the Press for the Costs of Reconfiguring an Aircraft

11 (11 CFR 9004.6(a)(3) and 9034.6(a)(3))

12 The Commission's rules at 11 CFR 9004.6 and 9034.6 establish procedures for
 13 authorized committees to obtain reimbursement for transportation and other services that
 14 are provided to the media and the Secret Service over the course of a campaign. The
 15 current rules contain a non-exhaustive listing of such services, and state at
 16 11 CFR 9004.6(a)(3) and 9034.6(a)(3) that presidential campaign committees may seek
 17 reimbursement from the media only for the billable items specified in the White House
 18 Press Corps Travel Policies and Procedures issued by the White House Travel Office, in
 19 conjunction with the White House Correspondents' Association ["White House
 20 Manual"]. The reference to the White House Manual has been in the rule since 1999.
 21 See Explanation and Justification for the Rules Governing Party Committee Coordinated
 22 Expenditures; Costs of Media Travel with Publicly Financed Presidential Candidates, 64
 23 Fed. Reg. 42579, 42581-82 (Aug. 5, 1999). Expenses for which a committee receives no

1 reimbursement are considered qualified campaign expenses, and, with the exception of
2 those expenses relating to Secret Service personnel and national security staff, are subject
3 to the overall expenditure limitation. 11 CFR 9004.6(a)(2) and 9034.6(a)(2).

4 In the 1996 campaign, some committees incurred significant expenses to
5 reconfigure campaign aircraft. The expenses included both interior work, such as
6 equipment installation, and exterior work such as campaign logos. However, these
7 expenses were not included in the White House Manual for 1996, which was not changed
8 in 2000. The Commission is accordingly seeking comment on whether it is appropriate
9 for campaign committees to obtain reimbursement for all or part of aircraft
10 reconfiguration expenses from the media, and whether the rules should be revised
11 accordingly. If so, which of these expenditures should be billed to the press? Are there
12 other specific expenditures not included in the White House Manual for which
13 reimbursement might also be appropriate? Given that the numbers of members of the
14 press on each flight, or segment of each flight, will likely vary, comments are sought on
15 the feasibility of determining the pro rata share for each person, where the reconfigured
16 plane will make numerous flights, and that precise number is not known in advance.
17 More broadly, the Commission seeks comment on whether the ability of committees to
18 seek reimbursement from the media should be governed solely by what billable items are
19 specified in the White House Manual, as current 11 CFR 9004.6(a)(3) and 9034.4(a)(3)
20 require, or whether the Commission should consider other criteria, or enumerate the
21 criteria in the regulations, or both. Please note that the draft rules that follow do not
22 contain specific changes to 11 CFR 9004.6 or 9034.6.

1 D. Candidate Salary (11 CFR 9004.4(b)(6), 9034.4(b)(5))

2 The Commission recently revised its rules governing personal use of campaign
3 funds at 11 CFR part 113 to implement BCRA's changes to 2 U.S.C. 439a. In that
4 rulemaking, the Commission addressed the use of contributions to pay salaries to
5 candidates and decided to allow campaign funds to be used for candidate salaries under
6 certain conditions delineated at 11 CFR 113.1(g)(1)(i)(I). See Explanation and
7 Justification for the Rules Governing Disclaimers, Fraudulent Solicitation, Civil
8 Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76962, 76971-73 (Dec. 13,
9 2002). The new rules, however, do not specifically state whether or not publicly funded
10 presidential candidates may receive salaries from their campaigns. The Commission
11 noted that a candidate's salary is a non-qualified campaign expense under 11 CFR
12 9004.4(b) and 9034.4(b), see also 11 CFR 9002.11 and 9032.9. Id. at 76972. However,
13 the Explanation and Justification for 11 CFR 113.1(g) stated that a salary payment to a
14 candidate from campaign funds would be considered personal use if the salary payment is
15 "in excess of the salary paid to a Federal officeholder – U.S. House, U.S. Senate, or the
16 Presidency." Id. Nevertheless, nothing in the amended personal use rules so states.
17 Thus, the Commission is seeking to clarify at this point whether presidential candidates
18 who do not receive public funds may receive a salary subject to the restrictions in 11 CFR
19 113.1(g)(1)(i)(I).

20 Currently, the rules at 11 CFR 9004.4(b)(6) and 9034.4(b)(5) state that payments
21 made to a candidate by the candidate's committee, other than to reimburse funds
22 advanced by the candidate, are non-qualified campaign expenses. In promulgating these
23 rules in 1987, the Commission explained that "no payments may be made to the candidate

1 from accounts containing public funds” except for reimbursements, and candidates “may
2 not receive a salary for services performed for the campaign nor may a candidate receive
3 compensation for lost income while campaigning.” See Explanation and Justification for
4 the Rules on Public Financing of Presidential Primary and General Election Candidates,
5 52 Fed. Reg. 20864, 20866 and 20870 (June 3, 1987).

6 The Commission is considering whether to revise its rules to allow publicly
7 funded general election and primary presidential candidates to receive salary payments
8 paid for, in whole or part, with public funds. Thus, salary payments to candidates would
9 be considered qualified campaign expenses. The Commission is considering allowing
10 salary payments to be paid to publicly funded candidates under similar conditions to those
11 for salary payments to other Federal candidates at 11 CFR 113.1(g)(1)(i)(I). Thus, the
12 candidate’s publicly funded principal campaign committee would be permitted to make
13 any salary payments to the candidate. Salary payments to publicly funded candidates
14 would be permissible beginning on January 1 of the calendar year prior to the presidential
15 election year or the filing of the candidate’s statement of candidacy, whichever is later.
16 This earlier starting date than the time restrictions for other Federal candidates would
17 recognize that the presidential primary campaign begins before the presidential election
18 year. Salary payments paid by the candidate’s primary committee would be permitted
19 through the candidate’s date of ineligibility and salary payments from a candidate’s
20 general election committee would begin on the date of nomination and end on the date of
21 the general election. Only non-incumbent presidential candidates who are not currently
22 Federal officeholders would be able to receive a salary paid with public funds.
23 Candidates who hold office in a State would be able to receive salary payments only to

1 the extent they are permitted to do so under the laws of that State. Salary payments
2 would be limited to the lesser of the annual salary paid to the President or the earned
3 income that the candidate received during the year prior to becoming a candidate. Any
4 earned income the candidate would receive from salaries or wages from any other source
5 would count against the salary limitation. In addition, the candidate would be required to
6 provide income tax records for the relevant year and other evidence of earned income
7 upon request by the Commission. Finally, salary payments would be made only on a pro
8 rata basis.

9 The Commission seeks comment on this approach, but no specific provision is
10 proposed in the draft rules that follow. Should candidate salary be considered a qualified
11 campaign expense payable with public funds or should candidate salaries for publicly
12 funded candidates continue to be considered non-qualified campaign expenses? Would
13 candidates avail themselves of a salary paid with public funds? Would the proposed
14 change encourage candidates of modest means who depend on their earned income to run
15 for the Presidency? Is this an appropriate use for public funds, and is there a potential for
16 abuse? Should any additional restrictions on candidate salaries apply to publicly funded
17 candidates?

18 Should payments of salary to candidates who receive public funds be prohibited
19 so that in addition to the committee being required to repay the public funds involved, the
20 candidate would violate 2 U.S.C. 439a by accepting the salary payments? Should the
21 candidate and committee agreements described in 11 CFR 9003.1 and 9033.1 contain a
22 provision agreeing that no salary would be paid to the candidate?

1 E. Gifts and Bonuses (11 CFR 9004.4(a)(5) and 9034.4(a)(5))

2 The Commission is considering revisiting its rules governing payment of gifts and
3 bonuses by primary and general election candidates at current 11 CFR 9004.4(a)(5) and
4 9034.4(a)(5). The current rules allow gifts and bonuses to be treated as qualified
5 campaign expenses if they meet certain restrictions. Gifts for committee employees,
6 consultants and volunteers in recognition of campaign-related activities or services are
7 limited to \$150 per individual recipient and a total of \$20,000 for all gifts. 11 CFR
8 9004.4(a)(5) and 9034.4(a)(5). Monetary bonuses for employees and consultants in
9 recognition for campaign-related activities or services must be provided for pursuant to a
10 written contract made prior to the general election for general election candidates or the
11 DOI for primary candidates and must be paid no later than 30 days after the DOI for
12 primary candidates or the end of the expenditure report period for general election
13 candidates. Id.

14 The Commission has not proposed any changes to these rules in the draft rules
15 that follow, but seeks comment on the current rules. Should the Commission maintain its
16 current rules on gifts and bonuses? Should the current restrictions on gifts and bonuses
17 be strengthened, reduced, or eliminated? Should the permissible dollar amounts for gifts
18 to individuals or the total amounts of gifts be lowered, or raised? Should the requirement
19 of a written contract be clarified to delineate what constitutes an acceptable written
20 agreement? Is the requirement of a written contract for monetary bonuses too restrictive,
21 since written contracts are not required for salary payments? Should additional
22 restrictions be added, such as limiting the amount of bonuses or requiring committees to
23 provide other documentation of the reasons for the bonus such as the type and amount of

1 work performed? What additional, or different, controls should be used for gifts and
2 bonuses? Should candidates be required to sign any contracts that include employment
3 bonus provisions? This would ensure that high-level campaign officials do not engage in
4 self-dealing. If the current restrictions are deleted from the rules, how should the
5 Commission ensure that gifts and bonuses comply with the restrictions on personal use of
6 campaign funds at 2 U.S.C. 439a and 11 CFR part 113?

7 In addition, should changes also be made to current 11 CFR 9008.7(a)(4)(xii) to
8 make the rule for convention committees more similar to the rules for candidates by
9 including the same requirements for bonuses? Currently 11 CFR 9008.7(a)(4)(xii) limits
10 all gifts and monetary bonuses to national committee or convention committee
11 employees, volunteers and convention officials to \$150 per individual or a total of
12 \$20,000 for all gifts.

13 F. Shortfall Exemption (11 CFR 9035.1(c))

14 During recent election cycles, the Presidential Primary Matching Payment
15 Account has occasionally experienced a shortfall in that it contained insufficient funds to
16 fully pay all of the matching funds to which primary candidates were entitled on the dates
17 payments were due. See 26 U.S.C. 9037; 11 CFR 9036.4(c)(2), 9037.1, 9037.2. The
18 delay or deficiency in matching fund payments has resulted in inconvenience and
19 additional costs for candidates such as the costs of obtaining bridge loans from banks to
20 pay for their expenses until they received their full entitlement of matching funds several
21 months later. Such expenses currently count against a candidate's overall expenditure
22 limitation, reducing the amount the candidate may spend on other campaign activities.

1 In order to mitigate the effect of a potential shortfall on candidates, the
2 Commission proposes a new “shortfall exemption” from a primary candidate’s overall
3 expenditure limitation at new paragraph 11 CFR 9035.1(c)(3). This new exemption
4 would equal 5% of the amount of any delayed or deficient payment of matching funds to
5 which the candidate is entitled.

6 The Commission seeks comment on this proposal. To what extent would the
7 proposed exemption ameliorate the negative impact of delayed or deficient payments of
8 matching funds on a primary candidate’s campaign? Should a different percentage be
9 used? Would this exemption be workable for candidates? Is this exemption a
10 permissible interpretation of the statutory spending limit?

11 G. Technical Amendments

12 1. Word Omitted from 11 CFR 9038.2(b)(4)

13 Under 11 CFR 9038.2(b)(4), the Commission may determine that the net income
14 derived from an investment or other use of surplus public funds after a candidate’s DOI,
15 less Federal, State and local taxes paid on that income, shall be paid to the Federal
16 Treasury. However, the word “taxes” was inadvertently dropped from that paragraph and
17 needs to be included.

18 2. Correcting citations in 11 CFR 104.5(b)(1)

19 The Commission proposes to correct several citations in 11 CFR 104.5(b)(1) to
20 reflect changes to 11 CFR 104.5(a) promulgated in the implementation of BCRA.
21 Specifically, the Commission proposes in 11 CFR 104.5(b)(1)(i)(C) to change the
22 reference to 11 CFR 104.5(a)(1)(i) to “paragraph (a)(2)(i) of this section” and to change
23 the reference to 11 CFR 104.5(a)(1)(ii) to “paragraph (a)(2)(ii) of this section.” In 11

1 CFR 104.5(b)(1)(ii), the Commission proposes to change the reference to 11 CFR
2 104.5(a)(1) to “paragraphs (a)(1) and (2) of this section”.

3 3. Private Contributions Received after DOI (11 CFR
4 9034.4(a)(3)(ii))

5 The Commission proposes to revise 11 CFR 9034.4(a)(3)(ii) to clarify the rules
6 governing ineligible primary election presidential candidates who continue to campaign
7 after their dates of ineligibility. Currently, paragraph (a)(3)(ii) provides that these
8 candidates may use contributions received after the DOI to campaign. However, current
9 11 CFR 9034.5(a)(2)(i) provides that a candidate’s cash on hand on the NOCO Statement
10 should include “all contributions dated on or before” the DOI, whether or not submitted
11 for matching. Thus, the current rules do not make clear how contributions should be
12 treated that are made or dated before the DOI but received after the DOI by a candidate
13 who continues to campaign. The proposed rules would clarify that each contribution
14 made, dated, and received after a candidate’s DOI may be used to continue to campaign.

15 In addition, the Commission proposes to delete the next sentence in section
16 9034.4(a)(3)(ii), which states: “The candidate shall be entitled to receive the same
17 proportion of matching funds to defray net outstanding campaign obligations as the
18 candidate received before his or her date of ineligibility.” In practice, each submission
19 for matching funds is reviewed individually; thus, a candidate receives a different
20 proportion of matching funds for each submission. The Commission proposes deleting
21 the sentence to make clear that candidates would continue to receive matching funds
22 based on the Commission’s review of each matching fund submission, rather than on the
23 proportion of matching funds the candidate received for any previous submission.

1 4. Clarification of 11 CFR 9032.9(c)

2 Current 11 CFR 9032.9(c) states that expenditures incurred “before the beginning
3 of the expenditure report period” are qualified campaign expenses if they meet the
4 requirements of 11 CFR 9034.4(a), which addresses, inter alia, testing the waters
5 expenses prior to the date an individual becomes a candidate. This wording is the same
6 as the equivalent rule for general election candidates at 11 CFR 9002.11(c), and appears
7 to be an error because the term “expenditure report period” applies to general election
8 candidates. See 11 CFR 9002.12. To clarify this section, the Commission proposes
9 changing this wording to “prior to the date the individual becomes a candidate,” the same
10 wording used in 11 CFR 9034.4(a)(2), governing testing the waters expenses.

11 5. Documentation of Disbursements

12 The current rules describe the requirements for the documentation of
13 disbursements applicable to all committees in 11 CFR 102.9(b) and provide additional
14 documentation requirements for publicly funded committees at 11 CFR 9003.5 (general
15 election candidates), 9008.10 (convention committees) and 9033.11 (primary candidates).
16 The Commission proposes to revise 11 CFR 9003.5, 9008.10 and 9033.11 to clarify that
17 publicly funded candidates must comply with both the general rules at section 102.9(b)
18 and the particular rules applicable to publicly funded primary or general election
19 candidates governing the documentation of disbursements. The proposed rules would
20 add new paragraphs 11 CFR 9003.5(b)(4) and 9033.11(b)(4) stating that the requirements
21 of section 102.9(b) also apply to disbursements, and would revise the introductory
22 language in section 9008.10 to state that the requirements in that section are in addition to

1 the requirements of 11 CFR 102.9(b). Adding these proposed references to 11 CFR
2 102.9(b) would improve the ease of use of the rules for publicly funded committees.

3 NATIONAL NOMINATING CONVENTIONS

4 The Commission is proposing a number of changes to its regulations concerning
5 national nominating conventions, 11 CFR part 9008. Some of these proposed changes
6 are necessary in order to give effect to BCRA's ban on the use of non-Federal funds by
7 national party committees. The rest of the proposed changes are designed to clarify
8 certain requirements in light of the Commission's experience in administering the public
9 financing of national nominating conventions over the past several presidential election
10 cycles.

11 I. Current Legal Structure of Convention Financing

12 Under 26 U.S.C. 9008(b), the national committees of both major and minor
13 political parties are entitled to public funds to defray expenses incurred in connection
14 with a presidential nominating convention. Major party committees receive an inflation-
15 adjusted payment from the Presidential Election Campaign Fund for their national
16 nominating conventions. 26 U.S.C. 9008(b)(1). Minor party committees receive a
17 proportional amount of that payment based on the number of votes the party's candidate
18 received in the last presidential election compared to the average number of votes
19 received by the major party candidates. 26 U.S.C. 9008(b)(2). For the 2004 conventions,
20 the major party committees will be entitled to receive \$14,880,000 in July 2003 and an
21 additional payment in 2004 for an inflation adjustment, subject to all applicable

1 requirements.² A national committee of a major or minor party may not make
2 expenditures related to the convention that exceed the expenditure limitations, which are
3 equal to the full amount of the payment to major parties. 26 U.S.C. 9008(d). Thus, the
4 major party convention committees may not receive any contributions, as defined in 2
5 U.S.C. 431(8), that would count towards their expenditure limit if they accepted the full
6 payment. Any such contributions would combine with the public funds to make total
7 expenditures exceed the limit.

8 In addition to the public funds provided to the national committees of both major
9 and minor political parties in connection with a presidential nominating convention, "host
10 committees" and "municipal funds" may defray certain expenses incurred in connection
11 with hosting these conventions. A host committee is defined as any local organization,
12 such as a local civic association, business league, chamber of commerce, real estate
13 board, board of trade, or convention bureau (1) which is not organized for profit; (2)
14 whose net earnings do not inure to the benefit of any private shareholder or individual;
15 and (3) whose principal objective is the encouragement of commerce in the convention
16 city, as well as the projection of a favorable image of the city to convention attendees. 11
17 CFR 9008.52(a). Host committees may provide the convention committees with certain
18 services and facilities, as specified in 11 CFR 9008.52(c). Any host committee
19 expenditures that comply with 11 CFR 9008.52 do not constitute convention

² In 2000, the Democratic and Republican National Committees each received \$13,512,000 for their national nominating convention, while the Reform Party received \$2,522,690. No candidate received a sufficient number of votes in the 2000 presidential general election to provide his or her party with minor party status in 2004.

1 committee expenditures and do not count toward the convention committee's expenditure
2 limit. 11 CFR 9008.8(b)(1).

3 "Municipal fund" is the term that has come to apply to local government agencies
4 and the separate funds or accounts established by them to receive and disburse funds in
5 order to defray certain expenses for a convention in that locality. Municipal funds may
6 make expenditures for the same purposes as host committees. 11 CFR 9008.53. As with
7 host committees, expenditures by a municipal fund that are in compliance with 11 CFR
8 9008.53 do not constitute convention committee expenditures and do not count toward
9 the convention committee's expenditure limit. 11 CFR 9008.8(b)(2).

10 Under current regulations, host committees and municipal funds are allowed to
11 accept monetary and in-kind donations from the same sources: local businesses,
12 including corporations; local banks; local labor organizations; and local individuals. 11
13 CFR 9008.52 and 9008.53. Municipal funds, however, face more limitations on their
14 fundraising than host committees. See 11 CFR 9008.53(b)(1)(i) and (ii). Municipal
15 funds may not accept donations "restricted" for use in connection with a particular
16 convention; they may not engage in fundraising restricted to a particular convention; and
17 they may not themselves be restricted to a particular convention. 11 CFR
18 9008.53(b)(1)(i) and (ii). Host committees are not subject to any of these limitations.
19 Once raised, funds received by a host committee or municipal fund may be used for the
20 same purposes. See 11 CFR 9008.52(c)(1) and 9008.53. If the funds are raised and spent
21 in compliance with 11 CFR 9008.52 or 9008.53, then they are exempt from the definition
22 of "contribution and expenditure" in the Commission's regulations concerning corporate
23 and labor organization funds, 11 CFR part 114. See 11 CFR 114.1(a)(2)(viii). On this

1 basis, host committees and municipal funds accept and spend such funds, which
2 constitute non-Federal funds.

3 II. Historical Basis for Current Legal Structure

4 In 1977, the Commission explained the basis for permitting in-kind contributions
5 to host committees from corporations and labor organizations, stating: "Such in-kind
6 contributions are presumably not politically motivated but are undertaken chiefly to
7 promote economic activity and good will of the host city." Explanation and Justification
8 for 1977 Amendments to the Federal Election Campaign Act of 1971, H.R. Doc. No. 95-
9 44, 136 (1977). Similarly, donations of money were described as "presumably
10 commercially motivated rather than politically, and thus will not be considered an
11 unlawful contribution." Id. at 137. Host committee funds were "to be used for purposes
12 designed to promote a good image of the host city to the convention attendees." Id. at
13 136-37.

14 The Commission acknowledged that the host committee exception to the
15 convention committee's expenditure limit could be considered a means of avoiding the
16 expenditure limit. Id. at 137. The Commission explained that "it appears from the
17 testimony of the major parties before the Commission that the Congress in deciding upon
18 a dollar figure for expenditure limitations, took into consideration only those expenses
19 actually paid by the national party for the 1972 convention and ignored in its computation
20 the value of services provided by host cities and committees." Id. The Commission
21 described its regulation on the use of funds by host committees as "represent[ing] an
22 interpretation of 26 U.S.C. § 9008(1) that the [expenditure] limit applies only to
23 expenditures made by the national party, and that expenditures made by private host

1 committees under certain restrictions will not be counted toward the ceiling.” Id.
2 (emphasis in original).

3 In 1979, the Commission recodified some of its regulations, including those
4 related to corporate donations to host committees. The Commission described again the
5 basis for this exception to the prohibition on corporate and labor organization funds in
6 2 U.S.C. 441b, stating: “While incorporated businesses are prohibited by 2 U.S.C. 441b
7 from making contributions or expenditures in connection with a Federal election,
8 donations by such corporations to a host committee in accordance with restrictions set
9 forth in [11 CFR 9008.7(d) (1979)] are sufficiently akin to commercial transactions to fall
10 outside the scope of that prohibition.” Explanation and Justification of Presidential
11 Election Campaign Fund and Federal Financing of Presidential Nominating Conventions,
12 44 Fed. Reg. 63036, 63038 (Nov. 1, 1979).

13 The basis for the municipal fund exception to the expenditure limit was also
14 discussed, and the Commission explained that the expenditure limit would be
15 “unrealistically low” if the value of “certain facilities and services” provided by the city
16 “as part of an overall package to attract the convention to that city” counted toward the
17 convention committee’s expenditure limit. Id. at 63037. With regard to host committees,
18 the Commission justified the restriction on who may donate funds as “necessary to insure
19 that such donations are commercially, rather than politically motivated.” Id. at 63038.³
20 The Commission also observed that “Defrayal of convention expenses by a host
21 committee is intended to be a very narrow exception to the statutory limitation on

³ At that time, the amount of donations to host committees was also limited. See
11 CFR 9008.7(d)(3)(ii) (1980).

1 convention expenses.” See id. at 63038. The 1979 document made the same point about
2 the apparent Congressional intent as presented in the 1977 Explanation and Justification.
3 Id. at 63037.

4 In 1994, the Commission again revised its regulations governing publicly financed
5 presidential nominating conventions. Incorporating the conclusions reached in Advisory
6 Opinions 1982-27 and 1983-29, the Commission promulgated its municipal fund
7 regulation, 11 CFR 9008.53. Explanation and Justification of Presidential Election
8 Campaign Fund and Federal Financing of Presidential Nominating Conventions, 59 Fed.
9 Reg. 33606, 33614 (June 29, 1994). Like donations to host committees, the Commission
10 explained that “the new rules recognize that local businesses and organizations that
11 donate to municipal funds are motivated by commercial and civic reasons, rather than
12 election-influencing purposes.” Id. at 33615.

13 Five years later, in 1999, the Commission reiterated the presumed motivation of
14 donors to host committees and municipal funds. In lifting the prohibition on bank
15 donations to host committees, the Commission agreed with the observation that “local
16 branches of national banks have the same interest in promoting the city and supporting
17 commerce” as local corporations. Explanation and Justification for Public Financing of
18 Presidential Primary and General Election Candidates, 64 Fed. Reg. 49355, 49357
19 (Sept. 13, 1999).

20 III. Petition for Rulemaking

21 A petition for rulemaking jointly filed by three organizations seeks the repeal or
22 revision of the Commission’s regulations that permit host committees to accept corporate
23 and labor organization funds and to use these funds for expenses incurred in conducting a

1 nominating convention. The petition argues that the host committee regulation,
2 11 CFR 9008.52, and the exemption from the Part 114 definition of “contribution and
3 expenditure” of activity permitted by the host committee regulation,
4 11 CFR 114.1(a)(2)(viii), are contrary to FECA and BCRA. According to the petition,
5 2 U.S.C. 441b of FECA is violated by the cited regulations because corporations and
6 labor organizations are permitted to contribute funds and in-kind contributions in
7 connection with a nominating convention. Similarly, according to the petition,
8 2 U.S.C. 441i of BCRA is violated by 11 CFR 9008.52(c) because it allows national party
9 committees to receive in-kind contributions paid for with corporate and labor
10 organization funds. In support of its position, the petition puts forth a statutory and
11 regulatory analysis, and it cites and attaches many articles from various media outlets that
12 purport to describe convention financing practices. The petition is available on the
13 Commission’s website.

14 The petition’s conclusion that the cited host committee regulations violate FECA
15 and BCRA obviously contradicts the Commission’s treatment of host committees since
16 1977. The proposed rules that follow are consistent with the Commission’s historical
17 treatment of host committees and do not reflect the position advanced by the petitioners.
18 Nonetheless, the Commission seeks comment on whether corporate or labor organization
19 donations to host committees under the conditions prescribed in current
20 11 CFR 9008.52(c) is contrary to FECA or BCRA. If the approach sought by the petition
21 were adopted, the Commission also seeks comment on whether the exemption from the
22 convention committee expenditure limit for host committee expenses,
23 11 CFR 9008.8(b)(1), should also be repealed. Similarly, the Commission also seeks

comment on whether corresponding changes would be required for the municipal fund regulations, 11 CFR 9008.8(b)(2) and 9008.53.

IV. Application of BCRA's Non-Federal Funds Provisions to Convention

Committees, Host Committees and Municipal Funds

Under BCRA, “[a] national committee of a political party . . . may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of [FECA].” 2 U.S.C. 441i(a)(1). BCRA also prohibits officers and agents of the national party committees and entities that are “directly or indirectly established, financed, maintained, or controlled” by national party committees from soliciting, receiving, directing, or spending such non-Federal funds. 2 U.S.C. 441i(a)(2); see also 11 CFR 300.10(c)(1) and 300.10(c)(2). Similarly, BCRA prohibits Federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more Federal candidate or officeholder from soliciting, receiving, directing, transferring, or spending non-Federal funds in connection with an election for Federal office. 2 U.S.C. 441i(e)(1)(A); see also 11 CFR 300.61.⁴

The Commission has promulgated rules implementing BCRA's new restrictions and prohibitions on the receipt, solicitation, direction, and use of certain types of non-Federal funds by political party committees, candidates, and officeholders. See

⁴ In connection with any election other than an election for Federal office, BCRA also prohibits the same persons from soliciting, receiving, directing, transferring, spending, or disbursing funds in excess of the amounts permitted under 2 U.S.C. 441a(a) or funds from sources prohibited by FECA. 2 U.S.C. 441i(e)(1)(B).

1 Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal
 2 Funds or Soft Money, 67 Fed. Reg. 49064 (July 29, 2002) (hereinafter “Non-Federal
 3 Funds Final Rules”). In this rulemaking, the Commission considers the impact of these
 4 new restrictions and prohibitions in BCRA and the Non-Federal Funds Final Rules on
 5 national nominating conventions. Specifically, the Commission considers the roles filled
 6 by national political party committees, their convention committees, host committees, and
 7 municipal funds, as well as the involvement of Federal candidates and officeholders.

8 A. Are Host Committees and Municipal Funds “Agents” of National Party
 9 Committees under 2 U.S.C. 441i(a) and (e) and 11 CFR 300.2(b)?

10 One issue that arises from BCRA’s ban on national parties soliciting, receiving,
 11 directing, and using non-Federal funds is whether host committees and municipal funds
 12 are “agents” of national party committees. In the Non-Federal Funds Final Rules, the
 13 Commission defined an “agent,” for purposes of 11 CFR part 300, as “any person who
 14 has actual authority, either express or implied . . . to solicit, direct, or receive any
 15 contribution, donation, or transfer of funds” on behalf of a national committee of a
 16 political party. 11 CFR 300.2(b). The Commission seeks comment on whether host
 17 committees and municipal funds satisfy the definition of “agents” in 11 CFR 300.2(b)
 18 with respect to the national political party committees or their convention committees. If
 19 host committees and municipal funds are “agents” of national party committees, then
 20 they, like the national party committees themselves, would be prohibited from soliciting,
 21 receiving, directing, or spending non-Federal funds by operation of 2 U.S.C. 441i(a)(1)
 22 and (2) and 11 CFR 300.10(a) and (c)(1).

1 The Commission does not propose regulatory text that would presume that host
2 committees or municipal funds would necessarily qualify as “agents” of the national
3 political parties. This approach, if adopted, would not preclude the Commission from
4 determining that in a particular case a host committee or municipal fund does, in fact,
5 meet the definition of “agent” in 11 CFR 300.2(b) with respect to the pertinent national
6 party committee. The Commission also seeks comment on whether host committees and
7 municipal funds should be treated per se as not agents of national party committees and,
8 therefore, as not subject to 2 U.S.C. 441i(a)(2) or 11 CFR 300.10(c)(1) as agents acting
9 on behalf of a national party committee, no matter how such host committees and
10 municipal funds operate or interact with the national party committees.

11 The Commission is also considering an alternative approach, whereby host
12 committees and municipal funds would be treated as per se agents of national party
13 committees. Such an approach would limit permissible funds for a host committee or
14 municipal fund to funds subject to FECA’s limitations, prohibitions, and reporting
15 requirements, regardless of how the host committees and municipal funds functioned and
16 related to the national party committees. If the Commission were to consider host
17 committees and municipal funds as per se agents of convention committees, how should
18 it restructure the rules relating to national nominating conventions in 11 CFR part 9008?
19 Would host committees or municipal funds be Federal political committees? Would all
20 their transactions with convention committees amount to in-kind contributions? If host
21 committees and municipal funds are limited to funds subject to FECA’s limitations,
22 prohibitions, and reporting requirements, should any uses of such funds be exempt from
23 the convention committee’s expenditure limit? The Commission recognizes that host

1 committees and municipal funds supplement the funds that are otherwise capped by the
2 expenditure limit and therefore removing the exemption from the expenditure limit for
3 host committees and municipal funds would have a profound impact on convention
4 financing. The Commission seeks comment on whether such a result is mandated by
5 BCRA.

6 The legislative debates of BCRA suggest that BCRA would entail significant
7 changes in convention financing. During the Senate's consideration of BCRA, Senator
8 Mitch McConnell said the bill "will end national party conventions as we have known
9 them." 148 Cong. Rec. S2122 (daily ed. Mar. 20, 2002). Senator McConnell went on to
10 state that "[t]he soft money ban covers the committees that are created to host these grand
11 events" and to say that post-BCRA conventions would have to be put on with "80 percent
12 less funding." *Id.* Senator McConnell's conclusion that passage of BCRA would mean:
13 "All the soft money that you used to put on the convention the last time is now gone." *Id.*
14 Senator Fred Thompson earlier that day described "the nature of the problem" addressed
15 by BCRA and noted in regard to what he called the "big outfits" that donate non-Federal
16 funds "the same entities pick up our expenses for the convention." 148 Cong. Rec.
17 S2110 (daily ed. Mar. 20, 2002). During Senate consideration of an earlier version of
18 BCRA, Senator Robert Bennett stated: "One very practical example that we can expect is
19 the scaling down, if not the elimination, of party conventions because party conventions
20 now are financed entirely with soft money which, under this bill, would become illegal.
21 So we may see party conventions disappear altogether, or we may see them become very
22 truncated affairs, which the media may decide is not worth covering." 147 Cong. Rec.
23 S3092 (daily ed. Mar. 29, 2001). Senator McConnell raised the issue during this earlier

1 consideration as well. He stated: "Host committees for national conventions are
2 abolished. Last year it took each party \$80 million to put on their national conventions.
3 They got \$15 million from the Treasury. All the rest of it was this odious soft money
4 which is going to be abolished. In order to continue to put on the national conventions in
5 hard dollars, the two committees will have to come up with about \$60 million each in
6 hard dollars to put on the national conventions." 147 Cong. Rec. S3234 (Apr. 2, 2001).
7 The Commission seeks comment on how these debates or any other legislative history on
8 this issue should be interpreted.

9 What effect does BCRA's non-Federal funds ban have on the rules relating to
10 convention financing? Can the Commission simply retain the pre-BCRA rules? Is there
11 legal justification for retaining the pre-BCRA rules? Does BCRA have any impact on the
12 convention committee expenditure limit? Would limiting host committees and municipal
13 funds to Federal funds have as significant an impact on convention financing as
14 eliminating the expenditure limit exemption for host committees and municipal funds? If
15 so, is such a result required by BCRA?

16 B. Are Host Committees and Municipal Funds Entities "Established,
17 Financed, Maintained, or Controlled" by National Party Committees under
18 2 U.S.C. 441i(a) and 11 CFR 300.2(c)?

19 Another issue that arises under BCRA is whether host committees and municipal
20 funds are "directly or indirectly established, financed, maintained, or controlled" by a
21 national party committee. If host committees and municipal funds are considered entities
22 directly or indirectly established, financed, maintained, or controlled by the national party
23 committees, then they, like the national party committees themselves, are prohibited from

1 soliciting, receiving, directing, or spending non-Federal funds. 2 U.S.C. 441i(a)(2); 11
2 CFR 300.10(c)(2). In the Non-Federal Funds Final Rules, the Commission provided a
3 non-exhaustive list of factors that may be considered in determining whether an entity is
4 directly or indirectly established, financed, maintained, or controlled by a national party
5 committee. 11 CFR 300.2(c). See Non-Federal Funds Final Rules, 67 Fed. Reg. at
6 49084 (“The Commission has concluded that the affiliation factors laid out in 11 CFR
7 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or
8 controlled’ for purposes of BCRA.”) The Commission seeks comment on whether host
9 committees and municipal funds satisfy the factors listed in 11 CFR 300.2(c) and should,
10 therefore, be considered per se entities that are directly or indirectly established, financed,
11 maintained, or controlled by the national party committees holding conventions in the
12 relevant cities. Alternatively, the Commission seeks comment on whether host
13 committees and municipal funds do not meet the criteria listed in 11 CFR 300.2(c) and,
14 therefore, should be considered per se as entities that are not directly or indirectly
15 established, financed, maintained, or controlled by the national party committees. Or
16 should this question be resolved on a case-by-case basis by applying section 300.2(c)?

17 The Commission notes that the regulatory text relating to host committees and
18 municipal funds proposed in this NPRM does not presume that host committees or
19 municipal funds satisfy any of the criteria listed in 11 CFR 300.2(c) for determining
20 whether entities are directly or indirectly established, financed, maintained, or controlled
21 by national party committees. This approach, if adopted, would not preclude a
22 Commission finding that a particular host committee or municipal fund does, in fact,
23 satisfy one or more of the specified factors in 11 CFR 300.2(c) with respect to a particular

1 national party committee. If the Commission were to conclude that host committees or
2 municipal funds are, as a matter of law, "directly or indirectly established, financed,
3 maintained, or controlled" by national political parties, many of the same questions raised
4 in the context of the discussion of "agency," above, would need to be addressed.
5 Accordingly, the Commission seeks comments on the same issues raised above in
6 connection with the agency discussion.

7 C. Impact of BCRA on Convention Committees

8 In contrast to host committees and municipal funds, convention committees are,
9 as a matter of law, entities directly established, financed, maintained, or controlled by
10 national party committees. The Commission's regulations require national party
11 committees to "establish a convention committee which shall be responsible for
12 conducting the day to day arrangements and operations of that party's presidential
13 nominating convention." 11 CFR 9008.3(a)(2). In addition, under 11 CFR 9008.3(a)(2),
14 convention committees are required to receive the national party's entitlement to public
15 funds and are responsible for making "[a]ll expenditures on behalf of the national
16 committee for convention expenses," they clearly are "agents" of the national party
17 committees as well as "entities directly or indirectly established, financed, maintained, or
18 controlled" by the national party committees, as those terms are defined in 11 CFR
19 300.2(b) and (c). Therefore, for purposes of this NPRM, the Commission proposes that
20 BCRA's ban in 2 U.S.C. 441i(a)(1) on national parties soliciting, receiving, directing, and
21 using non-Federal funds shall apply to convention committees by operation of 2 U.S.C.
22 441i(a)(2) and 11 CFR 300.10(c). See also 11 CFR 300.2(b) and (c).

1 The Commission seeks comment on whether this prohibition extends to bar
2 convention committees from accepting many of the in-kind donations typically provided
3 by host committees and municipal funds. Commission regulations permit certain local
4 businesses and organizations to donate funds or make in-kind donations to a host
5 committee to be used for the purposes listed in 11 CFR 9008.52(c)(1). A review of this
6 list reveals that many of the contemplated transactions could not be characterized as in-
7 kind donations to the convention committee, but instead relate to the provision of services
8 primarily used by convention attendees. For example, the permitted expenses' purposes
9 include: welcoming convention attendees; facilitating commerce by distributing guides
10 to attendees; providing bus transportation; and providing law enforcement services. See
11 11 CFR 9008.52(c)(1). In order to conclude that the convention committee received "a
12 contribution, donation, or transfer of funds or any other thing of value . . . that are not
13 subject to the limitations, prohibitions, and reporting requirements of [FECA]," the
14 Commission would need to determine that the convention committee itself received
15 something of value. In many of the transactions contemplated by 11 CFR 9008.52(c)(1),
16 host committees are providing something of value to convention delegates, other
17 attendees, press, local businesses, and the local community; in these transactions the
18 convention committee is a bystander, not a recipient of something of value. When a host
19 committee provides, for example, a shopping/dining guide, to convention attendees, it is
20 difficult to conclude that the convention committee received anything of value. The
21 Commission seeks comment on whether BCRA requires that permissible host committee
22 and municipal fund expenses must be limited to such activities.

1 Other permissible host committee and municipal fund expenses certainly provide
2 something of value to the convention committee. For example, host committees and
3 municipal funds are permitted to provide an auditorium or convention center and
4 construction services for that location. 11 CFR 9008.52(c)(1)(v). The Commission seeks
5 comment on whether BCRA permits host committees and municipal funds to provide
6 things of value to convention committees. Assuming that it does, in order to ensure that
7 non-Federal funds raised by host committees and municipal funds are not spent on behalf
8 of convention expenses beyond the "very narrow" host committee/municipal fund
9 exception to the convention committee's expenditure limit, however, the Commission is
10 also considering revising its regulations to more precisely circumscribe the permitted
11 purposes for host committee and municipal fund expenses as discussed below. See
12 Explanation and Justification for Regulations on Federal Financing of Presidential
13 Nominating Conventions and the Presidential Election Campaign Fund, 44 Fed. Reg.
14 63036, 63038 (Nov. 1, 1979) (stating: "Defrayal of convention expenses by a host
15 committee is intended to be a very narrow exception to the statutory limitation on
16 convention expenses.").

17 D. Solicitation of Funds for Host Committees and Municipal Funds Under

18 BCRA

19 1. 2 U.S.C. 441i(a) and (e)(1)

20 As explained above, BCRA prohibits national party committees, as well as their
21 agents and entities they directly or indirectly establish, finance, maintain, or control from
22 soliciting or directing non-Federal funds on behalf of, or to, others. 2 U.S.C. 441i(a).
23 BCRA also prohibits Federal candidates and individuals holding Federal office from

1 soliciting, receiving, directing, transferring, or spending funds in connection with an
2 election for Federal office unless the funds are subject to the limitations, prohibitions, and
3 reporting requirements of FECA. 2 U.S.C. 441i(e)(1)(A). BCRA extends these
4 prohibitions to the agents of Federal candidates and individuals holding Federal office
5 and entities directly or indirectly established, financed, maintained, or controlled by
6 either. 2 U.S.C. 441i(e)(1).

7 The foregoing restrictions on Federal candidates and officeholders under 2 U.S.C.
8 441i(e)(1), in contrast to the restrictions on national party committees under
9 2 U.S.C. 441i(a), only apply to funds “in connection with an election for Federal office”
10 or any other election. 2 U.S.C. 441i(e)(1)(A) and (B). The Commission seeks comment
11 on what impact this statutory distinction has on any of the issues addressed in this
12 rulemaking.

13 Are all host committee and municipal fund activities “in connection with an
14 election for Federal office” or any other election within the meaning of 2 U.S.C. 441i(e)?
15 If not, are any such activities “in connection with an election for Federal office”? If none
16 satisfy that statutory phrase, do the prohibitions and limitations of section 441i(e) not
17 apply to the funds of host committees and municipal funds on that basis alone? In the
18 alternative, are host committee and municipal fund activities subject to this provision of
19 2 U.S.C. 441i(e) only if they are not for the purpose of promoting the convention city and
20 its commerce? As described above, the Commission’s past treatment of host committee
21 and municipal fund expenses viewed those expenses as a permissible exception to the
22 prohibition on corporate or labor organization funds because they lacked an election-
23 influencing purpose. FECA’s definitions of “contribution” and “expenditure” both

1 require that such be made “for the purpose of influencing any election for Federal office.”

2 2 U.S.C. 431(8)(A)(i) and 431(9)(A)(i). Does the Commission’s determination that
3 certain permissible host committee and municipal fund expenses are not “contributions”
4 or “expenditures” also require that the Commission determine those expenses are not “in
5 connection with an election for Federal office” under 2 U.S.C. 441i(e)(1)(A)?

6 Are any of the costs of conducting a convention “in connection with an election
7 for Federal office”? FECA clearly defines “election” to include “a convention or caucus
8 of a political party which has the authority to nominate a candidate.” 2 U.S.C. 431(1)(B).
9 However, other election administering expenses, whether incurred by States or privately
10 funded in those States that require political parties to pay the costs of certain primary
11 elections, are not considered FECA-regulated expenses. See, e.g., AO 1991-33 (noting
12 that the parties act as agents of the State in performing the ministerial functions of
13 administering the primaries). Are the costs of conducting a convention, whether incurred
14 by a convention committee, host committee, or municipal fund, regulated by FECA, other
15 than those provisions that expressly mention convention activities? Although the Fund
16 Act provides for grants of public funds to pay these expenses and imposes an expenditure
17 limitation in exchange for accepting such a grant, should the Commission conclude that
18 some or all of the expenses of conducting a nominating convention are not subject to
19 FECA as amended by BCRA? If the Commission determines that these expenses are not
20 in connection with a Federal election, what changes should it make to its regulations?

21 The Commission carefully considered the scope of BCRA’s prohibition on
22 solicitation and direction of non-Federal funds by national party committees, Federal
23 candidates, Federal officeholders, and their agents in the Non-Federal Funds Final Rules.

1 See 67 Fed. Reg. at 49087-93, 49106-09, 49122-23, and 49131-32. The Commission
2 seeks comment on whether the new rules implementing BCRA's ban on the solicitation
3 of non-Federal funds are sufficient to resolve the question of whether national party
4 committees, Federal candidates, Federal officeholders, or their agents may solicit funds
5 for host committees and municipal funds. See 11 CFR part 300, subparts A and D.
6 Alternatively, if the Commission should promulgate an additional regulation specifically
7 applying BCRA and the Non-Federal Funds Final Rules to national nominating
8 conventions, should the Commission make any changes to the operation of 11 CFR part
9 300, subparts A and D in this context?

10 2. 2 U.S.C. 441i(d)

11 BCRA prohibits national party committees, their officers and agents acting on
12 their behalf, and entities directly or indirectly established, financed, maintained, or
13 controlled by them from soliciting any funds for, or making or directing any donations to,
14 certain tax-exempt organizations. 2 U.S.C. 441i(d). BCRA's prohibition on this type of
15 donor and fundraising activity extends only to tax-exempt organizations with a political
16 purpose or that conduct activities in connection with a Federal election. Specifically, this
17 prohibition extends to tax-exempt organizations described in 26 U.S.C. 501(c) that make
18 "expenditures or disbursements in connection with an election for Federal office
19 (including expenditures or disbursements for Federal election activity)" and organizations
20 described in 26 U.S.C. 527. Id. In considering how to implement these BCRA
21 provisions, the Commission concluded that a safe harbor is an appropriate way to help
22 ensure that party committees, and others to whom 11 CFR 300.11 and 300.37 apply,
23 comply with the Act.

1 Commission regulations at 11 CFR 300.11 and 300.50 implement this safe harbor
2 and set forth a process by which a section 501(c) organization can certify that it does not
3 make expenditures or disbursements in connection with an election for Federal office.

4 Under 11 CFR 300.11(c) and 300.50(c), national party committees, their agents, and
5 entities they directly or indirectly establish, finance, maintain, or control may obtain and
6 rely upon a certification that the organization has not and does not intend to make
7 expenditures or disbursements in connection with an election for Federal office as
8 specified in 11 CFR 300.11(d).

9 The Commission seeks comment on whether, as a matter of law, host committees
10 and municipal funds make “disbursements” in connection with an election for Federal
11 office, even as they adhere to the requirements in current 11 CFR 9008.52, which
12 arguably would leave host committees and municipal funds outside the certification safe
13 harbor set out in 11 CFR 300.11. A “disbursement” is defined, in 11 CFR 300.2(d), as
14 “any purchase or payment made by: (1) a political committee; or (2) any other person,
15 including an organization that is not a political committee, that is subject to [FECA].”
16 Host committees and municipal funds are organizations subject to FECA that make
17 purchases or payments in connection with a Federal election because FECA defines
18 presidential nominating conventions as Federal elections. 2 U.S.C. 431(1)(B). The
19 Commission’s past treatment of permissible host committee and municipal fund
20 disbursements has been that they are not expenditures for the purpose of influencing an
21 election and, therefore, are not subject to the corporate and labor organization prohibition
22 in 2 U.S.C. 441b. However, BCRA reaches far beyond expenditures and requires only

1 “disbursements in connection with an election” to make a 501(c) organization subject to
2 the prohibition in 2 U.S.C. 441i(d)(1).

3 The Commission proposes a new regulation, 11 CFR 9008.55, in order to apply
4 11 CFR part 300 to the solicitation of funds for those host committees or municipal funds
5 that have 26 U.S.C. 501(c) status. Paragraph (a) would state the general proposition that
6 all host committee and municipal fund payments in compliance with 11 CFR part 9008
7 are disbursements in connection with a Federal election for purposes of 11 CFR part 300.
8 Paragraph (b) would state that host committees and municipal funds would not be eligible
9 to make the certification pursuant to 11 CFR 300.11(d). The Commission seeks comment
10 on the proposed new regulation and the approach embodied in it.

11 In the alternative, the Commission seeks comment on whether host committees
12 and municipal funds should be eligible to make the certification pursuant to 11 CFR
13 300.11(d) and, if so, under what circumstances? The Commission also seeks comment
14 on whether Congress, in enacting BCRA, in any way intended to restrict convention
15 financing practices that were legal before BCRA became law, including the activities of
16 host committees and municipal funds (and any involvement therein by national party
17 committees, Federal candidates, Federal officeholders, and their agents.) Specifically,
18 comment is sought on whether permissible host committee and municipal fund expenses
19 do not constitute disbursements in connection with an election.

1 3. 2 U.S.C. 441i(e)(4)

2 In 2 U.S.C. 441i(e)(1), BCRA prohibits Federal candidates and officeholders⁵
 3 from soliciting, receiving, directing, transferring, or spending funds in connection with an
 4 election for Federal or non-Federal office unless the funds meet the source and amount
 5 restrictions of the Act. See also 11 CFR 300.61 and 11 CFR 300.62. BCRA creates two
 6 exceptions from that general rule in 2 U.S.C. 441i(e)(4). First, BCRA allows Federal
 7 candidates, individuals holding Federal office, and individuals who are agents acting on
 8 behalf of either to make general solicitations, without source or amount restrictions, for a
 9 501(c) organization, other than organizations whose "principal purpose" is to conduct
 10 certain Federal election activity, specifically voter registration, voter identification,
 11 GOTV activities, or generic campaign activity, so long as the solicitation does not specify
 12 how the funds will be spent. Second, BCRA permits Federal candidates and Federal
 13 officeholders, and individuals who are agents acting on their behalf, to make a solicitation
 14 explicitly to obtain funds for a 501(c) organization whose principal purpose is to conduct
 15 Federal election activity as described above or for a 501(c) organization to conduct these
 16 activities, provided that only individuals are solicited for no more than \$20,000 per
 17 calendar year. The final rule at 11 CFR 300.65 implements these exceptions for Federal
 18 candidate and officeholder solicitations for 501(c) organizations.

⁵ An "individual holding Federal office" is defined as "an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States." 11 CFR 300.2(o). It does not include those "who are appointed to positions such as the secretaries of departments in the executive branch, or other positions that are not filled by election." Non-Federal Funds Final Rules, 67 Fed. Reg. at 49,087. This definition is identical to the definition of "Federal officeholder" in 11 CFR 113.2(c).

1 As noted above in connection with national party committee solicitations of non-
2 Federal funds, host committees and municipal funds operating in compliance with 11
3 CFR part 9008 make disbursements in connection with the national nominating
4 convention, which is an election under FECA. Under 11 CFR 300.52(a)(1) and
5 300.65(a)(1), Federal candidates, individuals holding Federal office, and agents acting on
6 their behalf are prohibited from making general solicitations of non-Federal funds for
7 501(c) organizations that "engage in activities in connection with an election."
8 Accordingly, the exception permitting Federal candidates, Federal officeholders, and their
9 agents to make general solicitations on behalf of 501(c) organizations would not apply to
10 host committees and municipal funds. In addition, the exception permitting Federal
11 candidates, Federal officeholders, and their agents to make specific solicitations for
12 certain 501(c) organizations may not, as a matter of law, apply to host committees and
13 municipal funds because it is not their principal purpose to engage in certain types of
14 Federal election activity described in 2 U.S.C. 431(20)(A)(i) and (ii).

15 To make clear that the above-described exceptions to the general ban on
16 solicitation do not apply to solicitation of non-Federal funds by Federal candidates,
17 Federal officeholders, and their agents on behalf of host committees and municipal funds,
18 the Commission is considering adding a new provision to part 9008. See new 11 CFR
19 9008.55. Paragraph (c) of this section would state that host committees and municipal
20 funds are ineligible for the exceptions in 11 CFR 300.65. The Commission seeks
21 comment on this approach.

E. Effect of BCRA on Offsets

In 1996, the Commission permitted a convention committee to offset contributions received from host committees in the form of impermissible in-kind donations with convention committee expenditures that could have been permissible host committee expenses. The offsets served to eliminate repayment obligations for funds received in excess of entitlement. The proposed rules that follow would expressly prohibit offsets, because they are contrary to the requirements of BCRA, which prohibit the receipt and use of non-Federal funds by national party committees and their affiliates. The Commission seeks comment on whether this approach is required by BCRA. See proposed 11 CFR 9008.12(b)(8). Alternatively, the Commission also seeks comment on whether and, if so, under what conditions, it should permit offsets.

F. Effect of BCRA on Commercial Vendor Activities Related to Nominating Conventions

The current rules at 11 CFR 9008.9 permit convention committees to receive goods and services from commercial vendors, including corporations, at reduced or discounted rates, or at no charge, under certain circumstances. The prohibition in BCRA against the receipt of non-Federal funds, 2 U.S.C. 441a(a), may necessitate a change to this regulation.

Current 11 CFR 9008.9(a) permits commercial vendors, including businesses that are incorporated, to provide reductions or discounts in the ordinary course of business; that is, if the vendor has an established practice of providing the same reductions or discounts for the same amount of goods or services to non-political clients, or if the reduction or discount is consistent with established practice in the commercial vendor's

1 trade of industry. The Commission believes this provision is consistent with BCRA and
2 therefore proposes to retain it in its current location. It would be revised to combine the
3 introductory text and to make other conforming changes based on the other proposed
4 changes to the rule described below.

5 Current provisions (b) and (c) of 11 CFR 9008.9, however, address items
6 provided for promotional consideration (which are something of value), such as
7 complimentary, temporary use of automobiles, and items of de minimis value, such as
8 tote bags for convention attendees. The rationale for the promotional consideration
9 exception was explained in Advisory Opinion 1988-25, where the Commission
10 considered whether it was permissible, under FECA and the Fund Act, for General
11 Motors to provide complimentary use of automobiles to convention committees for use
12 during the 1988 Democratic and Republican conventions in exchange for GM's ability to
13 advertise the fact that its vehicles were the "official" vehicles of the respective
14 conventions. The Commission concluded that GM's provision of 500 automobiles to the
15 Democratic and Republican convention committees in exchange for advertising rights did
16 not violate the prohibition against corporate contributions in connection with a Federal
17 election, in 2 U.S.C. 441b(a). The Commission based its conclusion primarily on
18 evidence that GM had a practice of providing complimentary use of automobiles to other,
19 non-political conventions of similar size and duration in exchange for such advertising
20 authority and on evidence that the value of GM's donation was proportionate to the
21 commercial return GM expected to receive during the life of the convention.

22 The rationale for allowing commercial vendors to provide items of de minimis
23 value at little or no charge to convention attendees was explained in Advisory Opinion

1 1980-53, where the Commission considered whether it was permissible, under FECA and
2 the Fund Act, for Kelly Services, Inc., to provide, at no charge, tote bags to persons
3 attending the 1980 Democratic and Republican conventions. The Commission concluded
4 that Kelly Services' provision of 9,200 tote bags to the Democratic convention and 7,600
5 tote bags to the Republican convention did not violate the prohibition against corporate
6 contributions in connection with a Federal election, in 2 U.S.C. 441b, and did not count
7 toward the national parties' expenditure limits, in 11 CFR 9008.7(a). The Commission
8 based its conclusion on three factors: (1) the low cost of the tote bags (\$2.12 each); (2)
9 evidence that the tote bags were being provided solely for bona fide advertising purposes
10 of a local business; and (3) evidence that the tote bags were provided in the ordinary
11 course of Kelly Services' business.

12 While the provision of items for promotional consideration and items of de
13 minimis value were permissible under FECA and the Fund Act, these provisions may
14 contravene BCRA's prohibition on national party committee acceptance of non-Federal
15 funds, 2 U.S.C. 441i (a)(1), by authorizing national party committees to receive and
16 accept something of value not paid for with Federal funds. The Commission seeks
17 comment on whether these practices, which were legally permissible in the past, are
18 barred by BCRA. However, as explained above, the rules proposed in this NPRM
19 contemplate that it is still appropriate for host committees and municipal funds to accept
20 these corporate in-kind donations, provided such donations are in accordance with 11
21 CFR 9008.52 and 9008.53. Accordingly, the Commission is proposing to move the
22 provisions of current 11 CFR 9008.9(b) and (c) (convention committees) to 11 CFR
23 9008.52(a) (host committees), with a conforming amendment to 11 CFR 9008.53(a)

(municipal funds). The introductory text would no longer reference the provision of goods or services at no charge as that reference pertained to paragraphs (b) and (c).

Under this reorganization, current paragraph (d) of 11 CFR 9008.9, which states that the value of goods or services provided under this section do not count towards the national party's expenditure limit, would be retained as redesignated paragraph (b) of 11 CFR 9008.9, but would be limited to standard industry reductions and discounts provided pursuant to 11 CFR 9008.9(a). The definition of "commercial vendor" would continue to be that set out at 11 CFR 116.1(c): Any person providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services.

G. Effect of BCRA on Private Events in the Convention City

Private events are often held in the city hosting a nominating convention during the convention. Corporations, labor organizations, and other groups can hold these events, and often invite convention attendees including delegates, Federal candidates and officeholders, and party officials. These events are typically held in locations away from the convention venue. The temporal and geographic proximity of these events to nominating conventions has not previously subjected the events to regulation under FECA solely because of that proximity. Of course, FECA regulation could be triggered by such events if, for example, a Federal political committee holds a fundraising event. The Commission seeks comment on whether BCRA requires that private events held in the convention city during the convention are subject to regulation solely on that basis.

1 V. Definition of “Municipal Fund”

2 Over time, host committees and municipal funds have come to play increasingly
3 similar roles in convention funding. The Commission therefore seeks comment on
4 whether these entities should be treated similarly under the Commission’s rules. Under
5 this approach, which is reflected in the proposed rules that follow, host committees and
6 municipal funds would continue to be permitted to spend money for identical purposes.
7 The rules would change, however, to make municipal funds subject to the same
8 disclosure requirements that apply to host committees under 11 CFR 9008.51 and
9 9008.52. Current host committee disclosure rules would also be revised as described
10 below and would apply to both host committees and municipal funds. More importantly,
11 the Commission’s description of “municipal funds” would be revised to remove
12 provisions that operate as barriers to municipal funds raising money in conjunction with
13 host committees.

14 While the Commission’s rules define “host committee,” see 11 CFR 9008.52(a),
15 they do not currently define “municipal fund.” The Commission is proposing to add the
16 following definition, at new 11 CFR 9008.50(c): “A municipal fund is any separate fund
17 or account of a government agency, municipality, or municipal corporation whose
18 principal purpose is the encouragement of commerce in the municipality and whose
19 receipt and use of funds is subject to control of officials of the State or local
20 government.” Under this definition, any organization operating under 11 CFR 9008.53
21 would be required to use a separate account for receipts and payments related to
22 convention activities. Should the Commission adopt additional requirements for
23 municipal fund status? Should municipal funds be limited to accounts subject to audit by

1 State or local public agencies? Are there any other arrangements that would assure the
2 funds received and disbursed by a municipal fund would be used for the promotion of the
3 city and its commerce?

4 The proposed definition would eliminate the current provision in 11 CFR
5 9008.53(b)(1)(i) and (ii), requiring municipal funds to comply with two conditions: (1)
6 The fund or account is not permitted to be restricted to use in connection with any
7 particular convention; and (2) Donations to the fund or account must be unrestricted and
8 shall not be solicited or designated for use in connection with any particular convention,
9 event or activity. 11 CFR 9008.53(b)(1)(i) and (ii).

10 Host committees do not operate under similar limitations on fundraising. See
11 11 CFR 9008.52. These limitations complicate joint fundraising by a municipal fund and
12 a host committee, and their utility has diminished as municipal funds have become
13 functionally similar to host committees. Moreover, because hosting a national
14 nominating convention is a significant undertaking even for large communities,
15 organizations like municipal funds will necessarily devote substantial efforts toward their
16 roles in hosting a convention. In these circumstances, little purpose is served by
17 prohibiting municipal funds from engaging in fundraising devoted to a particular
18 nominating convention or accepting donations accompanied by correspondence that
19 refers to such a convention.

20 In the advisory opinions that formed the basis for this current rule, Advisory
21 Opinions 1982-27 and 1983-29, the requesters assured the Commission that the
22 undesignated nature of the donations received demonstrated the civic, not political,
23 motives of the municipal funds and their donors. Subsequently, the Commission

1 promulgated the regulation with these same restrictions on municipal funds in an effort to
2 ensure that both the donations and use of the donations arose from civic, not political,
3 motives. The Commission seeks comment on whether this requirement is unnecessary.
4 A municipal fund's references to the political party that intends to hold its national
5 nominating convention in the host city may not necessarily betray a partisan political
6 motivation, and insisting on no such reference in the solicitation materials and in the
7 responses from donors may serve little or no purpose.

8 Consequently, the Commission proposes deleting from its definition of municipal
9 funds the requirements that the fund itself, solicitations for donations to the fund, and the
10 donations to the fund not be restricted to a particular convention. The Commission also
11 proposes to restructure the municipal fund regulation, 11 CFR 9008.53, to follow the
12 structure of the host committee regulation, 11 CFR 9008.52, and to use the name by
13 which these funds have come to be known, "municipal funds." Alternatively, the
14 Commission also seeks comment on whether it should retain the current distinction
15 between municipal funds and host committees. Under the alternative approach, should
16 the Commission clarify the prohibitions of 11 CFR 9008.53, namely that a municipal
17 fund may not be restricted or accept or solicit restricted donations? What standard should
18 the Commission adopt for when a municipal fund is "restricted to use in connection with
19 any particular convention" contrary to 11 CFR 9008.53(b)(1)(i)? Under what
20 circumstances is it appropriate to conclude that donations or solicitations restricted or
21 designated for use in connection with a particular convention contrary to 11 CFR
22 9008.53(b)(1)(ii)?

1 While the Commission is proposing to treat host committees and municipal funds
2 the same in most respects (i.e., permitted expenses, registration and reporting
3 requirements), it does not propose to audit municipal funds as it currently audits host
4 committees. Under the current rules, host committees are subject to a Commission audit
5 pursuant to 11 CFR 9008.54, while municipal funds are not routinely subject to a
6 Commission audit. The Commission, however, has conducted financial transaction
7 examinations of municipal fund accounts, and it expects to continue to do so in the
8 appropriate circumstances. The Commission believes that the governmental controls
9 over municipal funds obviate the need to subject municipal funds to a routine audit like
10 host committees are subject to pursuant to 11 CFR 9008.54. Because municipal funds
11 necessarily are separate accounts of a government agency or municipality, the municipal
12 funds are subject to financial controls by the local authorities. Under these
13 circumstances, the Commission does not believe routine audits are necessary. The
14 Commission seeks comment on this approach and specifically whether the comity
15 required between agencies of the Federal government and agencies at the State or local
16 level counsels against routine audits of municipal funds.

17 The absence of routine audits should not be misconstrued to limit the
18 Commission's authority to examine municipal fund transactions related to conventions.
19 Because municipal funds provide substantial in-kind donations to publicly funded
20 convention committees, the Commission's audit of convention committees under 11 CFR
21 9008.11 may require a detailed and thorough review of municipal fund transactions.

22 Additionally, municipal funds are subject to Commission audit pursuant to 11 CFR
23 111.10.

Current 11 CFR 9008.50, entitled “Scope,” sets out the scope of Subpart B of Part 9008, “Host Committees Representing a Convention City; Convention Expenditures by Government Agencies and Municipal Corporations.” The Commission is proposing to change the title of this Subpart to “Host Committees and Municipal Funds Representing a Convention City.” The title of 11 CFR 9008.50 would be changed to “Scope and Definitions,” and the current provisions of this section would be revised with conforming changes and placed in new paragraph (a). The definition of “host committee” would be moved from 11 CFR 9008.52(a) to new 11 CFR 9008.50(b), and the new definition of “municipal fund” would appear at new 11 CFR 9008.50(c). Conforming changes using the newly defined term “municipal fund” would be made to 11 CFR 9008.8(b)(2) and 9008.12(b)(7).

VI. Permissible Expenditures by Convention Committees, Host Committees and Municipal Funds

Permissible expenditures by convention committees are currently set forth at 11 CFR 9008.7(a), while those by host committees and municipal funds are found at current 11 CFR 9008.52(c). See also 11 CFR 9008.53(b). As described above, these rules are intended to require convention committees to pay expenditures that are “political” in nature, while permitting host committees and municipal funds to pay commercially motivated expenses. The intent of the existing rules is for the convention committee to pay expenses incurred in connection with nominating its party’s candidates, while the host committee and the municipal fund pay expenses incurred to make the convention city attractive to potential visitors and those seeking a site to hold future conventions or similar events. Some expenditures fit into both categories, which has caused confusion.

1 Furthermore, the current rules do not state the types of expenditures that a host committee
2 or municipal fund may not incur on behalf of a convention committee.

3 After the last several election cycles, some observers have raised questions about
4 whether host committees and municipal funds continue to operate in the manner
5 contemplated by the regulations. The Commission has encountered host committees and
6 municipal funds that paid for expenses that the Commission determined were not for
7 permissible host committee or municipal fund purposes. In an effort to provide additional
8 guidance on the scope of expenses that may be paid by a host committee or municipal
9 fund, the Commission noted that its "decisions regarding the audits of the 1996
10 convention and host committees serve to provide additional guidance for the 2000
11 election cycle." Explanation and Justification for Public Financing of Presidential

12 Primary and General Election Candidates, 64 Fed. Reg. 49355, 49358 (Sept. 13, 1999).

13 The Commission therefore seeks comment on whether donations to host committees and
14 municipal funds should be considered to stem from political motivations, at least in part.

15 If so, what changes to the Commission's rules should be made? Comment is also sought
16 on whether the Commission should seek to limit the exception for host committee and
17 municipal fund expenses to ensure that impermissible funds are not used in connection
18 with the national nominating convention. If so, what measures should the Commission
19 adopt? Is the total amount of expenses the appropriate measure, or should the
20 Commission continue to focus on the purpose of the expenses?

21 Given the evolution in the operation of host committees and municipal funds, as
22 well as the need to ensure, in light of BCRA, that a host committee or municipal fund's
23 non-Federal funds are not used to provide facilities or services that constitute an

1 impermissible contribution to convention committees, the Commission is proposing to
2 reorganize the types of permissible expenses listed in current 11 CFR 9008.7(a)(4) and
3 9008.52(c). The current regulations provide a definition of “convention expenses” in
4 11 CFR 9008.7(a)(4), which explains that convention expenses “include all expenses
5 incurred by or on behalf of a political party’s national committee or convention
6 committee with respect to and for the purpose of conducting a presidential nominating
7 convention or convention-related activities.” 11 CFR 9008.7(a)(4). The current
8 regulation includes a non-exhaustive list of 13 examples of particular types of convention
9 expenses. See 11 CFR 9008.7(a)(4)(i) to (xiii).

10 A. Revisions to Convention Expenses, 11 CFR 9008.7(a)(4).

11 The Commission is considering two alternatives for revising 11 CFR
12 9008.7(a)(4), both of which are set out in the regulatory text portion of this NPRM. The
13 alternatives are intended to reach the same result as to what expenses may be paid by
14 convention committees, host committees, and municipal funds. They differ as to the
15 location of various provisions regarding permissible and impermissible expenses.
16 Alternative A would involve removing the list of thirteen examples of particular types of
17 convention expenses in 11 CFR 9008.7(a)(4). The Commission’s experience with
18 national nominating conventions indicates that, generally speaking, the public funds
19 provided for conventions are carefully conserved, given the convention committees’
20 limited resources. Thus, the Commission is considering, under Alternative A, whether
21 the convention committees’ use of funds can be adequately addressed with the general
22 and generic definition of “convention expenses” in section 9008.7(a)(4). Additionally,
23 using a broad and generic definition is consistent with the approach in the Commission’s

1 regulations concerning qualified campaign expenses for presidential primary and general
2 elections. See 11 CFR 9002.11 (general election definition of qualified campaign
3 expense); 11 CFR 9004.4 (general election use of payments); 11 CFR 9032.9 (primary
4 election definition of qualified campaign expense); and 11 CFR 9034.4 (primary election
5 use of contributions and matching payments).

6 Moreover, a number of the examples qualify as "convention expenses" in such an
7 unambiguous way, the value of stating them as an example is questionable. For example,
8 one states that "salaries and expenses of convention committee employees . . . and similar
9 personnel, whose responsibilities involve planning, management or otherwise conducting
10 the convention." Could such expenses fail to meet the general definition of "convention
11 expenses" in section 9008.7(a)(4) under any interpretation? A few of the examples
12 impose some limitations that may not otherwise be obvious. Entertainment activity
13 expenses is one such provision, 11 CFR 9008.7(a)(4)(viii). While provisions such as this
14 one focus on preventing the convention committee from subsidizing other organizations,
15 the Commission is considering whether the opposite arrangement is more frequently
16 encountered. The Commission also seeks comment on two other particular provisions:
17 11 CFR 9008.7(a)(4)(iii) and (iv), which permit convention committees to reimburse
18 national party committees for a portion of certain employees' compensation. Do
19 convention committees typically make the arrangements contemplated by these
20 provisions? Or do some employees temporarily leave the employ of the national party
21 committees and become employees of the convention committees?

22 The Commission seeks comment on its proposed simplification of the definition
23 of convention expenses under Alternative A. Particularly, are any of the thirteen

1 examples necessary to include in the codified regulation? Are there any drawbacks to
2 deleting the thirteen examples? Does the proposed definition of “convention expense”
3 standing alone provide sufficient guidance?

4 In contrast, Alternative B would retain the list of thirteen permissible convention
5 expenses currently located in section 9008.7(a)(4), but move them to a new section, 11
6 CFR 9008.17. Under this alternative, new section 9008.17 would contain lists of
7 permissible expenses for convention committees (paragraphs (a) and (b)), and host
8 committees and municipal funds (paragraphs (b) and (c)). See proposed 11 CFR 9008.17.
9 Paragraph (a) of section 9008.17 would define “convention expenses” generally in the
10 same manner as it is currently defined in section 9008.7(a)(4). See proposed 11 CFR
11 9008.17(a). The thirteen specific permissible convention expenses that may be paid by
12 convention committees currently listed in section 9008.7(a)(4) would be moved to new
13 section 9008.17(a) and (b).

14 Please note that under Alternative B, section 9008.7(a)(4) would be revised to
15 cross reference 11 CFR 9008.17(a) and (b). Alternative B’s version of section
16 9008.7(a)(4) is not set out in the regulation text that follows. Neither alternative would
17 amend the prohibited uses of a convention committee’s public funds listed in
18 11 CFR 9008.7(b).

19 B. Substantive Changes to Permissible Host Committee and Municipal Fund
20 Expenses.

21 The Commission also proposes under both alternatives to revise the list of
22 permissible expense purposes for host committees and municipal funds listed in current
23 11 CFR 9008.52(c)(1). The proposed revised listed would appear in paragraph (b) of

1 section 9008.52, and would be based substantially on the current list in section
2 9008.52(c)(1). However, the Commission proposes a number of changes intended to
3 clarify and add specificity as to the range of permissible expenses.

4 The Commission proposes to combine current 11 CFR 9008.52(c)(1)(i) and
5 (c)(1)(x) to state that host committees and municipal funds may pay expenses incurred for
6 the purpose of promoting the suitability of the city as a convention site including those
7 related to the selection committee's accommodations. See 11 CFR 9008.52(b)(1). The
8 Commission seeks comment on this proposed revision, particularly whether the rule
9 should be limited to such costs incurred prior to signing the site selection agreement.

10 The Commission proposes to narrow the focus of the provision concerning the use
11 of an auditorium or convention center and construction-related services in current section
12 9008.52(c)(1)(v). See proposed 11 CFR 9008.52(b)(5). To that end, the revised purpose
13 would contain a non-exhaustive list of permissible construction-related services and
14 would make it clear that only construction-related services for the purpose of designing,
15 creating, or installing the physical or technological infrastructure for the conduct of the
16 convention are permissible. Id. It would also codify in the regulations some of the
17 Commission's decisions made in connection with the 1996 conventions. Specifically, the
18 Commission considered a number of television production expenses and determined that
19 some were permissible host committee expenses and others were not. Many of the
20 distinctions the Commission made were based on whether the particular expense was
21 related to the infrastructure of the convention center. Another of the Commission's
22 decisions related to 1996 reflected in the proposed section 9008.52(b)(5) was to permit
23 host committees to pay telephone charges incurred by the convention committee.

1 The proposal would narrow the rule in current section 9008.52(c)(1)(vi) allowing
2 for the provision of local transportation services. Whereas the current section allows for
3 the provision of local transportation services without restriction, the Commission
4 proposes to narrow this purpose to the host committee to provide such services only if
5 they are made available to convention delegates and other individuals attending the
6 convention. See proposed 11 CFR 9008.52(b)(6).

7 The rule in current section 9008.52(c)(1)(vii) allowing for the provision of law
8 enforcement services would be expanded. In light of heightened security concerns
9 involving high-profile events attended by large numbers of people, such as presidential
10 conventions, the Commission proposes to broaden this purpose to permit the provision of
11 “security services” as well as law enforcement services. See proposed 11 CFR
12 9008.52(b)(7). The Commission also proposes to delete the current requirement that only
13 law enforcement services “necessary to assure orderly conventions” may be provided, in
14 recognition of the fact that maintenance of orderly conventions is only one of many
15 legitimate security concerns. Id. To codify another of the Commission’s decisions in
16 connection with the 1996 conventions, tickets, badges, and passes would be specifically
17 mentioned as part of permitted security.

18 The provision related to hotel rooms in current 11 CFR 9008.52(c)(1)(ix) would
19 also be clarified. This would codify another of the Commission’s 1996 decisions. The
20 provision would be clarified to permit host committees and municipal funds to provide
21 hotel rooms to convention committees for whatever rate the host committee paid for the
22 rooms, including at no charge or at a reduced rate based on the number of other rooms
23 rented. See proposed 11 CFR 9008.52(c)(9).

1 The Commission proposes to eliminate the final purpose of “other similar
2 convention related facilities and services,” in current section 9008.52(c)(1)(xi), which has
3 created confusion and could be improperly read to include a broad array of expenses that
4 is inconsistent with a specific list of permitted expenses. The Commission seeks
5 comment on this change.

6 The Commission seeks comment on the proposed changes to the list of
7 permissible host committee and municipal fund expense purposes. Specifically, does the
8 proposed regulation provide sufficient guidance to inform convention committees, host
9 committees, and municipal funds of what is permitted? Are other restrictions necessary
10 to ensure that the permitted expenses are appropriate for host committees and municipal
11 funds? Should other expense purposes be added to list? Are there any other aspects of
12 the Commission’s 1996 decisions that should be incorporated into the rules?

13 The Commission also proposes to add a new provision defining impermissible
14 host committee and municipal fund expense purposes. This provision is proposed as
15 paragraph (c) of section 9008.52 under Alternative A. It would include a general
16 prohibition on providing anything of value to a convention committee, national political
17 party committee, or any other political committee, except as expressly permitted under
18 11 CFR 9008.52(b)(1) and (5) through (8). See proposed 11 CFR 9008.52(c)(1). These
19 purposes listed in paragraph (b) of proposed section 9008.52 are included in the exception
20 because appropriate host committee and municipal fund expenses under these sections
21 would involve the provision of something of value to the convention committee. The
22 purposes listed in section 9008.52(b)(2) through (4) are not included in the exception
23 because a host committee or municipal fund must not provide anything of value to the

1 convention committee as it welcomes attendees to the convention city, facilitates
2 commerce, or pays its own administrative expenses, which are the purposes listed in the
3 cited provisions. The list of prohibited expense purposes includes another provision to
4 prohibit the use of donations to host committee or municipal funds for expenses related to
5 creating, producing, or directing the convention proceedings. See proposed
6 11 CFR 9008.52(c)(2). The proposal is intended to limit any of the permissible purposes
7 so that if the expense would be prohibited by 11 CFR 9008.52(c)(2), then it would not be
8 permitted even if it might also satisfy one of the permissible expense purposes in
9 11 CFR 9008.52(b). This proposal would codify one the more significant of the
10 Commission's decisions in connection with the 1996 conventions that the Commission
11 cited as guidance in the 1999 rulemaking. See Explanation and Justification for Public
12 Financing of Presidential Primary and General Election Candidates, 64 Fed. Reg. 49355,
13 49358 (Sept. 13, 1999). The Commission seeks comment on whether this proposal is
14 sufficient to contain the non-Federal funds of host committees and municipal funds to
15 uses consistent with the prohibitions and limitations imposed on the use of such funds by
16 BCRA. Should additional expense purposes be added to the prohibited list? Do the
17 listed prohibitions provide adequate guidance?

18 C. Regulatory Structure of Permissible Host Committee and Municipal Fund
19 Expenses.

20 Again, the Commission is considering two alternatives that differ as to the
21 location for the provisions regarding permissible host committee and municipal fund
22 expenses. Both reflect the proposed substantive changes to the host committee and
23 municipal fund permitted expenses described above in the section entitled "Substantive

1 Changes to Permissible Host Committee and Municipal Fund Expenses.” Alternative A
2 would involve providing a revised list of permissible host committee/municipal fund
3 expenses in paragraph (b) of section 9008.52. See proposed 11 CFR 9008.52.
4 Alternative B would involve providing substantially the same revised list of permissible
5 host committee and municipal fund expenses, but would locate them in paragraphs (b)
6 and (c) of new section 9008.17, rather than in 11 CFR 9008.52(b). Paragraph (b) of new
7 section 9008.17 would list expenses that may be paid by convention committees, host
8 committees, or municipal funds and paragraph (c) of 9008.17 would list expenses that
9 may be paid by host committees or municipal funds, but shall not be paid by convention
10 committees. Finally, the new provisions expressly prohibiting certain expenses to host
11 committees and municipal funds would appear in 11 CFR 9008.52(c) under Alternative A
12 and in 11 CFR 9008.17(d) under Alternative B.

13 Please note that under Alternative B, 11 CFR 9008.52 and 9008.53 would be
14 revised to cross reference to the appropriate provisions of the new section 9008.17; the
15 Alternative B version of sections 9008.52 and 9008.53 is not set out in the proposed
16 regulations that follow. The Commission seeks comment on the two different
17 organization schemes for permissible host committee and municipal fund expenses.

18 VII. Definition of “Local” Businesses, Labor Organizations, Other Organizations, and
19 Individuals

20 Commission regulations currently permit host committees and municipal funds to
21 receive donations from local businesses, local labor organizations, and other local
22 organizations or individuals who maintain a local residence or who work for a local
23 business, local labor organization, or local organization. 11 CFR 9008.52(c)(1) and

1 9008.53(b)(1). Frequently, the Commission has been called upon to determine whether a
2 particular individual, corporation, labor organization, or other organization qualifies as
3 "local" within the meaning of 11 CFR 9008.52(c)(1) and 9009.53(b). These often entail
4 difficult and seemingly arbitrary distinctions. For example, does the presence of a single
5 employee working from a home-based office constitute a business's local office under
6 section 9008.52 and section 9008.53?

7 Given the Commission's proposal to tighten the restrictions that prohibit host
8 committees and municipal funds from paying expenses that have primarily a political,
9 rather than commercial, purpose, the Commission is considering whether it remains
10 necessary to focus on the source of host committee and municipal fund donations.
11 Accordingly, the Commission proposes to delete the requirements in 11 CFR
12 9008.52(c)(1) (host committees) and 11 CFR 9008.53(b)(1) (municipal funds) that only
13 "local" businesses, labor organizations, other organizations, and individuals may make
14 donations to host committees and municipal funds. A conforming change would also be
15 made to 11 CFR 9008.12(b)(7). Under the Commission's proposal, any business, labor
16 organization, other organization, or individual, no matter where they are located, reside,
17 or do business, would be permitted to make donations or in-kind contributions to host
18 committees and municipal funds, provided those donations and in-kind contributions
19 comply with the restrictions prescribed in the regulations. Regardless of what it does on
20 the categories of expenses that host committees and municipal funds may pay for, should
21 the Commission abolish the locality requirement with respect to donations to host
22 committees and municipal funds? The Commission seeks public comment on this
23 approach.

1 As an alternative to deleting these “local” requirements, the Commission is
2 considering an alternative approach that would retain the requirement that only “local”
3 businesses, labor organizations, and other organizations may make donations and in-kind
4 contributions to host committees and municipal funds. Under this alternative, the
5 Commission would clarify its 1999 amendment to these regulations. The accompanying
6 Explanation and Justification explained that this language was intended to cover
7 “individuals who work for a business’s local office, or a labor organization’s local office,
8 or another organization’s local office.” Explanation and Justification of Rules Governing
9 Public Financing of Presidential Primary and General Election Candidates, 64 Fed. Reg.
10 49355, 49358 (Sept. 13, 1999). However, the regulatory text did not require that the
11 individuals work in the local office of the local organization; it only required that the
12 individuals work for an organization that had a local office, which suggested that
13 employees of a nationwide organization could donate to a host committee for any area
14 where the organization maintained a facility. Thus, under this alternative, the
15 Commission would revise the provision so that it would read “individuals . . . who work
16 for the local office of a business, labor organization, or other organization.” A third
17 alternative approach the Commission is considering is to rely exclusively on an
18 individual’s residence to determine whether the individual is local, instead of looking to
19 an individual’s employment as well. The Commission seeks comment on each of these
20 alternatives.

21 VIII. Host Committee and Municipal Fund Registration and Reporting Requirements

22 Under 11 CFR 9008.51(a)(1), host committees must register with the Commission
23 within 10 days of the date on which the party chooses the convention city. Host

1 committees must also report using FEC Form 4 to disclose all receipts and disbursements,
2 including in-kind contributions, made with respect to a national nominating convention.

3 11 CFR 9008.51(b). The initial reports are not due until the earlier of 60 days after the
4 convention or 20 days prior to the presidential general election. Id. Subsequent reports
5 are due quarterly, on the fifteenth day after the end of the quarter. 11 CFR 9008.51(b)(2).

6 A final host committee report is due ten days after it ceases reportable activity.

7 11 CFR 9008.51(b)(3). Municipal funds, in contrast, are required to file only one report,
8 which is due on the same day as the initial host committee report. 11 CFR 9008.51(c).

9 This report need list only categories of facilities and services provided for the convention
10 for disbursements and the total amounts of general revenues and private donations

11 received to defray the expenses. Id. This municipal fund reporting regime was intended
12 to strike a balance between two competing concerns: ensuring adequate public disclosure,
13 on the one hand, and avoiding the imposition of unduly burdensome requirements on

14 municipalities and other governmental entities, on the other. See Explanation and
15 Justification for Regulations on Presidential Election Campaign Fund and Financing of
16 Presidential Nominating Conventions, 59 Fed. Reg. 33606, 33614 (June 29, 1994).

17 The Commission seeks comment on several proposed revisions to these
18 registration and reporting requirements for host committees and municipal funds, as
19 described below. First, the Commission's experience has been that not all host
20 committees are established within the ten days of the date on which the party chooses the
21 convention, which is the current registration deadline. Accordingly, the Commission is
22 proposing to revise the registration deadline in 11 CFR 9008.51(a) to require registration
23 within ten days of the date on which the party chooses the convention city or ten days

1 after the host committee is formed, whichever occurs later. Revised paragraph (a) would
2 require that such registration be made by filing a Statement of Organization on FEC Form
3 1. The Commission is proposing that municipal funds be similarly treated as host
4 committees, so they would be required to register with the Commission within ten days of
5 the date on which the party chooses the convention city or ten days after the municipal
6 fund is formed, whichever occurs later. Alternatively, the Commission seeks comment
7 on whether either of the host committee or municipal fund registration deadlines should
8 be ten days after they first solicit or accept donations for convention activities, or make
9 disbursements for this purpose.

10 Second, the Commission proposes to apply the same reporting requirements that
11 currently apply to host committees to municipal funds. Currently, paragraph (b)(1) of 11
12 CFR 9008.51 requires host committees to file a post convention report with the
13 Commission on FEC Form 4. This report must be filed either 60 days following the last
14 day that the convention is officially in session or 20 days prior to the presidential general
15 election, whichever date is earlier. Currently, paragraph (b)(1) does not, however,
16 provide a date for the close of books for host committees' post-convention reports. The
17 Commission proposes to revise paragraph (b)(1) to establish this date as of 15 days prior
18 to the date of filing. This timeframe is consistent with the timeframes employed for post-
19 convention reports filed by convention committees, see 11 CFR 9008.3(b)(2)(ii), and the
20 Commission believes it should also provide sufficient time for host committees and
21 municipal funds to prepare their reports. The Commission seeks comment on this
22 approach.

1 Under current paragraph (b)(2) of 11 CFR 9008.51, host committees are required
2 to file quarterly reports if they continue to accept receipts or make disbursements after the
3 completion date of the post convention report. Host committees must continue to file
4 such reports until they cease all activity. 11 CFR 9008.51(b)(2).

5 By contrast, under current paragraph (c) of 11 CFR 9008.51, municipal funds are
6 required to file a post convention letter only rather than a post convention report on FEC
7 Form 4. The timeframe within which municipal funds have to file this letter is the same
8 as the timeframe applicable to host committees' post convention reports. Unlike host
9 committees, however, municipal funds are not required to continue filing information
10 with the Commission regarding their post convention activities, even if they accept
11 receipts or make disbursements after the completion date of the post convention letter.

12 Given that the Commission is proposing to permit municipal funds to accept
13 donations and make disbursements on the same terms as host committees, the
14 Commission believes that it is necessary to apply the same reporting requirements to
15 municipal funds that currently apply to host committees. Moreover, the Commission
16 proposes to require continuing reporting in order to ensure that the reported information
17 is "complete" as required by 2 U.S.C. 437(1). Accordingly, the Commission proposes to
18 change paragraph (b) of 11 CFR 9008.51 to make the same reporting requirements apply
19 to municipal funds as apply to host committees. As a conforming amendment, the
20 Commission proposes to delete paragraph (c) of 11 CFR 9008.51, which sets forth the
21 current municipal fund reporting requirements. The Commission seeks public comment
22 on this approach, particularly on the issue of whether continuing reports are required in

1 FECA to ensure completeness or are inconsistent with FECA's reference to a singular
2 financial statement. 2 U.S.C. 437.

3 The Commission also proposes to revise paragraph (b)(1) of 11 CFR 5008.51 to
4 clarify that reports filed pursuant to the requirements of 2 U.S.C. § 437 contain the
5 information specified in Part 104, notwithstanding Part 104's references to 2 U.S.C.
6 § 434. Although host committees and municipal funds are required to report by 2 U.S.C.
7 § 437(1), and 11 CFR part 104 refers to 2 U.S.C. § 434, the Commission believes that
8 having the information presented in the same format as that of other required reports
9 would greatly aid the public disclosure of this financial activity. The Commission also
10 proposes to revise 11 CFR 107.2 to reflect the revisions made to the registration and
11 reporting requirements for host committees and municipal funds.

12 Finally, the Commission is proposing that convention committees, host
13 committees, and municipal funds be required to submit a copy of all agreements that any
14 one of those organizations makes with the city, county or State hosting the convention or
15 any of the other convention-related organizations. See new 11 CFR 9008.3(b)(ii)
16 (convention committees) and new 11 CFR 9008.51(a)(3) (host committees/municipal
17 funds). Under the Commission's proposal, any such agreements would be required to be
18 submitted along with the first required report due after the execution of the agreement.
19 Id. This would include subsequent agreements to a previous agreement. Host
20 committees and municipal funds would not be required to submit agreements made with
21 convention committees if such agreements were already submitted to the Commission by
22 the convention committee. See new 11 CFR 9008.51(a)(3).

1 The Commission is also seeking comment on which form convention committees,
2 host committees, and municipal funds should use to report to the Commission. Current
3 regulations require convention committees and host committees to use FEC Form 4 when
4 reporting to the Commission. See 11 CFR 9008.3(b)(2)(i) and 9008.51(b)(1). The
5 proposed rules that follow would maintain this requirement, in addition to requiring that
6 municipal funds also use FEC Form 4 under new 11 CFR 9008.51(b)(1). The
7 Commission is also considering eliminating this form and requiring convention
8 committees, host committees, and municipal funds to file FEC Form 3P instead. FEC
9 Form 3P is for reports of receipts and disbursements by authorized committees of
10 candidates for the Office of President or Vice President. Use of FEC Form 3P would
11 require some adaptation for the convention scenarios. The Commission seeks comment
12 on whether it should maintain its requirement of FEC Form 4, or if it should adopt FEC
13 Form 3P for convention committees, host committees, and municipal funds.

14 IX. Effective Date

15 The Commission invites comment on what the effective date should be for any
16 regulations it adopts relating to financing of the national nominating conventions.
17 Specifically, considering that efforts related to the 2004 conventions are underway,
18 should any or all changes to the Commission's regulations not become effective until the
19 2008 conventions? If certain changes are required by BCRA, which became effective on
20 November 5, 2002, does the Commission have the flexibility to postpone the effective
21 date until after the 2004 conventions have been held? Can the Commission have final
22 regulations effective, but not enforce them until the 2008 conventions? Alternatively,
23 should any arrangements that were memorialized in a written contract by a convention

1 committee, host committee or municipal fund prior to the effective date of the regulatory
2 changes be subject to the regulations in effect at the contract's execution? For example,
3 in September 1999, the Commission declined to modify existing regulations regarding the
4 division of expenses between convention committees and host committees and stated it
5 was doing so "given that the party committees have already entered into contractual
6 agreements with the sites selected." Explanation and Justification for Public Financing of
7 Presidential Primary and General Election Candidates, 64 Fed. Reg. 49355, 49358 (Sept.
8 13, 1999). The Commission also seeks comments on alternative approaches to the
9 effective date issue.

Certification of No Effect Pursuant to 5 U.S.C. § 605(b)

[Regulatory Flexibility Act]

The attached proposed rules, if promulgated, 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 these proposals, which apply only to presidential candidates and their campaign committees. Presidential candidates, their committees and national party committees are not small entities. Most of these presidential campaigns receive full or partial funding from the Federal Government, and are subsequently audited by the Commission. The Commission reviews these rules every four years to reflect its experience in the previous presidential campaign. These rules propose no sweeping changes, and are largely intended to simplify this process. Many expand committee options; several are technical; and others codify past Commission practice. Those few proposals that might increase the cost of compliance by small entities would not do so in such an amount as to cause a significant economic impact.

List of Subjects

11 CFR Part 104

Campaign funds, political committees and parties, reporting and recordkeeping requirements

11 CFR Part 107

Campaign funds, political committees and parties, reporting and recordkeeping requirements

11 CFR Part 9003

Campaign funds, reporting and recordkeeping requirements

- 1 11 CFR Part 9004
- 2 Campaign funds
- 3 11 CFR Part 9008
- 4 Campaign funds, political committees and parties, reporting and recordkeeping
- 5 requirements
- 6 11 CFR Part 9032
- 7 Campaign funds
- 8 11 CFR Part 9033
- 9 Campaign funds, reporting and recordkeeping requirements
- 10 11 CFR Part 9034
- 11 Campaign funds
- 12 11 CFR Part 9035
- 13 Campaign funds
- 14 11 CFR Part 9036
- 15 Administrative practice and procedure, campaign funds, reporting and recordkeeping
- 16 requirements
- 17 11 CFR Part 9038
- 18 Administrative practice and procedure, campaign funds
- 19

For the reasons set out in the preamble, it is proposed to amend Subchapters A, E and F of Chapter I of title 11 of the Code of Federal Regulations as follows:

PART 104 – REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

1. 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, and 441a.

2. Section 104.5 would be amended by:

- a. Revising paragraph (b)(1)(i)(C);
- b. Revising paragraph (b)(1)(ii); and
- c. Revising paragraph (b)(2).

Revisions are to read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) In lieu of the monthly reports due in November and

December, a pre- election report shall be filed as prescribed

at ~~11 CFR 104.5(a)(1)(i)~~, paragraph (a)(2)(i) of this section,

a post-general election report shall be filed as prescribed at

~~11 CFR 104.5(a)(1)(ii)~~ paragraph (a)(2)(ii) of this section,

and a year-end report shall be filed no later than January 31

of the following calendar year.

(ii) If on January 1 of the election year, the committee does not anticipate receiving ~~and~~ has not received contributions aggregating \$100,000 ~~and~~ does not anticipate making ~~and~~ has not made expenditures aggregating \$100,000, the committee shall file a preelection report or reports, a post general election report and, quarterly reports, as prescribed in ~~11 CFR 104.5(a)(1)~~ paragraphs (a)(1) and (2) of this section.

* * * * *

(2) Non-election year reports. During a non-election year, the treasurer shall file either (i) monthly reports as prescribed ~~by paragraph at 11 CFR 104.5~~ (b)(1)(i) of this section; or (ii) quarterly reports as prescribed ~~by paragraph at 11 CFR 104.5(a)(1) of this section.~~ A principal campaign committee of a presidential candidate reporting under paragraph (b)(2) of this section may elect to change the frequency of its reporting from monthly to quarterly or vice versa during a non-election year only after notifying the Commission in writing of its intention at the time it files a required report under its current filing frequency. The committee will then be required to file the next required report under its new filing frequency. The committee may change its filing frequency no more than once per calendar year.

* * * * *

PART 107 – PRESIDENTIAL NOMINATING CONVENTION, REGISTRATION AND REPORTS

3. The authority citation for part 107 would continue to read as follows:

Authority: 2 U.S.C. 437, 438(a)(8).

4. Section 107.2 would be revised to read as follows:

§ 107.2 Registration and reports by host committees and ~~committees, organizations or other groups representing a state, city or other local government agency~~ municipal funds.

Each host committee and ~~each committee or other organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention,~~ municipal fund shall register and report in accordance with 11 CFR 9008.51. The reports shall contain the information specified in 11 CFR part 104.

PART 9003 – ELIGIBILITY FOR PAYMENTS

5. The authority for part 9003 would continue to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

6. Section 9003.3 would be amended by:

- a. Revising the introductory language in paragraph (a)(1)(i);
- b. Revising paragraph (a)(1)(i)(C);
- c. Revising paragraph (a)(1)(v);
- d. Revising paragraph (a)(2)(i)(D);
- e. Revising paragraph (a)(2)(i)(G);
- f. Revising paragraph (a)(2)(i)(H);
- g. Adding new paragraph (a)(2)(i)(I);
- h. Revising paragraph (a)(2)(iii); and
- i. Revising paragraph (a)(2)(iv).

Revisions and additions are to read as follows:

§ 9003.3 Allowable contributions; General election legal and accounting compliance fund.

(a) * * *

(1) * * *

(i) A major party candidate, or an individual who is seeking the nomination of a major party, may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A general election legal and accounting compliance fund ("GELAC") may be established by such individual prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States. Before June 1 of the calendar year in which a Presidential general election is held, contributions may only be deposited in the GELAC if they are made for the primary and exceed the contributor's contribution limits for the primary and are lawfully redesignated by the contributor for the GELAC pursuant to 11 CFR 110.1.

* * *

(C) Contributions shall be deposited in the GELAC only if they are designated in writing for the GELAC, or transferred pursuant to paragraph (a)(1)(ii), (iii), (iv) or (v) of this section. Any contribution which otherwise could be

1 matched pursuant to 11 CFR 9034.2 shall not be considered
 2 designated in writing for the GELAC unless the contributor
 3 specifically redesignates it for the GELAC ~~or unless~~, it is
 4 accompanied by a proper designation for the GELAC, or it
 5 meets the requirements of 11 CFR 110.1(b)(5)(ii)(B). Any
 6 contribution that is designated in writing or redesignated for
 7 the GELAC shall not be matched pursuant to 11 CFR
 8 9034.2.

9 * * * * *

10 (v) Contributions made with respect to the primary election that
 11 exceed the contributor's limit for the primary election may be
 12 redesignated for the GELAC and transferred to the GELAC if the
 13 candidate ~~obtains the contributor's redesignation~~ on the contribution
 14 for the GELAC in accordance with 11 CFR 110.1.

15 * * * * *

16 (2) * * *

17 (i) * * *

18 (D) To make repayments under 11 CFR 9007.2, 9038.2, or
 19 9038.3;

20 * * * * *

21 (G) To make a loan to an account established pursuant to 11
 22 CFR 9003.4 to defray qualified campaign expenses
 23 incurred prior to the expenditure report period or prior to

1 receipt of Federal funds, provided that the amounts so
 2 loaned are restored to the GELAC; and

- 3 (H) To defray unreimbursed costs incurred in providing
 4 transportation and services for the Secret Service and
 5 national security staff pursuant to 11 CFR 9004.6-; and
 6 (I) To defray winding down expenses for legal and accounting
 7 compliance activities incurred after the end of the
 8 expenditure report period by either the candidate's primary
 9 election committee, general election committee, or both
 10 committees. For purposes of this section, 100% of salary,
 11 overhead and computer expenses incurred after the end of
 12 the expenditure report period shall be considered winding
 13 down expenses for legal and accounting compliance
 14 activities payable from GELAC funds, and will be
 15 presumed to be solely to ensure compliance with 2 U.S.C.
 16 431 et seq. and 26 U.S.C. 9001 et seq.

17 * * * * *

- 18 (iii) Amounts paid from the GELAC for the purposes permitted by
 19 paragraphs (a)(2)(i) (A) through (F), ~~and (H)~~ and (I) of this section
 20 shall not be subject to the expenditure limits of 2 U.S.C. 441a(b)
 21 and 11 CFR 110.8. (See also 11 CFR 100.146.) When the
 22 proceeds of loans made in accordance with paragraph (a)(2)(i)(G)

of this section are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

- (iv) Contributions to ~~under~~ funds deposited in the GELAC may not be used to retire debts remaining from the presidential primaries, except that, if after payment of all expenses set out in paragraph (a)(2)(i) of this section, and the completion of the audit and repayment process, including the making of all repayments owed to the United States Treasury by both the candidate's primary and general election committees, ~~there are excess campaign funds, such~~ funds remaining in the GELAC may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts.

* * * * *

7. Section 9003.5 would be amended by adding new paragraph (b)(4), to read as follows:

§ 9003.5 Documentation of disbursements.

* * * * *

(b) Documentation required.

* * * * *

- (4) The documentation requirements of 11 CFR 102.9(b) shall also apply to disbursements.

* * * * *

**PART 9004 – ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS;
USE OF PAYMENTS**

8. The authority citation for part 9004 would continue to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

9. Section 9004.4 would be amended by:

- a. Revising the section heading;
- b. Revising paragraph (a)(3);
- c. Revising paragraph (a)(4);
- d. Removing paragraph (a)(4)(i);
- e. Revising and redesignating paragraph (a)(4)(ii) as paragraph (a)(5);
- f. Redesignating paragraph (a)(5) as paragraph (a)(6); and
- g. Revising paragraph (b)(3).

Revisions, removals, and redesignations are to read as follows:

§ 9004.4 Use of payments; examples of qualified campaign expenses and non-qualified campaign expenses.

(a) * * *

(3) To restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period;

(4) To defray winding down costs pursuant to 11 CFR 9004.11; and

(5) To defray costs associated with the candidate's general election campaign paid after the end of the expenditure report period, but and incurred by the candidate prior to the end of the expenditure report period, for which

written arrangement or commitment was made on or before the close of the expenditure report period.

* * *

(b) * *

(3) Expenditures incurred after the close of the expenditure report period.

Except for accounts payable costs pursuant to 11 CFR 9004.4(a)(5) and

winding down cost pursuant to 11 CFR 9004.11, Any expenditures

incurred after the close of the expenditure report period, as defined in

11 CFR 9002.12, are not qualified campaign expenses ~~except to the extent~~

~~permitted under 11 CFR 9004.4(a)(4).~~

* * *

10. Section 9004.9 would be amended by revising paragraph (a)(4) to read as follows:

§ 9004.9 Net Outstanding Qualified Campaign Expenses.

(a) * *

(4) The amount submitted as an estimate of necessary winding down costs under paragraph (a)(1)(iii) of this section shall be broken down by expense category and quarterly or monthly time period. This breakdown shall include estimated costs for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing and storage. The breakdown shall estimate the costs that will be incurred in each category from the time the statement is submitted until the expected

~~termination of the committee's political activity~~ end of the winding down
period.

* * * *

11. New section 9004.11 would be added, to read as follows:

§ 9004.11 Winding Down Costs.

(a) Winding down costs. Winding down costs are costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies. Winding down costs shall be considered qualified campaign expenses.

(b) Winding down period. The candidate may use public funds to pay for winding down costs only until the end of the winding down period. The winding down period begins on the day following the last day of the expenditure report period and continues until no earlier than:

(i) 30 days after the candidate's receipt of a Commission audit report that does not contain a repayment determination;

(ii) 60 days after service of notice to the candidate of a Commission repayment determination if the candidate does not file a request for an administrative review of the repayment determination; or

(iii) 30 days after service of notice to the candidate of the Commission's post-administrative review repayment determination or 30 days after service of notice of other final action concerning the administrative review.

(c) Winding down limitation. The total amount of winding down costs that may be paid for with public funds shall not exceed the lesser of:

(i) 2.5% of the expenditure limitation pursuant to 11 CFR 110.8(a)(2); or

(ii) 2.5% of the total of:

(A) The candidate's expenditures subject to the expenditure limitation as of the end of the expenditure report period; plus

(B) The candidate's expenses exempt from the expenditure limitation as of the end of the expenditure report period; except that

(C) The winding down limitation shall be no less than \$100,000.

(d) Allocation of primary and general election winding down costs. A candidate who runs in both the primary and general election may divide winding down expenses between his or her primary and general election committees using any allocation method, including payment of 100% of these expenses by the primary or general election committee.

PART 9008 – FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

12. The authority citation for Part 9008 would be revised to read as follows:

Authority: 2 U.S.C. 437, 438(a)(8), 441j; 26 U.S.C. 9008, 9009(b).

13. Section 9008.3 would be amended by adding new paragraph (b)(1) and redesignating paragraph (b)(1)(ii) as paragraph (b)(1)(iii), to read as follows:

§ 9008.3 Eligibility for payments; registration and reporting.

* * * * *

(b) * * *

(1) * * *

(ii) Each convention committee established by a national committee under paragraph (a)(2) of this section shall submit to the Commission a copy of any and all signed agreements that the convention committee has entered into with the city, county, or State hosting the convention, a host committee, or a municipal fund, including subsequent modifications to previous agreements. Each such agreement or modification shall be filed along with the first report due under paragraph (b)(2) of this section after the agreement or modification is executed.

14. In section 9008.7, paragraph (a)(4) would be revised to read as follows:

§ 9008.7 Use of funds.

(a) * * *

(4) "Convention expenses" include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities.

* * *

~~Such expenses include, but are not limited to:~~

~~(i) Expenses for preparing, maintaining, and dismantling the physical site of the convention, including rental of the hall, platforms and~~

1 ~~seating, decorations, telephones, security, convention hall utilities,~~
2 ~~and other related costs;~~

3 (ii) ~~Salaries and expenses of convention committee employees,~~
4 ~~volunteers and similar personnel, whose responsibilities involve~~
5 ~~planning, management or otherwise conducting the convention;~~

6 (iii) ~~Salary or portion of the salary of any national committee employee~~
7 ~~for any period of time during which, as a major responsibility, that~~
8 ~~employee performs services related to the convention;~~

9 (iv) ~~Expenses of national committee employees, volunteers or other~~
10 ~~similar personnel if those expenses were incurred in the~~
11 ~~performance of services for the convention in addition to the~~
12 ~~services normally rendered to the national committee by such~~
13 ~~personnel;~~

14 (v) ~~Expenses for conducting meetings of or related to committees~~
15 ~~dealing with the conduct and operation of the convention, such as~~
16 ~~rules, credentials, platform, site, contests, call, arrangements and~~
17 ~~permanent organization committees, including printing materials~~
18 ~~and rental costs for meeting space.~~

19 (vi) ~~Expenses incurred in securing a convention city and facility;~~

20 (vii) ~~Expenses incurred in providing a transportation system in the~~
21 ~~convention city for use by delegates and other persons attending or~~
22 ~~otherwise connected with the convention;~~

1 ~~(viii) Expenses for entertainment activities which are part of the official~~
2 ~~convention activity sponsored by the national committee, including~~
3 ~~but not limited to dinners, concerts, and receptions; except that~~
4 ~~expenses for the following activities are excluded:~~

5 ~~(A) Entertainment activities sponsored by or on behalf of candidates~~
6 ~~for nomination to the office of President or Vice President, or State~~
7 ~~delegations;~~

8 ~~(B) Entertainment activities sponsored by the national committee if the~~
9 ~~purpose of the activity is primarily for national committee~~
10 ~~business, such as fund raising events, or selection of new national~~
11 ~~committee officers;~~

12 ~~(C) Entertainment activities sponsored by persons other than the~~
13 ~~national committee; and~~

14 ~~(D) Entertainment activities prohibited by law;~~

15 ~~(ix) Expenses for printing convention programs, a journal of~~
16 ~~proceedings, agendas, tickets, badges, passes, and other similar~~
17 ~~publications;~~

18 ~~(x) Administrative and office expenses for conducting the convention,~~
19 ~~including stationery, office supplies, office machines, and~~
20 ~~telephone charges; but excluded from these expenses are the cost~~
21 ~~of any services supplied by the national committee at its~~
22 ~~headquarters or principal office if such services are incidental to~~
23 ~~the convention and not utilized primarily for the convention;~~

(xi) ~~Payment of the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses;~~

(xii) ~~Expenses for gifts or monetary bonuses for national committee or convention committee employees, volunteers and convention officials in recognition for convention related activities or services, provided that the gifts and bonuses do not exceed \$150 total per individual, and the total for all gifts and bonuses does not exceed \$20,000; and~~

(xiii) ~~Expenses for producing biographical films, or similar materials, for use at the convention, about candidates for nomination or election to the office of President or Vice President, but any other political committee(s) that use part or all of the biographical films or materials shall pay the convention committee for the reasonably allocated cost of the biographical films or materials used.~~

15. Section 9008.8 would be amended by revising the paragraph heading for paragraph (b)(2) and revising paragraph (b)(2) to read as follows:

§ 9008.8 Limitation of expenditures.

* * * *

(b) * * *

(2) Expenditures by government agencies and municipal corporations funds.

Expenditures made by government agencies and municipal corporations funds shall not be considered expenditures by the national committee and

shall not count against the expenditure limitations of this section if the funds are spent in accordance with the requirements of 11 CFR 9008.53.

* * * * *

16. Section 9008.10 would be amended by revising the introductory language to read as follows:

§ 9008.10 Documentation of disbursements; net outstanding convention expenses.

In addition to the requirements set forth at 11 CFR 102.9(b), ~~The~~ convention committee must include as part of the evidence of convention expenses the following documentation:

* * * * *

17. Section 9008.9 would be revised to read as follows:

§ 9008.9 Receipt of goods and services from commercial vendors.

(a) Standard reductions or discounts. A ~~Commercial~~ vendors may sell, lease, rent or provide goods or services to the national committee with respect to a Presidential nominating convention at reduced or discounted rates, ~~or at no charge,~~ provided that the ~~requirements of either paragraph (a), paragraph (b), or paragraph (c) of this section are met~~ it does so in the ordinary course of business. A reduction or discount shall be considered in the ordinary course of business if the commercial vendor has an established practice of providing the same reductions or discounts for the same amount of its goods or services to non-political clients, or if the reduction or discount is consistent with established practice in the commercial vendor's trade or industry. Examples of reductions or discounts made in the ordinary course of business include standard volume discounts and reduced rates for corporate, governmental or preferred customers. Reductions or

discounts provided under this section need not be reported. For purposes of this section,
commercial vendor has the same meaning as provided in 11 CFR 116.1(c).

~~(a) — Standard reductions or discounts. A commercial vendor may provide reductions or discounts in the ordinary course of business. A reduction or discount shall be considered in the ordinary course of business if the commercial vendor has an established practice of providing the same reductions or discounts for the same amount of its goods or services to non-political clients, or if the reduction or discount is consistent with established practice in the commercial vendor's trade or industry. Examples of reductions or discounts made in the ordinary course of business include standard volume discounts and reduced rates for corporate, governmental or preferred customers. Reductions or discounts provided under paragraph (a) of this section need not be reported.~~

~~(b) Items provided for promotional consideration.~~

~~(1) — A commercial vendor may provide goods or services in exchange for promotional consideration provided that doing so is in the ordinary course of business.~~

~~(2) — The provision of goods or services shall be considered in the ordinary course of business under this paragraph:~~

~~(i) — If the commercial vendor has an established practice of providing goods or services on a similar scale and on similar terms to non-political clients, or~~

~~(ii) — If the terms and conditions under which the goods or services are provided are consistent with established practice in the commercial vendor's trade or industry in similar circumstances.~~

1 ~~(3) — In all cases, the value of the goods or services provided shall not exceed~~
 2 ~~the commercial benefit reasonably expected to be derived from the unique~~
 3 ~~promotional opportunity presented by the national nominating convention.~~

4 ~~(4) — The convention committee shall maintain documentation showing: the~~
 5 ~~goods or services provided; the date(s) on which the goods or services~~
 6 ~~were provided, the terms and conditions of the arrangement; and what~~
 7 ~~promotional consideration was provided. In addition, the convention~~
 8 ~~committee shall disclose in its report covering the period the goods or~~
 9 ~~services are received, in a memo entry, a description of the goods or~~
 10 ~~services provided for promotional consideration, the name and address of~~
 11 ~~the commercial vendor, and the dates on which the goods or services were~~
 12 ~~provided (e.g., "Generic Motor Co., Detroit, Michigan—ten automobiles~~
 13 ~~for use 7/15–7/20, received on 7/14", or "Workers Inc., New York, New~~
 14 ~~York—five temporary secretarial assistants for use 8/1–8/30, received on~~
 15 ~~8/1").~~

16 ~~(e) Items of de minimis value. Commercial vendors (including banks) may sell at nominal~~
 17 ~~cost, or provide at no charge, items of de minimis value, such as samples, discount~~
 18 ~~coupons, maps, pens, pencils, or other items included in tote bags for those attending the~~
 19 ~~convention. The items of de minimis value may be distributed by or with the help of~~
 20 ~~persons employed by the commercial vendor, or employed by or volunteering for the~~
 21 ~~national party or a host committee. The value of the items of de minimis value provided~~
 22 ~~under this paragraph need not be reported.~~

1 ~~(b)(4)~~ Expenditure Limits. The value of goods or services provided pursuant to this
 2 section will not count toward the national party's expenditure limitation under 11 CFR
 3 9008.8(a).

4 18. 11 CFR 9008.12(b) would be amended by revising paragraph (7) and adding new
 5 paragraph (8), to read as follows:

6 **§ 9008.12 Repayments.**

7 * * * * *

8 (b) * * *

9 (7) The Commission may seek repayment, or may initiate an enforcement
 10 action, if the convention committee knowingly helps, assists or
 11 participates in the making of a convention expenditure by the host
 12 committee, ~~government agency or municipal corporation which fund that~~
 13 is not in accordance with 11 CFR 9008.52 or 9008.53, or the acceptance of
 14 a contribution by the host committee or ~~government agency or municipal~~
 15 ~~corporation fund~~ from an impermissible source, ~~such as a nonlocal~~
 16 business.

17 (8) No offsets. If a host committee or municipal fund makes an in-kind
 18 donation to a convention committee that is not permitted under
 19 11 CFR 9008.52 or 9008.53, the convention committee shall not be
 20 permitted to offset that impermissible in-kind donation with convention
 21 committee expenditures that could have been paid by the host committee
 22 or municipal fund in order to reduce or eliminate a repayment by the
 23 convention committee.

1 * * * *

2 ALTERNATIVE B:

3 19. Part 9008 would be amended by adding new section 9008.17, to read as follows:

4 **§ 9008.17 Payment for Convention and Host Committee or Municipal Fund**
5 **Expenses.**

6 (a) Convention expenses include all expenses incurred by or on behalf of a political
7 party's national committee or convention committee with respect to and for the purpose
8 of conducting a presidential nominating convention or convention-related activities. The
9 following convention expenses may be paid by the convention committee, but shall not
10 be paid by the host committee or municipal fund:

11 (1) Salaries and expenses of convention committee employees, volunteers and
12 similar personnel, whose responsibilities involve planning, management or
13 otherwise conducting the convention;

14 (2) Salary or portion of the salary of any national committee employee for any
15 period of time during which, as a major responsibility, that employee
16 performs services related to the convention;

17 (3) Expenses of national committee employees, volunteers or other similar
18 personnel if those expenses were incurred in the performance of services
19 for the convention in addition to the services normally rendered to the
20 national committee by such personnel;

21 (4) Expenses for conducting meetings of or related to committees dealing with
22 the conduct and operation of the convention, such as rules, credentials,
23 platform, site, contests, call, arrangements and permanent organization

1 committees, including printing materials and rental costs for meeting
2 space;

3 (5) Expenses for entertainment activities which are part of the official
4 convention activity sponsored by the national committee, including but not
5 limited to dinners, concerts, and receptions; except that expenses for the
6 following activities are excluded:

7 (i) Entertainment activities sponsored by or on behalf of candidates
8 for nomination to the office of President or Vice President, or State
9 delegations;

10 (ii) Entertainment activities sponsored by the national committee if the
11 purpose of the activity is primarily for national committee
12 business, such as fund-raising events, or selection of new national
13 committee officers;

14 (iii) Entertainment activities sponsored by persons other than the
15 national committee; and

16 (iv) Entertainment activities prohibited by law;

17 (6) Expenses for printing convention programs, a journal of proceedings,
18 agendas, and other similar publications;

19 (7) Administrative and office expenses for conducting the convention,
20 including stationery, office supplies, office machines, and telephone
21 charges; but excluded from these expenses are the cost of any services
22 supplied by the national committee at its headquarters or principal office if

1 such services are incidental to the convention and not utilized primarily for
2 the convention;

3 (8) Payment of the principal and interest, at a commercially reasonable rate,
4 on loans the proceeds of which were used to defray convention expenses;

5 (9) Expenses for gifts or monetary bonuses for national committee or
6 convention committee employees, volunteers and convention officials in
7 recognition for convention-related activities or services, provided that the
8 gifts and bonuses do not exceed \$150 total per individual, and the total for
9 all gifts and bonuses does not exceed \$20,000;

10 (10) Expenses for producing biographical films, or similar materials, for use at
11 the convention, about candidates for nomination or election to the office of
12 President or Vice President, but any other political committee(s) that use
13 part or all of the biographical films or materials shall pay the convention
14 committee for the reasonably allocated cost of the biographical films or
15 materials used; and

16 (11) To defray any expenses related to creating, producing, or directing
17 convention proceedings, such as directors, producers, and writers.

18 (b) The following expenses may be paid by the convention committee, host
19 committee, or municipal fund. Convention committees, host committees, and municipal
20 funds may use donated funds and in-kind donations they have received for the following
21 purposes:

22 (1) To defray those expenses incurred for the purpose of promoting or
23 evaluating the suitability of the city as a convention site, including

1 accommodations and hospitality for officials and employees of the
2 convention and national party committees who are responsible for
3 choosing the sites of the conventions;

4 (2) To provide the convention committee use of an auditorium or convention
5 center and to provide construction and related services for that location to
6 design, create, or install the physical or technological infrastructure for the
7 conduct of the convention, such as: construction of podiums; press
8 facilities; seating; lighting equipment; electrical systems; air conditioning
9 systems; loudspeaker and other communication systems; computer
10 networks; office facilities; office equipment; and other expenses for
11 preparing, maintaining, or dismantling the physical site of the convention,
12 including convention hall utilities;

13 (3) To defray the costs of various local transportation services that are widely
14 available to convention delegates and other individuals attending the
15 convention, including the provision of buses and automobiles;

16 (4) To defray the costs of law enforcement and other security services,
17 facilities, and personnel, including tickets, badges, and passes;

18 (5) To defray the cost of using convention bureau personnel to provide central
19 housing and reservation services; and

20 (6) To provide hotel rooms at no charge or a reduced rate on the basis of the
21 number of rooms actually booked for the convention.

22 (c) The following expenses may be paid by the host committee or municipal fund, but
23 shall not be paid by the convention committee. Convention committees are also

1 prohibited from using public funds as specified in 11 CFR 9008.7(b). Host committees
2 and municipal funds may use donated funds and in-kind donations they have received for
3 the following purposes:

4 (1) To defray those expenses incurred in facilitating commerce, such as
5 providing the convention attendees with shopping and entertainment
6 guides and distributing the samples and promotional material specified in
7 11 CFR 9008.52(a);

8 (2) To defray those expenses incurred for welcoming the convention attendees
9 to the city, such as expenses for information booths, receptions, and tours;
10 and

11 (3) To defray the host committee's administrative expenses incurred by the
12 host committee, such as host committee employee compensation and
13 expense reimbursement, host committee office rent, and host committee
14 liability insurance.

15 (d) Prohibited uses of donations received by host committees and municipal funds.
16 Host committees and municipal funds shall not use donated funds or in-kind donations in
17 connection with a national nominating convention for the following purposes:

18 (1) To provide anything of value to a convention committee, a national
19 political party committee, or any other political committee, except as
20 expressly permitted by paragraphs (b) and (c) of this section; or

21 (2) To defray any expenses related to creating, producing, or directing
22 convention proceedings, such as directors, producers, and writers.

20. The title of Subpart B of Part 9008 would be revised to read as follows:

SUBPART B--HOST COMMITTEES AND MUNICIPAL FUNDS
~~REPRESENTING A CONVENTION CITY; CONVENTION EXPENDITURES BY~~
~~GOVERNMENT AGENCIES AND MUNICIPAL CORPORATIONS~~

Section 9008.50 would be amended by:

- a. Revising the title;
- b. Redesignating the current language as paragraph (a);
- c. Adding new paragraph (b); and
- d. Adding new paragraph (c).

The revisions, redesignations, and additions are to read as follows:

§ 9008.50 Scope and definitions.

(a) Scope. Subpart B governs registration and reporting by host committees and
municipal funds representing convention cities ~~and by government agencies and~~
~~municipalities~~. Unsuccessful efforts to attract a convention need not be reported by any
city, committee or other organization. Subpart B also describes permissible sources of
funds and other permissible donations to host committees, ~~government agencies, and~~
~~municipal corporations~~ funds. In addition, subpart B describes permissible disbursements
by host committees and municipal funds to defray convention expenses and to promote
the convention city and its commerce.

(b) Definition of host committee. A host committee includes any local organization,
such as a local civil association, business league, chamber of commerce, real estate board,
board of trade, or convention bureau that satisfies all of the following conditions:

- (1) It is not organized for profit;

(2) Its net earnings do not inure to the benefit of any private shareholder or individual; and

(3) Its principal purpose is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees.

(c) Definition of municipal fund. A municipal fund is any separate fund or account of a government agency, municipality, or municipal corporation whose principal purpose is the encouragement of commerce in the municipality and whose receipt and use of funds is subject to control of officials of the State or local government.

22. Section 9008.51 would be amended by:

- a. Revising the paragraph heading for paragraph (a);
- b. Revising paragraph (a)(1);
- c. Adding paragraph (a)(3);
- d. Revising paragraph (b); and
- e. Deleting paragraph (c).

The revisions, additions, and deletions are to read as follows:

§ 9008.51 Registration and reports.

(a) Registration by host committees and municipal funds.

- (1) Each host committee and municipal fund ~~including a host committee, other organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention~~ shall register with the

Commission ~~on the Convention Registration Form~~ by filing a Statement of Organization on FEC Form 1 within 10 days of the date on which such party chooses the convention city, or within 10 days after the formation of the host committee or municipal fund, whichever is later. In addition to the information already required to be provided on FEC Form 1, the ~~The~~ following information shall be ~~required of the registrant~~ disclosed by the registering entity on FEC Form 1: the name and address; the name and address of its officers; and a list of the activities that the registering entity plans to undertake in connection with the convention.

* * * * *

(3) Each host committee and municipal fund required to register with the Commission under paragraph (a) of this section, shall submit to the Commission a copy of any and all signed agreements that they have entered into with the city, county, or State hosting the convention, a host committee, a municipal fund, or a convention committee, including subsequent modifications o previous agreements, unless such agreements or modifications have already been submitted to the Commission by the convention committee. Each such agreement or modification shall be filed along with the first report due under paragraph (b) of this section after the agreement or modification is executed.

(b) Post-convention and quarterly reports by host committees and municipal funds; content and time of filing.

- (1) Each ~~host committee, organization or group~~ committee or municipal fund required to register with the Commission pursuant to paragraph (a) of ~~under~~ this section shall file a post convention report ~~with the Commission~~ on FEC Form 4. The report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. This report shall be complete as of 15 days prior to the date on which the report must be filed and shall disclose all the information required by 11 CFR part 104 ~~receipts and~~ ~~disbursements, including in-kind contributions, made with respect to a~~ all activities related to a presidential nominating convention.
- (2) If such ~~host committee or municipal fund~~ organization or group has receipts or makes disbursements after the completion date of the post convention report, it shall begin to file quarterly reports no later than 15 days after the end of the following calendar quarter. This report shall disclose all transactions completed as of the close of that calendar quarter. Quarterly reports shall be filed thereafter until the host committee or municipal fund ceases all activity ~~which~~ that must be reported under this section.
- (3) Such ~~host committee, organization or group~~ or municipal fund shall file a final report with the Commission not later than 10 days after it ceases activity that must be reported under this section, unless such status is reflected in either the post-convention report or a quarterly report.

~~(e) — Registration and post-convention statements by municipalities and local government agencies. Each organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention shall file, by letter, a statement with the Commission reporting the total amount spent to provide facilities and services for the convention under 11 CFR 9008.53(e), a list of the categories of facilities and services the municipality or government agency provided for the convention, the total amount spent for each category of facilities and services provided, the total amount defrayed from general revenues, and the total amount of all private donations received to defray these expenses. This statement shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. Categories of facilities and services may include construction, security, communications, transportation, utilities, clean up, meeting rooms and accommodations.~~

ALTERNATIVE A:

23. Section 9008.52 would be revised to read as follows:

§ 9008.52 Receipts and disbursements of host committees.

(a) ~~Definition of host committee. A host committee includes any local organization, such as a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention bureau. Which is not organized for profit; whose net earnings do not inure to the benefit of any private shareholder or individual; and whose principal objective is the encouragement of commerce in the convention city, as well as~~

1 the projection of a favorable image of the city to convention attendees. A host committee
2 must register in accordance with 11 CFR 9008.51.

3 (b) — Receipt of goods or services from commercial vendors. Host committees may
4 accept goods or services from commercial vendors under the same terms and conditions
5 (including reporting requirements) set forth at 11 CFR 9008.9 for convention committees.

6 (1) Definition of "commercial vendor." For purposes of this section,
7 commercial vendor has the same meaning as provided in 11 CFR 116.1(c).

8 (2) Standard reductions or discounts. Commercial vendors may sell, lease,
9 rent or provide their goods or services to the host committee at reduced or
10 discounted rates, or at no charge, provided that they do so in the ordinary
11 course of business. A reduction or discount shall be considered in the
12 ordinary course of business if the commercial vendor has an established
13 practice of providing the same reductions or discounts for the same
14 amount of its goods or services to non-political clients, or if the reduction
15 or discount is consistent with established practice in the commercial
16 vendor's trade or industry. Examples of reductions or discounts made in
17 the ordinary course of business include standard volume discounts and
18 reduced rates for corporate, governmental or preferred customers.
19 Reductions or discounts provided under this section need not be reported.

20 (3) Items provided for promotional consideration.

21 (i) A commercial vendor may provide goods or services to a host
22 committee in exchange for promotional consideration provided that
23 doing so is in the ordinary course of business.

1 (ii) The provision of goods or services shall be considered in the
2 ordinary course of business under this paragraph:

3 (A) If the commercial vendor has an established practice of
4 providing goods or services on a similar scale and on
5 similar terms to non-political clients, or

6 (B) If the terms and conditions under which the goods or
7 services are provided are consistent with established
8 practice in the commercial vendor's trade or industry in
9 similar circumstances.

10 (iii) In all cases, the value of the goods or services provided shall not
11 exceed the commercial benefit reasonably expected to be derived
12 from the unique promotional opportunity presented by the national
13 nominating convention.

14 (iv) The host committee shall maintain documentation showing: the
15 goods or services provided; the date(s) on which the goods or
16 services were provided; the terms and conditions of the
17 arrangement; and what promotional consideration was provided.
18 In addition, the host committee shall disclose in its report covering
19 the period the goods or services are received in a memo entry, a
20 description of the goods or services provided for promotional
21 consideration, the name and address of the commercial vendor, and
22 the dates on which the goods or services was provided (e.g.,
23 "Generic Motor Co., Detroit, Michigan--ten automobiles for use

7/15-7/20, received on 7/14", or "Workers Inc., New York, New York—five temporary secretarial assistants to work 8/1-8/30, received on 8/1").

(4) Items of de minimis value. Commercial vendors (including banks) may sell at nominal cost, or provide at no charge, items of de minimis value, such as samples, discount coupons, maps, pens, pencils, or other items included in tote bags for those attending the convention. The items of de minimis value may be distributed by or with the help of persons employed by the commercial vendor, or employed by or volunteering for a host committee. The value of the items of de minimis value provided under this paragraph need not be reported.

(eb) Receipt of donations from local businesses, and organizations, and individuals.

(1) ~~Local b~~Businesses (including banks), ~~local~~ labor organizations, and other ~~local~~ organizations or individuals ~~who maintain a local residence or who work for a local business, local labor organization, or local organization~~ may donate funds or make in-kind donations to a host committee to be used only for the following purposes:

(i) ~~To defray those expenses incurred for the purpose of promoting the suitability of the city as a convention site, including (x) — To provide accommodations and hospitality for officials and employees of the convention and national party committees of the parties who are responsible for choosing the sites of the conventions;~~

(ii) To defray those expenses incurred in facilitating commerce, such as providing the convention ~~and~~ attendees with shopping and entertainment

1 guides and distributing the samples and promotional material specified in
 2 ~~11 CFR 9008.9(e)~~ paragraph (a) of this section;

3 (ii3) To defray those expenses incurred for welcoming the convention attendees
 4 to the city, such as expenses for information booths, receptions, and tours;

5 (iv4) To defray the host committee's administrative expenses incurred by the
 6 host committee, such as host committee employee compensation and
 7 expense reimbursement, salaries, host committee office rent, travel, and
 8 host committee liability insurance;

9 (v5) To provide the ~~national~~ convention committee use of an auditorium or
 10 convention center and to provide construction and ~~convention~~-related
 11 services for that location to design, create, or install the physical or
 12 technological infrastructure for the conduct of the convention, such as:
 13 construction of podiums; press ~~tables~~ facilities; false floors, camera-
 14 platforms; additional seating; lighting equipment; electrical systems; air
 15 conditioning systems; and loudspeaker and other communication systems;
 16 computer networks; office facilities; office equipment; and decorations
 17 other expenses for preparing, maintaining, or dismantling the physical site
 18 of the convention, including convention hall utilities;

19 (vi6) To defray the costs of various local transportation services that are widely
 20 available to convention delegates and other individuals attending the
 21 convention, including the provision of buses and automobiles;

(vii)7) To defray the costs of law enforcement and other security services,
facilities, and personnel, including tickets, badges, and passes necessary to
assure orderly conventions;

(viii)8) To defray the cost of using convention bureau personnel to provide central
 housing and reservation services; and;

(ix)9) To provide hotel rooms for the rate paid by the host committee, including
either at no charge or at a reduced rate on the basis of the number of rooms
actually booked for the convention.

(xi) — ~~To provide other similar convention related facilities and services.~~

(2) — ~~For purposes of this section, any business (including a branch of a national
 or regional chain, a franchise, or a licensed dealer) or labor organization or
 other organization with offices or facilities located within the Metropolitan
 Area (MA) of the convention city shall be considered local. There shall be
 a rebuttable presumption that any such entity located outside the MA is not
 local. This presumption may be rebutted by a showing that the volume of
 business or activity in an area lying outside the MA would be directly
 affected by the presence of the convention.~~

(c) Prohibited uses of donations received by host committees. Host committees shall
not use donated funds or in-kind donations in connection with a national nominating
convention for the following purposes:

(1) To provide anything of value to a convention committee, a national
political party committee, or any other political committee, except as
expressly permitted by 11 CFR 9008.52(b)(1) and (5) through (8); or

(2) To defray any expenses related to creating, producing, or directing convention proceedings, such as directors, producers, and writers.

24. Section 9008.53 would be amended by revising the title for the section, republishing the heading of paragraph (a), revising paragraph (a), and by revising paragraph (b)(1) to read as follows:

§ 9008.53 Receipts and disbursements of ~~government agencies and municipal corporations~~ funds.

(a) Receipt of goods and services provided by commercial vendors. ~~Government agencies and municipal corporations funds~~ may accept goods or services from commercial vendors for convention uses under the same terms and conditions (~~except including~~ reporting requirements) set forth at 11 CFR 9008.952 for ~~convention host~~ committees.

(b) Receipt and use of donations to a ~~separate municipal fund or account.~~

(1) ~~Local businesses~~ (including banks), ~~local labor organizations~~, and other ~~local organizations or individuals who maintain a local residence or who work for a local business, local labor organization, or local organization~~ may donate funds or make in-kind donations to a separate municipal fund or account of a government agency or municipality to pay for expenses listed in 11 CFR 9008.52(eb), provided that such funds or in-kind donations shall not be used for the expenses listed in 11 CFR 9008.52(c).

(i) ~~The fund or account is not restricted to use in connection with any particular convention; and~~

(ii) ~~Donations to the fund or account are unrestricted and are not solicited or designated for use in connection with any particular convention, event or activity.~~

(2) ~~For purposes of this section, any business (including a branch of a national or regional chain, a franchise, or a licensed dealer) or labor organization or other organization with offices or facilities located within the Metropolitan Area (MA) of the convention city shall be considered local. There shall be a rebuttable presumption that any such entity located outside the MA is not local. This presumption may be rebutted by a showing that the volume of business of activity in an area lying outside the MA would be directly affected by the presence of the convention.~~

25. Section 9008.55 would be added to read as follows:

§ 9008.55 Solicitation of non-Federal funds for host committees and municipal funds.

(a) Host committee and municipal fund payments made in compliance with this part shall be deemed disbursements in connection with a Federal election for purposes of 11 CFR part 300.

(b) Host committees and municipal funds shall not be eligible to make the certification pursuant to 11 CFR 300.11(d).

(c) Host committees and municipal funds shall not be eligible for the exception in 11 CFR 300.65.

PART 9032 – DEFINITIONS

26. The authority for part 9032 would continue to read as follows:

1 Authority: 26 U.S.C. 9032 and 9039(b).

2 27. Section 9032.9 would be amended by revising paragraph (c) to read as follows:

3 **§ 9032.9 Qualified campaign expense.**

4 * * * * *

5 (c) Except as provided in 11 CFR 9034.4(e), expenditures incurred either prior to the
 6 date the individual becomes a candidate before the beginning of the expenditure report-
 7 period or after the last day of a candidate's eligibility will be considered qualified
 8 campaign expenses if they meet the provisions of 11 CFR 9034.4(a). Expenditures
 9 described under 11 CFR 9034.4(b) will not be considered qualified campaign expenses.

10 **PART 9033 – ELIGIBILITY FOR PAYMENTS**

11 28. Authority: The authority citation for part 9033 would continue to read as follows:

12 Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

13 29. Section 9033.11 would be amended by adding new paragraph (b)(4), to read as
 14 follows:

15 **§ 9033.11 Documentation of disbursements.**

16 * * * * *

17 (b) Documentation required.

18 * * * * *

19 (4) The documentation requirements of 11 CFR 102.9(b) shall also apply to
 20 disbursements.

21 * * * * *

22 **PART 9034 – ENTITLEMENTS**

23 30. The authority citation for Part 9034 would continue to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

31. Section 9034.4 would be amended by:

- a. Revising the section heading;
- b. Revising paragraph (a)(3)(i);
- c. Revising paragraph (a)(3)(ii);
- d. Removing paragraph (a)(3)(iii);
- e. Adding paragraph (a)(6); and
- f. Revising paragraph (b)(3).

Revisions, removals, and additions are to read as follows:

§ 9034.4 Use of contributions and matching payments; examples of qualified campaign expenses and non-qualified campaign expenses.

(a) * * *

(3) * * *

- (i) ~~Costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies, shall be considered qualified campaign expenses. A candidate may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention.~~

1 Winding down costs subject to the restrictions in 11 CFR 9034.11
2 shall be considered qualified campaign expenses.

- 3 (ii) If the candidate continues to campaign after becoming ineligible
4 due to the operation of 11 CFR 9033.5(b), the candidate may only
5 receive matching funds based on net outstanding campaign
6 obligations as of the candidate's date of ineligibility. The
7 statement of net outstanding campaign obligations shall only
8 include costs incurred before the candidate's date of ineligibility
9 for goods and services to be received before the date of ineligibility
10 and for which written arrangement or commitment was made on or
11 before the candidate's date of ineligibility, and shall not include
12 winding down costs until the date on which the candidate qualifies
13 to receive winding down costs under 11 CFR 9034.11 ~~paragraph~~
14 ~~(a)(3)(i) of this section.~~ Each Contributions-contribution made,
15 dated and received after the candidate's date of ineligibility may be
16 used to continue to campaign, and may be submitted for matching
17 fund payments. ~~The candidate shall be entitled to receive the same~~
18 ~~proportion of matching funds to defray net outstanding campaign~~
19 ~~obligations as the candidate received before his or her date of~~
20 ~~ineligibility.~~ Payments from the matching payment account that
21 are received after the candidate's date of ineligibility may be used
22 to defray the candidate's net outstanding campaign obligations, but
23 shall not be used to defray any costs associated with continuing to

campaign unless the candidate reestablishes eligibility under 11
CFR 9033.8.

(iii) ~~In the case of a candidate who does not receive public funding for
the general election, for purposes of the expenditure limitations set
forth in 11 CFR 9035.1, 100% of salary, overhead and computer
expenses incurred after a candidate's date of ineligibility may be
treated as exempt legal and accounting compliance expenses
beginning with the first full reporting period after the candidate's
date of ineligibility. For candidates who continue to campaign or
re-establish eligibility, this paragraph shall not apply to expenses
incurred during the period between the date of ineligibility and the
date on which the candidate either re-establishes eligibility or
ceases to continue to campaign. For purposes of the expenditure
limitations set forth in 11 CFR 9035.1, candidates who receive
public funding for the general election must wait until the end of
the expenditure report period described in 11 CFR 9002.12 before
they may treat 100% of salary, overhead and computer expenses as
exempt legal and accounting compliance expenses.~~

* * * * *

(6) Certain expenses incurred by ineligible candidates attending
national nominating conventions.

(i) Expenses incurred by a candidate after the candidate's date
of ineligibility to conduct a specific fundraising event at a

1 national nominating convention needed to retire the
2 candidate's net outstanding campaign obligations may be
3 treated as qualified campaign expenses. The costs of the
4 candidate's travel to attend such fundraising events, as well
5 as the travel expenses of campaign staff who participate in
6 the organization and administration of such events, may be
7 treated as qualified campaign expenses. Travel costs
8 consist of transportation, hotel or other lodging, and per
9 diem subsistence for the candidate, the candidate's spouse,
10 and campaign staff and volunteers who organize or
11 administer the fundraising event. Expenses allocable to
12 participation by the candidate or campaign staff in the
13 national nominating convention, any other activities related
14 to the convention, or any other activities conducted by the
15 political party, other than such candidate fundraising
16 events, are non-qualified campaign expenses. Expenses
17 related to such a fundraising event may be treated as
18 qualified campaign expenses only to the extent that, on the
19 date of the fundraising event, the candidate has net
20 outstanding campaign obligations pursuant to 11 CFR
21 9034.1(b).

22 (ii) Expenses incurred by a candidate after the candidate's date
23 of ineligibility attributable to a meeting, reception, or other

event at a national nominating convention to thank
campaign employees, consultants and volunteers pursuant
to paragraph (a)(5) of this section, may be treated as
qualified campaign expenses so long as such a meeting,
reception or event is restricted to attendees who served the
candidate's primary campaign as employees, consultants, or
volunteers. Travel expenses for the candidate to attend
such events or for campaign staff who organize such events
at the national nominating convention are not qualified
campaign expenses.

(b) * * *

(3) General election and post-ineligibility expenditures. Except for continuing
to campaign costs and winding down costs pursuant to paragraph (a)(3) of
this section and certain convention expenses described in paragraph (a)(6)
of this section, any expenses incurred after a candidate's date of
ineligibility, as determined under 11 CFR 9033.5, are not qualified
campaign expenses. In addition, any expenses incurred before the
candidate's date of ineligibility for goods and services to be received after
the candidate's date of ineligibility, or for property, services, or facilities
used to benefit the candidate's general election campaign, are not qualified
campaign expenses.

* * * * *

32. Section 9034.5 would be amended by revising paragraph (b)(2) to read as follows:

§ 9034.5 Net Outstanding Campaign Obligations.

* * * *

(b) * * *

(2) The amount submitted as estimated necessary winding down costs under paragraph (a)(1) of this section shall be broken down by expense category and quarterly or monthly time period. This breakdown shall include estimated costs for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing and storage. The breakdown shall estimate the costs that will be incurred in each category from the time the statement is submitted until the expected termination of the committee's political activity end of the winding down period.

* * * *

33. Section 9034.10 would be added and reserved for the Commission's later use.

§ 9034.10 [Reserved].

34. New section 9034.11 would be added, to read as follows:

§ 9034.11 Winding Down Costs.

(a) Winding down costs. Winding down costs are costs associated with the termination of political activity related to a candidate's seeking his or her nomination for election, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign.

1 including office space rental, staff salaries, and office supplies. Winding down costs shall
2 be considered qualified campaign expenses.

3 (b) Winding down period. The candidate may use matching funds to pay for winding
4 down costs only until the end of the winding down period. The winding down period
5 begins on the day following the candidate's date of ineligibility for candidates who do not
6 run in the general election, or on the day following the date 30 days after the general
7 election for candidates who run in the general election, and continues until no earlier
8 than:

9 (i) 30 days after the candidate's receipt of a Commission audit report that
10 does not contain a repayment determination;

11 (ii) 60 days after service of notice to the candidate of a Commission
12 repayment determination if the candidate does not file a request for an
13 administrative review of the repayment determination; or

14 (iii) 30 days after service of notice to the candidate of the Commission's post-
15 administrative review repayment determination or 30 days after service of
16 notice of the Commission's determination that no repayment is owed.

17 (c) Winding down limitation. The total amount of winding down costs that may be
18 paid for, in whole or part, with matching funds shall not exceed the lesser of:

19 (i) 5% of the overall expenditure limitation pursuant to 11 CFR 9035.1; or

20 (ii) 5% of the total of:

21 (A) The candidate's expenditures subject to the overall expenditure
22 limitation as of the candidate's date of ineligibility; plus

1 (B) The candidate's expenses exempt from the expenditure limitations
 2 as of the candidate's date of ineligibility; except that

3 (C) The winding down limitation shall be no less than \$100,000.

4 (d) Allocation of primary and general election winding down costs. A candidate who
 5 runs in both the primary and general election may divide winding down expenses
 6 between his or her primary and general election committees using any allocation method,
 7 including payment of 100% of these expenses by the primary or general election
 8 committee.

9 (e) Primary winding down costs during the general election period. A primary
 10 election candidate who does not run in the general election may receive and use matching
 11 funds for these purposes either after he or she has notified the Commission in writing of
 12 his or her withdrawal from the campaign for nomination or after the date of the party's
 13 nominating convention, if he or she has not withdrawn before the convention. A primary
 14 election candidate who runs in the general election, regardless of whether the candidate
 15 receives public funds for the general election, must wait until 31 days after the general
 16 election before using any matching funds for winding down costs related to the primary
 17 election. No expenses incurred by a primary election candidate who runs in the general
 18 election prior to 31 days after the general election shall be considered primary winding
 19 down costs.

20 **PART 9035 – EXPENDITURE LIMITATIONS**

21 35. The authority citation for Part 9035 would continue to read as follows:

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

23 36. Section 9035.1 would be amended by;

- a. Adding new paragraph (a)(3);
- b. Adding new paragraph (a)(4);
- c. Revising the paragraph heading in paragraph (c);
- d. Revising paragraph (c)(1); and
- e. Adding new paragraph (c)(3).

Additions and revisions are to read as follows:

§ 9035.1 Campaign expenditure limitation; compliance and fundraising exemptions.

(a) * * *

(3) In addition to expenditures made by a candidate or the candidate's authorized committee(s) using campaign funds, the Commission will attribute to the candidate's overall expenditure limitation and to the expenditure limitations of particular states under 11 CFR 110.8 the total amount of all:

- (i) Coordinated expenditures under 11 CFR 109.20;
- (ii) Coordinated communications under 11 CFR 109.21 that are in-kind contributions received or accepted by the candidate, the candidate's authorized committee(s), or agents, under 11 CFR 109.21(b);
- (iii) Coordinated party expenditures, including party coordinated communications pursuant to 11 CFR 109.37 that are in-kind contributions received or accepted by the candidate, the candidate's authorized committee(s), or agents under 11 CFR 109.37(a)(3), and

that exceed the coordinated party expenditure limitation for the
presidential general election at 11 CFR 109.32(a); and

(iv) Other in-kind contributions received or accepted by the candidate
or the candidate's authorized committee(s) or agents.

(4) The amount of each in-kind contribution attributed to the expenditure
limitations under this section is the usual and normal charge for the goods
or services provided to the candidate or the candidate's authorized
committee(s) as an in-kind contribution.

* * * * *

(c) Compliance, ~~and fundraising and shortfall exemptions.~~

(1) A candidate may exclude from the overall expenditure limitation set forth
in paragraph (a) of this section an amount equal to 15% of the overall
expenditure limitation as exempt legal and accounting compliance costs
under 11 CFR 100.146. In the case of a candidate who does not run in the
general election, for purposes of the expenditure limitations set forth in
this section, 100% of salary, overhead and computer expenses incurred
after a candidate's date of ineligibility may be treated as exempt legal and
accounting compliance expenses beginning with the first full reporting
period after the candidate's date of ineligibility. Candidates who continue
to campaign or re-establish eligibility may not treat 100% of salary,
overhead and computer expenses incurred during the period between the
date of ineligibility and the date on which the candidate either
re-establishes eligibility or ceases to continue to campaign as exempt legal

and accounting compliance expenses. For purposes of the expenditure limitations set forth in this section, candidates who run in the general election, regardless of whether they receive public funds, must wait until the day following the date 30 days after the general election before they may treat 100% of salary, overhead and computer expenses as exempt legal and accounting compliance expenses.

* * * *

(3) A candidate may exclude from the overall expenditure limitation of 11 CFR 9035.1 5% of the amount of any matching funds to which the candidate was entitled that were not paid to the candidate, or were paid on a date subsequent to the date on which payment of such matching funds was due to the candidate, because of a shortfall in the matching payment account.

* * * *

PART 9036 – REVIEW OF MATCHING FUND SUBMISSIONS AND CERTIFICATION OF PAYMENTS BY COMMISSION

37. The authority citation for Part 9036 would continue to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

38. Section 9036.1 would be amended by revising paragraph (b)(1)(ii) to read as follows:

§ 9036.1 Threshold submission.

* * * *

(b) * * *

(1) * * *

(ii) The occupation and name of employer for individuals whose aggregate contributions exceed \$200 in an election cycle;

* * * * *

39. Section 9036.2 would be amended revising paragraph (b)(1)(v) to read as follows:

§ 9036.2 Additional submissions for matching fund payments.

* * * * *

(b) * * *

(1) * * *

(v) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed \$200 in the election cycle, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

* * * * *

PART 9038 – EXAMINATIONS AND AUDITS

40. The authority citation for Part 9038 would continue to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

41. Section 9038.2 would be amended by:

- a. Revising paragraph (b)(2)(ii)(A);
- b. Revising the introductory text of paragraph (b)(2)(iii); and
- c. Revising paragraph (b)(4).

Revisions are to read as follows:

§ 9038.2 Repayments.

* * * *

(b) * * *

(2) * * *

(ii) * * *

(A) Determinations that a candidate, a candidate's authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 CFR part 9035, by either making disbursements that are expenditures or by receiving or accepting in-kind contributions that are subject to the expenditure limitations pursuant to 11 CFR 9035.1(a)(3);

* * * *

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to; the candidate's total deposits; as of 90 days after the candidate's date of ineligibility; plus the usual and normal charge for all goods or services provided as in-kind contributions. For the purposes of this paragraph (b)(2)(iii)--

* * * *

(4) The Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus. The

1 Commission may determine that the net income derived from an
2 investment or other use of surplus public funds after the candidate's date
3 of ineligibility, less Federal, State and local taxes paid on such income,
4 shall be paid to the Treasury.

5 * * * * *

6
7 Ellen L. Weintraub
8 Chair
9 Federal Election Commission

10 DATED _____
11 BILLING CODE: 6715-01-P