

FEDERAL ELECTION COMMISSION**11 CFR Chapter IX****Presidential Election Campaign Fund and Presidential Primary Matching Fund**

AGENCY: Federal Election Commission.

ACTION: Transmittal of Regulations to Congress and Establishment of Chapter.

SUMMARY: FEC Regulations relating to Administration of the Presidential Primary Matching Payment Account have been revised and transmitted to Congress pursuant to 26 U.S.C. 9039(c). The revisions have been renumbered according to the section of the U.S. Code upon which each regulation is based. This renumbering has necessitated their transfer from Chapter I to Chapter IX of Title 11 of the Code of Federal Regulations. The Commission's experiences in administering the Primary Matching Account provisions of Chapter 96 of Title 26, United States Code, as well as comments solicited from the public at hearings held on June 20, 1978, (43 FR 29587, May 31, 1978) indicated the need for greater clarity in the regulations, especially as regards the reporting of particulars of expenditures, documentation requirements for submissions for matching payments, and procedures for suspension of payments for knowing and willful breaches of candidate agreements. Further information on the intended effect of the revised regulations is contained in the supplemental information below.

26 U.S.C. 9039(c) requires that any rule or regulation prescribed by the Commission to implement Chapter 96 of Title 26, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. If neither House of Congress disapproves of the regulations within 30 legislative days of their transmittal, the Commission may finally prescribe the regulations in question. The following regulations were transmitted to Congress on February 16, 1979.

EFFECTIVE DATE: Further action, including the announcement of an effective date and deletion of existing regulations in Subchapter C of 11 CFR Chapter I, will be taken by the Commission after these regulations have been before the Congress 30 legislative days in accordance with 26 U.S.C. 9039(c).

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Ann Fiori, Assistant General Counsel, Regulations and

Legislation, 1325 K Street, Northwest, Washington, D.C. 20510. (202) 523-4143.

SUPPLEMENTARY INFORMATION:

Explanation and Justification of the Presidential Primary Matching Fund Regulations, Parts 9031 Through 9038

§ 9032.1 Authorized Committee.

Except for the language concerning independent expenditures, this definition generally follows 26 U.S.C. 9032(1). The language regarding independent expenditures provides that an expenditure by an authorized committee on behalf of the candidate who authorized that committee cannot qualify as an independent expenditure. With the addition of this language, the definition of authorized committee for Title 26 purposes is the same as the definition of that term for Title 2 purposes (11 CFR 109.1(e)).

§ 9032.2 Candidate.

This definition generally follows 26 U.S.C. 9032(2), except that the language concerning an individual who is not actively conducting campaigns in more than one State has been transferred to the sections dealing with termination of payments to inactive candidates. (Sections 9033.4(a), 9033.5). In addition, this definition also adds the disavowal language appearing at 11 CFR 100.2(c).

§ 9032.3 Commission.

This definition follows 26 U.S.C. 9032(3).

§ 9032.4 Contribution.

The statute contains a definition of the term contribution two provisions—26 U.S.C. 9032(4) and 9034(a). However, these statutory definitions only set forth the criteria for matchable and nonmatchable contributions. The criteria for matchable and nonmatchable contributions will appear at Part 9034 of these regulations.

Because the definition of contribution in Title 2 is applicable to Title 26, this section incorporates the definition of the term "contribution" as it now appears in Title 2 provisions and regulations thereunder.

§ 9032.5 Matching Payment Account.

This definition follows 26 U.S.C. 9032(5).

§ 9032.6 Matching Payment Period.

This definition follows 26 U.S.C. 9032(6).

§ 9032.7 Primary Election.

This definition generally follows 26 U.S.C. 9032(7).

§ 9032.8 Political Committee.

This definition generally follows 26 U.S.C. 9032(8), except that the word individual is eliminated. With this

deletion, the definition of the term "political committee" is the same for Title 26 purposes as it is for Title 2 purposes. (See 2 U.S.C. 431(d).)

§ 9032.9 Qualified Campaign Expense.

This section adds to the statutory definition of the term qualified campaign expense (26 U.S.C. 9032(9)) by establishing a time frame for making qualified campaign expenses. This time frame begins on the date an individual becomes a candidate. Thus, this section in conjunction with § 9034.4, requires the candidate from the date he or she becomes a candidate to make expenditures *only* for the purpose of defraying qualified campaign expenses. This requirement in effect prohibits a candidate who accepts public funding from using private contributions received after becoming a candidate, including those received prior to establishing eligibility, for expenses which are not qualified campaign expenses. Where a candidate uses such contributions for nonqualified campaign expenses, repayment is required under § 9038.

If a candidate spends private campaign contributions received prior to establishing eligibility for public funding on nonqualified campaign expenses, those private funds would obviously not be available to defray the candidate's qualified campaign expenses. The net result would be that the candidate would subsequently require more public funding to meet his or her qualified campaign expenses. In essence, this additional public funding would restore private campaign funds diverted by the candidate to nonqualified campaign purposes. Such an outcome would be equivalent to permitting a candidate to use matching funds to defray nonqualified campaign expenses.

In this regard, statutory provisions require candidates to repay matching funds used to restore amounts spent on nonqualified campaign expenses. 26 U.S.C. 9038(b)(2)(B) states in part as follows:

If the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than . . . (E) . . . to restore funds . . . which were used to defray qualified campaign expenses . . . the candidate shall pay to the Treasury an amount equal to such amount.

This section also establishes the close of the time frame for making qualified campaign expenses as the last day of the candidate's eligibility. Since an individual's candidacy for presidential nomination in essence ends on the date of ineligibility, any expenditures made

(b) The Commission shall...

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(v) The Commission shall...

(w) The Commission shall...

...in any individual who is not actively...

...in (b) follow the amount of...

...in (c) shall be the amount...

...in (d) shall be the amount...

...in (e) shall be the amount...

...in (f) shall be the amount...

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...in (t) shall be the amount...

...in (u) shall be the amount...

...in (v) shall be the amount...

...the Commission shall...

For example, assume that candidate X is in the following financial status on the date of eligibility:

Assets	\$100,000
Liabilities	50,000
Net worth	50,000

Since candidate X has no outstanding campaign obligations of \$100,000 he is entitled to \$10,000 in matching funds on the basis of all the contributions that have been submitted for matching prior to the date of eligibility. On the basis of the example candidate X is in the following financial status on the date of eligibility:

Assets	\$110,000
Liabilities	50,000
Net worth	60,000

As a result of the matching funds, candidate X's net worth has increased by \$10,000. This increase is due to the fact that the matching funds are not considered an asset of the candidate until they are actually received. Therefore, the matching funds are not included in the candidate's net worth until they are received.

Subsection (b) of section 304(a) requires that the matching funds be paid to the candidate within 30 days of the date of eligibility. This requirement is intended to ensure that the candidate has the funds available to use for campaign purposes as soon as possible.

Section 304(b) of the U.S.C. provides that the matching funds are to be paid to the candidate in the form of a check. This requirement is intended to ensure that the funds are properly documented and can be traced.

Subsection (c) sets forth the entitlement scheme for candidates who have no outstanding campaign obligations on the date of eligibility. In such cases, candidates are entitled to payments only if the private

contributions received between the date of eligibility and the date of submission are not sufficient to discharge the debt.

For example, assume that candidate Y is in the following financial status on the date of eligibility:

Assets	\$100,000
Liabilities	50,000
Net worth	50,000

Assume that candidate Y has received \$10,000 in contributions between the date of eligibility and the date of submission. The difference between (1) the amount of private contributions received by candidate Y after the date of eligibility, and (2) candidate Y's remaining outstanding obligations is \$0. Therefore, candidate Y is not entitled to receive matching funds on the date of eligibility.

As a result of subsection (b), subsection (b) of section 304(a) requires that the matching funds be paid to the candidate within 30 days of the date of eligibility. This requirement is intended to ensure that the candidate has the funds available to use for campaign purposes as soon as possible.

Section 304(b) of the U.S.C. provides that the matching funds are to be paid to the candidate in the form of a check. This requirement is intended to ensure that the funds are properly documented and can be traced.

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As a result of subsection (b), subsection (b) of section 304(a) requires that the matching funds be paid to the candidate within 30 days of the date of eligibility. This requirement is intended to ensure that the candidate has the funds available to use for campaign purposes as soon as possible.

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qualified campaign expense provides that such an expense is one which is "in connection with" a candidate's campaign for nomination. Expenditures made after the termination of that campaign can not meet such a requirement.

Subsection (c) deals with winding down costs. Such costs, although perhaps incurred after a candidate's date of ineligibility may nevertheless be considered qualified campaign expenses if they are associated with the termination of the candidate's campaign (Re: A.O.R 1976-54). Examples of such costs include expenses incurred for transportation by campaign staff to return from National nominating convention, for employment of personnel necessary for Commission audit pursuant to PART 9038, etc.

Under subsection (d), an expenditure which is in excess of expenditure limitations is not considered a qualified campaign expense. The statutory definition of the term qualified campaign expense specifically excludes any expenditure which constitutes a violation of any Federal law. Since both 2 U.S.C. 441(a)(b) and 26 U.S.C. 9035(a) prohibit an eligible candidate from making expenditures in excess of certain limitations, any expenditure which exceeds those limitations is by definition not a qualified campaign expense.

Subsection (e) provides that civil or criminal penalties which must be paid pursuant to the Act are not considered qualified campaign expenses. If such amounts were considered qualified campaign expenses, a portion of the money used to pay those penalties would consist of Federal funds. In order to permit candidates to pay such penalties, subsection (e) provides that amounts received or expended to defray those penalties will not be considered contributions or expenditures. Such amounts will thus not be subject to contribution and expenditure limitations, but such amounts are subject to disclosure requirements.

Subsection (f) relates to payments for the purpose of determining whether an individual should become a candidate. These expenditures for "testing the waters" will be considered qualified campaign expenses despite the fact that they are usually made prior to the date an individual becomes a candidate. (See also 11 CRF 100.4(b)(1), 100.7(b)(1).)

Subsection (g) deals with statutory provisions at 2 U.S.C. 441a(a)(5)(c)(iii).

Subsection (h) deals with a candidate who has reestablished eligibility after falling into inactive status. Expenditures made by such candidates while in

inactive status are considered qualified campaign expenses as are those made after eligibility is reestablished.

§ 9034.5 Net Outstanding Campaign Obligations.

This section sets forth a formula for computing a candidate's financial status at the date of ineligibility. Under this formula, the campaign's obligations for qualified campaign expenses including winding down costs are balanced against total of the campaign's cash on hand, the value of capital assets, and amounts owed to the campaign.

PART 9035

This part follows the statutory language at 26 U.S.C. 9035.

PART 9036—Certification by the Commission **§ 9036.1 Initial Certification.**

This section sets out a procedure for the first certification of contributions to a candidate who has satisfied eligibility requirements. As is required by 26 U.S.C. § 9036(a), the Commission shall certify for payment amounts to which the candidate is entitled within ten days after the Commission notification to the candidate that he or she has established eligibility.

§ 9036.2 Additional certifications.

This section sets forth the format in which contributions submitted for matching must be presented to the Commission after the initial certification. These contributions must be presented in the same way except that contributions need not be segregated by State and the occupation and principal place of business of contributors whose aggregate contributions exceed \$100 during a calendar year need not be included. Since this information is important only for determining eligibility, it need not be included in subsequent certifications.

§ 9036.3 Insufficient Documentation.

This section sets forth the rules under which a contribution will be rejected for matching purposes because sufficient documentation is lacking to insure that it meets the criteria for a matchable contribution.

§ 9036.4 Certification Review and Notice.

This section establishes a procedure for determining whether a candidate's submission meets acceptable standards of good order as prescribed at §§ 9036.2 and 9036.3.

§ 9036.5 Resubmissions and hearing opportunity.

This section sets forth a mechanism for the settlement of disagreements over

which contributions are matchable and which are not matchable. The candidate who disputes a Commission conclusion that a contribution is not matchable will be given an opportunity to present written materials to demonstrate that the contribution is matchable. After consideration of materials submitted by the candidate, the Commission will render a final determination on the issue. This procedure meets due process requirements. (See Explanation and Justification of § 9033.8.)

§ 9036.6 Continuation of certification.

This section permits a candidate to submit contributions for matching until January 21 of the year following the presidential election year. In essence, this means that the candidate will have 21 days after the December 21 deposit date to submit those contributions to the Commission for matching. Thus, January 21 is the last day on which contributions may be submitted to the Commission for matching. This deadline allows the candidate sufficient time to submit contributions for matching, while avoiding unnecessarily delayed submissions which would burden the Commission in the efficient performance of its certification duties.

PART 9037 Payments

This part follows the statutory language of 26 U.S.C. 9037.

PART 9038 Examination and Audits.

§ 9038.1 Audit.

This section basically follows the statutory language at 26 U.S.C. 9038(a). The Commission is authorized to conduct its audit before the close of the matching payment period for candidates who become inactive prior to that date. Since these candidates have terminated campaign activity, no purpose is served by waiting until the end of the matching payment period to conduct an audit.

§ 9038.2 Repayments.

This section is based on statutory provisions at 26 U.S.C. 9038(b). It requires a candidate to repay any amounts spent from private contributions or matching funds if the expenditures were not documented in accordance with § 9033.1(a)(1). The candidate has the burden of proving that expenditures are qualified campaign expenses. Where required documentation is lacking, the candidate has not met that burden of proof. Therefore, the Commission has the authority to require repayment.

This section also requires repayment where the candidate spends private contributions as well as public funds on expenditures on which are not qualified campaign expenses. For an explanation of this approach, see the Explanation and Justification of § 9032(9).

This section also sets forth a procedure for determining disputes concerning the amount of a repayment. This procedure meets due process requirements. (See Explanation and Justification of § 9033.8.)

§ 9038.3 Liquidation of Obligations: Repayment.

This section generally follows the statutory provisions at 28 U.S.C. 9038. It sets forth a formula for recapturing from the candidate's accounts that portion of the account which represents Federal funds.