

FEDERAL ELECTION COMMISSION

11 CFR Chapter I

[Notice 1980-14]

Presidential Election Campaign Fund;
Presidential Primary Matching Fund

AGENCY: Federal Election Commission.

ACTION: Transmittal of Regulations to Congress.

SUMMARY: FEC regulations governing the administration of the Presidential Primary Matching Payment Account provided for in Chapter 96 of Title 26, United States Code have been revised. The revised regulations at 11 CFR Chapter I have been transmitted to Congress pursuant to 26 U.S.C. 9039(c). Under the following revisions, the Commission may suspend matching fund payments to a candidate who knowingly, willfully and substantially exceeds expenditure limitations, and that candidate would be prohibited from receiving any further payments. Current regulations provide that the Commission may suspend matching fund payments to a candidate who knowingly and willfully exceeds expenditure limitations, but payments to that candidate would be resumed if he or she repaid an amount equal to the excessive expenditure and paid or agreed to pay any civil or criminal penalties resulting from the violation.

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

FOR FURTHER INFORMATION CONTACT: Patricia Ann Fiori, Assistant General Counsel, 1325 K Street NW, Washington, D.C. 20510 (202) 523-4143.

SUPPLEMENTARY INFORMATION: The Commission on November 5, 1979, published a Notice of Proposed Rulemaking (44 FR 5594). No comments were received on the proposed regulations.

Explanation and Justification of Revised Regulations Governing Suspension of Payments From the Presidential Primary Matching Fund

Under the proposed revisions to the Presidential Primary Matching Fund regulations, the Commission may

suspend payments to a candidate who, after certification for matching funds, knowingly, willfully and substantially exceeds the expenditure limitations at 11 CFR 9035. A candidate whose payments are suspended will, under the proposed revisions, be ineligible to receive any further payments.

Regulations promulgated on May 7, 1979, provide that the Commission may suspend matching payments to a candidate who knowingly and willfully exceeds expenditure limitations after certification for public funds (11 CFR 9033.9).¹ However, such a candidate may re-establish eligibility by repaying an amount equal to the excessive expenditure and by paying or agreeing to pay any civil or criminal penalties resulting from the violation of the limitation. Under the proposed revisions, the Commission may suspend payments to a candidate only if he or she knowingly, willfully and substantially exceeds expenditure limitations. In addition, under the proposed revisions, a candidate will not be permitted to re-establish eligibility after payments have been suspended for exceeding expenditure limitations.

Statutory provisions at 26 USC 9033(b)(1) state that in order to receive matching funds, a candidate must certify to the Commission that the candidate and his or her authorized committees "will not incur qualified campaign expenses in excess of the limitations of such expenses under [26 USC] section 9035." A candidate who exceeds the expenditure limitations of 26 USC 9035 after certifying that he or she will not exceed those limitations violates a basic condition of eligibility for matching funds and that candidate's eligibility for continued receipt of payments is thereby terminated. Such a result is consistent with the statutory provisions establishing the public financing system for presidential primary candidates, as well as with the legislative history of those provisions.

The statutory provisions governing entitlement to matching funds expressly provide that a candidate must establish his or her eligibility for those funds by meeting certain conditions. The conditions are set forth at 26 USC 9033, which provides that in order to be eligible for payments, a candidate must make certain agreements and

certifications. Further, it is clear that the statute empowers the Commission to determine whether a candidate has established eligibility by meeting the specific conditions, and a candidate who does not meet those conditions is ineligible to receive matching funds. (See *Committee to Elect Lyndon LaRouche v. FEC*, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9091 (D.C. Cir. 1979), cert. denied, — US — (February 19, 1980) (No. 79-801)).

As a condition precedent to the receipt of federal matching funds, a candidate must, under 26 USC 9033(b)(1), certify that he or she will not exceed the expenditure limitations applicable to publicly financed candidates. While the statute does not specifically authorize the suspension of payments to a candidate who violates a condition of eligibility by exceeding expenditure limitations, the Commission's power to suspend is implied from its express authority to determine initial eligibility. Because eligibility is a continuing requirement, the power to determine initially whether eligibility has been established necessarily implies the authority to monitor eligibility. Section 9033 specifically sets forth conditions of eligibility. These conditions consist of a series of agreements and certifications which the candidate must make prior to receiving matching funds. Where a candidate fails to abide by an agreement or certification which relates to a requirement central to the Act—such as the expenditure limitations—that candidate is failing to fulfill the basic conditions for eligibility to continued receipt of matching payments. In such a situation, the Commission has the authority to revoke that candidate's eligibility.

Moreover, without the authority to suspend payments to a candidate who is violating the conditions of eligibility, the Commission would be unable to protect the integrity of the public financing system. Allowing candidates to exceed expenditure limitations while continuing to receive matching funds undermines the equal protection of the public financing system. A central concept of the statutory provisions establishing that system is equal treatment of all candidates. The candidate who abides by expenditure limitations would suffer a great disadvantage if another candidate were permitted to exceed those limitations and still receive public funds. To prevent this inequitable result,

¹ Current regulations at 11 CFR 9033.3 also provide that a candidate is ineligible for matching funds if he or she has knowingly, willfully and substantially exceeded the expenditure limitations prior to certification.

matching fund payments must be permanently suspended to any candidate who exceeds expenditure limitations.

Finally, permanent suspension of matching fund payments to a candidate who has knowingly, willfully and substantially exceeded expenditure limitations is consistent with the legislative history of the public financing system for presidential candidates. The legislative history of the matching fund system indicates that the primary purpose of that legislation was to curb "abuses by special interest groups and big money . . . in connection with campaigns to the office of President".² Congress sought to further this purpose by "drastically reducing the amounts which may be expended by the candidate".³ It would thus run counter to the very purpose of the public financing statute to allow candidates who knowingly, willfully and substantially exceed expenditure limitations to subsequently receive public funds. Such an outcome would permit a candidate to make vast amounts of campaign expenditures, and nevertheless receive matching payments, thereby defeating the basic purpose underlying the enactment of public financing.