

which implement the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 et seq. and have transmitted those regulations to Congress pursuant to 26 U.S.C. 9039(c). The revisions are based on the Commission's experience in administering the Act and on public comments received on the Notice of Proposed Rulemaking. The revisions would clarify the current submission and certification procedures to ensure that candidates submissions for matching funds are processed promptly and that matching funds are distributed properly. The revisions include expanded sections governing allocation of expenditures under the State expenditure limits and audits by the Commission. They also provide a more detailed statement of the requirements for making submissions for matching payments and include a new means for making such submissions by letter request. Further information on the intended effect of the revised regulations is contained in the supplemental information below.

**EFFECTIVE DATE:** Further action, including the announcement of an effective date, 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. Susan E. Propper, Assistant General Counsel, 1325 K Street NW, Washington, D.C. 20463, (202) 523-4143 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The revisions are based on the Commission's experience in administering the Act and on public comments received in response to the Commission's Notice of Proposed Rulemaking (47 FR 35892; August 17, 1982). A public hearing was held on the proposed rules on December 7, 1982, (47 FR 53030; November 24, 1982).

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 January 24, 1983.

11 CFR Parts 106, 9031, 9032, 9033, 9034, 9035, 9036, 9037, 9038 and 9039

[Notice 1983-3]

**Presidential Primary Matching Fund**

**AGENCY:** Federal Election Commission.

**ACTION:** Transmittal of regulations to Congress.

**SUMMARY:** The Federal Election Commission is revising its regulations

**Explanation and Justification of the Presidential Primary Matching Funds Regulations, Parts 106 and 9031 Through 9039**

**Part 106—Allocation of Candidate and Committee Activities**

**Section 106.2 State Allocation of Expenditures Incurred by Authorized Committees of Presidential Primary Candidates Receiving Matching Funds.**

This section, as in the current regulations, implements 2 U.S.C. 441a(b)(1)(A) and 441a(g).

Subsection (a)(1) has been redrafted to explain the scope of the application of this section. It also sets forth the general rule that an expenditure is not necessarily allocated to the State in which it is incurred or paid. For instance, an expenditure incurred or paid in State A would be allocated to State B if the purpose of the expenditure is to influence the candidate's campaign in State B. Where an expenditure is made for the purpose of influencing the nomination of a candidate in more than one State, the methods for allocating expenditures described in subsection (b) will govern allocation under this section.

Subsection (a)(2) provides that disbursements made while an individual is "testing the waters" for the purpose of determining whether to become a candidate must be allocated in accordance with this section if the individual later becomes a candidate. Therefore, individuals "testing the waters" should keep records of all disbursements made during that period to enable proper allocation in the event they become candidates.

Subsection (b)(1) sets forth the general requirement that allocations between two or more States be made on a reasonable and uniformly applied basis. For an allocation to be considered "uniformly applied", it should be based on consistent data as required under subsection (b)(2).

Subsection (b)(2) generally follows current section 106.2(b) and (c)(1) but contains more specificity regarding the actual methods to be used when allocating expenditures between two or more States. It requires that a candidate select one source of data to be used for each category of expenditures in that State. Thus, for example, once a method is used to allocate an advertisement on television in a State, the same method must be used for all allocations of television expenditures within that State unless in some portion of that State, such method is not available, in which event, a reasonable alternative method may be used.

Subsection (b)(2)(i) contains specific methods for allocating media expenditures. Under subsection (b)(2)(i)(A), expenditures for print media, such as newspaper or magazines, must be allocated based on the relative circulation percentages of that publication in each State. The amount allocated must include any commission charged. For the purpose of this section "commission" includes any amounts paid to an individual for services provided in obtaining advertising space in a publication. Allocation need not be made under this subsection to any State in which the circulation is less than 3% of the total estimated readership of that publication.

Subsection (b)(2)(i)(B) covers the allocation method for broadcast media. As in subsection (b)(2)(i)(A), the amount allocated must include any commission paid for buying media time. The industry market data that may be used to determine the allocations under this section include ADI, CCR, Grade B Contour and similar data sources. However, once a method has been selected, it must be used for all allocations of expenditures in that media category in a particular State. Examples of media categories include television broadcast, radio, and cable.

Subsection (b)(2)(i)(C) allows refunds received for media time or space not used to be credited on the same basis as the original allocation. Subsection (b)(2)(i)(D) prohibits allocation to any State in which the primary election has been held. This prohibition is based on the Act's requirement at 2 U.S.C. 441a(g) that allocation be made to each State in which the voting age population "can reasonably be expected to be influenced by such expenditure".

Subsection (b)(2)(ii) governs the allocation of salaries. If an individual is working in a State for four days or less, he or she will be presumed to be working on national campaign strategy and not influencing the primary in that particular State. Despite comments received that suggested exempting advance staff from any allocation requirement, such personnel are included in the class of persons whose salaries must be allocated if they remain in a State for five days or more. As the category of persons who could be considered "advance staff" is a difficult one to define, it was thought better to include them as persons working in a State; however, the Commission has recognized that most advance staff do not remain in a State for five days or more. For purposes of determining the length of time an individual remains in a State, the Commission will generally look to the calendar days or any portion

thereof that that person was in a State rather than using 24-hour periods. If an individual works in a State for five consecutive days or more, that individual's salary must be allocated to that State from the date of his or her arrival. While this section sets forth the basic rule for allocating salaries, a candidate may demonstrate that a particular individual or group of individuals is in a State for five days or more to work on national campaign strategy. Although the Commission expects such exemptions to be the exception rather than the rule, the Commission does recognize that national campaign strategy meetings, for example, may be held in a centrally located State for an extended period of time.

Subsection (b)(2)(iii) follows current § 106.2(c)(2) but limits this requirement to individuals remaining in a State for five days or more. This rule also applies to intra-state travel and subsistence expenses for the candidate, his or her family and the candidate's representatives if they remain in a State for five days or more.

Subsection (b)(2)(iv) describes the overhead expenditures of State and regional offices that must be allocated.

Subsection (b)(2)(v) sets forth a new method for allocating telephone charges other than base service charges. All calls made within a particular State must be allocated to that State. Calls made between two States, whether or not using toll-free service, are exempted from allocation. Calls charged to a credit card should be allocated on the same basis as calls charged to a phone number.

Subsection (b)(2)(vi) governs allocation of public opinion polls. Polls taken in two or more States must be allocated based on the number of people interviewed in each State unless the poll is a nationwide poll. Thus, candidates must keep records of the number of persons interviewed in each poll covering two or more States to support the allocations made as required by subsection (e).

Subsection (c) sets forth the categories of expenditures that are exempted from the allocation requirements. Subsection (c)(1)(i) exempts national campaign expenditures from allocation.

Under subsection (c)(1)(ii), the regulations exempt "national advertising". This exemption, however, is limited to advertising that is distributed on a nationwide basis and does not include ads that appear only in a regional edition of a national publication.

Under subsection (c)(2), the costs of producing media advertising are exempted from allocation as it is often difficult to determine, for example, what footage was used in commercials aired in particular States.

Subsection (c)(3) exempts the costs of transporting media personnel as such costs are not related to influencing the voters of any particular State. Subsection (c)(4) generally follows current § 106.2(c)(2) with respect to interstate travel. Travel across State lines that is occasioned by transportation or lodging facilities will not be deemed exempt interstate travel. For example, a candidate or persons campaigning on a candidate's behalf in a particular State may have lodging accommodations in a contiguous State. In such cases, travel across State lines to campaign in the contiguous State would not be considered exempt interstate travel. A similar situation involves transportation. If a candidate makes a campaign trip to a particular State, but for example, arrives at an airport in a neighboring State, travel from the airport to the State in which the campaign is being conducted would not be considered interstate travel.

Under subsection (c)(5), a candidate may claim a standard exemption of 10% of salaries and overhead in each State for compliance costs. An additional 10% of such costs may be claimed as exempt fundraising expenses, subject to the 28 day limit of 11 CFR 110.8(c)(2). If the candidate wishes to exempt more than 10% of expenditures under either category, he or she must then document the entire amount spent on compliance and/or fundraising for all individuals in that State to justify claiming the larger exemption.

Subsection (d) generally follows current § 106.2(a).

Subsection (e) requires that candidates retain detailed records to support the calculations made under this section.

#### *Section 106.3 Allocation of Expenses Between Campaign and Noncampaign related Travel.*

A technical amendment has been made in subsection (a) to make clear that this section does not apply to Presidential primary candidates receiving matching funds. No other changes have been made in this section.

#### **Part 9031—Scope**

##### *§ 9031.1 Scope.*

Section 9031.1 has been revised to conform to 11 CFR 9001.1.

#### **Part 9032—Definitions**

##### *Section 9032.1 Authorized Committee.*

Subsection (a) has been revised to conform to 11 CFR 9002.1. Subsection (b) generally follows current § 9032.1(a). Subsection (c) has been added to make clear that responsibilities of the candidate are also those of his or her authorized committee(s).

Subsection (d) generally follows current § 9032.1(b). Subsection (e) has been added to cross-reference the Commission's regulations governing delegate committees.

##### *Section 9032.2 Candidate.*

This section generally follows current § 9032.2 but clarifies in subsection (d) that the time for disavowal begins to run after receipt of notification from the Commission.

##### *Section 9032.3 Commission.*

This section generally follows current § 9032.3.

##### *Section 9032.4 Contribution.*

This section generally follows current § 9032.4.

##### *Section 9032.5 Matching Payment Account.*

This section generally follows current § 9032.5.

##### *Section 9032.6 Matching Payment Period.*

This section generally follows current § 9032.6 but has been clarified to state that the period will not exceed the applicable date as determined under subsection (a) or (b).

##### *Section 9032.7 Primary Election.*

Section 9032.7 has been revised to clarify that the definition of "primary election" under this subchapter includes elections held by a State as well as by a political party. This section now also provides, in subsection (b), that if both the party and the State sponsor primary elections, the primary election will be the election held by the political party.

##### *Section 9032.8 Political Committee.*

This section generally follows current § 9032.8.

##### *Section 9032.9 Qualified Campaign Expense.*

Subsection (a) generally follows current § 9032.9(a) but includes the phrase "on behalf of" in subsection (a)(1) to clarify the intent of subsection (b). Subsection (b) generally follows current § 9032.9(b). Subsection (c) has been added to cross-reference the provisions of 11 CFR 9034.4.

##### *Section 9032.10 Secretary*

This new section has been added to permit use of the word "Secretary" to mean Secretary of the Treasury in this subchapter.

##### *Section 9032.11 State.*

This section generally follows current § 9032.10.

#### **Part 9033—Eligibility for Payments**

##### *Section 9033.1 Candidate and Committee Agreements*

Subsection (a)(1) generally follows current § 9033.1 (a) and (b). Subsection (a)(2) has been added to make clear that the candidate must submit a candidate agreement that meets the stated requirements before the Commission will review the candidate's threshold submission to determine eligibility.

Under subsection (b), references to the candidate's authorized committee(s) have been included to make clear that such committees are also subject to the requirements of this section. In subsection (b)(2), the specific documentation requirements have been moved to a new § 9033.11 and this subsection now contains an agreement by the candidate to comply with § 9033.11. Subsections (b) (4) and (5) require the candidate to maintain and furnish to the Commission all documentation relating to matching fund submissions, disbursements and receipts. Subsection (b)(6) clarifies that audits conducted under 11 CFR Part 9038 will cover both receipts and disbursements, and may include a review of disbursements by persons or entities authorized by the candidate to make expenditures on the candidate's behalf. Subsection (b) (1), (3), and (7) through (10) generally follow current § 9033.1(a) and (b).

Current subsection (c) has been deleted in these regulations as that provision is covered under 11 CFR 9033.9.

##### *Section 9033.2 Candidate and Committee Certifications; Threshold Submission.*

Subsection (a)(1) generally follows current § 9033.2. Subsection (a)(2) is a parallel provision to 11 CFR 9033.1(a)(2).

Subsection (b)(3) follows current § 9033.2(c)(1) but has been reworded for clarity. Subsection (b)(3)(iv) has been added to state that in the case of contributions from an individual who is a resident of more than one State, the candidate may count contributions from that individual towards the \$5000 threshold in only one State. This State

will be the one from which the individual's earliest contribution was made.

The format requirements for threshold submissions have been moved from current § 9033.2(c) to 11 CFR 9036.1. Subsection (c) in these regulations explains that candidates must submit proof of the contributions required to establish eligibility and cross-references 11 CFR 9036.1 for the format in which submissions must be made.

#### *Section 9033.3 Expenditure Limitation Certification.*

This section generally follows current § 9033.3 but contains cross-references to new § 9033.10 for the procedures to be followed when the Commission makes a determination under this section. The requirement that a violation of this section be done "willfully" has been deleted.

#### *Section 9033.4 Matching Payment Eligibility Threshold Requirements.*

The time for reviewing a threshold submission during a Presidential election year has been extended from 5 working days to 15 business days during a Presidential election year.

Subsection (a) and (b) generally follow current § 9033.4 but cross-reference new § 9033.10 for the procedures to be followed when determinations are made under this section.

#### *Section 9033.5 Determination of Ineligibility Date.*

The introductory language of this section has been reworded for clarity. Subsection (a) generally follows current § 9033.5(a). Under subsection (b), a candidate who "permitted or authorized his or her name to appear on the ballot" includes a candidate who participates or receives votes in a caucus that is a primary election. Subsections (b) (1) and (2) generally follow current § 9033.5(b) (1) and (2). Subsection (b)(2) has been expanded, however, to address the situation in which there are two or more primaries held in the same State on different dates. If one of these primaries is held by the State and the other by the party, the primary held by the party will be the primary election as provided under 11 CFR 9032.7(b).

Subsection (c) generally follows current § 9033.5(c).10. Subsection (d) has been added to cross-reference the provisions on re-establishment of eligibility under 11 CFR 9033.8.

#### *Section 9033.6 Determination of Inactive Candidacy.*

Subsection (a) generally follows current § 9033.6 (a) and (f). In subsection

(b), two additional factors that may be considered by the Commission have been included at subsections (b) (5) and (6). Subsection (c) and (d) now cross-reference the procedures for making determination under 11 CFR 9033.10.

#### *Section 9033.7 Determination of Active Candidacy.*

This section generally follows current § 9033.7 but cross-references in subsections (b) and (c) the procedures for making determinations under 11 CFR 9033.10.

#### *Section 9033.8 Reestablishment of Eligibility.*

Subsection (a) and (b) generally follows current § 9033.8 (a) and (b). Subsection (c) has been added to clarify that candidates who have re-established eligibility need not submit new candidate agreements and certifications, and that contributions received during the period of ineligibility are matchable once the candidate re-establishes eligibility regardless of whether the candidate has any net outstanding campaign obligations.

#### *Section 9033.9 Failure to Comply With Disclosure Requirements or Expenditure Limitations*

This section has been re-titled to conform to other sections in these regulations dealing with ineligibility. As in § 9033.3, the standard that violations be done "willfully" under this section before payments will be suspended has been deleted. Subsections (b) and (c) generally follow current § 9033.9 (b), (c) and (d) but contain cross-references to 11 CFR 9033.10 for the procedures to be followed in making determinations. Subsection (d) generally follows current § 9033.9(e).

#### *Section 9033.10 Procedures for Initial and Final Determinations*

This new section contains the written hearing procedures for determinations regarding a candidate's eligibility to receive matching funds under 11 CFR Part 9033. These procedures have been taken from the various substantive provisions in current Part 9033 and consolidated in this section. The time limits on responses filed by candidates have been retained in each substantive section, however, as these time limits vary. This section also specifies, in subsection (d), that an eligibility determination made pursuant to this section may be independent of any Commission decision to institute an enforcement proceeding under 2 U.S.C. 437g. In addition, the Commission may rely upon the legal and factual basis on which an initial determination was

made in the future repayment determination if the Commission took no final action to suspend payments at the time of the initial determination.

#### *Section 9033.11 Documentation of Disbursements.*

This new section generally follows current § 9033.1(a)(1). Subsection (a) reiterates the general rule, also found in 11 CFR 9033.1, that the candidate has the burden of proving that disbursements are qualified campaign expenses. In subsection (b)(1), the threshold for documentation of disbursements has been raised to \$200 and is no longer an aggregate figure, in accordance with Pub. L. No. 96-187. References to "particulars" in subsection (b) have been changed to "purpose", also in accordance with Pub. L. No. 96-187.

Subsection (b)(3)(i) has been revised to clarify that an individual to whom \$500 or less is advanced by the campaign for travel and/or subsistence and who is the recipient of the goods or services purchased will be considered a payee under this section. In that case, the candidate must retain documentation of the advance of \$500 or less to that individual.

Subsection (c) has been added to provide a list of categories of documents that must be retained by the candidate and presented to the Commission on request.

#### **Part 9034—Entitlements.**

##### *Section 9034.1 Candidate Entitlements.*

This section generally follows current § 9034.1 with two exceptions. First, the language of subsection (b) has been revised to make clear that contributions deposited on or before December 31 of the Presidential election year may be matched. Second, subsection (b) has been revised to state that, to receive matching funds after the date of ineligibility, candidates must have net outstanding campaign obligations as of the date of payment rather than the date of submission. Thus, if the candidate's financial position changed between the date of his or her submission for matching funds and the date of payment, reducing the candidate's net outstanding campaign obligations, that candidate's entitlement would be reduced accordingly.

##### *Section 9034.2 Matchable Contributions.*

Subsection (a) generally follows current § 9034.2(a) except that a new provision has been added in subsection (a)(4) stating that donations received by an individual who is "testing the

waters" may be matched when the individual becomes a candidate if the donations meet the requirements for matchability.

Subsection (b) has been revised to make clear that all written instruments submitted for matching must represent contributions of the contributor's personal funds.

In subsection (c), the language excepting contributions from joint accounts and money orders has been deleted. These contributions are now subject to the provisions of subsections (c) (1) and (4). In subsection (c)(1) regarding contributions drawn on joint accounts, a provision has been added to subsection (i) requiring that joint tenants indicate that amount to be attributed to each contributor if attribution is other than equal. Subsection (c)(1)(ii) has been added to address the situation in which the imprinting on the check does not reflect whether each contributor is a joint tenant of the account on which the check is drawn. Subsection (c)(2), concerning checks drawn on escrow or trust accounts, has been revised to state that the contributor must have equitable, rather than beneficial, ownership of the account. This change is intended as a more precise definition of the contributor's interest in the account. In addition, subsection (c)(2)(ii) has been expanded to add requirements that will allow accompanying written documentation to be more easily correlated with the corresponding check. Finally, the provision in the current regulations that requires a statement that the contribution does not violate the conditions of the trust or escrow agreement has been deleted. This deletion was made in response to comments received that stressed the difficulty committees would have in seeking to assure that such contributions were lawfully made.

With respect to contributions drawn on partnership or other unincorporated association accounts, subsection (c)(3) has been revised to require a statement that the account is not maintained or controlled by a corporate entity as well as information allowing the accompanying written documentation to be correlated with the corresponding check.

Subsection (c)(4), which governs contributions made by money order or cashier's check, has been substantially revised in these regulations. In the past the Commission has faced difficulties in processing and verifying the authenticity of contributions submitted for matching in the form of money orders or cashier's checks. Unlike other written instruments (e.g., personal checks), money orders generally do not require the signature of

the individual whose funds such instrument represents. Where the money order that evidences the contribution does not clearly identify the contributor, the matchability of the contribution is placed in doubt. Moreover, the possibility of certifying for matching payments contributions which are not properly matchable increases due to the uncertainty that money order contributions represent the personal funds of listed contributions.

To preserve money orders and cashier's checks as contributions that may be matched, while ensuring that such contributions are properly matchable, subsection (c)(4) now requires that the signature of each contributor appear on the money order or cashier's check at the time it is initially submitted for matching and that the written instrument be accompanied by a signed statement evidencing that the contribution is made with the contributor's personal funds. If these requirements are not met, the money order or cashier's check may not be resubmitted for matching at a later date. Candidates should therefore obtain any additional documentation needed from the contributor before the contribution is submitted for matching purposes.

Subsection (c)(5), regarding contributions in the form of the purchase price paid to attend an entertainment activity, such as concert tickets, has also been significantly revised. These contributions are now matchable up to the full amount paid for such tickets. As a result, the submission requirements for these contributions have been substantially relaxed, although the promotional material and tickets must still reflect that the purchase price of a ticket is a contribution to the candidate.

Subsection (c)(6), regarding contributions in the form of the purchase price paid to attend a political event such as a political dinner, has been moved from current § 9034.3(i)(2).

Subsection (c)(7) has been added to provide that contributions received through joint fundraising may be matched.

#### *Section 9034.3 Non-Matchable Contributions.*

This section generally follows current § 9034.3. In subsection (h), the phrase "or otherwise induced by" has been added to make clear that this provision applies to any contribution involving a lottery or other drawing for prizes, whether or not a contribution is required for participation in the drawing. The provisions governing concert tickets and political dinners have been moved from this section to 11 CFR 9034.2.

Some of the comments received suggested that contributions made using credit cards be matchable. The Commission has rejected this suggestion because credit cards present problems for ensuring that the requirements of matchability are met. For example, credit card contributions could be made by phone and therefore lack the contributor's signature. Another problem is that of determining the source of funds contributed as many cards that appear to be personal accounts are paid for by incorporated businesses. A third difficulty is that credit card companies deduct varying amounts to pay for their services and thus candidates would be requesting more in matching funds than they had received in contributions.

#### *Section 9034.4 Use of Contributions and Matching Payments.*

This section generally follows current § 9034.4 but has been reorganized to separate qualified campaign expenses from non-qualified campaign expenses.

In subsection (a)(2), a provision has been added to make clear that disbursements made while "testing the waters" will count against the State and overall expenditure limits when the individual becomes a candidate.

In subsection (a)(3), the provisions limiting the winding down period to ten months and governing extensions of that time which were included in the Commission's Notice of Proposed Rulemaking, have been deleted from these regulations in response to the comments received opposing this proposal. The Commission has also deleted another provision contained in the Notice of Proposed Rulemaking in subsection (b)(3). That provision would have classified litigation costs incurred after the candidate's date of ineligibility as non-qualified campaign expenses. By deleting this provision, litigation costs that meet the requirements of subsection (a)(3) will be considered qualified campaign expenses.

The third provision deleted from this section was proposed in the Notice of Proposed Rulemaking as subsection (c). This provision would have allowed candidates to receive donations not subject to the contribution limitations for making repayments to the Treasury, but the Commission rejected this approach on final consideration of the regulations.

#### *Section 9034.5 Net Outstanding Campaign Obligations.*

Subsection (a) generally follows current § 9034.5 (a) and (b).

Subsection (b)(1) basically follows current § 9034.5(c) but gives examples of

property that would be considered capital assets. Also, the requirement that such property have a remaining useful life exceeding one year has been deleted.

Subsection (b)(2) has been added to cover property acquired by a campaign that does not fit the concept of "capital assets" but can be liquidated to pay outstanding debts of the campaign. Therefore, this property should be included in the candidate's statement of net outstanding campaign obligations to reflect these assets if the aggregate value of all property in this category exceeds \$5,000. Items that should be considered "other assets" include artwork, gifts such as pen sets acquired for use in fundraising, and items acquired by the campaign to be used as collateral for loans.

Subsection (c) has been added to require candidates to include in their statement funds they are due to receive from joint fundraising activity, even though such funds have not yet been transferred to the candidate by the fundraising representative. The intent of this provision is to avoid overpayment of matching funds when the candidate is due to receive additional contributions received through joint fundraising.

Subsection (d) reflects the Commission's requirement that statements be updated with each matching fund submission to reflect the candidate's current financial situation.

Subsection (e) provides the circumstances under which the Commission may temporarily suspend all or a portion of further matching payments based upon a Commission determination that a candidate's outstanding campaign obligations do not exceed campaign assets either to the extent claimed by the candidate or perhaps at all.

#### *Section 9034.6 Reimbursements for Transportation and Services Made Available to Media Personnel.*

This new section generally follows the current general election public financing regulations at 11 CFR 9004.6. However, references to expenditures for travel and services provided to Secret Service personnel and other staff required by law have been deleted as other government regulations govern payment for those expenditures.

In subsection (a), the language has been revised to make clear that expenditures for travel and services provided to media personnel will be subject to the overall expenditure limitation under 2 U.S.C. 441a(b)(1)(A) although they do not need to be allocated among the various State limits.

Under subsection (b), the reimbursements received from each person may not exceed the total cost of providing services to that person by more than 10%. The 10% figure will be based on the total cost of providing services to each person over the course of the campaign rather than on a per-trip basis. Candidates may include the cost of "down-time" for leased aircraft in the amount requested for reimbursement as this is a cost of providing transportation to the media. The reimbursements may be deducted from the amount applied to the overall expenditure limit but only to the extent that the reimbursements do not exceed the actual cost to the campaign.

#### *Section 9034.7 Allocation of Travel Expenditures.*

This new section generally follows the current general election public financing regulations at 11 CFR 9004.7 with one significant change. Subsection (b)(5) has been revised to require that candidates using government conveyance, such as government aircraft, pay the equivalent of first class commercial air fare or, commercial charter fare rather than the actual cost of such government transportation. Candidates must also pay the cost of other government conveyances or accommodations used, such as government-owned cars or buses.

#### *Section 9034.8 Joint Fundraising.*

This section has been added in response to the number of questions that arose during the 1980 election cycle concerning joint fundraising by candidates receiving matching funds. The requirements of this section generally follow the procedures established in the Commission's advisory opinions and in the course of the Commission's consideration of joint fundraising events during the 1980 election cycle.

Subsection (a)(1) describes the persons or entities with whom a Presidential primary candidate may engage in joint fundraising. Subsection (a)(2) outlines the various permissible uses for funds received as a result of joint fundraising.

Subsection (b) essentially follows the Commission's advisory opinions by requiring that the participants either establish a separate political committee or select a participating political committee to act as the fundraising representative. The fundraising representative then is responsible for collecting contributions, paying the costs of the fundraising effort and disbursing net proceeds to each participant. While the participant may engage a

commercial fundraising firm to assist in conducting the activity, they must still select a fundraising representative.

Subsection (c) sets out the procedures to be followed for conducting joint fundraising activities. Under subsection (c)(1), the participants must enter into a written agreement. A copy of this agreement must be submitted by Presidential primary candidates when they submit the contributions received for matching.

Subsection (c)(2) limits the amount that can be advanced by each participant as start-up costs. Under subsection (c)(3), each solicitation for contributions to a joint fundraiser must contain a fundraising notice informing contributors of specified details of the fundraising activity.

Subsection (c)(4) requires that the participants establish a separate account for the receipt and disbursement of joint fundraising proceeds. Only funds permissible under the Act may be deposited into this account. If one of the participants can accept funds prohibited under the Act, the participants may either set up a second account to collect those funds or transfer them directly to those participants that can accept prohibited funds. In either case, the prohibited funds need not be included in the allocation formula for payment of expenses or distribution of proceeds.

Subsection (c)(4)(III) makes clear that, although distribution of proceeds may be delayed until all expenses are paid, the participants will be deemed to have received the contributions as of the date they are received by the fundraising representative.

Subsection (c)(5) describes the recordkeeping responsibilities of the fundraising representative and participating committees. The fundraising representative should request the contributor records of each participant for those contributing to the fundraising activity to aid in screening and distributing contributions.

Subsection (c)(6) permits contributors to donate to a joint fundraiser an amount up to that which the contributor could give, in the aggregate, to all the participants subject to the applicable contribution limits. Therefore, if five Presidential primary candidates participated in a joint fundraiser, and agreed to share proceeds equally, an individual could contribute up to \$5,000, minus any amount that individual had previously contributed to any of the participants.

Subsection (c)(7) governs the manner in which the fundraising representative must allocate gross proceeds among the

participants. Subsection (c)(7)(i) prohibits any allocation method used to maximize the matchability of the contributions received. That is, the allocation method cannot be based on whether any of the participating Presidential primary candidates have received the maximum amount of matchable contributions from an individual. Thus, candidates may not "trade" contributions from individuals who have already contributed the maximum amount that could be matched.

For a candidate seeking to extinguish outstanding debts, subsection (c)(7)(ii) prohibits reallocation of the receipts of a joint fundraiser once that candidate has received sufficient matchable contributions to pay off his or her debts after those contributions have been matched. Rather, candidates must continue to receive their share of joint fundraising contributions until those contributions alone are sufficient to pay the candidate's debts. For example, assume that Candidate A has outstanding debts of \$100,000, Candidate B has outstanding debts of \$200,000 and that these two candidates have agreed to share proceeds of a joint fundraiser on a 50-50 basis. If the joint fundraiser nets \$200,000, Candidate A may not reallocate his share to Candidate B after receiving only \$50,000 in reliance on receiving another \$50,000 in matching funds to extinguish his debts. Instead, Candidate A must take his full share of \$100,000 and pay his debts with the contributions raised.

Subsection (c)(8) governs allocation of expenses and distribution of net proceeds. Under subsections (c)(8) (i) and (ii), "committees of the same political party" refers only to party committees and not to candidates running on the same party ticket.

Subsection (c)(9) explains when and how receipts and disbursements must be reported by the fundraising representative and participating political committees.

#### *Section 9034.9 Sale of Assets Acquired for Fundraising Purposes.*

Section 9034.9 has been added to the regulations to set forth rules regarding the sale of "Other Assets" as defined in § 9034.5(b)(2) of these regulations. Subsection (a) follows Advisory Opinion 1980-34 in setting forth the general rule that a candidate may sell assets donated to a campaign or otherwise acquired for fundraising purpose (e.g. artwork) provided that the sale does not violate the limitations and prohibitions of Title 2, United States Code, and the regulations prescribed thereunder (11 CFR Parts 110 and 114). Subsection (b)

provides the exception to the general rule. The exception permits a candidate who is in a debt situation at the end of the matching payment period to dispose of such assets in an arms-length transaction, without regard to the limitations and prohibitions of Title 2, United States Code and 11 CFR Parts 110 and 114, if the candidate is still in a debt position at the time of the transaction. Accordingly, under this specific factual situation a candidate may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public. Any such wholesaler or other intermediary may then sell the items to the public without regard to the limitations and prohibitions of the Act.

If the candidate has more than one category of items to dispose of, such as cars and artwork, he or she may have to sell each category of assets to a different wholesaler or wholesalers depending upon the circumstances. The Commission expects, however, that candidates will limit the number of these liquidation transactions to the fewest possible.

#### *Part 9035—Expenditure Limitations*

##### *Section 9035.1 Campaign Expenditure Limitation.*

Subsection (a) generally follows current § 9035.1 (a). Subsection (b) has been added to cross-reference the allocation requirements of 11 CFR 106.2.

Under subsection (c), candidates may exempt 10% of all salaries and overhead expenditures from the overall expenditure limitation as exempt compliance costs. Candidates may also exempt 10% of such costs as exempt fundraising expenditures. The procedures for claiming a larger exemption under this section are the same as those under 11 CFR 106.2(c)(5).

Subsection (d) generally follows current § 9035.1(b).

##### *Section 9035.2 Limitation on Expenditures from Personal or Family Funds.*

This section follows current § 9035.2.

#### *Part 9036—Review of Submission and Certification of Payments by Commission*

##### *Section 9036.1 Threshold Submission.*

Subsection (a) generally follows current § 9033.2(e) but explains that the threshold submission may be presented either with or after the candidate agreement and certifications are submitted.

Subsection (b)(1) essentially follows current § 9033.2(c)(2)(i) but has been

reorganized for clarity. In addition, the requirement in current § 9033.2(c)(2)(i) that the candidate indicate which contributions were received as a result of entertainment activity has been changed to require a notation only for contributions received as a result of joint fundraising activities.

Subsection (b)(2) generally follows current § 9033.2 (c)(2)(ii) but requires that the photocopies submitted be full-size. This new requirement was added because the Commission has had difficulty in the past with photocopies that were reduced in size and therefore difficult or impossible to read. The option of requiring that photocopies be "legible" rather than "full-size" was rejected as the former term could be subject to many varying interpretations.

In addition, some commenters suggested that the Commission permit use of microfilm in place of photocopies. This was also rejected as an option for several reasons. First, microfilm does not always reproduce as well as photocopying particularly in the case of checks on colored paper. Therefore, microfilm impedes the Commission's ability to review candidate submissions. Second, there is greater risk to candidates who use microfilm. If the film is damaged or improperly developed, it is generally too late to make new films of the checks received as they will have been deposited. In that case, the candidate cannot receive matching funds for any of the contributions involved.

Subsections (b) (3) and (4) have been added to reflect established Commission requirements.

Subsections (b)(5) generally follows current § 9036.1(b). Subsection (b)(6) generally follows current § 9033.2(c)(3).

Subsection (c)(1) essentially follows current § 9036.1(a). Subsections (c) (2) and (3) generally follow current § 9036.1(c) but explain the difference in procedure between the Presidential election year and the year preceding it.

##### *Section 9036.2 Additional Submissions for Matching Fund Payments.*

Subsection (a) generally follows current § 9036.2(b).

Subsection (b) generally follows current § 9036.2 (a) and (b). Subsection (b)(1) contains several new provisions. First, a requirement that the first submission contain all the contributions and supporting documentation from the threshold submission, in addition to the contributions presented in that submission, has been included in this subsection. Second, all documentation for each submission presented after the

threshold submission must be presented in straight alphabetical order and not segregated by State as in the threshold submission. Formerly, candidates could choose either method of presentation in additional submissions but the second method created too many problems for committees. Finally, an alternative method of submitting the supporting documentation of written instruments that accompanies contributions submitted for matching has been included in subsection (b)(1)(v). This subsection provides that a candidate may batch contributions in deposits of 50 contributions or less and cross-reference the contributions by deposit number and sequence number on the contributor list. Under this method, committees would not have to alphabetize the checks supporting a submission for matching funds but would still have to alphabetize the contributor list.

Under subsection (b)(2), candidates may request additional matching funds, on dates prescribed by the Commission, by making a letter request in lieu of a full submission as required under 11 CFR 9036.2(b)(1). These letter requests must state an amount of matchable contributions which were not previously submitted for matching and be accompanied by bank documentation, such as bank-validated deposit slips or unvalidated deposit slips and the relevant bank statement, to demonstrate that the committee has received the contributions submitted. The amount requested for matching in a letter request may include contributions received up to the last business day preceding the date of the letter request. Subsection (b)(2) also specifies that the next submission following a letter request must contain documentation for the contributions included in the letter request as well as the contributions submitted for matching in that submission. A committee may not submit two consecutive letter requests, but the committee may choose to make a full submission on a date designated as a letter request date.

Subsection (c)(1)(i) explains that, during a candidate's period of eligibility, the Commission will certify an amount based on its holdback procedure within 5 business days after receiving a regular submission. If a candidate makes a letter request, the Commission will certify an amount based upon the ratio of verified matchable contributions to total deposits for that candidate in the candidate's last regular submission. The Commission will then certify any additional amount to which the eligible candidate is entitled within 15 business

days after receipt of the candidate's submission.

Consideration was also given to incorporating rejection criteria into the regulations. As initially proposed, these criteria would have operated to reject from further Commission review a submission in which the pilot sample was determined to contain an error rate in excess of 15%. The Commission was reluctant to include these criteria in the regulations and, therefore, no provisions to this effect have been drafted. However, in recognition of the increased time which is required for Commission review of a matching fund submission which has a high error rate, subsection (c)(1)(ii) permits 25 business days, rather than 15 business days, for review of such submissions.

Subsection (c)(2) provides that the Commission's certification process under the holdback procedure will no longer apply after the candidate's date of ineligibility. Rather, the Commission will conduct its review of the submission before certifying any funds.

Subsection (d) explains that submissions made in the year before the Presidential election year must contain a minimum of \$50,000 in contributions. No certifications of matching funds will be made based on such submissions until after January 1 of the Presidential election year, in accordance with 20 U.S.C. 9037(b).

#### *Section 9036.3 Submission Errors and Insufficient Documentation.*

This section generally follows current § 9036.3 with some changes. First, this section now states that money orders and cashier's checks cannot be resubmitted as provided under 11 CFR 9034.2. Second, subsection (b) no longer provides that misspelling will be a basis for rejection. However, to the extent that misspelling triggers other errors in the submission, such as aggregation errors, other error categories may apply. Subsections (b) (3) and (4) have been added to follow established Commission practice.

A fourth change, in subsection (c)(2), represents a change in Commission policy. Formerly, the Commission considered all aggregation errors as a basis for rejection, whether the error resulted in a request for too much or too little in matching funds. As revised, this subsection now states that only aggregation errors which could cause more than \$250 to be matched for a contributor will be the basis for rejection.

Finally, subsections (c)(3) and (d) have been added to follow established Commission practice.

#### *Section 9036.4 Commission Review of Submissions.*

Section 9036.4 has been reorganized to clarify the distinction between a submission which is not accepted for review because it does not satisfy format requirements and a submission which satisfies these requirements and is reviewed. This section thus codifies the past practice of not accepting for review submissions that do not meet minimum facial standards necessary for proper processing.

Subsection (d) provides that the Commission may conduct an audit and examination under Part 9039 of contributions submitted for matching.

#### *Section 9036.5 Resubmissions.*

This section has been revised to more accurately reflect Commission resubmission procedures. Under subsection (c)(6), candidates must include a statement with each resubmission that the committee's contributor records have been corrected consistently with the resubmission. This requirement follows established Commission practice. Subsection (d) now provides that the Commission will certify any funds within 15 business, rather than calendar, days.

#### *Section 9036.6 Continuation of Certification.*

This section changes the time for making the last submission from January 21 to the last Monday in January. This deadline only applies to contributions submitted for the first time. It does not apply to resubmissions of contributions that were previously rejected for matching.

#### *Part 9037—Payments*

##### *Section 9037.1 Payments of Presidential Primary Matching Funds.*

This section follows current § 9037.1.

##### *Section 9037.2 Equitable Distribution of Funds.*

This section follows current § 9037.2.

##### *Section 9037.3 Deposits of Presidential Primary Matching Funds.*

This section follows current § 9037.3.

#### *Part 9038—Examinations and Audits*

##### *Section 9038.1 Audit*

Subsection (a)(1) Generally follows current § 9038.1(a). Subsection (a)(2) generally follows current § 9038.1(b). Subsection (a)(3) has been added to make clear that information obtained pursuant to an audit may be used as the basis for a Commission repayment determination.

Subsection (b) provides a description of audit fieldwork. Subsection (b)(1) makes clear that it is the committee's responsibility to provide adequate office space and access to committee records and personnel pursuant to the candidate and committee agreement. If the committee fails to provide adequate office space, access to records and/or personnel, the Commission will notify the candidate and recommend corrective action. If the dispute is not resolved, the Commission may seek judicial intervention to enforce the candidate and committee agreement. Subsection (b)(1)(iv) sets forth the procedures by which a candidate may seek Commission review of disputes that arise during the conduct of the audit that cannot be resolved informally.

Subsections (b) (2), (3) and (4) describe the various steps in the audit fieldwork based on past Commission practice.

Subsection (c) describes the preparation of, and candidate's response to, an interim audit report. The contents of the interim audit report are generally described in subsection (c)(1). Pursuant to subsection (c)(1)(v), the candidate will also have an opportunity to respond to the Commission's preliminary calculations regarding future repayments, in addition to any issues that may have been raised by the audit. This last provision was added in response to comments suggesting that candidates be given the earliest possible opportunity to respond to the Commission's thinking with respect to its future repayment determination. These preliminary calculations will not, however, be considered as the Commission's initial repayment determination under 11 CFR 9038.2(c)(1).

Subsection (d) describes the preparation of the audit report that is publicly released. This report is the same as the interim report with two main distinctions. First, this report may be revised based on the candidate's response to the interim report. Second, this report will contain the Commission's initial repayment determination pursuant to 11 CFR 9038.2(c)(1) instead of the preliminary calculations found in the interim report.

Subsection (e) explains the public release of the audit report. It also makes clear that addenda to the audit report may be issued later on. These addenda may be based, in part, on follow-up fieldwork conducted by the Commission.

#### *Section 9038.2 Repayments.*

Subsection (a) includes language to advise candidates to give preference to repayments required by § 9038.2 over all

other outstanding obligations of their committees once the Commission has made a final repayment determination.

Subsection (b) has been revised and reorganized to provide greater detail regarding the different bases for Commission repayment determinations. Language in the current regulations regarding specific repayment formulas (e.g., "the candidate shall repay \* \* \* an amount equal to the amount \* \* \*") has been deleted from this section. As that language generally follows 28 U.S.C. 9038(b), the Commission will continue to follow its past practice in applying repayment formulas. Therefore, this deletion is not intended to indicate a change in policy.

Subsection (c) sets forth each step involved in the making of a repayment determination. Under subsection (c)(3), the Commission may permit a candidate to make an oral presentation to the Commission prior to the Commission's final repayment determination.

Subsections (d) and (e) clarify the time periods in which the candidate must repay the United States Treasury.

Subsection (f) clarifies that the Commission may make additional repayment determinations on the basis of new facts.

Subsection (g) requires the candidate or committee to inform the Commission of newly-discovered assets after a repayment determination has been made.

#### *Section 9038.3 Liquidation of Obligations; Repayment.*

This section generally follows current § 9038.3, but subsection (c)(3) has been added to distinguish the Commission's ability to determine that the candidate has a surplus from the candidate's own determination and decision to voluntarily return funds to the Treasury.

#### *Section 9038.4 Extensions of Time.*

This new section governs applications for extensions of time throughout the audit and repayment process.

#### **Part 9039—Review and Investigative Authority**

##### *Section 9039.1 Retention of Books and Records.*

Part 9039 has been added to describe the Commission's review responsibilities and authority in its administration of the matching fund program. In making determinations, certifications, and findings under the Presidential Primary Matching Payment Account Act and related regulations, the Commission must perform a continuing review of candidate and committee reports and submissions, and other

relevant information. For the most part, the Commission's review is routine. In the past, however, there have been instances when the Commission has decided to conduct a more extensive review, or investigation, in order to properly discharge its statutory responsibilities. Prompted in part by a number of court decisions over the years, this new Part 9039 sets forth, for the first time in the regulations, the nature of the Commission's review in administering the matching fund program, including its authority under 28 U.S.C. 9039 to conduct investigations.

Section 9039.1 restates the responsibilities of candidates and committees to keep and furnish to the Commission certain information required by the Act and regulations.

##### *Section 9039.2 Continuing Review.*

This section briefly describes the routine Commission review conducted on a continuing basis as part of the Commission's administration of the matching fund program. Subsection (b) provides that Commission staff may contact representatives of the candidate on an informal basis.

##### *Section 9039.3 Examination and Audits; Investigations.*

This section describes the Commission's investigations under Part 9039. Generally, the Commission will exercise its authority under Part 9039 when the issues raised relate to the candidate's continuing eligibility or the amount of his or her entitlement during the course of the campaign. Part 9039 therefore provides the Commission with a means for resolving such questions expeditiously in the course of fulfilling its statutory obligation to review submissions and certify funds. Subsection (a)(1) requires that the Commission initiate an inquiry under this section on an affirmative vote of four of its members. Subsection (a)(2) sets forth the uses to which information obtained could be put, and describes the relationship between an investigation conducted under this section and one made under 2 U.S.C. 427g. Subsection (a)(3) provides that the Commission must first seek to obtain relevant information as part of its continuing review before exercising its authority to conduct an inquiry. This subsection also makes reference to the judicial standard of "patent irregularities suggesting the possibility of fraud" which the Commission must find before it can withhold matching payments prior to concluding its inquiry.

Subsection (b)(1) provides for notification to the candidate, and

subsection (b)(2) sets forth the Commission's possible methods in conducting the inquiry. Subsection (b)(3) distinguishes an inquiry conducted under part 9039 from the procedures for an investigation conducted under 2 U.S.C. 437g.