

FEDERAL ELECTION COMMISSION**[NOTICE 1991-13]****11 CFR PARTS 9034, 9036, and 9037****Matching Fund Submission and Certification Procedures for Presidential Primary Candidates****AGENCY:** Federal Election Commission.**ACTION:** Final rule and transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations setting forth procedures for matching fund submissions by Presidential primary candidates. 11 CFR 9034.1, 9034.5, 9036.2, 9036.4, 9036.5, 9036.6, 9037.1 and 9037.2. The changes are necessitated by the Department of the Treasury's recent promulgation of new rules regarding payments to candidates, which were adopted to address the possible shortage in the Presidential Election Campaign Fund. See 28 CFR parts 701 and 702, 56 FR 21596 (May 10, 1991). The principal changes to the Commission's rules involve monthly submission and certification dates for all candidates, as well as the elimination of letter requests and holdback procedures. Further information on these revisions is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9039(c). A document announcing the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 9034.1, 9034.5, 9036.2, 9036.4, 9036.5, 9036.6, 9037.1 and 9037.2 regarding matching fund submission and certification procedures for publicly-funded Presidential primary candidates. On June 26, 1991, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to three regulations. 56 FR 29372. One written comment was received from the Internal Revenue Service.

Section 9039(c) of title 26, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of title 26 of the United States Code be

transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on July 19, 1991.

Explanation and Justification

In response to a projected shortfall in the amount of federal funds in the Presidential Election Campaign Fund for the 1992 presidential election cycle, the Department of the Treasury has recently issued new rules regarding payments from the Fund. See 28 CFR parts 701 and 702, 56 FR 21596 (May 10, 1991). The priorities established by the public financing statutes indicate that a shortfall will affect the availability of matching funds for primary candidates before it affects the financing of general election candidates or nominating conventions. See 26 U.S.C. 9006(c), 9008(a) and 9037. Accordingly, the new Treasury Department rules set aside funds for the nominating conventions and general election candidates prior to depositing funds in the Presidential Primary Matching Payment Account. 26 CFR 701.9006-1 and 701.9037-1. If a shortage of primary funds occurs in a particular month, the Treasury Department regulations set forth a formula for determining the amount each candidate will receive as partial payment and the amount that will be treated as certified for the next month. 26 CFR 702.9037-2. In addition, the new Treasury Department rules change the dates on which federal payments will be made to primary election candidates. For 1992 Presidential primaries, candidates will receive federal payments on a once-a-month basis. 26 CFR 702.9037-2. All candidates will be paid on the same day each month. In previous election cycles, payments were made several times each month.

The changes in the timing of matching fund payments have necessitated corresponding changes to the Commission's certification procedures so that all certifications are made on the same date each month after the beginning of the matching payment period. Given the need for adequate time to review matching fund submissions prior to certification, the Commission expects to set monthly deadlines for receipt of all matching fund submissions near the beginning of each month. In addition, the Commission has recently decided, during limited periods of time, to reject matching fund submissions where the initial sampling indicates a projected dollar value of nonmatchable contributions of more than 15% of the

amount requested. These changes are explained in more detail below.

In the event that the projected shortfall does not occur, the Commission sought clarification of whether the Treasury Department intended to return to its previous practice of making payments throughout the month as matching fund certifications are received. The Commission also sought comment as to whether it would be feasible for the Commission and campaign committees to return to the former matching fund submission and certification procedures, either before or during the matching payment period. The Internal Revenue Service's position, as stated in the comment, is that even if there is no shortfall, the new Treasury regulations specify the procedures that will be followed. Thus, the Internal Revenue Service found no conflict between the Commission's proposed rules and the Internal Revenue Code and the regulations thereunder. Consequently, the Commission has decided to adopt the proposed changes to its matching fund submission and certification procedures.

1. Submission Procedures

In previous election cycles, the Commission scheduled candidates to make matching fund submissions on the second and fourth Monday of each month after the beginning of the matching payment period. Resubmissions were scheduled for the first and third Monday. The Commission is now changing the submission schedule so that all candidates will make once-a-month submissions and resubmissions on the same date. On the last two submission dates in the year before the election year and on each submission date after the beginning of the matching payment period, the candidate will be limited to making one submission, and either one resubmission under § 9036.5 or one corrected submission under § 9036.2(c) or (d)(2). The Commission will publish the list of the monthly submission dates and notify the candidates once the Treasury Department has established the payment schedule. Please note that the new monthly submission dates will not affect threshold submissions, which candidates may still make at any time. The monthly submission dates also will not apply to resubmissions made within the five day period for correcting a submission that either failed to meet the good order requirements or that had a high rate of nonmatchable contributions. See revised 11 CFR 9036.4(a), as discussed below.

One consequence of establishing a single submission date each month is that all submissions will need to be full submissions. Thus, 11 CFR 9036.2(b)(2) is being revised to delete the current letter request procedures. In the event of a shortage, this will help to ensure that candidates are paid only the amount to which they are entitled. In addition, 11 CFR 9036.6 is being revised to indicate that the last date for first-time submissions for all candidates is the first Monday in March of the year following the election year. In the past, a candidate's last submission date was either the last Monday in February or the second Monday in March, depending on the candidate's submission schedule.

2. Certification Procedures and Holdback Procedures

The revised rules which follow also change the timing of the Commission's certification of additional payments. Under the previous rules set forth at 11 CFR 9036.2(c)(1), during the Presidential election year, the Commission certified an amount within 5 business days using a holdback procedure. Any additional amount was then certified in either 20 or 25 business days, depending upon the projected dollar value of nonmatchable contributions. These provisions are being revised by eliminating the 5, 20, and 25 day periods, and also by eliminating the use of holdback procedures to determine the amount to be certified to the Secretary of the Treasury. See Federal Election Commission's Guideline for Presentation In Good Order. If a shortfall occurs, the elimination of the holdback procedures is necessary to ensure that the amount certified does not exceed the candidate's entitlement, as determined under the Commission's review procedures. Please note that the order of paragraphs (c) and (d) in § 9036.2 is also being reversed to follow a more logical chronological format.

Under renumbered § 9036.2(d)(1), certifications based on additional submissions after the beginning of the matching payment period will be made at least once a month on the same day for all candidates. Revised § 9036.2(d)(2) indicates that the once-a-month certification dates also apply to submissions after the candidate's date of ineligibility. Section 9036.5(d) is also being amended to provide that certifications of all resubmitted contributions will be made on the same monthly certification dates. In the past, the Commission had certified resubmitted contributions within 15 business days. However, these changes do not affect the timing of certifications of additional submissions that are filed

in the year before the Presidential election year. See renumbered 11 CFR 9036.2(c).

3. Commission Review of Submissions

The attached rules at 11 CFR 9036.4 contemplate the continuation of the Commission's previous procedures for reviewing matching fund submissions, with the following modifications. First, committees will be granted five business days, instead of three, to correct submissions that have been rejected from review because they failed to meet the Commission's good order requirements. Section 9036.4(a) is also being revised to indicate that if the matching fund submission is corrected in the five day time period, it will be processed before the next regularly scheduled submission date, and the Commission's certification will be made on the certification date for the original submission. However, if a corrected submission is made after the five day period, it will be reviewed as if received on the next regularly scheduled submission date after it is submitted.

4. High Error Rates

Recently, the Commission decided that during limited periods of time, it will use a new procedure of rejecting matching fund submissions from review in cases where the projected dollar value of the nonmatchable contributions exceeded 15% of the amount requested. Please note, however, that the new rejection policy does not apply to submissions made on the last submission date in the year preceding the Presidential election year, or to submissions made during the Presidential election year before the candidate's date of ineligibility. At other times when the new policy is in operation, the entire submission will be returned to the committee for corrective action before any amount is certified for payment. If the committee is able to correct the submission and resubmit it within five business days, it will be reviewed before the next regularly scheduled submission date and an amount will be certified on the certification date for the original submission. However, if the resubmission is made after the five day period, it will be reviewed after the next regularly scheduled submission date, and an amount will be certified on the next regularly scheduled certification date. Corrected submissions may not contain new or additional contributions that were not previously submitted for matching. Similarly, under 11 CFR 9036.5(c)(5), resubmissions may not contain new or additional contributions that were not previously submitted.

Submissions are not considered to be corrected until the projected dollar value of nonmatchable contributions has been reduced to 15% of the amount requested or less. The new policy is reflected in 11 CFR 9036.2 (c) and (d), and 9036.4(a) which follow.

5. Treasury Department Regulations

The final rules which follow add to §§ 9034.1(a), 9037.1 and 9037.2 cross-references to the new Treasury Department regulations. The added language alerts the reader to the possibility that a matching fund certification may not result in full payment by the Treasury Department in the event of a shortage of funds in the Presidential Primary Matching Payment Account. The Treasury Department has established a formula to determine the amount each candidate will receive as a partial payment and the amount that will be treated as certified for payment in the following month.

6. Revised Certifications

The revised rules address another new issue presented by the potential shortfall in the matching payment account. In the event of a shortage of public funds, one consequence of the new Treasury Department regulations could be over a month's delay between certification and payment of all certified matching funds. After a candidate's date of ineligibility, the current regulations require the candidate to have net outstanding campaign obligations as of the date of payment. 11 CFR 9034.1(b). The 1983 Explanation and Justification of this provision indicates that 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." Explanation and Justification of Presidential Primary Matching Fund Rules, 48 FR 5227 (Feb. 4, 1983). In a shortfall situation where there is a longer time period between submission date and payment date, the financial status of a candidate's committee may change significantly. For example, the candidate may wish to raise additional private contributions to pay the debts listed on the NOCO statement more promptly, thereby reducing or possibly eliminating the amount of qualified debt remaining. Consequently, the Commission is adding language at 11 CFR 9034.5(f) that requires all candidates who have not been paid the full amount certified after their dates of ineligibility to submit updated NOCO

statements shortly before the next payment date so that the Commission may revise the previous certifications, when necessary. The candidates and the Secretary of the Treasury will be promptly notified of any revised certifications under 11 CFR 9036.4(c)(2).