

DISCLOSURE OF CAMPAIGN FINANCES

COMMUNICATION

FROM

THE CHAIRMAN
FEDERAL ELECTION COMMISSION

TRANSMITTING

PROPOSED REGULATIONS GOVERNING THE DISCLOSURE
OF CAMPAIGN FINANCES BY CANDIDATES AND COMMIT-
TEES INVOLVED IN FEDERAL ELECTIONS. PURSUANT TO
SECTION 316(c) OF THE FEDERAL ELECTION CAMPAIGN
ACT OF 1971, AS AMENDED



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EXPLANATION AND JUSTIFICATIONS OF THE DISCLOSURE
REGULATIONS, PARTS 100-105 AND 109-111

§ 100.1 *Scope.*

These regulations are for the implementation of Title 2, United States Code. Contributions and expenditures required to be disclosed under Title 2 and under these regulations do not necessarily count for limitation purposes under Title 18, U.S.C.

The regulations of this chapter are issued pursuant to the authority of the Commission codified in 2 U.S.C. §§ 437(d)(8) and 438(a)(10), "to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of this Act."

§ 100.2 *Candidate.*

There are three ways for an individual to become a candidate: (1) take action under State law; (2) receive contributions or make expenditures or give consent to another person to do so; and (3) fail to disavow the activity of another person making contributions or expenditures after the Commission has given the individual written notice.

The first two methods follow the statutory language of 2 U.S.C. § 431(b). The third route to become a candidate is necessary to prevent persons from taking unauthorized action which would result in an individual meeting the statutory definition of candidate. If the Commission becomes aware of such activity, it can give the individual an opportunity to disavow the activity.

§ 100.3 *Commission.*

This section merely notifies the public of the Federal Election Commission's address to facilitate full disclosure.

§ 100.4 *Contribution.*

This definition parallels the statute, 2 U.S.C. § 431(e). Subsidiary terms, such as "loan," "money" and "anything of value" have been defined to implement the statute.

A contract or agreement has been limited in the regulation to written contracts so that promises, like an oral pledge, are not included as contributions. If an individual reduces a pledge to writing, it is reportable. The distinction was drawn between written and oral agreements because of the principal problem of keeping records of oral agreements. Further, while an individual may not be at all serious about an oral pledge he or she is more likely to honor a written pledge. An oral contract which results in a contribution is reported at the time the contribution is actually made; a written contract to make a contribution is reported at the time the contract is made, as an obligation owed to the candidate or committee, and is reported at the time the contribution is made.

A transfer of funds from a political committee or other similar source to another committee or candidate is reportable as a contribution. The statute says "committee or other source." Read literally, this would mean every contribution to a political committee or candidate would be a transfer. The definition has therefore been narrowed to sources similar to political committees or organizations. A candidate is treated as a political committee for reporting purposes.

"Personal services rendered without charge" is defined in the regulations as services provided when the volunteer is not being compensated by an employer for the time used for campaign activity.

The rental value of the use of an individual's residence need not be calculated for the \$500 exclusion from contribution. This exception was made because requiring disclosure is truly a *de minimis* matter. Computation of the value of a residence would also be exceedingly burdensome to the candidate and contributor alike.

§ 100.5 *Earmarking.*

The term "earmarking" is not used in the statute but is used in the regulations and therefore a definition is needed. It is used to mean designated contributions and expenditures, passed through a conduit. The use of a committee as a "conduit" is reported by all persons involved in the transaction. This definition follows that of the prior supervisory officers.

§ 100.6 *Election.*

General election is defined to include not only the normal November election but also an election where the result will cause an individual to assume an office vacant prior to the election for whatever reason. This will cover situations like the New Hampshire Senate race, an election which is the result of the death or resignation of the incumbent, and even the unusual case where an election to fill a two and one-half month term occurs on the same day as the normal November election.

The definitions under "election" are designed to be neutral as between party affiliated and independent candidates. Generally, each candidate will participate in two elections: The primary (for independents, a comparable period during which he or she may secure a position on the general election ballot) and the general election.

When a state party holds a convention or caucus for the purpose of choosing candidates for the primary ballot, such candidates, in campaigning prior to the caucus or convention, would use funds allocated for the primary election. These candidates would be responsible for determining what proportion of their expenditures would be necessary to secure convention delegates and what proportion would be needed to campaign in the primary itself. A party could, by its own bylaws or by agreement of the candidates, voluntarily limit expenditures for a convention or caucus to a fixed amount so that a reasonable amount remained to be used in the actual primary. If additional funding was allowed for pre-primary caucuses or conventions, it would be sufficient to establish parity between the candidates who were nominated by the caucus and independent candidates, and the candidates who fail to obtain nomination in the caucus. We adopt this approach cognizant of the fact that in some states, a candidate may have to run in a primary if he or she does not receive a certain percentage of the votes in a convention. The candidate must judge how much to spend on the convention and how much to hold back for a possible primary; the two events still constitute but one election.

Minor party candidates are treated the same as independent candidates. This was done because minor parties usually do not have actual primary elections and spend a great deal of effort to secure a ballot position. Therefore, their primary is considered to occur on

the last day to qualify for a ballot position in the general election or on the date of the last major party primary in that state, whichever comes later.

§ 100.7 *Expenditure.*

The definition of expenditure parallels the statute, 2 U.S.C. § 431(f). As for the definition of contribution (§ 100.4), the subdefinitions of "payment," "money" and "anything of value" have been clarified.

Many comments suggested that only the payment of interest on the loan be treated as an expenditure and not the repayment of the loan itself. For purposes of the limitations under 18 U.S.C. § 608, we agree. Nevertheless, for purposes of the disclosure regulations, the creation of an obligation to repay should constitute an expenditure and must be reported. The reporting forms provide for the reporting of loan repayments in a way to eliminate double-counting.

§ 100.8 *Federal office.*

Follows 2 U.S.C. § 431(c).

§ 100.9 *File, filed or filing.*

Follows 2 U.S.C. § 431(d).

§ 100.10 *Identification.*

Follows 2 U.S.C. § 431(j).

§ 100.11 *Occupation.*

This term is used in the statute, but is not defined in it.

§ 100.12 *Principal place of business.*

This term is used in the statute, but is not defined in it.

§ 100.13 *Person.*

This definition follows 2 U.S.C. § 431(h). Subsection (b) adds an exception to the statute for groups acting together for a single transaction. This exception allows, for example, a group of individuals to place a single ad in a major newspaper, so long as each individual member of the group does not spend more than \$1,000 concerning one candidate. This provision was drafted to minimize infringement of freedom of association and speech. The individuals report under the independent expenditure or contribution provision. 2 U.S.C. § 434(e); § 105.10.

§ 100.14 *Political committee.*

The general definition of political committee follows 2 U.S.C. § 431(d). The four types of political committees are:

- (1) principal campaign committee;
- (2) single candidate committee;
- (3) multicandidate committee; and
- (4) party committee.

The definition of principal campaign committee follows 2 U.S.C. § 431(n).

A single candidate committee is a political committee other than a principal committee which supports only one candidate.

A multicandidate committee is a political committee which supports two or more candidates. A qualified multicandidate committee is a multicandidate committee which meets the requirements of 18 U.S.C.

§ 608(b)(2) and therefore can contribute \$5,000 to a candidate. This definition is in the regulations because the comments received showed a need for it to eliminate confusion.

The definition of party committee is needed so that it can be distinguished from other multicandidate committees.

The term "authorized" is used in the Act but is not defined in it.

The term "affiliated" is used in the Act but not defined in it. This definition will cause the listing of affiliated committees in a committee's Statement of Organization.

A group of persons making a single transaction have been exempted from the definition of political committee for the same reason that this exception is made from the definition of person. See § 100.13.

§ 100.15 *Political party.*

This definition follows 2 U.S.C. § 431 (m).

§ 100.16 *National committee.*

This definition follows 2 U.S.C. § 431(k).

§ 100.17 *State.*

This definition follows 2 U.S.C. § 431(i).

§ 100.18 *State committee, subordinate committee.*

This definition identifies those party organizations responsible for party activity below the statewide level.

Part 101—Candidate status and designations

§ 101.1 *Duration of candidate status.*

Candidates, unless their personal reporting requirement is waived, continue to report until all of their personal debts concerning their election are extinguished. They may terminate candidate status by letter.

§ 101.2 *Candidate designations.*

After becoming a candidate an individual is required to designate a principal campaign committee, and campaign depositories. This is accomplished on one form, which also contains the waiver request. These designations are necessary to implement 2 U.S.C. § 432(e) and (f), and § 437b(a)(1).

If a candidate receives contributions or makes expenditures regarding the general election prior to the primary election, the candidate is required to use acceptable accounting methods to separate these contributions and expenditures. Candidates have the option, among others, of maintaining separate checking accounts or keeping separate records and ledgers.

This section allows the receipt of contributions for the general election prior to the primary election but creates safeguards which minimize the possibility of general election receipts and disbursements being commingled with primary election receipts and disbursements.

§ 101.3 *Waiver of candidate reporting.*

This section provides for the waiver of a candidate personally reporting if the candidate does not make expenditures or receive contributions. This section is based on 2 U.S.C. § 436(b)(1). The waiver becomes effective at the time the application is filed.

Part 102—Registration of political committees§ 102.1 *Registration of political committees.*

Political committees are required to file a Statement of Organization with the Commission, the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate, pursuant to 2 U.S.C. § 433(a). Existing committees which have registered with the supervisory officers do not have to re-register.

§ 102.2 *Forms and filing.*

This section follows 2 U.S.C. § 433(b).

§ 102.3 *Changes or correction in information.*

This section follows 2 U.S.C. § 433(c).

§ 102.4 *Discontinuance of registration.*

This section follows 2 U.S.C. § 433(d).

§ 102.5 *Identification number.*

Each political committee is assigned an identification number to implement the full disclosure principles of the Act, and for ease in clearly identifying committees with similar names.

§ 102.6 *Registration of state committees; establishment of Federal campaign committees by political committees.*

This section provides two options for political committees which participate in state political campaigns. They can either report all receipts and expenditures or establish a separate Federal committee and report only Federal activity. This should be especially beneficial for state political party committees, the bulk of whose activity is typically on behalf of non-Federal candidates. The segregation of funds prevents the commingling of contributions which may be lawful for state candidates but unlawful for Federal candidates.

Part 103—Organization of political committees§ 103.1 *Organization.*

This section follows 2 U.S.C. § 432(a), and provides for continuity in the offices of chairman and treasurer.

§ 103.2 *Receipts of contributions.*

This section follows 2 U.S.C. § 432(b).

§ 103.3 *Accounting for contributions and expenditures.*

This section follows 2 U.S.C. § 432(c) and (d). Subsection (e) recognizes that, even with a treasurer's best efforts, some information cannot be obtained. In that case, the treasurer is to keep a record of the efforts to obtain it.

§ 103.4 *Petty cash fund.*

A political committee may maintain a petty cash fund for making expenditures of less than \$100. This section implements 2 U.S.C. § 437(b).

§ 103.5 *Designation of principal campaign committee.*

This section follows 2 U.S.C. § 432(f). Some comments received requested that the definition of "support" in § 103.5(c) be such that a candidate could contribute to another candidate through the contrib-

uting candidate's principal campaign committee. The Commission believes that the statute explicitly prohibits a principal campaign committee from making a contribution to, or expenditure on behalf, of any other candidate in any amount. The type of contribution described can be made by establishing an authorized committee, by using excess campaign funds, or by making a contribution from personal funds.

§ 103.6 *Authorization of political committee.*

This section follows 2 U.S.C. § 432(e).

§ 103.7 *Unauthorized activity; notice.*

This section follows 2 U.S.C. § 432(e).

§ 103.8 *Notice; solicitation of contributions.*

This section follows 2 U.S.C. § 435.

§ 103.9 *Records; retention.*

This section follows 2 U.S.C. § 432(d).

§ 103.10 *Segregated funds.*

This section follows 2 U.S.C. § 432(b).

Part 104—Campaign depositories

§ 104.1 *Notification of the Commission.*

Unauthorized single candidate committees and multicandidate committees designate their own depositories on their Statement of Organization filed with the appropriate office. Principal campaign committees and authorized single candidate committees designate the depositories which their authorizing candidate has designated on their respective Statements. Authorized single candidate committees file their Statement with the respective principal campaign committee. This procedure follows the statute, 2 U.S.C. § 437b(a) and § 433(e).

§ 104.2 *Depositories.*

The section permits only State and nationally chartered banks to be used as campaign depositories as required by 2 U.S.C. § 437b(a)(1) and (a)(2).

§ 104.3 *Deposits and expenditures.*

(a) All contributions must be deposited in the appropriate campaign depository within 10 days. All expenditures must be made by check drawn on the appropriate account in the depository except expenditures for \$100 or less may be made from a petty cash fund.

Subsection (a) follows the requirements of 2 U.S.C. § 437b(2). The 10-day deposit requirement was designed to encourage the prompt disposition of contributions rather than permit "stale" checks to be kept lying around or lost. In addition, some large campaigns have used the date of deposit as the date of receipt for reporting purposes. The 10-day requirement would mean reported receipt dates would be close to actual receipt.

(b) Contributions of questionable legality shall either be returned to the contributor or deposited while the treasurer determines the validity of the contribution.

Subsection (b) was added by the Commission at the suggestion of many committees as a guide to the proper handling of questionable contributions.

§ 104.4 *Vice-Presidential candidate campaign depositories.*

This section follows 2 U.S.C. § 437b(c).

Part 105—Reports by political committees and candidates.

§ 105.1 *General.*

(a) Quarterly reports are required by political committees until all debts and obligations are extinguished and a Notice of Termination is filed. (b) Candidates must also continue to report until all debts are extinguished unless a waiver is granted. (c) Quarterly reports are required only if contributions exceed \$1,000 or expenditures exceed \$1,000.

The reporting of debts and obligations is required by the Commission under the authority of 2 U.S.C. § 434(b)(11). The quarterly report exemption is required under 2 U.S.C. § 434(a)(1)(C). The requirement for notifying the Commission that a committee is exempted from filing quarterly reports is to prevent the committee from being considered in violation for late filing. The Commission otherwise has no way to know the committee is exempt.

§ 105.2 *Form and content of reports.*

This section generally follows 2 U.S.C. § 434(b). Subsection (b)(1) requires a statement of cash on hand, to provide a starting point for each report. Subsection (b)(3)(ii) is to prevent a recurrent problem: when committees reported all contributions—not just those over \$100—the inclusion of large numbers of the small contributions made it more difficult to isolate large contributions. Reports may contain all contributions, but the over \$100 contributions must be on a separate schedule from the under \$100.

Subsection (b)(7)(i) makes it explicit that campaign funds may be taken out of depositories for investment purposes. The interest or other proceeds from an investment must be reported.

Subsection (e)(1) provides for consolidated reports by principal campaign committees. The consolidation will include the candidate's report (unless waived) and the reports of authorized committees. While the statute does not specifically include the candidate's report in the consolidation, the Commission believes that it would be best to include it since the expenditure limit can be most easily tracked that way by the principal campaign committee.

Subsection (c)(2) sets out an exception for the consolidation requirement, for the 10-day pre-election report only. Because principal campaign committees must file the consolidated report on the same day as authorized committees must file with it, and because there is only five days between the close of books and the date of filing (three days if the report is mailed), the Commission is permitting the principal campaign committee, if it chooses, to file only a summary sheet on the 10th day, and a complete consolidated report five days before the election. The Commission believes this meets the requirement for public disclosure and relieves the committees of a difficult burden.

§ 105.3 *Disclosure of receipt and consumption of in-kind contributions.*

This section provides for the valuation and disclosure of in-kind contributions, (contributions other than cash or check). The valuation is determined by the usual and normal charge at the time of the

contribution. Since § 100.4(b) excludes certain kinds of in-kind donations from the definition of contribution, those donations need not be reported. Furthermore, in-kind contributions need not be separately listed in reports if the aggregate value is less than \$100 from a single contributor. The regulation distinguishes between goods and services, and contributions to be liquidated, such as stock or art objects. The Commission's authority to require disclosure of in-kind contributions is found in 2 U.S.C. § 434(b)(2) and (b)(13).

§ 105.4 *Filing dates.*

All political committees and candidates are required to file pre election, post election and quarterly reports, and an annual report when appropriate. The filing dates are required by the statute, 2 U.S.C. § 434(a), except that this section requires that the 4th quarterly report be filed by January 31 instead of January 10 for election years even though a close reading of the statute would set it for January 10. Congressional intent seems to be for January 31. This was done at the request of many witnesses who wanted the 4th quarter due date to coincide with the annual report due date.

Under § 105.4(f), contributions of \$1,000 or more received subsequent to the 15th day, but more than 48 hours before an election, must be specially reported, but only if the \$1,000 was given for that election. The Commission felt that a strict requirement of specially reporting the \$1,000 received even if it was for a different election, would place an unnecessary reporting requirement on candidates or committees involved in presidential primaries. The section further provides for monthly reporting in certain cases instead of the usual reporting dates. The Commission's authority for this provision is located at 2 U.S.C. § 434(3).

Monthly reporting is mandatory for Presidential candidates and their committees, but is optional for all other multi-state committees. This provision would greatly ease the reporting burden during the primaries since the number of pre and post primary election reports otherwise required could total 56.

§ 105.5 *Uniform reporting of contributions.*

This provision, which requires reporting the identification of all individuals by whom a contribution over \$100 was made, follows 2 U.S.C. § 434 (b)(7) and (b)(8).

§ 105.6 *Uniform reporting of expenditures.*

This provision, which requires reporting the identification of all individuals to whom an expenditure over \$100 was made, follows 2 U.S.C. § 434 (b)(9) and (b)(10).

§ 105.7 *Allocation of expenditures among candidates.*

This section informs committees of their need to allocate expenditures made for the purpose of supporting more than one Federal candidate. The referral to Part 107 is the Commission's proposed regulation on allocation which appeared in the *Federal Register* on November 5, 1975, 40 FR 51610, and which will soon be submitted to the Congress.

§ 105.8 *Disclosure of earmarked contributions and expenditures.*

This section requires the disclosure of all contributions that are earmarked by the contributor to a candidate via a political committee.

This section is similar to § 14.12 of the GAO regulations under the 1971 Act, the purpose of which is to disclose those contributions passing through a "conduit" committee with the understanding that a particular candidate be the recipient of the contribution.

§ 105.9 *Continuous reporting of debts and obligations.*

A debt or obligation to make an expenditure of \$500 or less is required to be reported at the time of payment or no later than 60 days after the incurrence of the debt or obligation, whichever comes first. A loan of money or debt or obligation over \$500 is reported as an expenditure as of the time of the transaction. This section is designed to prevent unnecessary duplication of reporting operating expenditures, *i.e.*, once as a debt when incurred and again as an expenditure when paid, for small obligations.

The Commission's authority to prescribe this section is found at 2 U.S.C. § 434(b)(12).

§ 105.10 *Reports of independent expenditures and contributions.*

This section requires the reporting of all independent expenditures and contributions which, in the aggregate, exceed \$100. This section follows the statute, 2 U.S.C. § 434(e).

§ 105.11 *Waiver of reporting requirements.*

The Commission may waive at its discretion the reporting requirements of political committees that primarily support persons seeking State or local office and do not operate in more than one State. The authority for this section is 2 U.S.C. § 436(b)(2).

§ 105.12 *Political committees; cash on hand.*

The first report of a committee following its registration shall disclose the cash on hand at the time of its registration. In order to determine the legality of the source of the cash on hand, it is assumed that the cash on hand represents those contributions most recently received by the committee, *i.e.*, the "first-in, first-out" method of accounting. This provision is necessary, especially for political committees, which may register with substantial cash on hand.

§ 105.13 *Members of Congress; reporting exemption.*

This section follows 2 U.S.C. § 434(d).

Part 109—Reports on convention financing

§ 109.1 *Reports; committees shall report.*

This section follows 2 U.S.C. § 437.

§ 109.2 *Reports; political parties.*

This section follows 2 U.S.C. § 437 but exempts the reporting requirement for state and subordinate party committees that spend funds for delegate and alternate travel expenses and for certain events at the convention such as receptions. The Commission believes that these types of expenditures were not intended by the statute to be reported under 2 U.S.C. § 434.

§ 109.3 *Financial statements; time and content of filing.*

This section requires the convention report to be filed no later than 60 days after the convention but not later than 20 days before the general election in accordance with 2 U.S.C. § 437. If there is financial

activity subsequent to this report, quarterly reports are required to reflect those transactions in order to obtain full disclosure.

§ 109.4 *Committees receiving Federal funds.*

National political parties which receive public funds under 26 U.S.C. § 9008 are required by this section to file quarterly reports. This provision is necessary in order to ensure that public monies are not misused. Authority for this requirement is in 2 U.S.C. § 437d(a)(1), the Commission's general grant of authority to require reports. This reporting scheme requires committees receiving Federal funds to report more often and earlier than groups such as host city committees which receive no Federal convention funds and only have to file after the convention.

§ 109.5 *Convention expenses; definition.*

This section merely refers to Part 120 of the convention financing proposed regulation, which will contain a detailed definition of what is a qualified and non-qualified convention expense.

Part 110—Formal requirements respecting reports and statements

§ 110.1 *Verification.*

This section requires the individual responsible for submitting a report to sign it. This prevents the shifting of responsibility onto others who are not required under the Act to do the actual filing.

§ 110.2 *Preservation of records.*

This section requires that the reporting person retain all records relating to the reports that are filed, and the reports themselves for a period not less than three years from the end of the year in which the report is filed. Under 2 U.S.C. § 455, the statute of limitations for criminal prosecution is three years. Accordingly, to prevent the destruction of possible evidence and to assist in the routine auditing of a report, supporting records are required to be kept for three years.

§ 110.3 *Effect of acknowledgement and filing by the Commission.*

The acknowledgement by the Commission of the receipt of any report does not constitute any approval of the contents of the report.

§ 110.4 *Personal responsibility of person signing statement.*

This section places the responsibility for the timely filing of reports and their accuracy upon those persons who are required to submit them, namely, the treasurer of a political committee, or a candidate or other person as appropriate.

Part III—Filing copies of reports and statements with State officers.

§ 111.1 *Filing requirements.*

Follows 2 U.S.C. § 439(a).

§ 111.2 *Filing copies of reports by Presidential and Vice-Presidential candidates.*

This section follows basically 2 U.S.C. § 439(a)(1) except that the copy of reports need be filed with the appropriate state officer only if an expenditure is made in that State during the reporting period. This eliminates the unnecessary filing of reports with a state which, although at one time may have received a copy of a report, has no real concern in receiving other copies of future reports where no expenditures are made in that state during those subsequent reporting periods.

§ 111.3 *Filing copies of reports by other Federal candidates and committees.*

This section follows 2 U.S.C. § 439(a)(2).

111.4 *Filing copies of reports by committees supporting Presidential candidates.*

This section permits committees which support Presidential candidates, other than the Presidential principal campaign committee, to file a copy of their reports only in the state in which they are headquartered and in which the recipient committee is headquartered. This prevents committees which make one contribution to a Presidential candidate from having to file in every state in which the Presidential candidate files, which would serve no public purpose.

§ 111.5 *Time and manner of filing copies.*

This section requires the filing of a copy of the report with the appropriate state at the same time the original report is filed on the Federal level.

§ 111.6 *Duty of State officers.*

This section follows 2 U.S.C. § 439(b).

§ 111.7 *Effect of State law.*

This section follows 2 U.S.C. § 453.

