

## FEDERAL ELECTION COMMISSION

## 11 CFR Chapter IX

Presidential Election Campaign Fund  
and Presidential Primary Matching  
Fund

AGENCY: Federal Election Commission.

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

**SUMMARY:** FEC Regulations relating to Administration of the Presidential Primary Matching Payment Account have been revised and transmitted to Congress pursuant to 26 U.S.C. 9039(c). The revisions have been renumbered according to the section of the U.S. Code upon which each regulation is based. This renumbering has necessitated their transfer from Chapter I to Chapter IX of Title 11 of the Code of Federal Regulations. The Commission's experiences in administering the Primary Matching Account provisions of Chapter 96 of Title 26, United States Code, as well as comments solicited from the public at hearings held on June 20, 1978, (43 FR 23587, May 31, 1978) indicated the need for greater clarity in the regulations, especially as regards the reporting of particulars of expenditures, documentation requirements for submissions for matching payments, and procedures for suspension of payments for knowing and willful breaches of candidate agreements. Further information on the intended effect of the revised regulations is contained in the supplemental information below.

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

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

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

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

## SUPPLEMENTARY INFORMATION:

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

## § 9032.1 Authorized Committee.

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

## § 9032.2 Candidate.

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

## § 9032.3 Commission.

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

## § 9032.4 Contribution.

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

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

## § 9032.5 Matching Payment Account.

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

## § 9032.6 Matching Payment Period.

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

## § 9032.7 Primary Election.

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

## § 9032.8 Political Committee.

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

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

## § 9032.9 Qualified Campaign Expense.

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

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

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

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

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

after that date, except for winding down costs under § 9034.4(c), cannot be considered to be incurred by the candidate "in connection with" his or her campaign for nomination.

Subsection (b) incorporates language from 2 U.S.C. 441a(b)(2) and 11 CFR 110.8(g).

#### § 9032.10 State.

This definition adds Puerto Rico, Guam, the Virgin Islands, and the Canal Zone to the language of 26 U.S.C. 9032(10). Because primary elections are held in these areas, they should be included in the definition of State.

#### PART 9033 Eligibility for Payments

The statute delineates three provisions which must be included in the agreement between the Commission and an eligible candidate. The candidate must agree: To furnish any evidence the Commission requests concerning qualified campaign expenses; to furnish any records, books or other information the Commission requests; and to submit to a Commission audit under 26 U.S.C. 9038, as well as pay any amounts required to be paid under that provision.

With regard to the candidate agreement concerning evidence of qualified campaign expenses, subsection (a)(1) provides that the candidate has the burden of proving that his or her expenditures are qualified campaign expenses. While the statute does not explicitly state that this burden of proof rests with the candidate, the statutory requirement that the candidate "agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses" clearly indicates that the candidate who accepts public funding has the burden of proving that his or her expenditures were made to defray qualified campaign expenses.

The candidate's burden of proof with regard to qualified campaign expenses consists of two elements—the candidate must show (1) that the expenditure was made, and (2) that the goods or services purchased were in connection with the campaign. These two elements are derived from the statutory definition of the term qualified campaign expense. Section 9032(9)(A) of Title 26 states in part that a qualified campaign expense is one which is

incurred by a candidate, or his authorized committee, in connection with his campaign for nomination for election \* \* \* (Emphasis added).

Thus, the first element of the candidate's burden of proof—showing that the expenditure was made—is directed at providing that the expenditure was actually incurred;

while the second element—that the goods or services purchased were in connection with the campaign—is directed at showing that the expenditure was in connection with the candidate's campaign.

Subsections (a) (1) and (2) set forth the minimum documentation necessary for a candidate to discharge his or her burden of proof concerning qualified campaign expenses. With regard to showing that the expenditure was incurred, all expenditures, except for petty cash fund expenditures, must be documented by a cancelled check to the payee who provides the goods or services to the campaign. Except in the case of certain travel advances, an expenditure may not be documented by a cancelled check to a campaign staffer who in turn pays for goods or services used by the campaign. A cancelled check to a campaign staffer would not suffice to meet the candidate's burden of proof because at the time an advance is made to a staffer, the expenditure is not yet incurred for a campaign purpose.

With regard to showing that an expenditure was made in connection with the candidate's campaign, the purpose of the expenditure must be documented. For expenditures exceeding \$100, or to a payee who receives more than \$100 per year, the candidate must present written documentation disclosing a description of the goods or services purchased if this written documentation is not available, certain collateral evidence may be used to show the purpose of the expenditure. Finally, if a description of the goods or services does not suffice to show that the expenditure is campaign related, the Commission may request the candidate to state the connection between the expenditure and the campaign.

Subsections (a) (3) and (4) deal with the statutorily prescribed area of the candidate agreement concerning books and records. The candidate is required to furnish to the Commission bank records for all accounts as well as supporting documentation for contributions submitted for matching. These records relate to the basic issues of whether candidate expenditures are qualified and of the matchability of contributions.

Subsection (a)(5) deals with the candidate agreement concerning audit and examination. This subsection is intended to enable the Commission to conduct its audit and examination expeditiously.

In addition to the specific areas of candidate agreement mentioned in the statute, this section sets forth additional requirements.

Subsections (a) (6) and (7) relate to matching fund submissions and payments. These requirements will insure a standard format for making payments and determining matchability of contributions. This standard format will enable the Commission to provide funds to candidates on a prompt basis.

Under subsection (a)(8), candidates must agree to comply with the Title 2 Recordkeeping and Disclosure Requirements. Such a condition is desirable in order to encourage prompt disclosure as well as adequate recordkeeping.

Finally, subsection (a)(9) requires the candidate and principal campaign committee to agree to pay any civil penalties included in a conciliation agreement with or imposed by a court against the candidate, the principal campaign committee or any authorized committee. This agreement is designed to deal with a situation in which such a penalty is imposed against an authorized committee after it has transferred all of its campaign funds to the principal campaign committee. Thus, the principal campaign committee would be liable for those penalties.

Subsection (c) provides that the Commission may suspend payments to a candidate if he or she knowingly, willfully, and substantially fails to comply with Title 2 disclosure requirements. While the statute does not specifically authorize such a suspension, the Commission's power to suspend is implied from its express authority to initially determine candidate eligibility. It is clear that the statute empowers the Commission to determine whether a candidate has established eligibility by meeting the conditions set forth at 26 U.S.C. Section 9033 and regulations prescribed thereunder. Since eligibility is a continuing requirement, the power to initially determine whether eligibility has been established necessarily implies the authority to monitor and, where the candidate is no longer fulfilling the conditions of eligibility, revoke eligibility.

#### § 9033.2 Candidate certifications; threshold amount.

Subsection (a) concerns the statutory provision at 26 U.S.C. 9033(b)(2), which requires the candidate to certify that he is seeking nomination by a political party for election to the office of President. Subsection (a) provides that in order to meet this certification requirement, the party whose nomination the candidate seeks must have a procedure for holding a primary election for nomination to the office of President. Because Chapter 96 of Title 26

provides public funding for presidential primary candidates, it is obvious that the party whose nomination the candidate seeks must hold a primary election as defined at section 9032.7.

Subsection (a) also defines the term political party to mean an association, committee or organization which nominates an individual for election to the office of President. This definition is derived from 2 U.S.C. Section 431(m).

Subsections (b) and (c) basically follow 26 U.S.C. 9033(b)(1), (2), and (3). Subsection (c) establishes an orderly procedure for submitting information and documentation concerning threshold contributions. This information and documentation is necessary for the Commission to determine whether the candidate has in fact established eligibility. The verification process under this section may consist of such activity as contacting contributors to verify residential addresses stated by the candidate under § 9033.2(c)(2)(A) or contacting contributors to determine if a contribution was in fact made, etc. Such verifications and audits are directed at determining whether the conditions of eligibility have in fact been met by a candidate.

Subsection (f) provides that the Commission may suspend payments to a candidate who knowingly and willfully exceeds the expenditure limitations set forth at 2 U.S.C. 441a(b). As with suspension for failure to comply with reporting requirements, suspension for expenditures is within the implied authority of the Commission to determine, monitor and revoke eligibility.

#### § 9033.3 Matching Payment Threshold Requirements.

This section deals with a Commission determination that a candidate has failed to meet the minimum contribution requirement. Where the Commission makes such a determination, the candidate is afforded an opportunity to either satisfy the threshold requirement or to demonstrate that he has satisfied that requirement. This opportunity to demonstrate that the Commission's determination is in error takes the form of submitting written materials to the Commission. (See Explanation and Justification of § 9033.8.)

#### § 9033.4 Ineligibility dates defined.

This section sets forth the several possible dates on which a candidate may become ineligible for matching funds.

Subsection (a) basically follows the language of 26 U.S.C. 9032(2), which states that the term candidate shall not

include an individual who is not actively conducting campaigns in more than one State.

Subsection (b) follows the language of 26 U.S.C. 9033(c)(1)(B), which provides for the termination of payments to a candidate who fails to receive a requisite percentage of votes in two consecutive primaries.

Subsection (c) establishes the last day of the matching payment period as one of the possible dates of ineligibility for candidates. Since the last day of the matching payment period will be the ineligibility date for candidates who remain active until their party chooses a nominee, the date of ineligibility for all candidates is covered under this section.

#### § 9033.5 Determination of Inactive Candidacy.

This section sets forth a procedure for terminating payments to a candidate who is no longer actively seeking nomination for election in more than one State. Prior to termination, the candidate is given an opportunity to present written material to demonstrate that he or she is an active candidate in more than one State. (See Explanation and Justification of § 9033.8.)

This section also provides that the Commission will not make a determination of inactive candidacy at any time before March 1 or after July 1 of the presidential election year. Because most States hold their presidential preference primaries or caucuses during the period from March 1 through July 1, it would be unreasonable to require the candidate to remain active in more than one State either before or after that period.

Subsection (e) sets forth the factors which the Commission will consider in determining whether a candidate is inactive. These factors are designed to indicate minimal campaign activity in at least two States.

#### § 9033.6 Determination of Active Candidacy.

Statutory provisions require that payments terminate to a candidate who fails to receive at least 10% of the votes cast for all candidates of his or her party in two consecutive primaries unless the candidate certifies to the Commission that he or she will not be an active candidate in the primary involved (26 U.S.C. 9033(c)(1)(B)). This section sets forth a procedure through which the Commission may refuse to accept the candidate's certification by determining that he or she is an active candidate in the primary involved. This procedure is intended to deal with a situation where a candidate who is active in a particular State primary nevertheless certifies to

the Commission that he or she is not active in that primary in order to escape the operation of 26 U.S.C. 9033(c)(1)(B).

#### § 9033.7 Reestablishment of Eligibility.

This section establishes a procedure for a candidate whose eligibility has terminated through inactivity to reestablish eligibility for matching payments upon becoming an active candidate again.

#### § 9033.8 Suspension of Payments.

This section sets forth the procedure for suspending payments under § 9033.1(c) and § 9033.2(f). The Federal Election Campaign Act does not provide that Administrative Procedure Act (APA) requirements for adjudicative hearings (5 U.S.C. 554-557) apply to determinations by the Commission. While APA requirements for a full trial type hearing may not be applicable, procedural due process requirements mandate that prior to suspension the candidate be afforded some type of opportunity to demonstrate to the Commission that suspension is not warranted. (see K. Davis, Administrative Law of the Seventies, § 7.00-1-3 (Supp. 1977); *Mathews v. Eldridge*, 424 U.S. 319 (1976).)

The procedure set forth in this section fulfills due process requirements. It includes the following elements: Notice of the legal and factual matters upon which the Commission is relying; and opportunity to present in writing evidence and reasons why suspension should not occur; a final determination by the Commission on the basis of all evidence presented; and a statement of reasons underlying the Commission's determination. (It should be noted that even if the APA requirements were applicable to determinations by the Commission, the APA itself contains a significant exception to the requirement for a full trial type hearing by providing for the submission of evidence in written form under 5 U.S.C. 556(d).)

### PART 9034 Entitlements.

#### § 9034.1 Candidate Entitlements.

Subsection (a) deals with entitlement to matching fund payments prior to the date of ineligibility. It provides that a candidate is entitled to receive payments in an amount equal to each matchable campaign contribution received by the candidate. However, once a candidate reaches the date of ineligibility under § 9033.4, that candidate receives no further matching payments unless he or she has met outstanding campaign obligations.

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

Obligations for qualified campaign expenses.....	\$120,000
Cash on hand.....	20,000
Candidate's X net outstanding campaign obligation.....	100,000
Matchable contributions not submitted for matching.....	15,000

Since candidate X has net outstanding campaign obligations of \$100,000, he is entitled to \$15,000 in matching funds on the basis of matchable contributions that had not been submitted for matching prior to the date of ineligibility. On the other hand, assume candidate Y in the following financial status on the date of ineligibility.

Obligations for qualified campaign expenses.....	\$10,000
Cash on hand.....	\$20,000
Net outstanding campaign obligations.....	0
Matchable contributions not submitted for matching.....	\$15,000

Because candidate Y has no net outstanding campaign obligations on the date of ineligibility, he is entitled to no matching funds.

Subsection (a) thus bases entitlement to matching fund payments on or after the date of ineligibility on the existence of net outstanding campaign obligations on that date. In essence this approach requires the candidate to apply private funds whenever possible to discharge obligations for qualified campaign expenses.

Subsection (a) follows the legislative intent of 26 U.S.C. 9033(c)(1) which provides that payments are cut off to a candidate who become inactive, except where those payments are used to defray expenses incurred before the date of ineligibility. Therefore, if a campaign has no debts for qualified campaign expenses on the date of ineligibility, no further matching funds are forthcoming. While 26 U.S.C. 9033(c)(1) specifically applies only to an individual whose candidacy terminates through inactivity, the same legislative intent would be appropriate for application to a candidate whose date of ineligibility occurs at the end of the matching payment period. Finally, inasmuch as the statutory language of 26 U.S.C. 9034 entitles a candidate to matching funds for contributions received after a certain date without any specific mention of a final date for matching contributions, subsection (a) accords with statutory requirements.

Subsection (b) sets forth the entitlement formula for candidates who have net outstanding campaign obligations on the date of ineligibility. Basically, these candidates are entitled to payments only if the private

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

For example, assume that candidate A is in the following financial status on the date of ineligibility.

Net debt at date of ineligibility.....	\$100,000
Matchable contributions received after the date of ineligibility but before the date of submission.....	\$30,000*

Because on the date of submission, the difference between: (1) The amount of private contributions received by candidate A after the date of ineligibility; and (2) candidate A's remaining net debt is \$70,000, he is entitled to receive \$30,000—an amount equal to the amount of matchable contributions received after the date of ineligibility.

As with subsection (a), subsection (b) accords with statutory requirements. In addition, subsection (b) also furthers the policy that the candidate should use private contributions to discharge campaign obligations wherever possible.

Subsection (c) deals with candidates whose eligibility has been reestablished after having fallen into inactive status.

Subsection (d) follows the language of 26 U.S.C. 9034(b).

#### § 9034.2 Matchable Campaign Contributions.

This section sets forth the rules for determining which contributions are matchable. The language of 26 U.S.C. 9034 makes it clear that not all contributions are matchable. The major statutory restrictions reflected in this section are that contributions must be a gift of money made by written instrument and that only \$250 from each individual contributor is considered matchable.

Statutory restrictions also require that the contribution be "received" by the candidate on or after January 1 of the calendar year immediately preceding the presidential election year (26 U.S.C. 9034). This section specifies that the candidate must *physically* receive the contribution after the January 1 date. This requirement specifically precludes a candidate from collecting post-dated checks before January 1 of the year preceding the presidential general election year and then submitting those checks for matching on the basis that they weren't received until the date written on the check. The legislative history of the public financing provisions clearly indicates congressional intent to bar candidates from receiving matching funds for

\*Example assumes all contributions are 100% matchable.

contributions solicited and received prior to the year preceeding the presidential general election year. (See 120 Cong. Rec. 54438, daily ed., March 26, 1974).

This section defines a written instrument to mean a check, money order, or any other negotiable instrument payable on demand to the candidate or his or her committee. The contributor's full name, signature, and mailing address, as well as the amount and date of the gift, must appear on the instrument or in an accompanying written document.

#### § 9034.3 Nonmatchable contributions.

This section reflects statutory restrictions found in 26 U.S.C. § 9034(a), which excludes certain categories of contributions from being matched.

Subsections (g) through (i) reflect the Commission's view that amounts paid in the form of a purchase price for certain items or tickets are not matchable since the intent necessary to make a gift is lacking on the part of the purchaser. Particularly, subsections (h) through (i) follow Internal Revenue Service rulings 72-411 and 72-412 which exclude certain contributions from the category of political contributions that are deductible for income tax purposes.

#### § 9034.4 Use of Contributions and Matching Payments.

Subsection (a) specifies that the candidate must spend both private contributions and matching fund payments only on expenditures which are qualified campaign expenses. As was stated earlier, if a candidate were permitted to spend private campaign funds on campaign expenses which were not qualified, those private funds would not be available to defray the candidates qualified campaign expenses. The candidate would then require more public funding to defray qualified campaign expenses. This additional public funding would in essence restore private campaign funds spent on nonqualified campaign expenses. Such a restoration of funds would violate 26 U.S.C. 9038 (b)(2)(B). (See Explanation and Justification of § 9032.9.)

Subsection (b) establishes the candidate's date of ineligibility as the cut off date for making qualified campaign expenses. Since a candidate's campaign for nomination essentially terminates on the date of ineligibility, any expenditures made after that date, except for winding down costs, can not possibly be made in connection with the candidate's campaign for nomination. The statutory definition of the term

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

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

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

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

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

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

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

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

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

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

#### **PART 9035**

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

#### **PART 9036—Certification by the Commission**

##### **§ 9036.1 Initial Certification.**

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

##### **§ 9036.2 Additional certifications.**

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

##### **§ 9036.3 Insufficient Documentation.**

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

##### **§ 9036.4 Certification Review and Notice.**

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

##### **§ 9036.5 Resubmissions and hearing opportunity.**

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

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

##### **§ 9036.6 Continuation of certification.**

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

#### **PART 9037 Payments**

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

#### **PART 9038 Examination and Audits.**

##### **§ 9038.1 Audit.**

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

##### **§ 9038.2 Repayments.**

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

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

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

#### § 9038.3 Liquidation of Obligations: Repayment.

This section generally follows the statutory provisions at 26 U.S.C. 9038. It sets forth a formula for recapturing from the candidate's accounts that portion of the account which represents Federal funds.

Chapter IX is added to 11 CFR to read as follows:

### CHAPTER IX—FEDERAL ELECTION COMMISSION

#### SUBCHAPTER C—PRESIDENTIAL ELECTION CAMPAIGN FUND, PRESIDENTIAL PRIMARY MATCHING FUND

##### PART 9031—SCOPE

###### § 9031.1 Scope.

The restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of Title 2 and regulations prescribed thereunder. Unless expressly stated to the contrary, this subchapter does not affect the restrictions, obligations and liabilities imposed by sections 431–455 of Title 2 and regulations prescribed thereunder.

(Sec. 310(8), Pub. L. 92–225, added by sec. 208, Pub. L. 93–443, 88 Stat. 1297, and amended by secs. 105 and 107(a)(1), Pub. L. 94–283, 90 Stat. 481 (2 U.S.C. 437d(a)(8), and sec. 408(c), Pub. L. 93–443, 88 Stat. 1297 (26 U.S.C. 9039(b))).

##### PART 9032—DEFINITIONS

Sec.

- 9032.1 Authorized Committee.
- 9032.2 Candidate.
- 9032.3 Commission.
- 9032.4 Contribution.
- 9032.5 Matching Payment Account.
- 9032.6 Matching Payment Period.
- 9032.7 Primary Election.
- 9032.8 Political Committee.
- 9032.9 Qualified Campaign Expense.
- 9032.10 State.

Authority: Sec. 408(c), Pub. L. 93–443, 88 Stat. 1297, as amended by sec. 115(c)(2), Pub. L. 94–283, 90 Stat. 495, 500 (26 U.S.C. 9032).

###### § 9032.1 Authorized Committee.

(a) "Authorized committee" means any political committee which is authorized by a candidate to solicit or receive contributions or to make expenditures on behalf of the candidate. This authorization shall be in writing and addressed to the unauthorized political committee. A copy of the authorization shall be filed by the candidate with the Commission. A withdrawal of authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

(b) An expenditure by an authorized committee on behalf of the candidate who authorized the committee cannot qualify as an independent expenditure.

###### § 9032.2 Candidate.

"Candidate" means an individual who seeks nomination for election to the office of President of the United States. An individual is considered to seek nomination for election if he or she—

(a) Takes the action necessary under the law of a State to qualify for a caucus, convention, primary election or run off election;

(b) Receives contributions or incurs qualified campaign expenses;

(c) Gives consent to any other person to receive contributions or to incur qualified campaign expenses on his or her behalf; or

(d) Receives written notification from the Commission that any other person is receiving contributions or making expenditures on the individual's behalf and fails to disavow that activity by letter to the Commission within 30 days of notification.

###### § 9032.3 Commission.

"Commission" means the Federal Election Commission, 1325 "K" Street, Northwest, Washington, D.C. 20463.

###### § 9032.4 Contribution.

For purposes of Subchapter C, "contribution" has the same meaning given the term under 2 U.S.C. 431(e) and 11 CFR 100.4, except as provided at 11 CFR 9034.4(e).

###### § 9032.5 Matching payment account.

"Matching payment account" means the Presidential Primary Matching Payment Account established by the Secretary of the Treasury under 26 U.S.C. 9037(a).

###### § 9032.6 Matching payment period.

"Matching payment period" means the period beginning January 1 of the year in which a Presidential general election is held and ending on one of the following dates:

(a) For a candidate seeking the nomination of a party which nominates its Presidential candidate at a national convention, the date on which the party nominates its candidate.

(b) For a candidate seeking the nomination of a party which does not make its nomination at a national convention, the earlier of—

(1) The date the party nominates its Presidential candidate, or

(2) The last day of the last national convention held by a major party in the calendar year.

###### § 9032.7 Primary election.

"Primary election" means an election, including a runoff election, or a nominating convention or a caucus held by a political party—

(a) For the selection of delegates to a national nominating convention of a political party;

(b) For the expression of a preference for the nomination of Presidential candidates;

(c) For the purposes stated in both paragraphs (a) and (b) of this section; or

(d) To nominate a Presidential candidate.

###### § 9032.8 Political committee.

"Political committee" means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purposes of influencing, or attempting to influence, the nomination of any individual for election to the office of President of the United States.

###### § 9032.9 Qualified campaign expense.

(a) "Qualified campaign expense" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred by a candidate or his or her authorized committees from the date the individual becomes a candidate through the last day of the candidate's eligibility as determined under § 9033.4.

(2) Made in connection with his or her campaign for nomination; and

(3) Neither the incurrence nor payment of which constitutes a violation of any law of the United States or of any State in which the expense is incurred or paid, except that any State law which has been preempted by the Federal Election Campaign Act of 1971, as amended shall not be considered a State law for purposes of this Subchapter.

(b) An expenditure is made on behalf of a candidate, including a Vice Presidential candidate, if it is made by—

(1) An authorized committee or any other agent of the candidate for purposes of making an expenditure

(2) Any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate to make the expenditure; or

(3) A committee which has been requested by the candidate, by an authorized committee of the candidate, or by an agent of the candidate to make the expenditure, even though such committee is not authorized in writing.

#### § 9032.10 State.

"State" means each State of the United States, Puerto Rico, the Canal Zone, the Virgin Islands, the District of Columbia, and Guam.

### PART 9033—ELIGIBILITY

#### Sec.

9033.1 Candidate agreements.

9033.2 Candidate certifications; threshold amounts.

9033.3 Matching payment threshold requirements.

9033.4 Ineligibility dates defined.

9033.5 Determination of Inactive Candidacy.

9033.6 Determination of Active Candidacy.

9033.7 Reestablishment of Eligibility.

9033.8 Suspension of Payments.

Authority: Sec. 408(c), Pub. L. 93-443, 88 Stat. 1297, as amended by sec. 305(c) and 306(b)(2), Pub. L. 94-283, 90 Stat. 499-500 (26 U.S.C. 9033).

#### § 9033.1 Candidate agreements.

(a) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall agree in a letter signed by the candidate to the Commission that the candidate and his or her principal campaign committee will comply with the conditions set forth below.

(1) The candidate has the burden of proving that expenditures by the candidate, the principal campaign committee or any authorized committee are qualified campaign expenses. The candidate shall agree to obtain and furnish to the Commission at its request any evidence regarding qualified campaign expenses by the candidate, the principal campaign committee and all authorized committees. The candidate must include as part of this evidence the following documentation:

(i) For expenditures exceeding \$100 or for expenditures of less than \$100 to a payee who receives expenditures aggregating more than \$100 per year, either:

(A) A receipted bill which is from the payee and states the particulars of the expenditure; or

(B) If such a receipted bill is not available, the following documents, which must state the particulars of the expenditure:

(1) A cancelled check negotiated by the payee; plus

(2) One of the following documents generated by the payee—a bill, invoice, voucher or contemporaneous memorandum;

(3) Where the documents specified in Subsection (2) (11 CFR 9033.1(a)(1)(i)(B)(2)) are not available, a voucher or contemporaneous memorandum from the candidate or the committee; or

(C) If neither a receipted bill nor the documentation specified in subsection (ii) is available, a cancelled check stating the particulars of the expenditure.

(D) Where the supporting documentation required above (11 CFR 9033.1(a)(1)(i) (A), (B), (C)) is not available, the candidate or committee may present a cancelled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

(1) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented, such as where the expenditure is one of a number of documented expenditures relating to a campaign mailing or to the operation of a campaign office;

(2) Evidence that the expenditure is covered by a preestablished written campaign committee policy, such as a per diem policy; etc.

(ii) For all other expenditures:

(A) If from the petty cash fund, a record disclosing the identification of the payee, the amount and the date of the expenditure; or

(B) A cancelled check which has been negotiated by the payee and states the identification of the payee, and the amount and date of the expenditure.

(C) For purposes of subparagraph (1), (11 CFR 9033.1(a)(1)) "payee" means the person who provides the goods or services to the candidate or committee in return for the expenditure except for an advance of \$500 or less for travel and/or subsistence to an individual who will be the recipient of the goods or services purchased.

(D) For purposes of subparagraph (1) (11 CFR 9033.1(a)(1)), the term "particulars" means the identification of the payee, the date and amount of the expenditure, and a description of the goods or services purchased.

(2) Upon the request of the Commission the candidate shall supply

an explanation of the connection between the expenditure and the campaign;

(3) The candidate shall keep and furnish to the Commission any books, records, including bank records for all accounts and supporting documentation for matching fund submissions, or other information that the Commission may request, as well as copies of books and records maintained by all authorized committees of the candidate.

(4) For purposes of audit and examination pursuant to Part 9038, of this chapter, and at the Commission's request, the candidate shall gather the books and records specified in subsection 3 in one centralized location.

(5) The candidate shall permit an audit and examination pursuant to Part 9038 of this chapter of all campaign expenditures, including those made by all authorized committees; facilitate such audit by making available office space, records, and such personnel as is necessary to the conduct of the audit and examination; and pay any amounts required to be paid under Part 9038 of this chapter.

(6) The candidate shall submit the name and mailing address of the person who is entitled to receive matching fund payments on behalf of the candidate and the name and address of the national or State bank designated by the candidate as a campaign depository as required at 11 CFR Part 103 of this chapter and § 9037.3.

(7) The candidate shall prepare matching fund submissions in accordance with Federal Election Commission Guideline for Presentation in Good Order.

(8) The candidate shall comply with applicable requirements of Sections 431-434; 437b Title 2, U.S. Code and Parts 100-108 of these Regulations.

(9) The candidate shall pay any civil penalties included in a conciliation agreement with or imposed under 2 U.S.C. 437g against the candidate, the principal campaign committee or any authorized committee of the candidate.

(b) The candidate may submit the letter containing the agreements required under § 9033.1 at any time after January 1 of the year immediately preceding the Presidential election year.

(c) Payments may be suspended to a candidate if he or she knowingly, willfully and substantially fails to comply with this disclosure requirements of 2 U.S.C. 434 and 11 CFR Part 104 as specified in the candidate agreement. Any determination to suspend payments shall be made in accordance with the procedure set forth at § 9033.8.

**§ 9033.2 Candidate certifications; threshold amount.**

A candidate seeking to become eligible to receive Presidential primary matching fund payments shall make the following certifications to the Commission in a written statement signed by the candidate:

(a) The candidate shall certify that he or she is seeking nomination by a political party to the office of President in more than one State. For purposes of this section in order for a candidate to be deemed to be seeking nomination by a political party to the office of President, the party whose nomination the candidate seeks must have a procedure for holding a primary election, as defined in 11 CFR 9032.7, for nomination to that office.

(1) For purposes of this section (11 CFR 9033.2) the term political party means an association, committee or organization which nominates an individual for election to the office of President. The fact that an association, committee or organization qualifies as a political party under this section does not affect the party's status as a national political party for purposes of 2 U.S.C. 441a(a)(1)(B) and 441a(a)(2)(B).

(b) The candidate and his or her authorized committee(s) shall certify that they will not incur qualified campaign expenses in excess of the limitations under 11 CFR Part 9035.

(c)(1)(i) The candidate and his or her authorized committees shall certify that they have received matchable contributions which, in the aggregate, exceed \$5,000 in contributions from individuals who are residents of each of at least 20 States, and which with respect to any individual do not exceed \$250.

(ii) In order to be considered a resident for threshold purposes, the individual need not meet the qualifications of voting residence, but a candidate may not submit contributions from one individual as a resident of more than one State.

(2) For each State in which the candidate certifies he or she has met this requirement, the candidate shall—

(i) Submit an alphabetical list of contributors showing: each contributor's full name and residential address; the date of the deposit into the designated campaign depository; the dollar amount of each contribution submitted for matching purposes; the matchable portion thereof; the total amount of all matchable contributions submitted; an indication of which contributions were received as a result of entertainment activity; and for individuals whose aggregate contributions exceed \$100 per

calendar year, the occupation and principal place of business;

(ii) Submit a photocopy of each check or other written instrument for each contribution which the candidate submits to establish eligibility for matching funds. The photocopies shall be segregated alphabetically by State, and shall be accompanied by and referenced to copies of the relevant deposit slip.

(3) Contributions which are not submitted in compliance with this subsection shall not count toward the threshold amount.

(d) The Commission may conduct audits of candidate records and make verifications of contributions submitted under this section to determine eligibility and shall notify candidates if it chooses to conduct such audits or verifications. In that case, the Commission may, at its own discretion waive the submission requirement under subsection (c)(2)(11 CFR 9033.2(c)(2)).

(e) The candidate may submit the certifications required under 11 CFR 9033.2 at any time after January 1 of the year immediately preceding the Presidential election year.

(f) Payments may be suspended to a candidate if he or she knowingly and willfully exceeds the expenditure limitations at 2 U.S.C. 441a(b). Any determination to suspend payments shall be made in accordance with the procedure set forth at 11 CFR 9033.8.

**§ 9033.3 Matching payment threshold requirements.**

The Commission shall, as soon as practicable and, during the Presidential election year, generally within 5 working days, examine the submission under 11 CFR 9033.1 and 9033.2 and shall either—

(a) Make a determination that the candidate has satisfied the minimum contribution threshold requirement under 11 CFR 9033.2(c); or

(b) Make an initial determination that the candidate has failed to satisfy the matching payment threshold requirements. The Commission shall notify the candidate of its initial determination, giving the legal and factual reasons for the determination and advising the candidate of the evidence upon which its initial determination is based. The candidate will be given an opportunity to satisfy the threshold requirements or to submit within 30 days of the receipt of the Commission's notice written legal or factual materials to demonstrate that he or she has satisfied those requirements. The Commission will consider any written legal or factual materials submitted by the candidate before

making its final determination. Such materials may be submitted by counsel if the candidate so desires. A final determination that the candidate has failed to satisfy threshold requirements shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the legal and factual reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

**§ 9033.4 Ineligibility dates defined.**

The ineligibility date of a candidate is determined by paragraph (a), (b), or (c) (11 CFR 9033.4 (a), (b), (c)) whichever occurs first.

(a) The ineligibility date shall be the day on which an individual ceases to be a candidate because he or she is not actively conducting campaigns in more than one State in connection with seeking the Presidential nomination. This date shall be the earlier of—

(1) The date the candidate publicly announces that he or she will not be actively conducting campaigns in more than one State; or

(2) The date the candidate notifies the Commission by letter that he or she is not actively conducting campaigns in more than one state; or

(3) The date which the Commission determines under § 9033.5 to be the date that the candidate is not actively seeking election in more than one State.

(b) The ineligibility date shall be the 30th day following the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of popular votes cast for all candidates of the same party for the same office in that primary election, if the candidate permitted or authorized his or her name to appear on the ballot, unless the candidate certifies to the Commission at least 25 business days prior to the primary that he or she will not be an active candidate in the primary involved.

(1) The Commission may refuse to accept the candidate's certification if it determines under 11 CFR 9033.6 that the candidate is an active candidate in the primary involved.

(2) For purposes of this paragraph, if the candidate is running in two primary elections in different States on the same date, the highest percentage of votes a candidate receives in any one State will govern. Separate primary elections held in more than one State on the same date are not deemed to be consecutive primaries. If two primary elections are held on the same date in the same State (e.g., a primary to select delegates to a

national nominating convention and a primary for the expression of preference for the nomination of candidates for election to the office of President), the highest percentage of votes a candidate receives in either election will govern.

(c) The ineligibility date shall be the last day of the matching payment period for the candidate as specified in 11 CFR 9032.6.

#### **§ 9033.5 Determination of Inactive Candidacy.**

(a) The Commission may on the basis of the factors listed in subsection (e) (11 CFR 9033.5(e)) make an initial determination that a candidate is no longer actively seeking nomination for election in more than one State at any time after March 1 but before July 1 of the Presidential election year.

(b) The Commission shall notify the candidate in writing of its initial determination, giving the legal and factual reasons for the determination and advising the candidate of the evidence upon which its initial determination is based and of the date on which active campaigning in more than one State ceased. The candidate will be given an opportunity to submit within 15 business days of receipt of the Commission's notice, written legal or factual materials to demonstrate that he or she is actively campaigning in more than one State.

(c) The Commission will consider any written legal or factual materials submitted by the candidate in making its final determination. Such materials may be submitted by counsel if the candidate so desires. In addition prior to making a final determination, the Commission will consider the factors listed in paragraph (e) of this section.

(d) A final determination of inactive candidacy shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

(e) In making its final determination, the Commission shall consider, but is not limited to considering, the following factors:

(1) The frequency and type of public appearances, speeches, and advertisements;

(2) Campaign activity with respect to soliciting contributions or making expenditures for campaign purposes;

(3) Continued employment of campaign personnel or the use of volunteers; and

(4) The release of committed delegates.

(f) Upon a final determination by the Commission that the candidate is inactive, that candidate's eligibility for matching payments will terminate.

#### **§ 9033.6 Determination of active candidacy.**

(a) Where a candidate certifies to the Commission under § 9033.4(b) that he will not be an active candidate in an upcoming primary, the Commission may within 10 business days of receiving such certification notify the candidate in writing that it has made an initial determination that the candidate is an active candidate in the primary involved. This initial determination shall be based on the factors listed in 11 CFR 9033.5(e).

(b) The Commission's notice shall set forth the legal and factual reasons for the initial determination and advise the candidate of the evidence upon which its initial determination is based. The candidate will be given an opportunity to submit within 10 business days of receipt of the Commission's notice written legal or factual materials to demonstrate that he or she is not an active candidate in the primary involved.

(c) The Commission will consider any written legal or factual materials submitted by the candidate in making its final determination. Such materials may be submitted by counsel if the candidate so desires. In addition, prior to making a final determination, the Commission will consider the factors listed in 11 CFR 9033.5(e).

(d) A final determination by the Commission under this section (11 CFR 9033.6) shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

#### **§ 9033.7 Reestablishment of Eligibility.**

(a) A candidate who has become ineligible under § 9033.4(a) on the basis that he or she is not actively campaigning in more than one state may reestablish eligibility for matching payments by submitting to the Commission evidence of active campaigning in more than one State. In determining whether the candidate has reestablished eligibility, the Commission will consider, but is not limited to considering, the factors listed in 11 CFR 9033.5(e). The Commission shall make its determination without requiring the

individual to reestablish eligibility under 11 CFR 9033.1 and 2. The day the Commission determines to be the day the candidate become active again will be the reestablishment of eligibility date.

(b) A candidate determined to be ineligible under 11 CFR 9033.4(b) by failing to obtain the required percentage of votes in two consecutive primaries may have his or her eligibility reestablished if the candidate receives at least 20 percent of the total number of votes cast for candidates of the same party for the same office in a primary election held subsequent to the date of the election which rendered the candidate ineligible.

#### **§ 9033.8 Suspension of Payments.**

(a) If the Commission has reason to believe that a candidate has knowingly, willfully and substantially failed to comply with the disclosure requirements of 2 U.S.C. 434 and 11 CFR Part 104, or that a candidate has knowingly and willfully exceeded the expenditure limitations at 2 U.S.C. 441a(b), the Commission may make an initial determination to suspend payments to that candidate.

(b) The Commission shall notify the candidate of its initial determination, giving the legal and factual reasons for the determination and advising the candidate of the evidence upon which its initial determination is based. The candidate will be given an opportunity within 20 days of the Commission's notice to comply with the above cited provisions or to submit written legal or factual materials to demonstrate that he or she is not in violation of those provisions.

(c) The Commission will consider any written legal or factual materials submitted by the candidate in making its final determination. Such materials may be submitted by counsel if the candidate so desires.

(d) A final determination to suspend payments by the Commission shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

(e) A candidate whose payments have been suspended under this section may become entitled to receive payments if he or she fulfills the following conditions:

(1) For candidates whose suspension was based on failure to comply with reporting requirements, compliance with reporting requirements and payments or

agreement to pay any civil or criminal penalties resulting from failure to comply; or

(2) For candidates whose payments were suspended for exceeding expenditure limitations, repayment of an amount equal to the amount by which the candidate exceeded the expenditure limitation and payment of or agreement to pay any civil or criminal penalties resulting from violation of limitation.

#### PART 9034—ENTITLEMENTS

Sec.

9034.1 Candidate entitlements.

9034.2 Matchable Campaign Contributions.

9034.3 Nonmatchable Campaign Contributions.

9034.4 Use of Contributions and matching payments.

9034.5 Net outstanding campaign obligations.

Authority: Sec. 408(c), Pub. L. 93-443, 88 Stat. 1299, as amended by sec. 307(b), Pub. L. 94-283, 90 Stat. 501 (26 U.S.C. 9034).

##### § 9034.1 Candidate entitlements.

(a) A candidate who has been notified by the Commission under 11 CFR 9036.1 that he or she has successfully satisfied eligibility and certification requirements is entitled to receive payments in an amount equal to the amount of each matchable campaign contribution received by the candidate, except that a candidate who has become ineligible under 11 CFR 9033.4 may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations as defined in 11 CFR 9034.5.

(b) If on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited before December 31 of the Presidential election year only if on the date of submission there are remaining net outstanding campaign obligations. The candidate shall be entitled to payment only if at the time of submission the sum of the contributions received on or after the date of ineligibility plus matching funds received on or after the date of ineligibility (on the basis of post ineligibility contributions) is less than the candidate's net outstanding campaign obligations. This entitlement will be equal to the lesser of:

(1) The amount of contributions submitted for matching; or

(2) The remaining net outstanding campaign obligations.

(c) A candidate whose eligibility has been reestablished under § 9033.7 or who after suspension of payments has met the conditions set forth at 11 CFR 9033.8(e) is entitled to receive payments for matchable contributions for which payments were not received during the ineligibility or suspension period.

(d) The total amount of payments to a candidate under this section shall not exceed 50% of the total expenditure limitation applicable under 2 U.S.C. 441a(b)(1)(A) as adjusted by 2 U.S.C. 441a(c).

##### § 9034.2 Matchable campaign contributions.

(a) Contributions meeting the following requirements will be considered matchable campaign contributions.

(1) The contribution must be a gift of money made: by an individual; by a written instrument identifying the contributor by full name and mailing address; and for the purpose of influencing the result of a primary election.

(2) The contribution shall be matchable only to the extent of the first \$250 contributed by an individual account the contributor is considered to be the owner whose signature appears on the check. To be attributed equally to other joint tenants of the account, the check or other accompanying written document shall contain the signature(s) of the joint tenant(s).

(3) In cases of money orders which do not contain the signature of the contributor, an accompanying written document shall contain the signature of the contributor.

(4) Checks drawn on escrow or trust accounts can only be a contribution from the person who has beneficial ownership of the account and therefore must be signed by that person with the statement that the giving of the contribution does not violate the conditions of the trust or escrow agreement.

(5) Contributions in the form of checks written on partnership accounts or accounts of unincorporated associations or businesses are matchable contributions, so long as—

(i) The checks are accompanied by documentation which specifies that the contribution is made by a specific individual or individuals;

(ii) Such documentation is signed by the individual or individuals; and

(iii) The aggregate amount of the contributions drawn on a partnership or unincorporated association or business account does not exceed \$1,000 to any

one Presidential candidate seeking nomination.

##### § 9034.3 Nonmatchable campaign contributions.

A contribution to a candidate other than one which meets the requirements of 11 CFR 9034.2 is not matchable. Contributions which are not matchable include:

(a) In-kind contributions of real or personal property;

(b) A subscription, loan, advance, or deposit of money, or anything of value;

(c) A contract, promise, or agreement, whether or not legally enforceable, such as a pledge card or credit card transaction, to make a contribution for any such purposes (but a gift of money by written instrument is not rendered unmatchable solely because the contribution was preceded by a promise or pledge);

(d) Funds from a corporation, labor organization, government contractor, political committee as defined in 11 CFR 100.14 or any group of persons other than those under 11 CFR 9034.2(c)(4);

(e) Contributions which are illegally made or accepted, such as contributions in the name of another;

(f) Contributions in the form of a check drawn upon the account of a committee, corporation, union, or government contractor even though the funds represented personal funds earmarked by a contributing individual to a Presidential candidate;

(g) Contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value, such as a watch;

(h) Contributions in the form of the purchase price paid for a chance to participate in a raffle, lottery, or a similar drawing for valuable prizes;

(i) Contributions in the form of the purchase price paid for the admission to any activity that primarily confers private benefits in the form of entertainment to the contributor, such as a concert, motion picture, or theatrical performance, in which case the amount of the matchable contribution shall include only the excess of the amount paid for admission over the fair market value of all the benefits available to the purchaser of the ticket, using a good faith reasonable estimate.

(1) The fair market value and any amount in excess of the fair market value of the benefits conferred shall be clearly and separately indicated on the promotional material and the tickets for the event, and a copy of such material and of a ticket shall accompany the submission of documentation under 11 CFR 9033.2 and 9036.2.

(2) A contribution in the form of the purchase price paid for admission to an activity that is essentially political is fully matchable. An "essentially political" program is one the principal purpose of which is political speech or discussion, such as the traditional political dinner or reception.

(j) Contributions which are made by persons without the necessary donative intent to make a gift or made for any purpose other than to influence the result of a primary election; and

(k) Contributions of currency of the United States or currency of any foreign country.

#### § 9034.4 Use of contributions and matching payments.

(a) Except as provided in paragraph (e) of this section, all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.

(b) Any expenses incurred after a candidate reaches the date of ineligibility under 11 CFR 9033.4 are not qualified campaign expenses, except as provided in paragraph (c) of this section.

(c) Winding down costs shall be considered a qualified campaign expense if such costs are:

(1) Incurred before the date of ineligibility; or

(2) Associated with the termination of political activity, such as the cost of complying with post election requirements of the Act and other necessary administrative costs, including office space rental, staff salaries, etc.

(3) For purposes of this subsection, winding down costs shall be deemed to have been incurred before the candidate's date of ineligibility if an oral or written arrangement or commitment for the activity was made on or before candidate's date of ineligibility.

(d) An expenditure which is in excess of any of the limitations under 2 U.S.C. 441a(b)(1)(A) shall not be considered a qualified campaign expense.

(e) Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and can not be defrayed from contributions or matching payments. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures, but such amounts shall be

reported in accordance with 11 CFR Part 104.

(f) Even though incurred prior to the date an individual becomes a candidate, payments made for the purpose of determining whether an individual should become a candidate, such as those incurred in conducting a poll, shall be considered qualified campaign expenses if the individual subsequently becomes a candidate.

(g) Where a candidate has received matching funds and is simultaneously seeking nomination or election to another Federal office, any transfer of funds between his or her principal campaign committees or authorized committees must be in accordance with 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(a)(1)(v).

(h) A candidate whose eligibility has been reestablished under 11 CFR 9033.7 or who after suspension of payments has met the conditions set forth at 11 CFR 9033.8(e) is entitled to receive payments for matchable contributions for which payments were not received during the ineligibility or suspension period.

#### § 9034.5 Net outstanding campaign obligations.

(a) A candidate's net outstanding campaign obligations equal the difference between paragraph (a) (1) and (2) of this section:

(1) The total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility under 11 CFR 9033.4, plus estimated necessary winding down costs as defined under 11 CFR 9034.4(c) less

(2) The total of:

(i) Cash on hand as of the close of business on the last day of eligibility (including all contributions received as of that date whether or not submitted for matching);

(ii) The fair market value of capital assets on hand; and

(iii) Amounts owed to the campaign in the form of credits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(b) The candidate shall submit a statement of net outstanding campaign obligations within 15 days of the candidate's date of ineligibility.

(c) For purposes of this section, a capital asset means any property which has remaining useful life exceeding 1 year from the date of the candidate's ineligibility: *Provided*, That the fair

market value at the date of ineligibility exceeds \$500.

### PART 9035—EXPENDITURE LIMITATION

Sec.

9035.1 Qualified Campaign Expense Limitation.

9035.2 Limitation on Expenditures From Personal or Family Funds.

Authority: Sec. 408(c), Pub. L. 93-443, 88 Stat. 1300, as amended by sec. 305(a), 307(c), Pub. L. 94-283, 90 Stat. 494, 501 (26 U.S.C. 9035.)

#### § 9035.1 Qualified Campaign Expense Limitation.

No candidate who has accepted matching funds shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under 2 U.S.C. 441a(b)(1)(A);

#### § 9035.2 Limitation on Expenditures from Personal or Family Funds.

(a) No candidate who has accepted matching funds shall knowingly make expenditures from his or her personal funds, or funds of his or her immediate family, in connection with his or her campaign for nomination for election to the office of President in excess of, in the aggregate \$50,000.

(b) For purposes of this section, the term "immediate family" means a candidate, spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(c) For purposes of this section, "personal funds" has the same meaning as specified in 11 CFR 110.10.

### PART 9036—CERTIFICATION BY THE COMMISSION

Sec.

9036.1 Initial certification.

9036.2 Additional certification.

9036.3 Insufficient documentation.

9036.4 Certification review and notice.

9036.5 Resubmission and hearing opportunity.

9036.6 Continuation of certification.

Authority: Sec. 408(c), Pub. L. 93-443, 88 Stat. 1300 (26 U.S.C. 9036).

#### § 9036.1 Initial certification.

(a) After a determination has been made that the candidate has successfully satisfied the eligibility and certification requirements under 11 CFR 9033.1 and 9033.2 including the threshold requirement, the Commission shall so notify the candidate in writing and shall request the submission in accordance with paragraph (b) of this section of all contributions received and deposited by a date specified by the Commission.

(b) Contributions which are submitted for purposes of meeting the threshold requirements must be submitted in accordance with the Federal Election Commission Guideline for Presentation in Good Order.

(c) Within 10 calendar days after the Commission has sent notification to the candidate under subsection (a) (11 CFR 9036.1(a)), but not before the beginning of the matching payment period, the Commission shall certify to the Secretary of the Treasury for payment of the amount to which such candidate is entitled.

#### § 903.2 Additional certifications.

(a) To obtain subsequent certifications following the initial certification and payment, a candidate shall file all information required for the initial eligibility under Part 9033, except that:

(1) The alphabetical listing of contributors need not be segregated by State;

(2) The candidate need not resubmit the agreement under 11 CFR 9033.1 and the certifications under § 9033.2; and

(3) The occupation and principal place of business need not be disclosed for individuals whose aggregate contributions exceed \$100 per calendar year, except that such information is subject to recordkeeping and reporting requirements under 2 U.S.C. 432(c)(2), 434(b)(2) and 11 CFR 102.9(a)(2), 104.2(b)(2).

(b) Requests for additional certifications may be submitted on dates to be determined and published by the Commission from time to time.

(c) Except as provided by 11 CFR 9036.4, requests for additional certification shall cover a period beginning the day following the close of the period for the previous submission.

(d) All submissions for matching payments must be in accordance with the Federal Election Commission Guideline for Presentation in Good Order.

(e) The Commission shall certify to the Secretary of the Treasury any additional amount to which a candidate is entitled within 15 calendar days of receipt of information submitted under paragraph (a) (11 CFR 9036.2(a)), but not before the beginning of the matching payment period.

#### § 9036.3 Insufficient documentation.

Contributions which are otherwise matchable may be rejected for matching purposes because of insufficient supporting documentation. These contributions may become matchable if there is a proper resubmission in accordance with 11 CFR 9036.5 and

9036.6. Insufficient documentation includes:

(a) Discrepancies in the written instrument, such as:

(1) Instruments drawn on other than personal accounts of contributors and not signed by the contributing individual;

(2) Signature discrepancies; and

(3) Lack of the contributor's signature, the amount of the contribution, or the listing of the committee or candidate as payee;

(b) Discrepancies between listed contributions and supporting documentation, such as:

(1) The contributor's name is misspelled;

(2) The listed amount requested for matching exceeds the amount contained on the written instrument; and

(3) A written instrument has not been submitted to support a listed contribution;

(c) Discrepancies within or between contribution lists submitted, such as:

(1) The address of the contributor is missing or incomplete or the contributor's name is alphabetized incorrectly, or more than one contributor is listed per item; and

(2) A discrepancy in aggregation within or between submissions, or a listing of a contributor more than once within the same submission.

#### § 9036.4 Certification review and notice.

(a) The Commission will review the submission to determine if the submission meets acceptable standards of good order under 11 CFR 9036.2 and 9036.3. Those submissions not meeting the standards will not be certified, and the candidate will be requested to resubmit the documentation. Submissions of a sufficient size will be reviewed using statistical sampling, and the candidate will be given a reduced amount based on the results of the sample. (Note that under 11 CFR 9036.5 contributions which are submitted and rejected may be resubmitted for matching.) If the Commission certifies to the Treasury for payment an amount which is less than the amount requested by the candidate, the Commission shall notify the candidate in writing which notice or notices shall include:

(1) The amount less than the full amount requested for certification;

(2) The amount of the contribution and the name of the contributor which the Commission considers not matchable and the reasons therefor, or, if statistical sampling is used, the estimated amount of contributions by type and the reason for rejection;

(3) The amount of contributions which are not in dispute and which the Commission will certify to the Treasury for payment; and

(4) A statement that the candidate has the opportunity to supply the Commission with additional documentation or other explanation in the form of a resubmission under 11 CFR 9036.5 in order as to make the disputed contributions matchable.

(b) In any case where the candidate or his or her committee has knowledge that a contribution which has been submitted for matching purposes does not so qualify, such as a check returned to the committee for insufficient funds, the Commission shall be notified as soon as possible so that a proper adjustment may be made in the amount to be certified.

#### § 9036.5 Resubmissions and hearing opportunity.

(a) Contributions which were submitted and rejected under 11 CFR 9036.4 may be resubmitted with the necessary information.

(b) In order to be reviewed, the resubmission of disputed contributions shall be made on a separate list identifying the submission in which the contributions were originally submitted.

(c) Resubmissions must be presented to the Commission at a time specified and, to the extent approved, will be certified to the Secretary of the Treasury within 15 calendar days.

(d) If the candidate chooses to make a resubmission and the Commission determines that the disputed contribution is still unmatchable, the Commission will notify the candidate in writing of its determination. The Commission will advise the candidate of the legal and factual reasons for its determination and of the evidence on which that determination is based. The candidate will be given an opportunity to submit within 30 days of the Commission's notice written legal or factual materials to demonstrate that the contribution is matchable.

(e) The Commission will consider any written legal or factual materials submitted by the candidate in making its final determination. Such materials may be submitted by counsel if the candidate so desires.

(f) A final determination by the Commission that a contribution is not matchable shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the reasons underlying the Commission's determination and shall summarize the results of any

investigation upon which the determination is based.

#### § 9036.6 Continuation of certification.

(a) Candidates who have received matching funds and who are eligible to continue to receive such funds may continue to submit contributions to the commission to be certified for matching through January 21 of the year following the election.

(b) No contribution will be matched if it is submitted after this period, regardless of the date the contributions were deposited.

### PART 9037—PAYMENTS

Sec.

9037.1 Payments of Presidential Primary Matching Funds.

9037.2 Equitable Distribution of Funds.

9037.3 Deposits of Presidential Primary Matching Funds.

Authority: Sec. 408(a), Pub. L. 93-443, 88 Stat. 1300 (26 U.S.C. 9037).

#### § 9037.1 Payments of Presidential Primary Matching Funds.

Upon receipt of a written certification from the Commission, but not before the beginning of the matching payment period, the Secretary of the Treasury or his or her delegate will promptly transfer the amount certified from the matching payment account to the candidate.

#### § 9037.2 Equitable Distribution of Funds.

In making such transfers to candidates of the same political party, the Secretary or his or her delegate will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary or his or her delegate will take into account, in seeking to achieve an equitable distribution of funds available in the matching payment account, the sequence in which such certifications are received.

#### § 9037.3 Deposits of Presidential Primary Matching Funds.

Upon receipt of any matching funds, the candidate shall deposit the full amount received into a checking account maintained by the candidate's principal campaign committee in the depository designated by the candidate.

### PART 9038—EXAMINATIONS AND AUDITS

Sec.

9038.1 Audit.

9038.2 Repayments.

9038.3 Liquidation of Obligations; Repayment.

Authority: Section 408(c), Pub. L. 93-443, 88 Stat. 1300 (26 U.S.C. 9038).

#### § 9038.1 Audit.

(a) After the close of a matching payment period, the Commission shall

conduct an audit of the qualified campaign expenses of every candidate and his or her authorized committees who received Presidential primary matching funds. For candidates whose date of ineligibility occurs before the end of the matching payment period, the audit may be conducted at any time after the date of ineligibility.

(b) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

#### § 9038.2 Repayments.

(a) If the Commission determines that:

(1) Any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount to which such candidate was entitled; or

(2) Any amount of any payment made to a candidate from the matching payment account or any contributions received by the candidate were used for any purposes other than—

(i) To defray qualified campaign expenses; or

(ii) To repay loans which were used to defray qualified campaign expenses; or

(iii) To restore funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses; or

(3) Any amounts spent by the candidate from matching funds or from private contributions were not documented in accordance with 11 CFR 9033.1(a)(1); the Commission shall notify the candidate as soon as possible, but no later than 3 years after the end of such matching payment period. The candidate shall repay to the Secretary of the Treasury, within 90 days of the notice, an amount equal to the amount improperly paid under § 9038.2(a)(1), an amount equal to the amount improperly expended under 11 CFR 9038.2(a)(2), or an amount equal to the amount of any expenditure which is improperly documented under 11 CFR 9038.2(a)(3). The Commission's notice shall set forth the legal and factual reasons for the determination that a repayment is required and shall also advise the candidate of the evidence upon which that determination is based. Upon application by the candidate, the Commission may grant a 90 day extension of the repayment period.

(b) If the candidate disputes the Commission's determination that a repayment is required, he or she shall be given an opportunity to submit in writing, within 30 days of receipt of the Commission's notice, legal or factual materials to demonstrate that a repayment is not required.

(c) The Commission will consider any written legal or factual materials submitted by the candidate in making its final determination. Such materials may be submitted by counsel if the candidate so desires.

(d) A final determination by the Commission that a candidate must repay a certain amount shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

(e) The Candidate shall repay to the Secretary of the Treasury the amount specified by the Commission in its notice of final determination within 20 days from the date the notice is received by the candidate. Upon application by the candidate, the Commission may grant a 90 day extension of this period.

#### § 9038.3 Liquidation of obligations; repayment.

(a) Amounts received by the candidate from the matching payment account may be retained for 6 months after the end of the matching payment period and may be used to pay qualified campaign expenses incurred by the candidate.

(b) After all obligations have been liquidated, the candidate shall so inform the Commission in writing.

(c)(1) If on the last day of candidate eligibility the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus, the candidate shall within 30 days of the ineligibility date repay to the Secretary of the Treasury an amount which represents the amount of matching funds contained in the candidate's surplus. The amount shall be an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's accounts.

(2) For purposes of this subsection, total deposits shall be considered all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts.

Dated: March 28, 1979.

Joan D. Aikens,  
Chairman, Federal Election Commission.  
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