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The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6346, South Agriculture Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." On January 30, 1980, FmHA published a proposal to the *Federal Register* (45 FR 6972) to add Exhibit B to Subpart A of Part 1941, Chapter XVIII, Title 7, Code of Federal Regulations, to clarify the eligibility requirements for limited resource loans to operators of very small farm enterprises. This exhibit will supplement the existing individual operating loan eligibility requirements concerning farm training, income and the size of operation as they relate to limited resource operators of small farm enterprises in the seven States listed above.

Comments were received from the Sierra Club, Delta Chapter and the Consortium for the Development of the Rural Southeast.

The Sierra Club was concerned about loans being made to small farmers with enterprises in floodplain areas. FmHA does not anticipate any significant adverse impacts resulting from this action.

The Consortium for the Development of the Rural Southeast recommended that:

(1) The 240 hours of formal training be reduced to 100-120 hours.

(2) The two years of intensive on-the-job training and management be reduced to 12 to 18 months as a maximum.

(3) The formal education and on-the-job training be provided simultaneously.

These recommendations were considered and the proposed rule material that was published in the *Federal Register* (45 FR 6972) on January 30, 1980, was revised to incorporate these recommendations.

Accordingly, Subpart A Part 1941 is amended as follows:

Table of Sections [Amended]

1. In the Table of Sections following "Exhibit A" add "Exhibit B—Small Farm Enterprises. (Note: Exhibit B applies only in AL, FL, GA, LA, MS, MO and SC)."

§ 1941.4 [Amended]

2. In § 1941.4(g) add the following phrase at the end of the paragraph: "(For limited resource loans to applicants with small farm enterprises in AL, FL, GA, LA, MS, MO and SC, refer to Exhibit B of this subpart)".

Exhibit B [Added]

3. Exhibit B is added and reads as follows:

Exhibit B—Small Farm Enterprises

Individual Limited Resource Loans for Small Farm Enterprises in Alabama, Florida, Georgia, Louisiana, Mississippi, Missouri, and South Carolina.

I. General

The Farmers Home Administration (FmHA) wants to emphasize and encourage operating loan assistance to eligible limited resource applicants who operate small farm enterprises in these States through December 31, 1981, and wants to study and evaluate the overall impact such assistance has on stabilizing the financial position of small farm operators. Some limited resource applicants have very little farm experience or training and may operate or propose to operate very small farm enterprises with annual gross farm incomes as low as \$3,000. This Exhibit supplements the existing individual operating loan eligibility requirements concerning farm training, income, and the size of operation as they relate to limited resource operators of small farm enterprises.

II. Eligibility

A. A limited resource applicant who operates or will operate a small farm enterprise must meet all operating loan requirements. However, whether or not an applicant meets these requirements must be evaluated in relation to the size of the applicant's farming operation. An applicant with a small farm enterprise will not need as much training or experience or income as applicants with other farming enterprises.

B. A limited resource applicant operating a small farm enterprise can meet the eligibility requirement relating to training in § 1941.12(a)(3) of this subpart if the applicant is a member of a responsible sponsoring organization and has successfully completed a minimum of 240 hours of formal and informal training from the organization's professional staff. The formal training must include a minimum of one hundred-twenty hours of training on the enterprise(s) that will be financed. The informal training will consist of on the job supervision and assistance. The applicant must also receive intensive management assistance for the small farm enterprise(s) that will be financed from a qualified advisor of the sponsoring organization for at least two years. An advisor must have a degree in agriculture or equivalent experience managing the same type of enterprise that will be financed. Before loan approval, the County Supervisor will obtain a letter from the sponsoring organization certifying that its training staff and advisors will provide the required

training and management assistance. There must be a written agreement between the County Supervisor and the sponsoring organization if the two-year management assistance requirement is reduced for applicants who have attained a sufficient skill level that will enable them to profitably operate a farm with minimum supervision.

III. Income

The total income of the applicant at time of application will not exceed the U.S. Bureau of the Census, Current Population Reports, Non-metropolitan Median Family Income for the State.

IV. Small Farm Requirement.

Section 1941.4(g) of this subpart states that a limited resource applicant may operate a small farm. A small farm is described as a marginal family farm. Such a farm must meet the definitions of "family farm" and "farm" found in § 1941.4(d) and § 1941.4(e) of this subpart, and must have planned annual gross farm income of at least \$3,000. A marginal family farm is usually one which is at the very lowest acreage and income level in the area but which still qualifies as a family farm.

This document has been reviewed in accordance with FmHA Instruction 1901-G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, P.L. 91-190, an Environmental Impact Statement is not required.

(7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

Dated: June 6, 1980.

Gordon Cavanaugh,
Administrator, Farmers Home
Administration.

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FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 106, 110, 140, 141,
142, 143, 144, 145, 146, 9001, 9002,
9003, 9004, 9005, 9006, 9007

Public Financing of Presidential General Election Campaigns

AGENCY: Federal Election Commission.

ACTION: Final Rule: Transmittal of Regulations to Congress.

SUMMARY: FEC Regulations implementing the provisions of the Presidential Election Campaign Fund Act (26 U.S.C. 9001, et seq.) relating to the public financing of Presidential General Election Campaigns have been

revised and transmitted to Congress pursuant to 26 U.S.C. 9009(c). The regulations have been renumbered according to the section of the U.S. Code upon which each is based and are a substitute for regulations currently appearing in 11 CFR Parts 140 through 146. Technical conforming amendments have also been made to 11 CFR Parts 100, 106 and 110.

EFFECTIVE DATE: Further action, including the announcement of an effective date, and deletion of existing regulations in 11 CFR Parts 140 through 146, will be taken after these regulations have been reviewed by Congress in accordance with 26 U.S.C. 9009(c).

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Ann Fiori, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463, (202) 523-4143.

SUPPLEMENTARY INFORMATION: 26 U.S.C. 9009(c) requires that any rule or regulation prescribed by the Commission under Chapter 95 of Title 26, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate for legislative review prior to final promulgation. The following regulations were transmitted to Congress on June 13, 1980.

By Notice of Proposed Rulemaking published on May 31, 1978 (43 FR 23587), the Commission invited oral and written public comments on revisions to its regulations governing the public financing of Presidential election campaigns. Public hearings were held on June 20, 1978. A second Notice of Proposed Rulemaking containing the text of proposed regulations to govern the public financing of Presidential General Election Campaigns was published for comment on May 15, 1980 (45 FR 32203). The following regulations are based on the comments received in response to these two NPRM's as well as the experience the Commission has gained in administering the public financing provisions since 1976.

A section by section analysis of the new regulation is contained in the following Explanation and Justification.

Explanation and Justification

PART 9001 Scope

§ 9001.1 Scope

This subchapter is issued by the Federal Election Commission to govern the entitlement to and use of the Presidential Election Campaign Fund.

PART 9002 Definitions

§ 9002.1 Authorized Committee

This definition derives from 26 U.S.C. 9002(1). While the procedures for

authorizing a committee under this subchapter follow the procedures outlined in Title 2 regulations, the \$5,000 threshold established under Title 2 (11 CFR 100.5(d)) does not apply. In addition, a candidate of a political party may designate the party's national committee as the candidate's authorized committee.

§ 9002.2 Candidate

This definition generally follows 26 U.S.C. 9002(2)(A) and (B) and as such does not incorporate the \$5,000 candidate threshold requirement found in 2 U.S.C. 431(2). The \$5,000 threshold in the Title 2 definition of candidate does not apply to this subchapter because major party candidates are generally prohibited from receiving contributions (unless they choose to establish a legal and accounting compliance fund). The threshold is also not applicable to minor or new party candidates as the definition of candidate in Title 26 is premised on placing one's name on the general election ballot as the candidate of that party and on "qualifying" for public funds by receiving a percentage of the popular vote.

§ 9002.3 Commission

This definition generally follows 26 U.S.C. 9002(3).

§ 9002.4 Eligible Candidates

This definition follows 26 U.S.C. 9002(4).

§ 9002.5 Fund

This definition follows 26 U.S.C. 9002(5).

§ 9002.6 Major Party

This definition follows 26 U.S.C. 9002(6). A provision has been added which includes within the definition of "candidate" for the purposes of this section those individuals who received popular votes for the office of President in the preceding election. This provision was formerly included in the definition of "candidate" at 11 CFR 140.2(b).

§ 9002.7 Minor Party

This definition follows 26 U.S.C. 9002(7). A provision has been added which includes within the definition of "candidate" for the purposes of this section those individuals who received popular votes for the office of President in the preceding election. This provision was formerly included in the definition of "candidate" at 11 CFR 140.2(b).

§ 9002.8 New Party

This definition follows 26 U.S.C. 9002(8).

§ 9002.9 Political Committee

This definition narrows the scope of 26 U.S.C. 9002(9), which extends to groups influencing state or local elections as well as federal elections. This definition covers only those entities over which the Commission has jurisdiction, that is, those groups accepting contributions or making expenditures for the purpose of influencing federal elections. This definition is thus in concert with the definition of political committee in Title 2 in that it reaches only groups influencing federal elections.

§ 9002.10 Presidential Election

This definition follows 26 U.S.C. 9002(10).

§ 9002.11 Qualified Campaign Expense

This section explains and adds to the statutory definition of qualified campaign expense.

Subsection (a) generally follows 26 U.S.C. 9002(11). Subsection (a)(3) provides that while expenses which constitute a violation of state or federal law are not qualified campaign expenses, such expenses do count against the candidate's expenditure limitation. Since such expenses are made to further the candidate's campaign, they should count against the expenditure limitation.

Subsections (b) (1) and (2) follow 2 U.S.C. 441a(b)(2).

Subsection (b)(3) derives from the last sentence of 26 U.S.C. 9002(11). It permits a Presidential or Vice Presidential candidate to pay for expenditures which further the election of another individual to the extent that the expenditure furthers the Presidential or Vice Presidential candidate's election.

Subsections (b) (4) and (5) specifically include as qualified campaign expenses unreimbursed travel costs paid by a candidate's committee for media, Secret Service or similar personnel and payments for legal and accounting services provided solely to ensure compliance with Title 2 and Chapter 95 of Title 26.

Subsection (c) sets forth those expenses which are not considered qualified campaign expenses. Expenses incurred after the expenditure report period are by definition not qualified. An exception is made for "winding down" costs. Because these costs are necessary to the orderly termination of a campaign, they are considered qualified campaign expenses.

Primary campaign expenditures are not considered qualified campaign expenses. Since federal funds are provided under Chapter 95 for the

general election campaign, those funds are not to be used in connection with the primary election.

Civil or criminal penalties which must be paid pursuant to the Act or Chapter 95 of Title 26 are not qualified campaign expenses. If such penalties were considered qualified, the result would be that federal funds would be used to pay penalties imposed for violations of the campaign law. Such penalties may, however, be paid from the legal and accounting compliance fund.

§ 9002.12 Expenditure Report Period

This definition follows 26 U.S.C. 9002(12).

§ 9002.13 Contribution

While the term "contribution" is used, it is not defined in Title 26. Section 9002.13 gives the term "contribution" the same meaning under Title 26 as it is given under Title 2.

§ 9002.14 Secretary

The term "Secretary" means the Secretary of the Treasury.

§ 9002.15 Political Party

While the term "political party" is not defined in Title 26, it is used throughout that Title. To make clear that this term has the same meaning as under Title 2, the Title 2 definition has been added here. Thus, this definition follows 2 U.S.C. 431(16).

PART 9003 Eligibility for Payments

§ 9003.1 Candidate and Committee Agreements

Subsection (a) generally follows 26 U.S.C. 9003(a), and adds two requirements to that section: each candidate must agree to comply with the provisions of the Commission's regulations implementing the Presidential Election Campaign Fund Act and must provide certain information regarding the depository account to which payments from the fund will be initially deposited. The latter requirement is included to facilitate prompt payment of amounts certified by the Commission.

Subsection (b) sets the time limitations within which the candidate agreement must be submitted to the Commission, but allows for some flexibility in this deadline with respect to minor and new party candidates. Since major party candidates will be entitled to full funding, and are only eligible for federal funds if they have not received private contributions, no extension provisions have been made for such candidates.

§ 9003.2 Candidate Certification

In subsection (a), pursuant to 26 U.S.C. 9003(b), each major party candidate is required to certify to the Commission that the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of his or her entitlement under 11 CFR Part 9004. The candidate shall also certify that no contribution has been or will be accepted, except those solicited for and deposited to the candidate's legal and accounting fund and to the extent necessary to make up any deficiency in payments from the Fund.

Subsection (b) generally follows 26 U.S.C. 9003(c) and provides that minor and new party candidates shall certify to the Commission that the candidate and his or her authorized committee(s) have not and will not incur qualified campaign expenses in excess of the major party candidate's entitlement under 11 CFR Part 9004 and that no contributions have been or will be accepted, except where qualified campaign expenses exceed aggregate payments received by the candidate.

Subsection (c) generally follows 26 U.S.C. 9004(d). Subsections (c) (1) and (2) incorporate former 11 CFR 141.2(c) (1) and (3). Subsection (c)(3) defines the term "personal funds" as it is defined at 11 CFR 110.10(b). Subsection (c)(4) follows 26 U.S.C. 9004(d). Subsection (c)(5) clarifies that contributions by family members from funds over which the candidate, at the time he or she became a candidate, had no control or access to are subject to the \$1,000 limitation under 2 U.S.C. 441a, but do not count against the \$50,000 limitation under 26 U.S.C. 9004(d). Subsection (c)(6) requires personal funds to be deposited in a committee account established to receive private contributions before such funds may be spent to further the candidate's campaign. This requirement has been included to ensure that the disbursement of such funds is properly documented and reported.

Subsection (d) revises former 11 CFR 141.2(d) and is consistent with the requirements for filing candidate agreements.

§ 9003.3 Allowable Contributions

Subsection (a) permits a candidate to establish a separate account known as a legal and accounting compliance fund. This provision has been added to follow past Commission practice, which allowed candidates receiving public funding to solicit private contributions to pay for the costs of services necessary to comply with the

requirements of the Act and Chapter 95 of Title 26. The services covered parallel those described in 11 CFR 100.8(b)(15).

It should be noted that the establishment of a compliance fund is recommended only for candidates receiving full federal funding for their general election campaigns. Other candidates will be soliciting private contributions to pay for qualified campaign expenses and should therefore make payments for their legal and accounting compliance services from their private contribution account established under 11 CFR 9003.3(b). Payments made from a private contribution account for exempted legal and accounting services will not be counted against the candidate's overall expenditure limits under 2 U.S.C. 441a(b) and 11 CFR 110.8. (See 11 CFR 100.8(b)(15).)

Subsection (a)(1) sets forth the requirements regarding funds deposited in this account.

Subsection (a)(1)(i) permits candidates to establish such an account prior to being chosen as the nominees of their political party. Early establishment of this account could be used to solicit contributions to defray start-up expenses for the candidate's general election campaign under 11 CFR 9003.4.

Subsection (a)(1)(i)(A) requires that all solicitations for contributions to the separate legal and accounting compliance fund must clearly state that they will become part of this fund. This notification is necessary to inform contributors of the intended use of their contributions.

Subsection (a)(1)(i)(B) makes it clear that contributions to the legal and accounting compliance fund are subject to the limitations and prohibitions of Title 2.

Subsection (a)(1)(ii) permits a candidate to transfer to the separate legal and accounting compliance fund any amounts projected to remain in the candidate's primary election account after all required repayments have been made to the U.S. Treasury under 11 CFR 9038.2. This projected balance essentially represents the amount of private contributions which are projected to remain in the candidate's primary account after all federal matching funds have been extracted and all repayments made.

Subsection (a)(1)(iii) permits a candidate to deposit in the compliance fund contributions designated for the primary election but received after the general election expenditure report period has begun. These contributions may be so deposited only if the candidate's primary campaign is solvent. In addition, the contributor

must be given the same notice required for solicitations to the compliance fund; if he or she does not object, the contribution may then be deposited in the compliance account. Otherwise, the contribution must be refunded. All such contributions which are deposited in the compliance fund will be counted against the donor's general election contribution limits rather than his or her primary limit.

Subsections (a)(2)(i)(A) through (E) establish the permissible uses of contributions to the legal and accounting compliance fund.

Subsection (a)(2)(i)(A) permits the use of such contributions to defray the costs of legal and accounting services provided solely to ensure compliance with the requirements of Title 2 and of Chapter 95 of Title 26. Legal and accounting services which are not related to compliance must be paid for from the account maintained for federal funds. As set forth in 11 CFR 100.8(b)(15), payments for compliance-related services made from this fund or other accounts containing private contributions will not count against the candidate's expenditure limitation under 2 U.S.C. 441a(b). Payments made from the federal fund account for either compliance related or non-compliance related services will count against the expenditure limitation.

Subsection (a)(2)(i)(B) permits the use of contributions to the separate legal and accounting compliance fund to defray civil or criminal penalties imposed pursuant to Title 2 or Chapter 95 of Title 26. The payment of civil or criminal penalties is not considered a qualified campaign expense and may not be paid from the federal funds account. Therefore it is necessary that an acceptable source for such penalty payments be provided. (See 11 CFR 9002.11(c)(4).)

Subsection (a)(2)(i)(C) permits the use of contributions to the separate legal and accounting compliance fund to make repayments to the U.S. Treasury required under 11 CFR 9007.2.

Subsection (a)(2)(i)(D) permits the use of contributions to the separate legal and accounting compliance fund for soliciting additional contributions to that account. Solicitation costs may not be paid from payments received from the Fund.

Subsection (a)(2)(i)(E) permits contributions to the separate legal and accounting compliance fund to be borrowed from that fund and used to defray qualified campaign expenses incurred prior to the beginning of the expenditure report period or prior to the receipt of funds from the Presidential Election Campaign Fund. The use of

contributions for this purpose is permissible because only a temporary borrowing is involved; the contributions must be restored in accordance with 11 CFR 9003.4. Ultimately, these contributions will be used only for non-qualified campaign expenses.

Subsection (a)(2)(ii)(A) outlines the related costs which may be paid from this account as part of the cost of exempted compliance services. This subsection also permits committees to allocate a portion of their overhead costs to compliance-related services. If the amount of overhead so allocated is equal to or less than 10% of the cost of all other compliance-related services, no proof will be required to demonstrate that such costs were in fact compliance-related. If this amount exceeds 10%, the entire amount claimed must be justified as compliance costs. This formula follows past Commission practice.

Subsection (a)(2)(ii)(B) allows committees to pay all legal and accounting costs from their federal funds account and then reimburse their federal account for the compliance-related portion of such costs. This provision allows committees some flexibility in deciding what portion, if any, of the cost of compliance services, they may wish to pay from federal funds. However, the reimbursement must occur before the Commission makes a final repayment determination for that committee. Further, once funds have been transferred to the federal account for such reimbursement, they may not be transferred back to the compliance fund if it is later found that such reimbursement was in excess of the amount the committee wanted to reimburse.

Subsection (a)(2)(iii) provides that disbursements made from the separate legal and accounting compliance fund will not be subject to the expenditure limitations of 2 U.S.C. 441a(b) and 11 CFR 110.8 so long as they are used for the purposes outlined in 11 CFR 9003.3(a)(2)(i)(A) through (D). This section also makes it clear that if a candidate borrows from this fund, pursuant to 11 CFR 9003.3(a)(2)(i)(E), to pay qualified campaign expenses incurred before the beginning of the expenditure report period or prior to the receipt of payments from the Fund, such qualified campaign expenses will count against the expenditure limitations.

Subsection (a)(2)(iv) prohibits the use of contributions to the compliance fund for the payment of outstanding debts remaining from the candidate's primary campaign. This prohibition continues until all obligations and repayments have been paid for the general election; at that point, such funds become excess

campaign funds and may be used for any purpose permitted under Title 2 or Part 113 of the Commission's regulations.

Subsection (a)(3) establishes the reporting, recordkeeping and documentation requirements for the separate legal and accounting compliance fund.

Subsection (b) sets forth the guidelines for candidates who may accept private contributions to pay for qualified campaign expenses.

Subsection (b)(1) defines the circumstances under which major, minor and new party candidates may accept such contributions. Subsection (b)(1)(i) follows 2 U.S.C. 9003(b)(2); subsection (b)(1)(ii) follows 2 U.S.C. 9003(c)(2).

Subsection (b)(2) requires that all contributions received under this section be deposited into a separate account, and limits their use to the payment of qualified campaign expenses and the costs of soliciting contributions to this account. It also establishes recordkeeping and reporting requirements for this separate account.

Inasmuch as the compliance fund contains private contributions, subsection (b)(3) permits candidates to make transfers to this separate account from the legal and accounting compliance fund.

Subsection (b)(4) parallels the exemption allowed for fundraising costs during the Presidential primaries for candidates receiving matching funds. See 11 CFR 100.8(b)(21). Candidates may spend, as solicitation costs, up to 20% of the amount they are permitted to raise for qualified campaign expenses without such costs being counted against the expenditure limits. Disbursements for such solicitation costs must, however, be reported and documented in the same manner as all other disbursements, whether or not they are counted against the expenditure limits. This fundraising exemption is intended to make the system function more equitably with respect to candidates who receive only partial federal funding. While candidates receiving full federal funding will not incur fundraising costs, candidates who receive only partial federal funding will be forced to make expenditures to raise private contributions. Therefore, a fundraising exemption similar to that provided for in the Primary Matching Fund Act is incorporated into these regulations.

Subsection (b)(5) requires that all contributions received under this section must be aggregated with any contributions made by the same person to the candidate's separate legal and accounting compliance fund for purposes of the Title 2 contribution

limitations. The prohibitions of 11 CFR Parts 114 and 115 shall also apply to contributions received under this section.

§ 9003.4 Expenses Incurred Before the Beginning of the Expenditure Report Period or Prior to Receipt of Federal Funds.

Subsection (a)(1) defines the qualified campaign expenses which a candidate is permitted to incur in connection with his or her general election campaign prior to the beginning of the expenditure report period as defined at 11 CFR 9002.12. This provision is designed to permit a candidate to set up a basic campaign organization before the expenditure report period begins.

Subsection (a)(2) allows candidates to continue to use the funding sources permitted under this section until they receive federal funds.

Subsection (b) establishes the permissible sources from which a candidate may obtain funds for making such expenditures in connection with the general election. These sources are bank loans obtained pursuant to the requirements of 11 CFR 100.7(b)(11), loans obtained from the candidate's separate legal and accounting compliance fund, contributions received by minor or new party candidates under 11 CFR 9003.3(b), loans obtained from the candidate's primary election campaign, and personal funds up to the \$50,000 limit. Major party candidates receiving federal funds equal to the expenditure limitation must repay all loans within 15 days after receipt of payment of the public funds to which the candidate is entitled. Expenditures made by a candidate in accordance with this section will be counted against the candidate's expenditure limitation under 11 CFR 110.8 and 2 U.S.C. 441 (a) (b).

Subsection (c) requires the establishment of separate accounts for such expenditures. It also sets forth the documentation and reporting requirements for such expenditures.

§ 9003.5 Documentation of Disbursements

This section generally parallels the documentation requirements set forth in the Presidential Primary Matching Fund regulations and also incorporates current recordkeeping requirements at 2 U.S.C. 432.

Under subsection (a), the candidate has the burden of proving that all disbursements made by the candidate, his or her authorized committee(s) or any agents of either the candidate or such committee(s) are qualified campaign expenses. The statutory requirement that the candidate "agree

(in writing) to obtain and furnish to the Commission such evidence as it may request of the qualified campaign expenses" clearly indicates that the candidate who accepts public funding has the burden of proving that all expenditures made on his or her behalf 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—an expense "incurred by [a] candidate * * * or by [the candidate's] authorized committee[s] to further the election of * * * such candidate [] * * *" 26 U.S.C. 9002(11).

The first element of the candidate's burden of proof—showing that the expenditure was made—is directed at proving that the expenditure was actually incurred. The second element of proof—that the goods or services purchased were in connection with the campaign—is directed at showing that the expenditure was made to further the candidate's election.

Subsections (a)(1) through (4) set forth the minimum documentation necessary to show that the expenditure was incurred. For disbursements in excess of \$200, the preferred documentation is by receipted bill from the payee. If there is no receipted bill, documentation may be by cancelled check to the payee plus a bill, invoice, voucher or memorandum from either the payee or the candidate. If such documentation is not available, the minimum documentation permissible is a cancelled check. Disbursements of \$200 or less, must be documented by a cancelled check to the payee, unless such disbursements are from the petty cash fund. Subsection (a)(3) defines the term "payee" to mean the ultimate payee, that is the person who provides the goods or services to the campaign. Except for travel advances, a cancelled check to a campaign staffer who then pays other individuals for goods and services provided to the campaign would not be sufficient documentation.

To demonstrate that the disbursement was made to further the candidate's campaign, the "purpose" of each disbursement must be documented. Subsection (a)(5) defines the term "purpose" to mean a brief statement or description of why the disbursement was made. If this statement or description does not suffice to show that the disbursement was campaign related, the Commission, under subsection (b),

may request that the candidate explain the connection between the disbursement and the campaign.

§ 9003.6 Books and Records

This subsection deals with the statutorily prescribed area of the candidate agreement to produce books and records (See 26 U.S.C. 9003(a)(2)).

§ 9003.7 Audit and Examination

This section deals with the portion of the candidate agreement which requires the candidate to submit to a post-election audit and examination. (See 26 U.S.C. 9003(a)(3)). The additional requirements of this section are intended to facilitate this audit and examination.

§ 9003.8 Compliance with Law and Regulations

Under subsection (a), the candidate and his or her authorized committee(s) must comply with the requirements of Title 2 and Chapter 95 of Title 26. This section is intended to encourage prompt disclosure and adequate recordkeeping, and puts the candidate on notice of all statutory and regulatory provisions to which he or she is subject.

Subsection (b) requires the candidate to pay any penalties included in a conciliation agreement or imposed by a court against either the candidate or his or her authorized committee(s). This section would include the situation in which a penalty is imposed against an authorized committee after it has disposed of its excess campaign funds. As agreed by the candidate under 11 CFR 9003.1, the candidate is personally liable for such penalties.

PART 9004—Entitlement of Eligible Candidates to Payments; Use of Payments

§ 9004.1 Major parties.

This section sets forth the amount which an eligible major party candidate is entitled to receive by statute (2 U.S.C. 441a(b)(1)(B)).

§ 9004.2 Pre-election payments; minor and new parties.

Subsection (a) sets forth the entitlement formula for eligible minor party candidates who received 5 percent or more, but less than 25 percent, of the popular vote received by all candidates in the prior election. It generally follows 26 U.S.C. 9004(a)(2) and former 11 CFR 142.2(a). Subsection (b) generally follows former 11 CFR 142.2(b).

§ 9004.3 Post-election payments; minor and new parties.

Subsection (a) sets forth the entitlement formula for eligible minor

and new party candidates who receive 5 percent or more of the total number of popular votes cast in the election. It generally follows 26 U.S.C. 9004(a)(3) and former 11 CFR 142.3(a).

Subsection (b) limits allowable payments from the Fund to candidates qualifying under 11 CFR 9004.2 to an amount equal to the amount by which such candidate's entitlement, as calculated under 11 CFR 9004.3, would exceed his or her entitlement under 11 CFR 9004.2. It generally follows former 11 CFR 142.3(b).

Subsection (c) generally follows 26 U.S.C. 9004(b) (1) and (2).

The formula used for determining the amount to which a minor or new party candidate is entitled after the election is demonstrated by the following example:

Assuming that the amount to which a major party candidate is entitled equals \$20 million and that Candidate X, a minor party candidate, incurs qualified campaign expenses of \$20 million. If Candidate X raises \$15 million in private contributions and, after the election, Candidate X is entitled (based on his or her vote percentage) to receive \$10 million in federal funds, Candidate X will receive only \$5 million since \$5 million represents the difference between the amount of qualified campaign expenses incurred and the amount of contributions received (\$20 million minus \$15 million). If Candidate X had received \$2 million in federal funds prior to the election, he or she would only receive \$3 million after the election. If, based on the vote percentage, Candidate X was entitled to receive only \$3 million even though the total of qualified campaign expenses incurred which were not covered by private contributions equalled \$5 million, Candidate X would still only receive the amount to which he or she was entitled.

§ 9004.4 Use of Payments

Subsection (a) generally follows 26 U.S.C. 9004(c) and specifies the purposes for which eligible candidates may use monies received from the Fund, that is, to defray qualified campaign expenses. In addition to expenses incurred during the expenditure report period, payments may be used to defray winding down costs, which are considered qualified campaign expenses if connected with the termination of the candidate's campaign (See AOR 1976-54), and to restore funds expended for qualified campaign expenses incurred before the beginning of the expenditure report period. Subsection (a)(4) also sets forth examples of those winding down costs which would be considered by the

Commission to be qualified campaign expenses.

Subsection (b) prohibits the use of federal funds to solicit contributions to the candidate's legal and accounting compliance fund. Since excess funds from the compliance fund may be used after the campaign for any purpose permissible under 2 U.S.C. 439a, the use of federal funds to solicit contributions to that account was felt to be inappropriate.

§ 9004.5 Investment of public funds.

This section concerns the investment of public funds. While the statute does not specifically provide for such activity, this section is consistent with the Commission's past practice of permitting eligible candidates to invest public funds. An amount equal to the income derived, minus investment expenses or any taxes paid on such income, must be repaid to the Treasury. It should be noted that if, as a result of such an investment, there is a loss in federal funds, the candidate will be required to repay any amount lost.

§ 9004.6 Reimbursements for transportation and services made available to media, Secret Service and similar personnel.

Subsections (a) and (b) establish rules to govern the use of candidate supplied transportation and ground services by members of the media, Secret Service, or similar personnel. Candidates are not required to seek reimbursement for such transportation or ground services, but may consider the costs involved to be qualified campaign expenses subject to the candidate's overall expenditure limitation pursuant to 2 U.S.C. 441a(b). If, however, reimbursement is sought, such reimbursement may not exceed the amounts established in this section.

Any reimbursement sought for transportation made available to media, Secret Service or similar personnel may not exceed the individuals' pro rata share of the actual cost of the transportation made available. Any reimbursement sought for ground services made available to members of the media, Secret Service, or similar personnel shall not exceed either: the individual's pro rata share of the actual cost of the services made available; or a reasonable estimate of such cost. If reimbursements related to a trip exceed by 10% or more the actual cost of the services and facilities made available, the excessive amount shall be deemed income to the committee. The purpose of this provision is to eliminate the possibility for the subsidizing of a campaign by the media or other individuals through the charging of

higher than pro rata shares for the use of candidate-supplied transportation.

Example of Ground Cost Reimbursement for a Media Personnel on a Campaign Trip

Assume a trip from Washington to Chicago to Los Angeles to Washington. On this trip were 50 press representatives.

Further assume:

At Washington—before departure	
Press bus to airport	\$650.00
At Chicago	
Press bus to and from airport	1,100.00
Hotel accommodation	4,387.00
Baggage handling	843.00
Buffet	787.00
At Los Angeles	
Press bus to and from airport and hotel to event site	1,385.00
Baggage	643.00
Hotel and food provided	7,459.00
Arrive at Washington	
No service provided	0
Trip cost for ground services	17,254.00
5% for Misc. costs (typewriter rental, phone installation)	862.70
Total Costs	\$18,116.70

It is noted that though 50 press representatives were among the party at departure, three left the party at Chicago and two joined in Los Angeles. The pro rata share will be calculated on the basis of 52 persons. Also in both cities a number of press representatives did not take advantage of the transportation and accommodations provided.

The billing will be calculated as follows:

\$18,116.70 divided by 52 persons = \$348.39.

If it is determined that the total reimbursements for this trip exceeded \$19,928.37, the excessive amount shall be deemed income to the Committee and repayable.

Subsection (c) outlines the reporting requirements pursuant to 11 CFR Part 104 relating to expenditures and reimbursements for such transportation or ground services. The total expenditures for transportation and ground services will be reported by the committee. Reimbursements will also be reported, separately from expenditures. Pursuant to Part 104, the reimbursements will be subtracted from the committee's total expenditures to produce the committee's net expenditures. It is the net expenditures which will count against the candidate's expenditure limit.

§ 9004.7 Allocation of travel expenses.

This section is concerned with allocation of expenses incurred for travel relating to the campaign of a candidate who receives funding under Chapter 95 of Title 26. If a trip by a candidate or any other individuals includes only campaign stops, the total cost of the trip is a qualified campaign

expense, payable by the committee. If a trip by a candidate or any other individual includes campaign and non campaign stops, the portion of the cost allocable to campaign activity is calculated on a campaign stop to campaign stop basis. For example, assume that to a candidate's itinerary were Washington, D.C. to Detroit to San Francisco to Fort Worth and return to Washington, D.C. If the stops in San Francisco and Fort Worth were campaign-related while that in Detroit was not, the cost allocable to campaign activity would be determined by calculating what the trip would have cost if the candidate had travelled from Washington, D.C. to San Francisco, from San Francisco to Fort Worth, and from Fort Worth to Washington, D.C.

Individuals who use government conveyance or accommodations paid for by a government entity are required to reimburse the government entity for costs allocable to campaign activity. For example, the Department of Defense has developed a cost rate for use of aircraft owned by the federal government. If such aircraft were used for campaign related travel, the authorized committee would be required to reimburse the federal government on the basis of the Defense Department rate in accordance with the formula set forth in § 9004.7. This requirement is necessary to prevent the free use of government conveyance or accommodations for campaign related activity. Such free use would amount to government subsidization of a candidate's campaign and would totally defeat the purposes of the expenditure limitations. Similarly, if any person, other than a government entity incurs expenses for campaign related travel on behalf of a candidate, such expenses shall be qualified campaign expenses payable by the committee.

§ 9004.8 *Withdrawal by candidate.*

This section generally follows the statutory language in 26 U.S.C. 9003(d)(1) and (2). Subsection (b) additionally requires such individuals to submit a statement similar to that submitted by candidates who received primary matching funds. See 11 CFR Part 9034. Based on this statement, the amount, if any, of excess federal funds remaining in the individual's campaign account is required to be repaid to the Treasury under subsection (c). Subsection (d) provides for a final repayment to the Treasury if necessary, after the Commission has conducted its audit.

PART 9005—Certification by Commission

§ 9005.1 *Initial certification.*

This section follows 26 U.S.C. 9005(a).

§ 9005.2 *Finality of certification.*

Subsection (a) sets forth the procedure by which a candidate is notified of the Commission's initial decision on the amount which that candidate is entitled to receive from the Fund. A candidate who disputes the Commission's determination is given an opportunity to present written materials which would support and warrant a reconsideration of the matter by the Commission. The Commission will render a final determination of certification upon review of the materials submitted and will notify the candidate in writing of its decision and reasons in support thereof.

Subsection (b) generally follows 26 U.S.C. 9005(b).

§ 9005.3 *Payments to eligible candidates from the fund.*

Subsection (a) generally follows 26 U.S.C. 9006(b).

Subsection (b)(1) and (2) generally follow 26 U.S.C. 9006(c).

Subsection (c) and (d) require payments received from the Fund to be deposited to a separate account to facilitate accurate accounting of the use of public funds. Subsection (d) sets forth certain types of receipts by a candidate's committee which represent returns of federal funds to the campaign. These funds must also be deposited in the candidate's federal funds account.

PART 9006—Reports and Recordkeeping

§ 9006.1 *Separate reports.*

This section requires separate reporting of expenditures made by a candidate's authorized committee(s) to further his or her general election campaign. The provision is intended to facilitate accurate accounting of the use of public funds. Such authorized committee(s) shall comply with reporting requirements set forth at 11 CFR 104.3(a) and (b), or when applicable, the reporting requirements set forth at 11 CFR 104.17. Candidates reporting in accordance with 11 CFR 104.17 during the 1980 election cycle may, however, use the \$200 itemization threshold instead of itemizing all receipts and disbursements aggregating in excess of \$100.

The authorized committee(s) is also required to file separate reports to disclose different general election activities. One report must be filed to disclose all receipts and disbursements related to qualified campaign expenses.

A second report, which must be filed with the first one, should list all activity of the legal and accounting campaign fund.

§ 9006.2 *Filing dates.*

This section follows 2 U.S.C. 434(a)(3).

PART 9007—Examinations and Audits; Repayments

§ 9007.1 *Audits, records and investigations.*

This section follows 26 U.S.C. 9007(a) and sets forth examples of what will be included in this audit.

§ 9007.2 *Repayments.*

Subsections (a)(1), (2), (3) and (4) follow 26 U.S.C. 9007(b)(1), (2), (3) and (4).

Subsection (a)(5) requires repayment for expenditures which are not properly documented. (See Explanation and Justification of § 9003.5.)

Subsection (a)(6) requires repayment of any income received through investment of public funds, as provided in 11 CFR 9004.5.

Subsections (b), (c), (d), (e) and (f) set forth a procedure governing disputes over repayment determinations made by the Commission.

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 repayment, the committee be afforded some type of opportunity to demonstrate to the Commission that repayment 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 these sections fulfills due process requirements. It includes the following elements: notice of the legal and factual matters upon which the Commission is relying; an opportunity for the committee to present in writing evidence and reasons why repayment is not warranted; 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 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).)

Subsection (g) has been added to make it clear that the candidate may not retain public monies.

Subsection (h) follows 26 U.S.C. 9007(b)(5).

§ 9007.3 Additional audits.

This section follows 26 U.S.C. 9009(b), which authorizes the Commission to conduct examinations and audits, other than those required by 26 U.S.C. 9007(a), as it deems necessary to carry out its statutory responsibilities. Such audits may be conducted only upon an approval by four Commissioners in cases in which the Commission finds there is reason to believe that a violation of the Act or regulations has occurred or is about to occur. See 11 CFR 111.10 and 2 U.S.C. 437g.

Note

Part 146 has been transferred to 11 CFR 110.7.

Subchapter E, Parts 9001 through 9009, is added to Chapter I of 11 CFR to read as follows:

SUBCHAPTER E—PRESIDENTIAL ELECTION CAMPAIGN FUND: GENERAL ELECTION FINANCING

PART 9001—SCOPE

Sec.
9001.1 Scope.

Authority: 26 U.S.C. 9009(b).

§ 9001.1 Scope

This subchapter governs entitlement to and use of funds certified from the Presidential Election Campaign Fund under 26 U.S.C. 9001, *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431-455 of Title 2, United States Code, and regulations prescribed thereunder (11 CFR Parts 100 through 115). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431-455 of Title 2, United States Code, or regulations prescribed thereunder (11 CFR Parts 100 through 115).

PART 9002—DEFINITIONS

Sec.
9002.1 Authorized committee.
9002.2 Candidate.
9002.3 Commission.
9002.4 Eligible candidates.
9002.5 Fund.
9002.6 Major party.
9002.7 Minor party.
9002.8 New party.
9002.9 Political committee.
9002.10 Presidential election.
9002.11 Qualified campaign expense.

9002.12 Expenditure report period.
9002.13 Contribution.
9002.14 Secretary.
9002.15 Political party.

Authority: 26 U.S.C. 9002, 9009(b).

§ 9002.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, "authorized committee" means, with respect to the candidates (as defined at 11 CFR 9002.2) of a political party for President and Vice President, any political committee(s) which are authorized in accordance with the procedures set forth at 11 CFR 102.12 or 102.13 or which have not been disavowed pursuant to 11 CFR 100.3(a)(3). If a party has nominated a Presidential and a Vice Presidential candidate, all political committees authorized by that party's Presidential candidate shall also be authorized committees of the Vice Presidential candidate and all political committees authorized by the Vice Presidential candidate shall also be authorized committees of the Presidential candidate.

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) Any candidate nominated by a political party may designate the national committee of that political party as that candidate's authorized committee in accordance with 11 CFR 102.12(c).

§ 9002.2 Candidate.

(a) For the purposes of this subchapter, "candidate" means an individual who has met the conditions of either paragraph (a) (1) or (2) of this section:

(1) The individual has been nominated by a major party for election to the office of President of the United States or the office of Vice-President of the United States; or

(2) The individual has qualified or consented to have his or her name appear on the general election ballot (or to have the names of electors pledged to him or her on such ballot) as the candidate of a political party for election to either such office in 10 or more States. For the purposes of this section, "political party" shall be defined in accordance with 11 CFR 9002.15.

(b) An individual who is no longer actively conducting campaigns in more than one State pursuant to 11 CFR 9004.5 shall cease to be a candidate for the purpose of this subchapter.

§ 9002.3 Commission.

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

§ 9002.4 Eligible candidates.

"Eligible candidates" means those Presidential and Vice Presidential candidates who have satisfied all conditions for eligibility to receive payments from the Fund under 11 CFR Part 9003.

§ 9002.5 Fund.

"Fund" means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

§ 9002.6 Major party.

"Major party" means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.6, "candidate" means, with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.7 Minor party.

"Minor party" means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.7, "candidate" means with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.8 New party.

"New party" means a political party which is neither a major party nor a minor party.

§ 9002.9 Political committee.

For purposes of this subchapter, "political committee" means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the election of any candidate to the office of President or Vice President of the United States; except that for the purposes of 26 U.S.C. 9012(f), the term "political committee" shall be defined in accordance with 11 CFR 100.5.

§ 9002.10 Presidential election.

"Presidential election" means the election of Presidential and Vice Presidential electors.

§ 9002.11 Qualified campaign expense.

(a) "Qualified campaign expense" means any expense, including a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value which meets each of the following conditions:

(1) The expense is incurred to further a candidate's campaign for election to the office of President or Vice-President of the United States;

(2) The expense is incurred within the expenditure report period, as defined under 11 CFR 9002.12, or incurred before the beginning of such period in accordance with 11 CFR 9003.4 to the extent such expense is for property, services or facilities to be used during such period; and

(3) Neither the incurrence nor the payment of such expense constitutes a violation of any law of the United States, any law of the State in which such expense is incurred or paid, or any regulation prescribed under such Federal or State law, 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. Any expense which constitutes such a violation shall nevertheless count against the candidate's expenditure limitation if the expense meets the conditions set forth at 11 CFR 9002.11(a) (1) and (2).

(b)(1) An expenditure is made to further a Presidential or Vice Presidential candidate's campaign if it is incurred by or on behalf of such candidate or his or her authorized committee. For purposes of 11 CFR 9002.11(b)(1), any expense incurred by or on behalf of a Presidential candidate of a political party will also be considered an expense to further the campaign of the Vice Presidential candidate of that party. Any expense incurred by or on behalf of the Vice Presidential candidate will also be considered an expense to further the campaign of the Presidential candidate of that party.

(2) An expenditure is made on behalf of a candidate if it is made:

- (i) By any authorized committee or any other agent of the candidate for the purpose of making an expenditure; or
- (ii) By any person authorized or requested to make an expenditure by the candidate, by any authorized committee(s) of the candidate, or by an agent of the candidate or his or her authorized committee(s).

(3) Any expenditure incurred by a candidate or his or her authorized committee(s) to further the election of any other individual to a Federal, State or local office shall be a qualified campaign expense to the extent such expenditure is to further the candidate's own campaign for election. If the expenditure is incurred specifically to further the election of such other individuals, it will not be considered a qualified campaign expense.

(4) Expenditures by a candidate's authorized committee(s) pursuant to 11 CFR 9004.6 for the travel and related ground service costs of media, Secret Service, or other staff authorized by law or required by national security to travel with a candidate shall be qualified campaign expenses. Any reimbursement for travel and related services costs received by a candidate's authorized committee shall be subject to the provisions of 11 CFR 9004.6.

(5) Legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431, *et seq.*, or 26 U.S.C. 9001, *et seq.*, shall be qualified campaign expenses which may be paid from payments received from the Fund. If federal funds are used to pay for such services, the payments count against the candidate's expenditure limitation. Such services may also be paid for from an account established in accordance with 11 CFR 9003.3 or may be provided to the committee in accordance with 11 CFR 100.7(b)(14) and 100.8(b)(15). If payments for such services are made from an account established in accordance with 11 CFR 9003.3, the payments do not count against the candidate's expenditure limitation. The amount paid by the committee shall be reported in accordance with 11 CFR Part 9006. Amounts paid by the regular employer of the person providing such services pursuant to 11 CFR 100.7(b)(14) and 100.8(b)(15) shall be reported by the recipient committee in accordance with 11 CFR 104.3(h).

(c) The term "qualified campaign expense" does not include any amounts paid by a candidate or his or her authorized committee(s) for the following expenses:

(1) Expenses incurred after the expenditure report period are not qualified campaign expenses, except for "winding down costs" as provided under 11 CFR 9004.4(a)(3).

(2) Expenses incurred in connection with a candidate's campaign for nomination by a political party to the office of President or Vice President of the United States shall not be qualified campaign expenses.

(3) Any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26

U.S.C. 9012 shall not be considered qualified campaign expenses. Such penalties may be paid from the candidate's legal and accounting compliance fund under 11 CFR 9003.3(a).

§ 9002.12 Expenditure report period.

"Expenditure report period" means, with respect to any Presidential election, the period of time described in either paragraph (a) or (b) of this section, as appropriate.

(a) In the case of a major party, the expenditure report period begins on September 1 before the election or on the date on which the major party's presidential nominee is chosen, whichever is earlier; and the period ends 30 days after the Presidential election.

(b) In the case of a minor or new party, the period will be the same as that of the major party with the shortest expenditure report period for that Presidential election as determined under paragraph (a) of this section.

§ 9002.13 Contribution.

"Contribution" has the same meaning given the term under 2 U.S.C. 431(8), 441b and 441c, and under 11 CFR 100.7, and 11 CFR Parts 114 and 115.

§ 9002.14 Secretary.

"Secretary" means the Secretary of the Treasury.

§ 9002.15 Political Party.

"Political party" means an association, committee, or organization which nominates or selects an individual for election to any Federal office, including the office of President or Vice President of the United States, whose name appears on the general election ballot as the candidate of such association, committee, or organization.

PART 9003—ELIGIBILITY FOR PAYMENTS**Sec.**

9003.1 Candidate and committee agreements.

9003.2 Candidate certifications

9003.3 Allowable contributions.

9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.

9003.5 Documentation of disbursements.

9003.6 Books and records.

9003.7 Audit and examination.

9003.8 Compliance with law and regulations.

Authority: 26 U.S.C. 9003, 9009(b).

§ 9003.1 Candidate and Committee Agreements.

(a) To become eligible to receive payments under 11 CFR Part 9005, the Presidential and Vice Presidential

candidates of a political party shall sign a written agreement in which they shall:

(1) Agree that they and their authorized committee(s) shall obtain and furnish to the Commission such evidence of their qualified campaign expenses as is required under regulations implementing Chapter 95 of Title 26 United States Code;

(2) Agree that they and their authorized committee(s) shall keep and furnish to the Commission such records, books and other information as is required under regulations implementing Chapter 95 of Title 26;

(3) Agree that they and their authorized committee(s) shall comply with an audit and examination by the Commission as specified under regulations implementing Chapter 95 of Title 26, United States Code and to pay any amounts required to be paid under such regulations;

(4) Agree that they and their authorized committee(s) shall comply with all other conditions and requirements imposed under regulations implementing Chapter 95 of Title 26, United States Code; and

(5) Shall submit the name and mailing address of the person who is entitled to receive payments from the Fund on behalf of the candidate; the name and address of the depository designated by the candidate as required at 11 CFR 9005.3; and the name under which each account is held at the depository at which the payments from the Fund are to be deposited.

(b) Major party candidates shall sign and submit such agreement to the Commission within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such agreement within 14 days after such candidates have qualified to appear on the general election ballot in 10 states pursuant to 11 CFR 9002.2(a)(2). The Commission, upon written request by a minor or new party candidate at any time prior to the date of the general election, may extend the deadline for filing such letter, except that the deadline shall be a date prior to the day of the general election.

§ 9003.2 Candidate certifications.

(a) *Major Parties.* To be eligible to receive payments under 11 CFR Part 9005, the Presidential and Vice Presidential candidates of a major party shall, under penalty of perjury, make certifications to the Commission as set forth below:

(1) Each candidate shall certify that the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses

in excess of the aggregate payments to which they will be entitled under 11 CFR Part 9004.

(2) Each candidate shall certify that no contributions have been or will be accepted by the candidate or his or her authorized committee(s); except as contributions specifically solicited for, and deposited to, the candidate's legal and accounting compliance fund established under 11 CFR 9003.3(a); or except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.3(b).

(b) *Minor and new parties.* To be eligible to receive any payments under 11 CFR Part 9005, the Presidential and Vice Presidential candidates of a minor or new party in a Presidential election shall, under penalty of perjury, make certifications to the Commission as set forth below:

(1) Each candidate shall certify that the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1.

(2) The candidate shall certify that no contributions have been or will be accepted by the candidate or his or her authorized committee(s) except to the extent that the qualified campaign expenses incurred exceed the aggregate payments received by such candidate from the Fund under 11 CFR 9004.2.

(c) *All parties.* To be eligible to receive any payment under 11 CFR 9004.2, the Presidential candidate of each major, minor, or new party shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his or her personal funds, or the personal funds of his or her immediate family, in connection with his or her campaign for the office of President in excess of \$50,000 in the aggregate.

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

(2) Expenditures from personal funds made under this paragraph shall not apply against the expenditure limitations.

(3) For purposes of this section, the terms "personal funds" and "personal funds of his or her immediate family" mean:

(i) Any funds, including funds from immediate family members, which meet either of the following conditions:

(A) Funds to which, at the time the candidate became a candidate, he or she had legal and rightful title; or

(B) Funds to which, under applicable State law, at the time the candidate became a candidate, he or she had the right of beneficial enjoyment and had either a legal right of access or control over; or

(ii) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

(4) For purposes of this section, expenditures from personal funds made by a candidate of a major, minor or new party for the office of Vice President shall be considered to be expenditures made by the candidate of such party for the office of President.

(5) Contributions made by members of a candidate's family from funds which do not meet the definition of personal funds under 11 CFR 9003.2(c)(3) shall not count against such candidate's \$50,000 expenditure limitation under 11 CFR 9003.2(c).

(6) Personal funds expended pursuant to this section shall be first deposited in an account established in accordance with 11 CFR 9003.3(b).

(d) *Form.* Major party candidates shall submit the certifications required under 11 CFR 9003.2 in a letter which shall be signed and submitted within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more States pursuant to 11 CFR 9002.2(a)(2). The Commission may, upon written application by a minor or new party candidate made at any time prior to the date of the general election, extend the deadline for filing such letter, except that the deadline shall be a date prior to the day of the general election.

§ 9003.3 Allowable contributions.

(a) *Legal and Accounting Compliance Fund—(1) Sources.* (i) A candidate may accept contributions to a legal and accounting compliance fund, if such contributions are received and disbursed in accordance with this section. A legal and accounting compliance fund may be established by a candidate prior to being nominated as

the candidate of a political party for the office of President or Vice President of the United States.

(A) All solicitations for contributions to this fund shall clearly state that such contributions are being solicited for this fund.

(B) Contributions to this fund shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114, and 115.

(ii) Funds remaining in the primary election account of a candidate, which funds are in excess of any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2, may be transferred to the legal and accounting compliance fund and used for any purpose permitted under this section.

(iii) Contributions which are made after the beginning of the expenditure report period but which are designated for the primary election may be deposited in the legal and accounting compliance fund: *Provided*, That: the candidate already has sufficient funds to pay any outstanding campaign obligations incurred during the primary campaign; and the candidate notifies the contributor that his or her contribution will be deposited in the compliance fund. If, after such notification the contributor objects to the funds being so used, the contribution shall be returned. The contributions so received and deposited shall be subject to the contribution limitations applicable for the general election, pursuant to 11 CFR 110.1(a)(2)(ii)(B).

(2) *Uses.* (i) Such contributions shall be used only for the following purposes:

(A) Such contributions may be used in accordance with 11 CFR 9003.3(a)(2)(ii) to defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431, *et seq.*, and 26 U.S.C. 9001, *et seq.*

(B) Such contributions may be used to defray any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26 U.S.C. 9012.

(C) Such contributions may be used to make repayments under 11 CFR 9007.2.

(D) Such contributions may be used to defray the cost of soliciting contributions to the legal and accounting compliance fund.

(E) Such contributions may be used to make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of federal funds: *Provided*, That the amounts so loaned are restored to the legal and accounting compliance fund.

(ii)(A) All legal and accounting costs related to compliance with Title 2 and

Chapter 95 of Title 26, United States Code may be paid from the compliance fund. Such costs may include payments for personnel, computer services, reproduction, mailing expenses, and independent audits conducted to assure compliance with Title 2 or Chapter 95 of Title 26, United States Code. A committee may pay from its compliance fund costs incurred for establishing that portion of its financial accounting system which is allocable to the legal and accounting aspects of compliance. In addition, a committee may pay from its compliance fund an amount equal to 10% of all other legal and accounting compliance costs to cover overhead costs allocable to such compliance services. If the amount of overhead so allocated exceeds 10% of all other legal and accounting compliance costs, the committee shall provide proof to the Commission that the entire amount so allocated represents overhead costs related to legal and accounting compliance services.

(B) Reimbursement from the compliance fund may be made to the separate account maintained for federal funds under 11 CFR 9005.3(c) if costs for legal and accounting compliance services are initially paid from such account. Such reimbursement must be made prior to any final repayment determination by the Commission pursuant to 11 CFR 9007.2. Any amounts so reimbursed to the federal fund account may not subsequently be transferred back to the legal and accounting compliance fund.

(C) Payments may not be made under 11 CFR 9003.3(a)(2)(i) for any legal and accounting services or related costs which are not performed solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*

(iii) Amounts paid from this account for the purposes permitted by 11 CFR 9003.3(a)(2)(i) (A) through (D) shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15).) When the proceeds of loans made in accordance with 11 CFR 9003.3(a)(2)(i)(E) are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to or funds deposited in the legal and accounting compliance fund may not be used to retire debts remaining from the Presidential primaries except that, if after payment of all expenses relating to the general election, there are excess campaign funds, such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR Part 113,

including payment of primary election debts.

(3) *Deposit and disclosure.* (i) Amounts received pursuant to 11 CFR 9003.3(a)(1) shall be deposited and maintained in an account separate from that described in 11 CFR 9005.3 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.3.

(ii) The receipts to and disbursements from this account shall be reported in a separate report in accordance with 11 CFR 9006.1(b)(2). All contributions made to this account shall be recorded in accordance with 11 CFR 102.9. Disbursements made from this account shall be documented in the same manner provided in 11 CFR 9003.5.

(b) *Contributions to Defray Qualified Campaign Expenses.* (1) A candidate or his or her authorized committee(s) may solicit contributions to defray qualified campaign expenses under the following circumstances:

(i) In the case of a major party candidate, to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.3(b).

(ii) In the case of a minor or new party candidate, to defray qualified campaign expenses which exceed the amount received by such candidate from the fund, subject to the limits of 11 CFR 9003.2(b).

(2) Such contributions shall be deposited in a separate account. Disbursements from this account shall be made only to defray qualified campaign expenses and to defray the cost of soliciting contributions to such account. All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and reported in accordance with 11 CFR 9006.1.

(3) A candidate may make transfers to this account from his or her legal and accounting compliance fund.

(4) Any costs incurred for soliciting contributions to this account shall not be considered expenditures, to the extent that the aggregate of such costs does not exceed 20 percent of the amount which a candidate is permitted to raise in private contributions under 11 CFR 9003.3(b). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1.

(5) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115 and shall be aggregated with all contributions made by the same person to the candidate's legal and accounting compliance fund under 11 CFR 9003.3(a) for the purposes of such limitations.

§ 9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.

(a) *Permissible Expenses.* (1) A candidate may incur expenses before the beginning of the expenditure report period, as defined at 11 CFR 9002.12, if such expenses are for property, services or facilities which are to be used in connection with his or her general election campaign and which are for use during the expenditure report period. Such expenses will be considered qualified campaign expenses. Examples of such expenses include but are not limited to: expenses for establishing financial accounting systems; expenses for organizational planning; and expenses for polling.

(2) A candidate may incur qualified campaign expenses prior to receiving payments under 11 CFR Part 9005.

(b) *Sources.* (1) A candidate may obtain a loan which meets the requirements of 11 CFR 100.7(b)(11) for loans in the ordinary course of business to defray permissible expenses described in paragraph (a) of this section. Candidates receiving payments equal to the expenditure limitation in 11 CFR 110.8 shall make full repayment of principal and interest on such loans from payments received by the candidate under 11 CFR Part 9005 within 15 days of receiving such payments.

(2) A candidate may borrow from his or her legal and accounting compliance fund for the purpose of defraying permissible expenses described in paragraph (a) of this section. All amounts borrowed from the legal and accounting compliance fund must be restored to such fund after the beginning of the expenditure report period either from federal funds received under 11 CFR Part 9005 or private contributions received under 11 CFR 9003.3(b). For candidates receiving federal funds, restoration shall be made within 15 days after receipt of such funds.

(3) A minor or new party candidate may defray such expenses from contributions received in accordance with 11 CFR 9003.3(b).

(4)(i) A candidate who has received federal funding under 11 CFR Part 9031, *et seq.*, may borrow from his or her primary election campaign an amount not to exceed the residual balance projected to remain in the candidate's primary account(s) on the basis of the formula set forth at 11 CFR 9038.3(c). A major party candidate receiving payments equal to the expenditure limitation shall reimburse amounts borrowed from his or her primary campaign from payments received by the candidate under 11 CFR Part 9005 within 15 days of such receipt.

(ii) A candidate who has not received federal funding during the primary campaign may borrow at any time from his or her primary account(s) to defray such expenses, provided that a major party candidate receiving payments equal to the expenditure limitation shall reimburse all amounts borrowed from his or her primary campaign from payments received by the candidate under 11 CFR Part 9005 within 15 days of such receipt.

(5) A candidate may use personal funds in accordance with 11 CFR 9003.2(c), up to his or her \$50,000 limit, to defray such expenses.

(c) *Deposit and Disclosure.* Amounts received or borrowed by a candidate under 11 CFR 9003.4(b) to defray expenses permitted under 11 CFR 9003.4(a) shall be deposited in a separate account used only for such expenses. All receipts and disbursements from such account shall be reported pursuant to 11 CFR 9006.1(a) and documented in accordance with 11 CFR 9003.5.

§ 9003.5 Documentation of disbursements.

(a) Each candidate has the burden of proving that disbursements made by the candidate or any authorized committee(s) are qualified campaign expenses. The candidate and his or her authorized committees shall obtain and furnish to the Commission at its request any evidence regarding qualified campaign expenses made by the candidate, all authorized committees and all agents thereof. The candidate shall include, as part of this evidence, the full name and mailing address of the payee; the date and amount of the disbursement; and the following documentation:

(1) For each disbursement exceeding \$200, either:

(i) A receipted bill from the payee which describes the purpose of the disbursement; or

(ii) If such a receipted bill is not available, the following documents, which shall describe the purpose of the disbursement:

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

(B) Either a bill, invoice, voucher, or contemporaneous memorandum from the payee.

(C) Where the documents specified at 11 CFR 9003.5(a)(1)(ii)(B) are not available, a voucher or contemporaneous memorandum from the candidate or the committee shall be provided.

(iii) If neither a receipted bill nor the documentation specified in 11 CFR 9003.5(a)(1)(ii) is available, the

candidate or committee may present a cancelled check and collateral evidence to document the purpose of each qualified campaign expense. Such collateral evidence may include but is not limited to:

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

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a per diem policy.

(2) For all other disbursements, the candidate or committee shall provide the following documentation:

(i) If the disbursement is made from the petty cash fund pursuant to 11 CFR 102.11, a record disclosing the full name and mailing address of the payee and the amount and date of the disbursement shall be kept.

(ii) In all other cases, a cancelled check which has been negotiated by the payee and states the full name and mailing address of the payee and the date and amount of the disbursement shall be provided.

(3) For purposes of 11 CFR 9003.5(a)(1) and (2), "payee" means the person who provides the goods or services to the candidate or authorized committee or agent thereof in return for the disbursement, except in the case of an advance of \$500 or less for travel and/or subsistence paid to an individual who will be the recipient of the goods or services purchased. For any advance of \$500 or less paid to an individual for travel and/or subsistence, the expense voucher or other expense account documentation and a cancelled check made to the recipient of the advance shall be retained for documentation.

(4) For purposes of 11 CFR 9003.5(a)(1) and (2), the requirement to retain a cancelled check shall be satisfied with respect to disbursements made using credit cards when all of the following documentation is retained: The monthly billing statement, the customer receipt for each transaction, and the cancelled check used to pay the credit card account.

(5) For purposes of this section, "purpose" shall have the same meaning as set forth in 11 CFR 104.3(b)(4)(i)(A).

(b) Upon the request of the Commission, the candidate shall supply an explanation of the connection between the disbursement and the campaign.

§ 9003.6 Books and records.

The candidate shall furnish to the Commission upon its request books and records of all accounts, including bank records and any other information and documentation, maintained by any authorized committee(s) or by agents of the candidate or such committees.

§ 9003.7 Audit and examination.

The candidate shall permit an audit and examination pursuant to 11 CFR 9007.1 of all campaign receipts, disbursements, debts and obligations of the candidate, any authorized committee(s) or agents of the candidate or his or her committees. The candidate shall gather the documentation, books and records specified in 11 CFR 9003.5 and 9003.6 in one centralized location for such audit; and shall facilitate such audit by making available office space, and such personnel as is necessary to the conduct of the audit and examination. The candidate shall pay any amounts required to be paid under 11 CFR 9007.2.

§ 9003.8 Compliance with law and regulations.

(a) The candidate and his or her authorized committee(s) shall comply with the applicable requirements of the Act, as well as Chapter 95 of Title 26, United States Code and Regulations prescribed under such Act and Chapter.

(b) The candidate shall pay any penalties included in a conciliation agreement with or imposed under 2 U.S.C. 437g and 26 U.S.C. 9012 against the candidate or any authorized committee of the candidate. (See 11 CFR 9003.3(a)).

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

Sec.

- 9004.1 Major Parties.
- 9004.2 Pre-election payments; minor and new parties.
- 9004.3 Post-election payments; minor and new parties.
- 9004.4 Use of payments.
- 9004.5 Investment of public funds.
- 9004.6 Reimbursements for transportation and services made available to media, Secret Service, and similar personnel.
- 9004.7 Allocation of travel expenses.
- 9004.8 Withdrawal of candidate.

Authority: 26 U.S.C. 9004, 9009(b).

§ 9004.1 Major parties.

The eligible candidates of each major party in a Presidential election shall be entitled to equal payments under 11 CFR Part 9005 in an amount which, in the aggregate, shall not exceed \$20,000,000 as adjusted by the Consumer Price

Index in the manner described in 11 CFR 110.9(c).

§ 9004.2 Pre-election payments; minor and new parties.

(a) The eligible candidates of a minor party shall be entitled to payments under 11 CFR Part 9005, which payments are equal, in the aggregate, to a proportionate share of the amount to which major party candidates are entitled under 11 CFR 9004.1. The aggregate amount received by a minor party candidate shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor party Presidential candidate in the preceding Presidential election bears to the average number of popular votes received by all major party candidates in that election.

(b) If the candidate of one or more political parties (not including a major party) for the office of President was a candidate for such office in the preceding Presidential election and received at least 5 percent but less than 25 percent of the total number of popular votes received by all candidates for such office, such candidate and his running mate for the office of Vice President shall be treated as eligible candidates entitled to payments under 11 CFR 9005.1, upon compliance with the provisions of 11 CFR 9003.1 and 9003.2. The amount of such payments shall be computed as provided in 11 CFR 9004.2(a) based on the number of popular votes received by such candidate for the office of President in the preceding Presidential election. If eligible candidates of a minor party are entitled to payments under this paragraph, such entitlement shall be reduced by the amount of the entitlement allowed under 11 CFR 9004.2(a).

§ 9004.3 Post-election payments; minor and new parties.

(a) Eligible candidates of a minor party or of a new party who, as candidates, receive 5 percent or more of the total number of popular votes cast for the office of President in the election shall be entitled to payments under 11 CFR Part 9005 equal, in the aggregate, to a proportionate share of the amount allowed for major party candidates under 11 CFR 9004.1. The amount to which a minor or new party candidate is entitled shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by such candidate in such election bears to the average number of popular votes received in

such election by the major parties' candidates for President.

(b) In the case of eligible candidates entitled to payments under 11 CFR 9004.2, the amount allowable under this paragraph shall be limited to the amount, if any, by which the entitlement under 11 CFR 9004.3(a) exceeds the amount of the entitlement under 11 CFR 9004.2.

(c) The aggregate payments to which the eligible candidates of a minor or new political party shall be entitled shall not exceed an amount equal to the lower of:

(1) The amount of qualified campaign expenses incurred by such eligible candidates and their authorized committees, reduced by the amount of contributions which are received to defray qualified campaign expenses by such eligible candidates and such committees; or

(2) The aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1, reduced by the amount of contributions received by such eligible candidates and their committees to defray qualified campaign expenses in the case of a deficiency in the Fund.

§ 9004.4 Use of payments.

(a) An eligible candidate of a political party shall use payments received under 11 CFR Part 9005 only for the following purposes:

(1) A candidate may use such payments to defray qualified campaign expenses incurred by such eligible candidates or their authorized committees.

(2) A candidate may use such payments to repay bank loans or otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3(b) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses.

(3) A candidate may use such payments to restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period.

(4) A candidate may use such payments to defray winding down costs incurred after the close of the expenditure report period: *Provided*, That such costs are associated with the termination of that candidate's general election campaign. Examples of such costs include but are not limited to: The cost of complying with the post-election requirements of the Act, the cost of necessary office space rental, and payroll costs for necessary personnel.

(b) A candidate shall not use payments received under 11 CFR Part

9005 to solicit contributions to a legal and accounting compliance fund established pursuant to 11 CFR 9003.3(a).

§ 9004.5 Investment of public funds.

Investment of public funds or any other use of public funds to generate income is permissible, provided that an amount equal to all net income derived from such investments, less Federal, State and local taxes paid on such income, shall be repaid to the Secretary.

§ 9004.6 Reimbursements for transportation and services made available to media, Secret Service and similar personnel.

(a) If an authorized committee incurs expenses for transportation made available to media, Secret Service or other staff authorized by law or required by national security to travel with a candidate, such expenses shall be qualified campaign expenses. If reimbursement for such expenses is received by a committee, the amount of such reimbursement for each individual shall not exceed that individual's pro rata share of the actual cost of the transportation made available. An individual's pro rata share shall be calculated by dividing the total number of passengers transported into the total cost of the transportation made available.

(b) If an authorized committee incurs expenses for ground services and facilities (e.g. ground transportation, housing, meals, telephone service, typewriters) made available to media, Secret Service, or other staff authorized by law or required by national security to travel with a candidate, such expenses shall be qualified campaign expenses. If reimbursement for such expenses is received by a committee, the amount of such reimbursement for each individual shall not exceed either: the individual's pro rata share of the actual cost of the services and facilities made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the services and facilities made available. If it is determined that reimbursements related to a trip have exceeded by 10% or more the actual cost of the services and facilities made available, such excessive amount shall be deemed income to the committee and shall be repaid to the Secretary. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such services and facilities are made available into the total cost of such services and facilities.

(c) The total amount paid by an authorized committee for the cost of

transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

§ 9004.7 Allocation of travel expenses.

(a) Notwithstanding the provisions of 11 CFR Part 106, expenses for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of paragraph (b) of this section, be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign related stop and from that stop through each subsequent campaign related stop to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, travelling for campaign purposes. Such payments to the government entity shall be considered qualified campaign expenses and shall be reported by the committee as expenditures.

(i) If the trip is by government conveyance or charter paid for by a government entity, the actual cost for

each passenger shall be determined by dividing the total operating cost for the conveyance or charter by the total number of passengers transported. The amount payable to the government entity shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers travelling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation or accommodations paid for by a government entity, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of commercial fare.

(iii) In the case of candidates authorized by law or required by national security to be accompanied by staff, such staff shall not be considered to be travelling for campaign purposes unless such staff engages in campaign activity during a trip.

(iv) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign related activities, their travel expenses shall be qualified campaign expenses and reportable expenditures.

(6) If any individual, including a candidate, incurs expenses for campaign related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, travelling for campaign purposes shall be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers travelling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

(iii) The provisions of 11 CFR 9004.7(b)(5) (iii) and (iv) apply to calculations under this section.

§ 9004.8 Withdrawal by Candidate.

(a) Any individual who is not actively conducting campaigns in more than one State for the office of President or Vice President shall cease to be a candidate under 11 CFR 9002.2.

(b) An individual who ceases to be a candidate under this section shall:

(1) No longer be eligible to receive any payments under 11 CFR 9005.3, except to defray qualified campaign expenses as provided at 11 CFR 9004.4.

(2) Submit a statement, within 60 days after he or she ceases to be a candidate, setting forth the following information:

(i) The total of all outstanding obligations for qualified campaign expenses as of the date on which the individual ceased to be a candidate plus an estimate of any necessary winding down costs as provided under 11 CFR 9004.4(a)(4), and

(ii) The total of: All cash on hand as of the close of business on the day on which the individual ceases to be a candidate under this section; the fair market value of capital assets on hand; and all 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, receivable or rebates). For purposes of this section, a capital asset means any property which has remaining useful life exceeding 1 year from the date on which the individual ceased to be a candidate, provided that the fair market value on such date exceeds \$500.

(c) If the total of the amounts set forth in 11 CFR 9004.5(b)(ii) exceeds the total set forth in 11 CFR 9004.5 (b)(i), the individual shall pay to the Secretary, within 60 days after the date on which he or she ceased to be a candidate, an amount equal to the difference between such totals; except that if the total payments received by the individual from the Fund equal an amount which is less than such difference, the individual shall repay an amount equal to the total payments received by the individual from the Fund.

(d) A final repayment shall be made, if necessary, pursuant to 11 CFR 9007.2, after an audit has been conducted by the Commission under 11 CFR 9007.1.

PART 9005—CERTIFICATION BY COMMISSION

Sec.

9005.1 Initial Certification.

9005.2 Finality of Certification.

9005.3 Payments to Eligible Candidates from the Fund.

Authority: 26 U.S.C. 9005, 9009(b).

§ 9005.1 Initial certification.

Not later than 10 days after the Presidential and Vice Presidential candidates of a political party have met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1 and 9003.2, the Commission shall certify to the Secretary that payment in full of the amounts to which such candidates are entitled under 11 CFR Part 9004 should be made pursuant to 11 CFR 9005.3.

§ 9005.2 Finality of certification.

(a)(1) Except for major party candidates who are certified to receive an amount equal to the expenditure limitation, the Commission shall notify all candidates of its initial determination of the amount, if any, to which such candidates are entitled, give the legal and factual reasons for its determination, and advise the candidates of the evidence upon which such determination is based. The candidate will be given an opportunity to submit, within 15 days of the initial determination, written legal and/or factual material to demonstrate that a redetermination is appropriate.

(2) The Commission shall 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.

(3) A final determination of certification 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.

(b) Certifications by the Commission under 11 CFR 9005.1, and all determinations made by it under this subchapter, shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under 11 CFR Part 9007 and judicial review under 26 U.S.C. 9011.

§ 9005.3 Payments to eligible candidates from the fund.

(a) Upon receipt of a certification from the Commission under 11 CFR 9005.1 for payment to the eligible Presidential and Vice Presidential candidates of a political party, the Secretary shall pay to such candidates out of the Fund the amount certified by the Commission.

Amounts paid to a candidate shall be under the control of that candidate.

(b)(1) If at the time of a certification from the Commission under 11 CFR 9005.1, the Secretary or his or her delegate determines that the moneys in the Fund are not, or may not be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he or she shall withhold an amount which is determined to be necessary to assure that the eligible candidates of each political party will receive their pro rata share.

(2) Amounts withheld under this paragraph shall be paid when the Secretary or his or her delegate determines that there are sufficient moneys in the Fund to pay such amounts, or pro rata portions thereof, to all eligible candidates from whom amounts have been withheld.

(c) Payments received from the Fund by a candidate shall be deposited in a separate account maintained by his or her authorized committee. This account shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(d) No funds other than the payments received from the Treasury, reimbursements, or income generated through use of public funds in accordance with 11 CFR 9004.5, shall be deposited in the account described in 11 CFR 9005.3(c). "Reimbursements" shall include but are not limited to refunds of deposits, vendor refunds, reimbursements for travel expenses under 11 CFR 9004.6 and 9004.7, and reimbursements for legal and accounting costs under 11 CFR 9003.3(a)(2)(ii)(B).

PART 9006—REPORTS AND RECORDKEEPING

Sec.

9006.1 Separate Reports.

9006.2 Filing Dates.

Authority: 26 U.S.C. 9006, 9009(b).

§ 9006.1 Separate reports.

(a) The authorized committee(s) of a candidate shall report all expenditures to further his or her general election campaign in reports separate from reports of any other expenditures made by such committee(s) with respect to other elections. Such reports shall be filed pursuant to the requirements of 11 CFR Part 104. The authorized committee(s) of candidates seeking election prior to January 1, 1981 may elect to comply with the requirements of

11 CFR 104.17 in lieu of 11 CFR 104.3(a) and (b).

(b) The authorized committee(s) of a candidate shall file separate reports as follows:

(1) One report shall be filed which lists all receipts and disbursements of:

(i) Contributions and loans received by a major party candidate pursuant to 11 CFR Part 9003 to make up deficiencies in Fund payments due to the application of 11 CFR Part 9005;

(ii) Contributions and loans received pursuant to 11 CFR 9003.2(b)(2) by a minor or new party candidate for use in the general election;

(iii) Receipts for expenses incurred before the beginning of the expenditure report period pursuant to 11 CFR 9003.4;

(iv) Personal funds expended in accordance with 11 CFR 9003.2(c); and

(v) Payments received from the Fund.

(2) A second report shall be filed which lists all receipts of, and disbursements from, contributions received for the candidate's legal and accounting compliance fund in accordance with 11 CFR 9003.3(a).

§ 9006.2 Filing dates.

The reports required to be filed under 11 CFR 9006.1 shall be filed during an election year on a monthly or quarterly basis as prescribed at 11 CFR 104.5(b)(1). During a non-election year, the candidate's principal campaign committee may elect to file reports either on a monthly or quarterly basis in accordance with 11 CFR 104.5(b)(2).

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

Sec.

9007.1 Audits, Records and Investigations.

9007.2 Repayments.

9007.3 Additional audits.

Authority: 26 U.S.C. 9007, 9009(b)

§ 9007.1 Audits, records and investigations.

After each Presidential election, the Commission shall conduct a thorough examination and audit of the receipts, disbursements, debts and obligations of each candidate, his or her authorized committee(s), and agents of such candidates or committees. Such examination and audit shall include, but shall not be limited to, expenses incurred pursuant to 11 CFR 9003.4 prior to the beginning of the expenditure report period, contributions to and expenditures made from the legal and accounting compliance fund established under 11 CFR 9003.3(a), contributions received to supplement any payments received from the Fund, and qualified campaign expenses.

§ 9007.2 Repayments.

(a) The Commission shall notify the candidates of a political party that a repayment of money to the Fund will be required in an amount equal to the following:

(1) Any payments made to the candidate(s) from the Fund in excess of the aggregate amount to which such candidate(s) was entitled; or

(2) Any expenses incurred by the eligible candidates or their authorized committees in excess of the aggregate payments to which an eligible major party candidate is entitled; or

(3) Any contributions accepted by the eligible candidates or their authorized committee(s) to defray qualified campaign expenses, other than contributions accepted to make up deficiencies in payments from the Fund pursuant to the operation of 11 CFR 9005.2(b), to defray expenses incurred for legal and accounting services, or to defray those excessive qualified campaign expenses for which repayment is already required under paragraph (a)(2) of this section; or

(4) Any amount of any payment made to the eligible candidates of a political party under 11 CFR 9005.2 which amount was used for any purpose other than—

(i) To defray qualified campaign expenses; or

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

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

(5) Any amounts expended by the candidate from monies received from the Fund or from private contributions received under 9003.3(b) which amounts are not documented in accordance with 11 CFR 9003.5; or

(6) Any income received as a result of investment or other use of public funds pursuant to 11 CFR 9004.5, less any Federal, State or local taxes paid on such income.

(b) The Commission shall notify the candidate of its determination that any of the circumstances under 11 CFR 9007.2(a) exist no later than 3 years after the end of the expenditure report period. The Commission's notice shall set forth the legal and factual reasons for its determination that a repayment is required and shall also advise the candidate of the evidence upon which that determination is based. Within 30 days after receiving notice from the Commission, the candidate shall repay to the Secretary an amount equal to the amount improperly paid, expended,

and/or documented, as determined by the Commission under 11 CFR 9007.2(a). The candidate may request, in writing, a 90 day extension of the repayment period.

(c) 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 after receipt of the Commission's notice, legal or factual materials to demonstrate that a repayment is not required. Such materials may be submitted by counsel if the candidate so desires. Upon application by the candidate, the Commission may grant a 30 day extension for submission of these materials by the candidate.

(d) The Commission will consider any written legal or factual materials submitted by the candidate under 11 CFR 9007.2(c) in making its final determination. Such materials may be submitted by counsel if the candidate so desires.

(e) 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.

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

(g) In addition to any repayment(s) which may be required under 11 CFR 9007.2(a) through (f), a candidate shall be required to return to the Secretary any portion of the payment under 11 CFR 9005.3 which remains unspent after all qualified campaign expenses have been paid.

(h) No repayment shall be required from the eligible candidates of a political party under 11 CFR 9007.2 to the extent that such repayment, when added to other repayments required from such candidates under 11 CFR 9007.2, exceeds the amount of payments received by such candidates under 11 CFR 9005.3.

§ 9007.3 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission, pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds

reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

The following technical amendments are made to 11 CFR 100.8, 11 CFR 106.3, and 11 CFR 110.7:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

§ 100.8 [Amended]

1. 11 CFR 100.8(b)(15), delete last sentence and insert:

(b) ***
(15) *** Expenditures for these services by a candidate certified to receive Primary Matching Funds under 11 CFR Part 9034 do not count against such candidate's expenditure limitations under 11 CFR Part 9035 or 11 CFR 110.8. Unless paid for with federal funds received pursuant to 11 CFR Part 9005, disbursements for these services by a candidate who is certified to receive payments from the Presidential Election Campaign Fund under 11 CFR Part 9005 do not count against that candidate's expenditure limitations under 11 CFR 110.8.

2. 11 CFR 100.8(b)(21)(i), delete first sentence and insert:

(b) ***
(2) Any costs incurred by a candidate or his or her authorized committee(s) in connection with the solicitation of contributions are not expenditures if incurred by a candidate who has been certified to receive Presidential Primary Matching Fund Payments, or by a candidate who has been certified to receive general election public financing under 26 U.S.C. 9004 and who is soliciting contributions in accordance with 26 U.S.C. 9003(b)(2) or 9003(c)(2) to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation applicable to the candidate. These costs shall, however, be reported as disbursements pursuant to 11 CFR Part 104.***

PART 106—ALLOCATION OF CANDIDATE AND COMMITTEE ACTIVITIES

§ 106.3 [Amended]

3. 11 CFR 106.3(a), insert as first sentence:

(a) This section applies to allocation for expenses between campaign and non-campaign related travel with respect to campaigns of candidates for Federal office, other than Presidential and Vice Presidential candidates who

receive federal funds pursuant to 11 CFR Part 9005. (See 11 CFR 9003.7.)***

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS (2 U.S.C. 441a)

§ 110.7 [Amended]

4. 11 CFR 110.7(a), add the following new subparagraph:

(a) ***
(6) Any expenditures made by the national, state and subordinate committees of a political party pursuant to 11 CFR 110.7(a) on behalf of that party's Presidential candidate shall not count against the candidate's expenditure limitations under 11 CFR 110.8.

Dated: June 20, 1980.
Max L. Friedersdorf,
Chairman, Federal Election Commission.
[FR Doc. 80-19375 Filed 6-26-80; 8:45 am]
BILLING CODE 6715-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Rev. 2, Amdt. 9]

Organization and Functions

AGENCY: Small Business Administration.
ACTION: Final rule.

SUMMARY: Due to reorganization within the Small Business Administration, portions of Part 101—Administration as it pertains to organization, functions, and listing of field offices is being updated.

DATE: June 27, 1980.

FOR FURTHER INFORMATION CONTACT: Amos B. Cheseboro, Office of Personnel Services, Small Business Administration, 1441 L St. NW., Washington, D.C. 20416, (202) 653-5293.

SUPPLEMENTARY INFORMATION: Inasmuch as this Part sets forth the Agency's organization and procedures, notice of proposed rulemaking and public procedure thereon are not required by section 553 of Title 5 of the United States Code.

Accordingly, pursuant to authority contained in Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, 13 is revised as set forth below.

PART 101—ADMINISTRATION

1. The table of contents is amended by revising § 101.2-7a and by adding §§ 101.2-7d and 101.2-7e to read as follows:

Sec.

101.2-7a Associate Administrator for Financial Assistance.

101.2-7d Associate Administrator for Investment.

101.2-7e Assistant Administrator for Women's Business Enterprise.

§ 101.2-5 [Amended]

2. Section 101.2-5 is amended by deleting the third sentence in its entirety.

3. Section 101.2-7 is amended by adding a sentence between the second and third sentences to read as follows:

§ 101.2-7 Associate Deputy Administrator for Programs.

*** Develops policies, procedures, and programs to ensure maximum participation by women business owners in the Nation's business enterprise.***

4. Section 101.2-7a is revised as follows:

§ 101.2-7a Associate Administrator for Financial Assistance.

Develops and recommends policies concerning the loan programs, including related activities of liquidation and disposal. Develops plans, operating procedures, and standards to effectively improve the Agency's financial programs designed to meet the existing and potential needs of the small business community. Plans, directs, and administers the bank certification and other lender relation functions. Also, plans, directs, and administers the Small Business Lending Company (SBLC) program, including approving and providing necessary regulatory oversight. Plans, directs, and administers the Agency's disaster operations through contingency planning, administration during the disaster, and disaster maintenance. Recommends physical and product disaster declarations to the Administrator. Maintains liaison with other Government agencies relating to the disaster program. Develops program goals and objectives within the framework of approved policies. Reviews and evaluates program effectiveness. Serves as a member of the Size Appeals Board.

5. Section 101.2-7d is added as follows:

§ 101.2-7d Associate Administrator for Investment.

Develops plans, operating procedures, and standards to effectively strengthen and improve the Agency's Investment program designed to meet the existing