

# **federal register**

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Monday  
July 11, 1983

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**Part VI**

## **Federal Election Commission**

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**Presidential Election Campaign Fund  
Provisions**

## FEDERAL ELECTION COMMISSION

11 CFR Parts 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9012

[Notice 1983-18]

**Presidential Election Campaign Fund Provisions**

**AGENCY:** Federal Election Commission.

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

**SUMMARY:** The Federal Election Commission is revising its regulations which implement the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.*, and have transmitted those regulations to Congress pursuant to 26 U.S.C. 9009(c). The revisions are based on the Commission's experience in administering the Act and on public comments received on the Notice of Proposed Rulemaking. Many of the provisions in these regulations have been revised to assure consistency with the recently revised Presidential Primary Matching Fund Regulations, 11 CFR Part 9031 *et seq.* In addition, the revisions include a new Part 9012 regarding unauthorized expenditures and contributions which follows 26 U.S.C. 9012. Further information on the intended effect of the revised regulations is contained in the supplemental information below.

**EFFECTIVE DATE:** Further action, including the announcement of an effective date, will be taken by the Commission after these regulations have been before the Congress 30 legislative days in accordance with 26 U.S.C. 9009(c).

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463, (202) 523-4143 or (800) 424-9560.

**SUPPLEMENTARY INFORMATION:** The revisions are based on the Commission's experience in administering the Act and on public comments received in response to the Commission's Notice of Proposed Rulemaking [48 FR 14532; April 4, 1983]. One issue raised in the Notice of Proposed Rulemaking was that of providing public funding for independent candidates. After receiving public comment and Commission consideration of this question, these provisions were removed from the regulations.

26 U.S.C. 9009(c) requires that any rule or regulation prescribed by the Commission to implement Chapter 95 of Title 26, United States Code, be transmitted to the Speaker of the House of Representatives and the President of

the Senate prior to final promulgation. The Commission may finally prescribe the regulations in question after they have been before both Houses of Congress for 30 legislative days. The following regulations were transmitted to Congress on July 1, 1983.

Explanation and Justification of the Presidential Election Campaign Fund Regulations, Parts 9001 through 9007 and new Part 9012.

**Part 9001—Scope**

*Section 9001.1 Scope.*

This section follows current § 9001.1

**Part 9002—Definitions**

*Section 9002.1 Authorized Committee.*

This section generally follows current § 9002.1 but subsection (d) has been added to make clear that responsibilities of the candidate are also those of his or her authorized committee(s).

*Section 9002.2 Candidate.*

This section generally follows current § 9002.2.

*Section 9002.3 Commission.*

This section follows current § 9002.3.

*Section 9002.4 Eligible Candidates.*

This section follows current § 9002.4.

*Section 9002.5 Fund.*

This section follows current § 9002.5.

*Section 9002.6 Major Party.*

This section follows current § 9002.6.

*Section 9002.7 Minor Party.*

This section follows current § 9002.7.

*Section 9002.8 New Party.*

This section follows current § 9002.8.

*Section 9002.9 Political Committee.*

This section follows current § 9002.9.

*Section 9002.10 Presidential Election.*

This section follows current § 9002.10.

*Section 9002.11 Qualified Campaign Expense.*

Subsection (a) generally follows current § 9002.11(a).

Subsection (b) generally follows current § 9002.11(b) but (b)(2)(iii) has been added to conform to 11 CFR 9032.9(b)(3). In subsection (b)(4), references to expenditures for travel and services provided to Secret Service personnel and other staff required by law have been deleted as other government regulations govern payment for those expenditures. Subsection (b)(5) generally follows current § 9002.11(b)(5) but clarifies that if payments for legal and accounting services which are

provided solely to ensure compliance with the Act and Chapter 95 of Title 26 are made by a minor or new party candidate from an account containing private contributions, the payments do not count against that candidate's expenditure limitation.

Subsection (c) has been revised to provide that expenditures incurred in accordance with § 9004.4 are qualified campaign expenses even if incurred outside of the expenditure report period. This subsection also provides a cross reference to § 9004.4(b) which sets forth examples of what is a non-qualified campaign expense.

*Section 9002.12 Expenditure Report Period.*

This section follows current § 9002.12.

*Section 9002.13 Contribution.*

This section follows current § 9002.13.

*Section 9002.14 Secretary.*

This section follows current § 9002.14.

*Section 9002.15 Political Party.*

This section follows current § 9002.15.

**Part 9003—Eligibility for Payments**

This Part has been revised to delete current §§ 9003.6, 9003.7, and 9003.8. The provisions of these sections are now incorporated in subsection (b) of § 9003.1 which sets forth the various conditions to which a candidate and his or her authorized committee(s) must agree in order to become eligible to receive payments from the Fund. The Commission's decision to include these items in the candidate agreement is consistent with their inclusion in the candidate agreement for Presidential primary candidates.

*Section 9003.1 Candidate and Committee Agreements.*

This section has been reorganized for clarity into two subsections, (a) and (b). Subsection (a) sets forth the general requirements that a candidate must meet to become eligible to receive payments and basically follows current § 9003.1 (a) and (b). Subsection (b) sets forth in greater detail the various conditions to which a candidate must agree, and incorporates the provisions of current § 9003.6, § 9003.7 and § 9003.8. Subsection (b)(1) specifies that the candidates shall have the burden of proving that disbursements made by them, or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11. Subsection (b)(2) contains an agreement by the candidate to comply with the documentation requirements of § 9003.5.

Subsections (b) (3) and (4) require the candidate to explain the connection between the disbursements and the campaign and to maintain and furnish to the Commission documentation relating to receipts and disbursements.

Subsection (b)(5) generally follows current § 9003.7. Subsection (b)(6) generally follows current § 9003.1(a)(5). Subsections (b) (7) and (8) generally follow current § 9003.7 (a) and (b).

#### *Section 9003.2 Candidate Certifications.*

Subsections (a) and (b) generally follow current § 9003.2(a) and (b). Subsection (c) generally follows current § 9993.2(c), with three additions. In subsection (c)(3)(i) the definition of "personal funds" and "personal funds of his or her immediate family" has been rearranged to make clear that the candidate must have legal access or control over the funds whether he or she has legal or equitable title to the property. Also in this subsection, the term "equitable interest" has been substituted for "beneficial enjoyment" when defining the types of ownership interest that may be used as personal funds. "Equitable interest" is a more specific term which is used as a definition of ownership or pecuniary interest. Subsection (c)(3)(iii) has been added to clarify what portion of jointly owned property the candidate's share is considered to be. These changes were made as part of the Commission's regulations on "Candidate's Use of Property in Which Spouse Has An Interest." For a fuller discussion of these changes, see 48 F.R. 19019 (April 27, 1983). Subsection (d) generally follows current § 9003.2(d).

#### *Section 9003.3 Allowable Contributions.*

This section has been substantially revised and expanded from the current regulation. Subsection (a), which permits a candidate to establish a legal and accounting compliance fund, has been limited to major party candidates. While minor and new party candidates may also make disbursements for legal and accounting services to ensure compliance with the Act, which disbursements would not count against the expenditure limit, there is no need for those candidates to establish a separate account for that purpose as they can already accept private contributions. Therefore, the need for a compliance fund only arises when a major party candidate receives full federal funding and cannot accept private funds except for the purposes permitted by the compliance fund. This

rule does not, however, prohibit other candidates from establishing separate accounts if they so desire.

Subsection (a)(1)(ii) has been revised to make clear that excess funds from the candidate's primary account may be transferred to the compliance fund without regard to the contribution limitations. Thus, the candidate need not determine which of the funds transferred represent contributions which would otherwise count against the amount those persons could contribute to the compliance fund.

Subsection (a)(2)(i) has been revised to make clear that a portion of payroll, overhead and computer services costs may be defrayed from the compliance fund to the extent such costs relate to ensuring compliance with the Federal Election Campaign Act and the Presidential Election Campaign Fund Act. This provision has been patterned after 11 CFR 9035.1(c) but has been expanded to include computer costs. As in section 9035.1(c), a candidate may demonstrate that a larger proportion of the described costs are related to ensuring compliance than the percentages provided in this section would cover. This section also provides that payroll, overhead and computer services costs must be initially paid from the federal funds account and then may be reimbursed by the compliance fund at any time before the Commission's final repayment determination is made. In the limited circumstance in which a bona fide error is made and a qualified campaign expense is paid from the compliance fund, the federal fund account may reimburse the compliance fund.

Subsections (a)(2)(iii) and (iv) follow current §§ 9003.3(a)(2)(iii) and (iv). Subsection (a)(3) generally follows current § 9003.3(a)(3).

Subsection (b) has been revised to address major party candidates in the event of a deficiency in the Fund. Such candidates may solicit private contributions to defray qualified campaign expenses in order to make up the deficiency. They may choose to deposit these contributions in the same account as the federal funds received or they may deposit them separately. This approach is consistent with the Commission's view in the case of Presidential primary candidates, who may also defray qualified campaign expenses from both federal and private funds. Subsection (b)(5) follows current § 9003.3(b)(4) but is revised to more accurately reflect the provisions of 11 CFR 100.8(b)(2) and 2 U.S.C. 431(9)(B)(vi).

Subsections (b) (5), (6), (7) and (8) provide that a candidate may exempt a portion of payroll and overhead costs from the expenditure limitation as fundraising costs. A candidate may also exempt a portion of overhead, payroll and computer services costs as compliance costs. As in subsection (a), these provisions follow 11 CFR 9035.1(c).

Subsection (c) contains the provisions applicable to minor and new party candidates. This subsection has been revised from current § 9003.3(b) to reflect the Commission's decision that one account may be used to defray both qualified campaign expenses and the costs normally payable from a compliance fund. The provisions regarding the exemptions for compliance and fundraising costs parallel those in subsection (b).

The Commission considered and rejected a proposal to add provisions to subsections (a) through (c) that would have permitted candidates to use private contributions deposited in their compliance fund or campaign account for transition expenses after all other obligations including repayments and penalties had been paid. In view of the "Transition Trust" permitted by Advisory Opinion 1980-97 and the funds provided under the Presidential Transition Act of 1963, Pub. L. 88-277, 78 Stat. 153, the Commission decided not to include a provision to this effect in these regulations.

#### *Section 9003.4 Expenses Incurred Prior to the Beginning of the Expenditure Report Period or Prior to Receipt of Federal Funds.*

This section generally follows current § 9003.4

#### *Section 9003.5 Documentation of Disbursements.*

This section generally follows current § 9003.5. In the Notice of Proposed Rulemaking, this section required the "identification" of a payee; however, the Commission has determined to retain the language of the current regulation which requires the "full name and mailing address" of the payee. The latter was retained as a clearer statement of the information sought.

In addition, the Commission notes that the use of the term "purpose" in this section has the same meaning as in 11 CFR 104.3(b)(4)(i)(A).

Subsection (c) has been added to follow the Presidential Primary Matching Fund regulations at 11 CFR 9033.11(c).

**Part 9004—Entitlement of Eligible Candidates to Payments; Use of Payments**

*Section 9004.1 Major Parties.*

This section follows current § 9004.1.

*Section 9004.2 Pre-Election Payments for Minor and New Party Candidates.*

This section has been divided into three parts to set forth separately and in detail the conditions which candidates of a minor party in the preceding election, candidates of a minor party in the current election, and new party candidates must satisfy to qualify for pre-election payments from the Fund. Otherwise, this section generally follows current § 9004.2.

*Section 9004.3 Post-election Payments.*

Subsection (a) generally follows current § 9004.3(a) but has been reworded for clarification. Subsection (b) sets forth the maximum amount of payments which may be received and generally follows current § 9004.3(c). Subsection (c) generally follows current § 9004.3(b).

*Section 9004.4 Use of Payments.*

This section has been reorganized to provide examples of what may be considered qualified and non-qualified campaign expenses. The format of this section generally follows that of 11 CFR 9034.4.

*Section 9004.5 Investment of Public Funds.*

This section generally follows current § 9004.5 but contains a new provision requiring repayment of a net loss resulting from the investment of public funds. A net loss will be considered a non-qualified campaign expense and repayable under § 9007.2(b)(2)(i).

*Section 9004.6 Reimbursements for Transportation and Services Made Available to Media Personnel.*

All references to reimbursement for transportation, services and facilities made available to the Secret Service or other staff authorized by law or required by national security to travel with a candidate have been deleted from this section. Other government regulations govern payment for those expenditures.

In subsection (a), language has been added to clarify that expenditures for services provided to media personnel are subject to the overall expenditure limitations of 11 CFR 9003.2(a)(1) and (b)(1).

Subsection (b) follows the Presidential primary regulations at 11 CFR 9034.6 and provides that the reimbursements received from each person may not

exceed the total cost of providing services to that person by more than 10%. The 10% figure will be based on the total cost of providing services to each person over the course of the campaign rather than on a per-trip basis.

Candidates may include the cost of "down-time" for leased aircraft in the amount requested for reimbursement as this is a cost of providing transportation to the media. The reimbursements may be deducted from the amount applied to the overall expenditure limit but only to the extent that the reimbursements do not exceed the actual cost to the campaign.

*Section 9004.7 Allocation of Travel Expenditures.*

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

*Section 9004.8 Withdrawal by Candidate.*

This section has been revised to delete much of the language regarding the statement to be filed by a candidate who withdraws. Instead, this section now refers to new § 9004.9, which consolidates the requirements for statements to be filed by all candidates. In addition, the time for filing a statement under this section has been shortened from 60 to 30 calendar days.

*Section 9004.9 Net Outstanding Qualified Campaign Expenses.*

This new section sets forth requirements for filing statements similar to the statements of net outstanding campaign obligations filed by Presidential primary candidates under 11 CFR 9034.5. It reflects requirements consistent with past Commission practice.

Unlike the Presidential primary regulations, however, this section sets different deadlines for candidates who withdraw, candidates seeking post-election funding and all other candidates. Candidates seeking post-election funding must file a preliminary statement to aid in determining their entitlement to public funds as well as a statement at the time other candidates must submit theirs.

Subsection (d) follows the Presidential primary regulations at 11 CFR 9034.5(b). Subsection (e) follows 11CFR 9034.5(e).

*Section 9004.10 Sale of Assets Acquired for Fundraising Purposes.*

This new section follows the Presidential primary regulations at 11 CFR 9034.9. Its application here is limited, however, to minor and new party candidates and to major party candidates who have not received full federal funding due to a deficiency in the Fund.

**Part 9005—Certification by Commission**

*Section 9005.1 Certification of Payments for Candidates.*

This section reflects the provisions of current §§ 9005.1 and 9005.2 but has been reorganized and expanded. Subsection (a) addresses certification of payments for major party candidates. Subsection (b) addresses certification of pre-election payments for minor and new party candidates.

Subsection (c) has been added to follow the procedures used by the Commission in 1980 to certify post-election payments to minor and new party candidates but adds the requirement to file a preliminary statement of net outstanding qualified campaign expenses pursuant to section 9004.9.

Subsection (d) follows current § 9005.1(b) regarding the finality of Commission certifications.

*Section 9005.2 Payments to Eligible Candidates from the Fund.*

This section generally follows current § 9005.3.

**Part 9006—Reports and Recordkeeping**

*Section 9006.1 Separate Reports.*

This section generally follows current § 9006.1.

*Section 9006.2 Filing Dates.*

This section follows current § 9006.2.

**Part 9007—Examinations and Audits; Repayments**

*Section 9007.1 Audits.*

Subsection (a)(1) follows current § 9007.1. The remaining provisions of this section follow the provisions of the Presidential primary regulations at 11 CFR 9038.1.

*Section 9007.2 Repayments.*

This section has been reorganized to follow the format of the Presidential primary regulations at 11 CFR 9038.2.

**Section 9007.3 Extensions of Time.**

This new section follows the Presidential primary regulations at 11 CFR 9038.4.

**Section 9007.4 Additional Audits.**

This section follows current § 9007.3.

**Part 9008—Federal Financing of Presidential Nominating Conventions**

This Part has not been changed; however, the separate subchapter designation for this Part has been removed and this Part included in subchapter E to permit the correct numbering of new Part 9012 in accordance with the corresponding statutory citation. Part 9012 was printed as Part 9007a in the Notice of Proposed Rulemaking.

**Part 9012—Unauthorized Expenditures and Contributions****Section 9012.1 Excessive Expenses.**

This new section follows 26 U.S.C. 9012(a).

**Section 9012.2 Unauthorized Acceptance of Contributions.**

This new section follows 26 U.S.C. 9012(b).

**Section 9012.3 Unlawful Use of Payments Received from the Fund.**

This new section follows 26 U.S.C. 9012(c).

**Section 9012.4 Unlawful Misrepresentations and Falsification of Statements, Records or Other Evidence to the Commission; Refusal to Furnish Books and Records.**

This new section follows 26 U.S.C. 9012(d).

**Section 9012.5 Kickbacks and Illegal Payments.**

This new section follows 26 U.S.C. 9012(e). In the Notice of Proposed Rulemaking, subsection (c) was inadvertently included regarding the penalty provisions of 9012(e). This subsection was deleted from the regulations in accordance with the Commission's practice of not including the statutory penalty provisions in the regulations.

**Section 9012.6 Unauthorized Expenditures and Contributions by Political Committees.**

This new section follows 26 U.S.C. 9012(f).

**List of Subjects**

11 CFR Parts 9001, 9002, 9003, 9004 and 9005

Campaign funds, Political candidates, Elections.

11 CFR Part 9006

Campaign funds, Reporting and recordkeeping requirements, Political candidates, Elections.

11 CFR Part 9007

Campaign funds, Administrative practice and procedure, Political candidates.

11 CFR Part 9012

Political candidates, Political committees and parties, Elections.

11 CFR is amended as follows:  
1. By Revising Parts 9001 through 9007 to read as follows:

**PART 9001—SCOPE****§ 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).

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

**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 a candidate (as defined at 11 CFR 9002.2) of a political

party for President and Vice President, any political committee that is authorized by a candidate to incur expenses on behalf of such candidate. The term "authorized committee" includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate 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).

(d) For purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

**§ 9002.2 Candidate.**

(a) For the purposes of this subchapter, "candidate" means with respect to any presidential election, an individual who—

(1) 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) 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 9004.8 shall cease to be a candidate for the purpose of this subchapter.

**§ 9002.3 Commission.**

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

**§ 9002.4 Eligible candidates.**

"Eligible candidates" means those Presidential and Vice Presidential candidates who have met all applicable 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 purpose 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 purpose 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 purpose of 11 CFR 9012.6, 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 expenditure, including a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred to further a candidate's campaign for election to the Office of President or Vice President of the United States;

(2) 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 expenditure is for property, services or facilities to be used during such period; and

(3) Neither the incurrence nor the payment of such expenditure 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. An expenditure which constitutes such a violation shall nevertheless count against the candidate's expenditure limitation if the expenditure 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 expenditure incurred by or on behalf of a Presidential candidate of a political party will also be considered an expenditure to further the campaign of the Vice Presidential candidate of that party. Any expenditure incurred by or on behalf of the Vice Presidential candidate will also be considered an expenditure 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 by—

(i) Any authorized committee or any other agent of the candidate for the purpose of making an expenditure; or

(ii) Any person authorized or requested by the candidate, by the candidate's authorized committee(s), or by an agent of the candidate or his or her authorized committee(s) to make an expenditure; or

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

(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 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 will count against the candidate's expenditure limitation. Payments for such services may also be made 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. If payments for such services are made by a minor or new party candidate from an account containing private contributions, the payments do not count against that 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) Expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a). Expenditures described under 11 CFR

9004.4(b) will not be considered qualified campaign expenses.

**§ 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.

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

**§ 9003.1 Candidate and committee agreements.**

(a) *General.*

(1) To become eligible to receive payments under 11 CFR Part 9005, the Presidential and Vice Presidential candidates of a political party shall agree in a letter signed by the candidates to the Commission that they and their authorized committee(s) shall comply with the conditions set forth in 11 CFR 9003.1(b).

(2) Major party candidates shall sign and submit such letter to the Commission 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, on 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 date of the general election.

(b) *Conditions.* The candidates shall: (1) Agree that they have the burden of proving that disbursements made by them or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11.

(2) Agree that they and their authorized committee(s) shall comply with the documentation requirements set forth at 11 CFR 9003.5.

(3) Agree that they and their authorized committee(s) shall provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidates or the authorized committee(s) of the candidates and the campaign if requested by the Commission.

(4) Agree that they and their authorized committee(s) shall keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter including those required to be maintained under 11 CFR 9003.5, and other information the Commission may request.

(5) Agree that they had their authorized committee(s) shall permit an audit and examination pursuant to 11 CFR Part 9007 of all receipts and disbursements including those made by the candidate, all authorized committees and any agent or person authorized to make expenditures on behalf of the candidates or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR Part 9007.

(6) Submit the name and mailing address of the person who is entitled to receive payments from the Fund on behalf of the candidates; the name and address of the depository designated by

the candidates as required by 11 CFR Part 103 and 11 CFR 9005.2; and the name under which each account is held at the depository at which the payments from the Fund are to be deposited.

(7) Agree that they and their authorized committee(s) shall comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9001 *et seq.*, and the Commission's regulations at 11 CFR Parts 100-115, and 9001-9012.

(8) Agree that they and their authorized committee(s) shall pay any civil penalties included in a conciliation agreement entered into under 2 U.S.C. 437g against the candidates, any authorized committees of the candidates or any agent thereof.

**§ 9003.2 Candidate certifications.**

(a) *Major Party Candidates.* To be eligible to receive payments under 11 CFR Part 9005, each Presidential and Vice Presidential candidate of a major party shall, under penalty of perjury, certify to the Commission:

(1) 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) 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 9005.2(b).

(b) *Minor and Major Party Candidates.* To be eligible to receive payments under 11 CFR Part 9005, each Presidential and Vice Presidential candidate of a minor or new party shall, under penalty of perjury, certify to the Commission:

(1) 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) That no contributions to defray qualified campaign expenses 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 Candidates.* 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 assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

- (A) Legal and rightful title, or
- (B) An equitable interest.

(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.

(iii) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by any instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

(4) For purposes of this section, expenditures from personal funds made by a candidate of a political 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.

(3) 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) or (c).

(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, upon written request by a minor or new party candidate made 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.

#### § 9003.3 Allowable contributions.

(a) *Legal and Accounting Compliance Fund—Major Party Candidates.*—(1)

*Source.* (i) A major party 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 such candidate prior to being nominated or selected 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 without regard to the contribution limitations of 11 CFR Part 110 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 contribution 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) Contributions to the legal and accounting compliance fund shall be used only for the following purposes:

(A) 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.*, in accordance with 11 CFR 9003.3(a)(2)(ii):

(B) To defray in accordance with 11 CFR 9003.3(a)(2)(ii)(A), that portion of expenditures for payroll, overhead, and computer services related to ensuring compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*:

(C) To defray any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26 U.S.C. 9012:

(D) To make repayments under 11 CFR 9007.2;

(E) To defray the cost of soliciting contributions to the legal and accounting compliance fund; and

(F) 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) Expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with Title 2 and Chapter 95 of Title 26, shall be initially paid from the candidate's federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. For purposes of 11 CFR 9003.3(a)(2)(i)(B), a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 10 percent of the payroll and overhead expenditures of his or her national campaign headquarters and state offices. Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and telephone base service charges. In addition, a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 70 percent of the costs (other than payroll) associated with computer services. Such

costs include but are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies. If the candidate wishes to claim a larger compliance exemption for payroll or overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered necessary to ensure compliance with Title 2 or Chapter 95 of Title 26. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity. If the candidate wishes to claim a larger compliance exemption for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by persons other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(B) Reimbursement from the compliance fund may be made to the separate account maintained for federal funds under 11 CFR 9005.2 for legal and accounting compliance services disbursements that are initially paid from the separate federal funds 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.

(iii) Amounts paid from this account for the purposes permitted by 11 CFR 9003.3(a)(2)(i) (A) through (E) 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 9003.2(a)(2)(i)(F) 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 9005.2 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.2.

(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—Major Party Candidates.* (1) A major party candidate or his or her authorized committee(s) may solicit contributions to defray qualified campaign expenses to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(2) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. 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 shall be 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) 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 persons to the candidate's legal and accounting compliance fund under 11 CFR 9003.3(a) for the purposes of such limitations.

(5) 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 expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported

as disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(b)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and telephone base service charges.

(ii) For purposes of 11 CFR 9003.3(b)(6) costs associated with computer services include but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(b) (5) or (6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(b)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services

performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(c) *Contributions to Defray Qualified Campaign Expenses—Minor and New Party Candidates.* (1) A minor or new party candidate may solicit contributions 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) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115.

(3) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only for the following purposes:

(i) To defray qualified campaign expenses;

(ii) To make repayments under 11 CFR 9007.2;

(iii) To defray the cost of soliciting contributions to such account;

(iv) 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.*

(4) All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR Parts 104 and 9006.1.

(5) 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 expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10 percent of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10 percent of the payroll (including payroll taxes)

and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70 percent of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(c)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and telephone base services charges.

(ii) For purposes of 11 CFR 9003.3(c)(6) costs associated with computer services include but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(c)(6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(c)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The candidate shall keep and maintain a separate record of disbursements made to defray exempt legal and accounting costs under 11 CFR 9003.3(c)(6) and (7) and shall report such disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1.

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

(a) *Permissible Expenditures.* (1) A candidate may incur expenditures

before the beginning of the expenditure report period, as defined at 11 CFR 9002.12, if such expenditures 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 expenditures will be considered qualified campaign expenses. Examples of such expenditures include but are not limited to: Expenditures for establishing financial accounting systems, expenditures for organizational planning and expenditures 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 expenditures described in 11 CFR 9003.4(a). A candidate 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 major party candidate may borrow from his or her legal and accounting compliance fund for the purposes of defraying permissible expenditures described in 11 CFR 9003.4(a). 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 expenditures from contributions received in accordance with 11 CFR 9003.3(c).

(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 expenditures, 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 expenditures.

(c) *Deposit and Disclosure.* Amounts received or borrowed by a candidate under 11 CFR 9003.4(b) to defray expenditures permitted under 11 CFR 9003.4(a) shall be deposited in a separate account to be used only for such expenditures. 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) *Burden of Proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9002.11. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission at its request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9003.5(b).

(b) *Documentation Required.* (1) For disbursements in excess of \$200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement; or

(ii) If such a receipt is not available, a cancelled check negotiated by the payee, and

(A) One of the following documents generated by the payee: a bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in 11 CFR 9003.5(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9003.5(b)(1)(i) nor

the supporting documentation specified in 11 CFR 9003.5(b)(1)(ii) is available, a cancelled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR 9003.5(b)(1) (i), (ii) or (iii) is not available, the candidate or committee may present a cancelled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

(A) Evidence demonstrating that the expenditure 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 shall present:

(i) A record disclosing the full name and mailing address of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A cancelled check negotiated by the payee that states the full name and mailing address of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) "Payee" means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives \$500 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) "Purpose" means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(c) *Retention of Records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

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

Sec.

- 9004.1 Major parties.
  - 9004.2 Pre-election payments for minor and new party candidates.
  - 9004.3 Post-election payments.
  - 9004.4 Use of payments.
  - 9004.5 Investment of public funds.
  - 9004.6 Reimbursements for transportation and services made available to media personnel.
  - 9004.7 Allocation of travel expenditures.
  - 9004.8 Withdrawal by candidate.
  - 9004.9 Net outstanding qualified campaign expenses.
  - 9004.10 Sale of assets acquired for fundraising purposes.
- 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 for minor and new party candidates.

(a) *Candidate of a Minor Party in the Preceding Election.* An eligible candidate of a minor party is entitled to pre-election payments:

(1) If he or she received at least 5% of the total popular vote as the candidate of a minor party in the preceding election whether or not he or she is the same minor party's candidate in this election.

(2) In an amount which is 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) *Candidate of a Minor Party in the Current Election.* The eligible candidate of a minor party whose candidate for the office of President in the preceding election received at least 5% but less than 25% of the total popular vote is eligible to receive pre-election payments. The amount which a minor party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by

the minor party's candidate in the preceding Presidential election; however, the amount to which the minor party candidate is entitled under this section shall be reduced by the amount to which the minor party's Presidential candidate in this election is entitled under 11 CFR 9004.2(a), if any.

(c) *New Party Candidate.* A candidate of a new party who was a candidate for the office of President in at least 10 States in the preceding election may be eligible to receive pre-election payments if he or she received at least 5% but less than 25% of the total popular vote in the preceding election. The amount which a new party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the new party candidate in the preceding election. If a new party candidate is entitled to payments under this section, the amount of the entitlement shall be reduced by the amount to which the candidate is entitled under 11 CFR 9004.2(a), if any.

#### § 9004.3 Post-election payments.

(a) *Minor and New Party Candidates.* 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 the minor or new party candidate in the Presidential election bears to the average number of popular votes received by the major party candidates for President in that election.

(b) *Amount of Entitlement.* The aggregate payments to which an eligible candidate shall be entitled shall not exceed an amount equal to the lower of:

(1) The amount of qualified campaign expenses incurred by such eligible candidate and his or her authorized committee(s), reduced by the amount of contributions which are received to defray qualified campaign expenses by such eligible candidate and such committee(s); 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 authorized committees to defray

qualified campaign expenses in the case of a deficiency in the Fund.

(c) *Amount of Entitlement Limited By Pre-Election Payment.* If an eligible candidate is entitled to payment under 11 CFR 9004.2, the amount allowable to that candidate under this section shall also 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.

#### § 9004.4 Use of payments.

(a) *Qualified Campaign Expenses.* An eligible candidate 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;

(2) A candidate may use such payments to repay loans that meet the requirements of 11 CFR 100.7(a)(1) or 100.7(b)(11) or to 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) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of that candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies; or

(ii) Costs incurred by the candidate prior to the end of the expenditure report period, for which written arrangement or commitment was made on or before the close of the expenditure report period.

(b) *Non-qualified campaign expenses.*—(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive Expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR 9003.2 shall not be considered a qualified campaign expense.

(3) *Expenditures Incurred After the Close of the Expenditure Report Period.* Any expenditures incurred after the close of the expenditure report period, as defined in 11 CFR 9002.12, are not qualified campaign expenses except to

the extent permitted under 11 CFR 9004.4(a)(4).

(4) *Civil or Criminal Penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR Part 9005. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR Part 104.

(5) *Solicitation Expenses.* Any expenses incurred by a major party candidate to solicit contributions to a legal and accounting compliance fund established pursuant to 11 CFR 9003.3(a) are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR Part 9005.

#### § 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. Any net loss resulting from the investment of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such net loss shall be repaid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

#### § 9004.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitation of 11 CFR 9003.2(a)(1) and (b)(1).

(b) If reimbursement for such expenditures 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 transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and

services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%. Reimbursements received in compliance with the requirements of this section may be deducted from the amount of expenditures that are subject to the overall expenditure limitation of 11 CFR 9003.2(a)(1) and (b)(1), except to the extent that such reimbursements exceed the amount actually paid by the committee for the services provided.

(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 expenditures.

(a) Notwithstanding the provisions of 11 CFR Part 106, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9004.7(b), 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 the 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:

(i) The first class commercial air fare plus the cost of other services; in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related 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.

(7) 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 the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

#### § 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 900.2.

(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 9005.2 except to defray qualified campaign expenses as provided in 11 CFR 9004.4.

(2) Submit a statement, within 30 calendar days after he or she ceases to be a candidate, setting forth the information required under 11 CFR 9004.9(c).

#### § 9004.9 Net outstanding qualified campaign expenses.

(a) *Candidates Receiving Post-Election Funding.* A candidate who is eligible to receive post-election payments under 11 CFR 9004.3 shall file, no later than 20 calendar days after the date of the election, a preliminary statement of that candidate's net outstanding qualified campaign expenses. The preliminary statement shall be signed by the treasurer of the candidate's principal campaign committee. The candidate's net outstanding qualified campaign expenses under this section equal the difference between 11 CFR 9004.9(a)(1) and (2).

(1) The total of:

(i) All outstanding obligations for qualified campaign expenses as of the date of the election; plus

(ii) An estimate of the amount of qualified campaign expenses that will be incurred by the end of the expenditure report period; plus

(iii) An estimate of necessary winding down costs as defined under 11 CFR 9004.4(a)(4); less

(2) The total of:

(i) Cash and hand as of the close of business on the day of the election (including all contributions dated on or before that date);

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

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

(b) *All Candidates.* Each candidate, except for individuals who have withdrawn pursuant to 11 CFR 9004.8, shall submit a statement of net outstanding qualified campaign expenses no later than 30 calendar days after the end of the expenditure report period. This statement shall be signed by the treasurer of the candidate's principal campaign committee. The statement shall contain the information required by 11 CFR 9004.9(a)(1) and (2), except that the amount of outstanding

obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the last day of the expenditure report period.

(c) *Candidates Who Withdraw.* An individual who ceases to be a candidate pursuant to 11 CFR 9004.8 shall file a statement of net outstanding qualified campaign expenses no later than 30 calendar days after he or she ceases to be a candidate. This statement shall be signed by the treasurer of the candidate's principal campaign committee. The statement shall contain the information required under 11 CFR 9004.9(a)(1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the day on which the individual ceased to be a candidate.

(d)(1) *Capital Assets.* For purposes of this section, the term "capital assets" means any property used in the operation of the campaign whose value exceeds \$500 on the last day of the expenditure report period or the day on which the individual ceases to be a candidate, whichever is earlier. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9004.9(d)(2). The value of a capital asset shall be the fair market value on the last day of the expenditure report period or the day on which the individual ceases to be a candidate whichever is earlier, unless the item is acquired after these dates, in which case the item will be valued on the date it is acquired.

(2) *Other Assets.* The term "other assets" means any property acquired by the campaign for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the candidate's statement of net outstanding qualified campaign expenses if the aggregate value of such assets exceeds \$5000. The value of "other assets" shall be determined by the fair market value of each item on the last day of the expenditure report period or the day on which the individual ceased to be a candidate, whichever is earlier, unless the item is acquired after these dates, in which case the item shall be valued on the date it is acquired.

(e) *Review of Candidate Statement.*—(1) *General.* The Commission will review the statement filed by each candidate under this section. The Commission may request further

information with respect to statements filed pursuant to 11 CFR 9004.9(b) during the audit of that candidate's authorized committee(s) under 11 CFR Part 9007.

(2) *Candidate Eligible for Post-Election Funding.* (i) If, in reviewing the preliminary statement of a candidate eligible to receive post-election funding, the Commission receives information indicating that substantial assets of that candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding qualified campaign expenses have been otherwise overstated in relation to campaign assets, the Commission may decide to temporarily postpone its certification of funds to that candidate pending a final determination of whether the candidate is entitled to all or a portion of the funds for which he or she is eligible based on the percentage of votes the candidate received in the general election.

(ii) *Initial Determination.* In making a determination under 11 CFR 9004.9(e)(2)(i), the Commission will notify the candidate within 10 business days after its receipt of the statement of its initial determination that the candidate is not entitled to receive the full amount for which the candidate may be eligible. The notice will give the legal and factual reasons for the initial determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given the opportunity to revise the statement or to submit, within 10 business days, written legal or factual materials to demonstrate that the candidate has net outstanding qualified campaign expenses that entitle the candidate to post-election funds. Such materials may be submitted by counsel if the candidate so desires.

(iii) *Final Determination.* The Commission will consider any written legal or factual materials submitted by the candidate before making its final determination. A final determination that the candidate is entitled to receive only a portion or no post-election funding will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(iv) If the candidate demonstrates that the amount of outstanding qualified campaign expenses still exceeds campaign assets, the Commission will certify the payment of post-election funds to which the candidate is entitled.

#### § 9004.10 Sale of assets acquired for fundraising purposes.

(a) *General.* A minor or new party candidate may sell assets donated to the campaign or otherwise acquired for fundraising purposes subject to the limitations and prohibitions of 11 CFR 9003.2, Title 2, United States Code, and 11 CFR Parts 110 and 114. This section will only apply to major party candidates to the extent that they sell assets acquired either for fundraising purposes in connection with his or her legal and accounting compliance fund or when it is necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Sale After End of Expenditure Report Period.* A minor or new party candidate, or a major party candidate in the event of a deficiency in the payments received from the Fund due to the application of 11 CFR 9005.2(b), whose outstanding debts exceed the cash on hand after the end of the expenditure report period as determined under 11 CFR 9002.12, may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of Title 2, United States Code and 11 CFR Parts 110 and 114.

#### PART 9005—CERTIFICATION BY COMMISSION

- Sec.  
9005.1 Certification of payments for candidates.  
9005.2 Payments to eligible candidates from the fund.  
Authority: 26 U.S.C. 9005, 9009(b).

##### 9005.1 Certification of payments for candidates.

(a) *Certification of Payments for Major Party Candidates.* Not later than 10 days after the Commission determines that the Presidential and Vice Presidential candidates of a major 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 9005.2.

(b) *Certification of Pre-election Payments for Minor and New Party Candidates.* (1) Not later 10 days after a minor or new party candidate has met all applicable conditions for eligibility to

receive payments under 11 CFR 9003.1, 9003.2 and 9004.2, the Commission will make an initial determination of the amount, if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each State. In notifying the candidate, the Commission will give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based.

(2) The candidate may submit, within 15 days after the Commission's initial determination, written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(c) *Certification of Minor and New Party Candidates for Post-election Payments.* (1) Not later than 30 days after the general election, the Commission will determine whether a minor or new party candidate is eligible for post-election payments.

(2) The Commission's determination of eligibility will be based on the following factors:

(i) The candidate has received at least 5% or more of the total popular vote based on unofficial vote results in each State;

(ii) The candidate has filed a preliminary statement of his or her net outstanding qualified campaign expenses pursuant to 11 CFR 9004.9(a); and

(iii) The candidate has met all applicable conditions for eligibility under 11 CFR 9003.1 and 9003.2.

(3) The Commission will notify the candidate of its initial determination of the amount, if any, to which the candidate is entitled, give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based. The Commission will also notify the candidate that it will deduct a percentage of the amount to which the candidate is entitled based on the unofficial vote results when the Commission certifies an amount for payment to the Secretary. This

deduction will be based on the average percentage differential between the unofficial and official vote results for all candidates who received public funds in the preceding Presidential general election.

(4) The candidate may submit within 15 days after the Commission's initial determination written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(5) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(d) All certifications made by the Commission pursuant to this section 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.

#### § 9005.2 Payments to eligible candidates from the fund.

(a) Upon a 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 determines that the monies 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 11 CFR 9005.2(b) (1) shall be paid when the Secretary determines that there are sufficient monies 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 major party candidate shall be deposited in a separate account maintained by his or her authorized

committee, unless there is a deficiency in the Fund as provided under 11 CFR 9005.2(b)(1). In the case of a deficiency, the candidate may establish a separate account for payments from the Fund or may deposit such payments with contributions received pursuant to 11 CFR 9003.3(b). The account(s) 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 9005.2(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.

##### § 9006.1 Separate reports.

(a) The authorized committee(s) of a candidate shall report all expenditures to further the candidate's 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.

(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 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—EXAMINATION AND AUDITS; PAYMENTS

#### Sec.

- 9007.1 Audits.
  - 9007.2 Repayments.
  - 9007.3 Extensions of time.
  - 9007.4 Additional audits.
- Authority: 26 U.S.C. 9007, 9009(b).

#### § 9007.1 Audits.

(a) *General.* (1) After each Presidential election, the Commission will 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 will include, but will not be limited to, expenditures 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.

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

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9007.1(a) (1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9007.2.

(b) *Conduct of Fieldwork.* (1) The Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork will be conducted at a site provided by the committee.

(i) *Office Space and Records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with

the candidate and committee agreement under 11 CFR 9003.1(b)(6).

(ii) *Availability of Committee Personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to Provide Staff, Records or Office Space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9010(c) to enforce the candidate and committee agreement made under 11 CFR 9003.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have ten (10) calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreements.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within 10 days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance Conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of Records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit Conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9007.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

- (i) Committee response to audit findings;
- (ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1);
- (iii) Committee responses to Commission repayment determinations made under 11 CFR 9007.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9007.1(b) (1) and (2) will apply to any additional fieldwork conducted.

(c) *Preparation of Interim Audit Report.* (1) After the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1), the Commission will issue an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Presidential Election Campaign Fund Act and Commission regulations;

(ii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iii) Compliance of the candidate and committee with applicable statutory and regulatory provisions in those instances where the Commission has not instituted any enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR Part 111; and

(iv) Preliminary calculations regarding future repayments to the United States Treasury.

2. The candidate and his or her authorized committee will have an opportunity to submit in writing within 30 calendar days of receipt of the interim report, legal and factual materials disputing or commenting on the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9007.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly-released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of Publicly-Released Audit Report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9007.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9007.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public Release of Audit Report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9007.1(d).

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR Part 111, those matters will not be contained in the publicly-released report. In such cases, the audit report will indicate that certain other matters have been referred

to the Commission's Office of General Counsel.

(3) The Commission will provide the candidate and committee copies of the audit report 24 hours prior to releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based in part on follow-up fieldwork conducted under 11 CFR 9007.1(b)(3) and will be placed on the public record.

#### **§ 9007.2 Repayments.**

(a) *General.* (1) A candidate who has received payments from the Fund under 11 CFR Part 9005 shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9007.1 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the close of the expenditure report period.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases for Repayment.* The Commission may determine that an eligible candidate of a political party who has received payments from the Fund must repay the United States Treasury under any of the circumstances described below.

(1) *Payments in Excess of Candidate's Entitlement.* If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate shall pay to the United States Treasury an amount equal to such portion.

(2) *Use of Funds for Non-qualified Campaign Expenses.*

(i) If the Commission determines that any amount of any payment to an eligible candidate from the Fund or any contributions received by a candidate under 11 CFR 9003.3(b) were used for purposes other than those described in paragraphs (6) (A) through (C) of this section, it will notify the candidate of the amount so used, and such candidate

shall pay to the United States Treasury an amount equal to such amount.

(A) To defray qualified campaign expenses;

(B) To repay loans, the proceeds of which were used to defray qualified campaign expenses; and

(C) 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.

(ii) Examples of Commission repayment determinations under 11 CFR 9007.2(b)(2) include, but are not limited to the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agent(s) have incurred expenses in excess of the aggregate payments to which an eligible major party candidate is entitled;

(B) Determinations that amounts spent by a candidate, a candidate's authorized committee(s) or agent(s) from the Fund, or from any contributions received by a candidate under 11 CFR 9003.3 (b) or (c), were not documented in accordance with 11 CFR 9003.5;

(C) Determinations that any portion of the payments made to a candidate from the Fund or any contributions received by a candidate under 11 CFR 9003.3 (b) or (c) were expended in violation of State or Federal law; and

(D) Determinations that any portion of the payments made to a candidate from the Fund, or any contributions received by a candidate under 11 CFR 9003.3 (b) or (c) were used to defray expenses resulting from a violation of State or Federal law, such as the payment of fines or penalties.

(3) *Surplus.* If the Commission determines that a portion of payments from the Fund remains unspent after all qualified campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the United States Treasury that portion of surplus funds.

(4) *Income on Investment of Payments from the Fund.* If the Commission determines that a candidate received any income as a result of investment or other use of payments from the Fund pursuant to 11 CFR 9004.5, it shall so notify the candidate and such candidate shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

(5) *Unlawful Acceptance of Contributions by an Eligible Candidate of a Major Party.* If the Commission determines that an eligible candidate of

a major party, the candidate's authorized committee(s) or agent(s) accepted contributions to defray qualified campaign expenses (other than contributions to make up deficiencies in payments from the Fund, or to defray expenses incurred for legal and accounting services in accordance with 11 CFR 9003.3(a)), it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the United States Treasury an amount equal to such amount.

(c) *Repayment Determination Procedures.* The Commission repayment determination will be made in accordance with the procedures set forth at 11 CFR 9007.2 (c)(1) through (c)(4).

(1) *Initial Determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report pursuant to 11 CFR 9007.1(d) and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days of the candidate's receipt of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of Written Materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days of receipt of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral Presentation.* A candidate who has submitted written materials under 11 CFR 9007.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to

the Commission based upon the legal and factual materials submitted under 11 CFR 9007.2(c)(2). The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final Determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR 9007.2(c)(2) and any oral presentation made under 11 CFR 9007.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment Period.* (1) Within 90 calendar days of the candidate's receipt of the notice of the Commission's initial repayment determination(s) the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under 11 CFR 9007.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 20 calendar days of the candidate's receipt of the notice of the Commission's final repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(e) *Computation of Time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional Repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9007.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-Discovered Assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding qualified campaign expenses submitted pursuant to 11 CFR 9004.9, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding qualified campaign expenses. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9007.2(f).

(h) *Limit on Repayment.* 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 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR Part 9007 will not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR Part 9007 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder shall be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR Part 9007, the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR part 9007.

#### § 9007.4 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.

2. By Transferring Part 9008 to Subchapter E, removing the heading for Subchapter F, and redesignating Subchapter G (consisting of Parts 9031 through 9039) as Subchapter F.

3. By adding and reserving Parts 9009 through 9011 as follows:

#### PARTS 9009—9011 [Reserved]

4. By adding new Part 9012 as follows:

#### PART 9012—UNAUTHORIZED EXPENDITURES AND CONTRIBUTIONS

Sec.

9012.1 Excessive expenses.

9012.2 Unauthorized acceptance of contributions.

9012.3 Unlawful use of payments received from the fund.

9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.

9012.5 Kickbacks and illegal payments.

9012.6 Unauthorized expenditures and contributions by political committees.

Authority: 26 U.S.C. 9012.

#### § 9012.1 Excessive expenses.

(a) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a Presidential election or the candidate's authorized committee(s) knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR Part 9004 with respect to such election.

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to incur expenses with respect to a Presidential nominating convention in excess of the

expenditure limitation applicable with respect to such committee under 11 CFR Part 9008, unless the incurring of such expenses is authorized by the Commission under 11 CFR 9008.7(a)(3).

#### § 9012.2 Unauthorized acceptance of contributions.

(a) It shall be unlawful for an eligible candidate of a major party in a Presidential election or any of his or her authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b), or to defray expenses which would be qualified campaign expenses but for 11 CFR 9002.11(a)(3).

(b) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a Presidential election or any of his or her authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred in that election by that eligible candidate or his or her authorized committee(s).

#### § 9012.3 Unlawful use of payments received from the fund.

(a) It shall be unlawful for any person who receives any payment under 11 CFR Part 9005, or to whom any portion of any payment so received is transferred, knowingly and willfully to use, or authorize the use of, such payment or any portion thereof for any purpose other than—

(1) To defray the qualified campaign expenses with respect to which such payment was made; or

(2) To repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(b) It shall be unlawful for the national committee of a major or minor party which receives any payment under 11 CFR Part 9008 to use, or authorize the use of, such payment for any purpose other than a purpose, authorized by 11 CFR 9008.6

#### § 9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.

It shall be unlawful for any person knowingly and willfully—

(a) To furnish any false, fictitious, or fraudulent evidence, books or information to the Commission under 11 CFR Parts 9001-9008, or to include in any evidence, books or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books or information relevant to a certification by the Commission or any examination and audit by the Commission under 11 CFR Parts 9001 *et seq.*; or

(b) To fail to furnish to the Commission any records, books or information requested by the Commission for purposes of 11 CFR Parts 9001 *et seq.*

#### § 9012.5 Kickbacks and illegal payments.

(a) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expenses of any eligible candidate or his or her authorized committee(s).

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a Presidential nominating convention.

#### § 9012.6 Unauthorized expenditures and contributions by political committees.

(a) It is unlawful for any political committee which is not an authorized committee of any eligible candidate of a political party for the Office of President or Vice President, knowingly and willfully to incur expenditures to further the election of such candidates which aggregate in excess of \$1,000 and which would constitute qualified campaign expenditures if incurred by the candidate's authorized committee.

(b) The unauthorized expenditures and contributions referred to in 11 CFR 9012.6(a) do not include:

(1) Expenditures by a broadcaster regulated by the Federal Communications Commission, or by a periodical publication, in reporting the news or taking editorial positions; or

(2) Expenditures by any organization described in 26 U.S.C. 501(c) which is exempt from tax under 26 U.S.C. 501(a) in communicating to its members the views of that organization.

Dated: July 1, 1983.

Danny L. McDonald,  
Chairman, Federal Election Commission.

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