By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

- **Effective September 27, 1984**
  - Escanaba, MI—Delta County, LOC/DME (BC)
  - Kalamazoo, MI—Kalamazoo Muni, LOC BC RWY 17, Amkt. 16
  - Reno, NV—Reno Cannon Int'l, LOC BC RWY 16R, Amdt. 2

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

- **Effective September 27, 1984**
  - Cadillac, MI—Wexford County, NDB RWY 14, Amkt. 5
  - Coffeyville, KS—Coffeyville Muni, NDB RWY 35, Amkt. 8

4. By amending § 97.29 ILS/DME, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

- **Effective September 27, 1984**
  - Sacramento, CA—Sacramento Executive, ILS RWY 22, Amkt. 10
  - Blytheville, AR—Blytheville, Muni, ILS RWY 17, Amkt. 5
  - Charlotte, NC—Charlotte Douglas Int'l, ILS RWY 28, Amdt. 1, Cancelled
  - Coffeyville, KS—Coffeyville Muni, RNAV RWY 35, Amdt. 1

5. By amending § 97.31 RADAR SIAPs identified as follows:

- **Effective September 27, 1984**
  - Cadillac, MI—Wexford County, MLS RWY 31L, Amdt. 30

6. By amending § 97.33 RNAV SIAPs identified as follows:

- **Effective August 2, 1984**
  - Cadillac, MI—Wexford County, RNAV RWY 25, Amkt. 3

**Effective August 30, 1984**

- Cadillac, MI—Wexford County, MLS RWY 25, Orig.
- Austin, TX—Robert Mueller Muni, ILS RWY 28R, Amdt. 5
- Reno, NV—Reno Cannon Int'l, MLS RWY 16R, Amdt. 5
- New Orleans, LA—New Orleans Intl (Moisant Field), RADAR 1, Orig.
- Coffeyville, KS—Coffeyville Muni, RNAV RWY 35, Amkt. 5
- Coffeyville, KS—Coffeyville Muni, RNAV RWY 35, Amdt. 5

**Effective August 15, 1984**

- Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 5
- Austin, TX—Robert Mueller Muni, MLS RWY 31L, Amdt. 30
- Austin, TX—Robert Mueller Muni, ILS RWY 23, Amdt. 5
- Coffeyville, KS—Coffeyville Muni, NDB RWY 32, Amdt. 8

**Effective August 2, 1984**

- Cadillac, MI—Wexford County, RNAV RWY 35, Amdt. 2
- Sacramento, CA—Sacramento Executive, ILS RWY 22, Amdt. 2
- Atlantic City, NJ—Atlantic City Intl, ILS RWY 18L, Amdt. 3
- Laredo, TX—Laredo Int'l, ILS RWY 17C, Amdt. 15

**Effective August 15, 1984**

- Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 5
- Austin, TX—Robert Mueller Muni, MLS RWY 31L, Amdt. 30
- Austin, TX—Robert Mueller Muni, ILS RWY 23, Amdt. 5
- Laredo, TX—Laredo Int'l, ILS RWY 17C, Amdt. 15

**Effective August 2, 1984**

- Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 5
- Austin, TX—Robert Mueller Muni, MLS RWY 31L, Amdt. 30
- Austin, TX—Robert Mueller Muni, ILS RWY 23, Amdt. 5
- Laredo, TX—Laredo Int'l, ILS RWY 17C, Amdt. 15

**Effective August 15, 1984**

- Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 5
- Austin, TX—Robert Mueller Muni, MLS RWY 31L, Amdt. 30
- Austin, TX—Robert Mueller Muni, ILS RWY 23, Amdt. 5
- Laredo, TX—Laredo Int'l, ILS RWY 17C, Amdt. 15

**Effective August 2, 1984**

- Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 5
- Austin, TX—Robert Mueller Muni, MLS RWY 31L, Amdt. 30
- Austin, TX—Robert Mueller Muni, ILS RWY 23, Amdt. 5
- Laredo, TX—Laredo Int'l, ILS RWY 17C, Amdt. 15

**Effective August 2, 1984**

- Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 5
- Austin, TX—Robert Mueller Muni, MLS RWY 31L, Amdt. 30
- Austin, TX—Robert Mueller Muni, ILS RWY 23, Amdt. 5
- Laredo, TX—Laredo Int'l, ILS RWY 17C, Amdt. 15

**Effective August 2, 1984**

- Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 5
- Austin, TX—Robert Mueller Muni, MLS RWY 31L, Amdt. 30
- Austin, TX—Robert Mueller Muni, ILS RWY 23, Amdt. 5
- Laredo, TX—Laredo Int'l, ILS RWY 17C, Amdt. 15

**Effective August 2, 1984**

- Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 5
- Austin, TX—Robert Mueller Muni, MLS RWY 31L, Amdt. 30
- Austin, TX—Robert Mueller Muni, ILS RWY 23, Amdt. 5
- Laredo, TX—Laredo Int'l, ILS RWY 17C, Amdt. 15

**Effective August 2, 1984**

- Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 5
- Austin, TX—Robert Mueller Muni, MLS RWY 31L, Amdt. 30
- Austin, TX—Robert Mueller Muni, ILS RWY 23, Amdt. 5
- Laredo, TX—Laredo Int'l, ILS RWY 17C, Amdt. 15

**Effective August 2, 1984**

- Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 5
- Austin, TX—Robert Mueller Muni, MLS RWY 31L, Amdt. 30
- Austin, TX—Robert Mueller Muni, ILS RWY 23, Amdt. 5
- Laredo, TX—Laredo Int'l, ILS RWY 17C, Amdt. 15
Explanation and Justification

On May 15, 1984, the U.S. Court of Appeals for the D.C. Circuit held that repayments by publicly-financed Presidential primary candidates for non-qualified campaign expenses should be "limited to the amount of federal funds that the Commission reasonably determined were spent" by the candidates for such purposes. Kennedy v. Federal Election Commission, No. 83-1852 (D.C. Cir. May 15, 1984); Reagan v. Federal Election Commission, No. 83-1666, slip op. at 2 (D.C. Cir. May 15, 1984). In accordance with the court's order, the Commission has revised its regulations, which currently require repayment of the total amount spent on non-qualified campaign expenses. See, 11 CFR 9007.2(b)(2) and 9038.2(b)(2) [1983]. The revised regulations implement a pro-rata formula based on the proportion of federal funds to total funds received by the candidate. The amount of any repayment sought would then be a similar proportion of the total amount spent on non-qualified campaign expenses. In the case of Presidential primary candidates, the proportion of federal funds certified will be determined as of the candidates date of eligibility. In the general election, a pro-rata formula will only be used for major party candidates who have received private contributions to make up a deficiency in the Fund and for minor or new party candidates receiving partial Federal funding. The use of such formulas is consistent with the court's opinion, which does not require a mathematically precise determination of the amount of the Federal funds spent improperly but only a reasonable determination of the amount of federal matching funds so used. Kennedy slip op. at 7. Moreover, the revisions are limited to repayment determinations under 26 U.S.C. 9007(b)(4) and 9038(b)(2), as those were the only types of repayment determinations addressed in the Kennedy and Reagan decisions.

To demonstrate how these formulas will operate, the Commission has prepared two examples of hypothetical repayment determinations under 26 U.S.C. 9038(b)(2). Although the examples deal with repayments by Presidential primary candidates, they may be analogized to repayments by general election candidates as the issues presented in both cases are similar. The examples cover hypothetical repayments by candidates in a surplus and in a deficit position.

**Illustration No. 1: Surplus Candidate**

**Assumptions:**

- Date of ineligibility (DOI): 7/19/84.
- Surplus on DOI: $1,000,000.
- Matching funds received through DOI: $6,000,000 [net].
- Total deposits through DOI: $20,000,000.
- Non-qualified campaign expenses incurred pre-DOI: $100,000 [in excess of New Hampshire limit].

The Audit staff verified the Candidate's NOCO statement [as of 7/19/84] and reach agreement with the Treasurer as to the amount of the surplus at DOI (i.e., $1,000,000). The Audit staff then calculated the 26 U.S.C. 9038(b)(3) ratio using figures developed by reviewing reports and records of the Committee. The ratio calculated was:

\[
\text{ratio} = \frac{\$8,000,000}{\$20,000,000} = 40\%
\]

Applying this ratio (40%) to the verified surplus ($1,000,000), the 26 U.S.C. 9038(b)(3) repayment amount becomes $400,000. Since some estimates (for winding down costs) were used to calculate the surplus, adjustments to the amount repayable may be appropriate as a result of audit fieldwork updates.


In order to determine the repayment for $100,000 in expenditures in excess of the New Hampshire state limit, several calculations and adjustments were performed by the Audit staff. First, the ratio had to be calculated. In this case, the Treasurer had workpapers supporting his calculation of the 26 U.S.C. 9038(b)(2) ratio and the Audit staff verified his figures. The Treasurer's ratio was

\[
\text{ratio} = \frac{\$8,000,000}{\$20,000,000} = 40\%
\]

Since the $100,000 ($75,000 paid and $25,000 yet to be paid) were the only non-qualified expenses incurred prior to date of ineligibility, the Audit staff simply multiplied 40% time $100,000 to arrive at the amount ($40,000) repayable pursuant to 26 U.S.C. 9038(b)(2).

With respect to the review of post-DOI disbursements, the Audit staff noted a $25,000 payment for purchase of an automobile made on 8/2/84. It was also noted that the Treasurer had properly: (1) not included this amount for purposes of inclusion in the NOCO statement and (2) considered this expense to have been defrayed with excess campaign funds pursuant to 2 U.S.C. 439a. (The Committee's calculated residual funds after all repayments and qualified expenses were satisfied, amounted to approximately $560,000).

In summary, the total repayment requested would have been as follows:

\[
\begin{align*}
\text{Total Repayment} & = 8,000,000 \\
& = 20,000,000 \times 40\% = 400,000
\end{align*}
\]

26 U.S.C. 9038(b)(3):

1. The Treasurer included $25,000 in accounts payable for expenses chargeable in the New Hampshire limit and arrived at a calculated surplus of $975,000. The Audit staff excluded the $25,000 in accounts payable for non-qualified campaign expenses, thus making the surplus $1,000,000.

2. There is no adjustment for repayments under 26 U.S.C. 9038(b)(1) or (b)(3) because the repayment formula for section 9039(b)(2) is based on the amount of funds certified to the candidate and therefore available to defray non-qualified campaign expenses. This is so even if the Commission may later determine that the candidate was not entitled to a portion of the funds or that the candidate had a surplus.
Assumptions:

Date of ineligibility (DOI): 3/20/84.

Matching Funds Certified Through DOI: $3,000,000.

Pre verification of NOCO position and 26 U.S.C. 9038(b)(2) repayment situation.

Amount of Non-Qualified Expenses incurred Pre-DOI:

- 31,666.67
- 8,000,000

Amount of Non-Qualified Expenses incurred Post-DOI:

Date incurred: May 4, 1985
Date paid: May 4, 1985
Amount paid: $5,000
Non-qualified expenses included above. The Audit staff explained that, if permitted, inclusion of the $25,000 in non-qualified campaign expenses could result in an additional $25,000 in matching fund entitlement.

During the audit fieldwork update, the Audit staff reviewed expenses incurred after the date of ineligibility, the updated NOCO statements submitted, and the liquidation of matching fund payments received after the date of ineligibility. It was noted that the Treasurer included on her NOCO statement, $20,000 expenses related to the candidate’s and his staff’s travel, food and lodging costs at the nominating convention. The Audit staff pointed out two problems with the Treasurer’s approach.

First, the $20,000 in convention-related expenses were not valid winding down costs and, therefore, could not be defrayed with matching funds. The Audit staff advised the Treasurer that $20,000 which resulted in a repayment of $20,000 which resulted in a repayment amount of $440,000.

The total 26 U.S.C. 9038(b)(2) repayment is $31,666.67, comprised of the following:

- Pre-DOI non-qualified campaign expenses $25,000
- Post-DOI non-qualified campaign expenses $6,666.67

At the close of follow-up fieldwork, the Treasurer inquired concerning the possible impact of settling a $500,000 debt for $50,000 in the near future. The Audit staff advised her of the Commission’s debt settlement procedures and informed the Treasurer that all NOCO statements filed carried this debt at $500,000. Should the debt be settled for less, it was the Commission’s policy to recalculate entitlement based on the $50,000 settlement amount, and seek a 26 U.S.C. 9038(b)(1) repayment, if appropriate.

Statutory Authority

26 U.S.C. 9007, 9038

List of Subjects in 11 CFR Parts 9007 and 9038

Campaign funds, Administrative practice and procedure, Political candidates.

PART 9007—[AMENDED]

11 CFR Part 9007 is amended by revising §9007.2(b)(2)(i), (ii) (B), (C) and (D); and adding (b)(2)(iii) as follows:

§ 9007.2 Repayments.

(a) * * *

(b) * * *

(2) * * *

If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than those described in paragraphs (A) through (C) below, 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.

(ii) * * *

(B) Determinations that amounts spent by a candidate, a candidate’s authorized committee(s), or agent(s) from the Fund...
PART 9038—[AMENDED]

11 CFR Part 9038 is amended by revising § 9038.2(b)(2), adding (b)(3)(i) and revising (b)(3) as follows:

§ 9038.2 Repayments.

(b) * * *

(2) * * *

(i) The Commission may determine that amounts of any repayments made to a candidate from the matching payment account were used for purposes other than those set forth in (b)(3)(i)(II) of the preceding section.

(ii) The Commission may determine that amounts of any repayments made to a candidate from the matching payment account were used for purposes other than those set forth in (b)(3)(i)(II) of the preceding section.

(iii) * * *

(3) Failure to Provide Adequate Documentation. The Commission may determine that amounts spent by the candidate, the candidate’s authorized committee(s), or agents were not documented in accordance with 11 CFR 9033.11. The amount of any repayment sought under this section shall be determined by using the formula set forth in 11 CFR 9038.2(b)(3)(ii).