

## FEDERAL ELECTION COMMISSION

## 11 CFR Parts 100, 104, 114, and 116

[Notice 1990—10]

## Debts Owed by Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Final rule; Transmittal of Regulations to Congress.

**SUMMARY:** The Commission has deleted its regulations at 11 CFR 114.10 and has prepared new 11 CFR part 116 concerning the extension of credit and settlement of debts owed by candidates and political committees. These regulations implement sections 433, 434, 439a, 441a, 441b and 451 of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), 2 U.S.C. 431 *et seq.* In addition, the Commission has made several corresponding amendments to 11 CFR 100.7(a), 104.3(d) and 104.11(b) to bring those provisions into conformity with new 11 CFR part 116. Finally, the Commission is preparing a new form to facilitate the submission of debt settlements, which will be transmitted to Congress at a later date. Further information on these revisions is provided in the supplementary information which follows.

**EFFECTIVE DATE:** Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Ms Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing today the final text of new regulations at 11 CFR part 116, which concern debts owed by candidates and political committees. The new rules replace current § 114.10, which is being removed from 11 CFR. In addition, the Commission is publishing conforming amendments to §§ 100.7, 104.3 and 104.11 to reflect the new provisions in part 116 of the regulations.

On December 6, 1988 the Commission issued a Notice of Proposed Rulemaking (NPRM) in which is sought comments on proposed revisions to these regulations 53 FR 59193. Seven written comments were received in response to the Notice. A public hearing was held on February 15 and 16, 1989 at which four witnesses

presented testimony on the issues raised in the rulemaking.

Section 438(d) of title 2, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days before they are finally promulgated. These regulations were transmitted to Congress on June 22, 1990.

## Explanation and Justification

The Commission has extensively revised and reorganized its regulations regarding debts owed by candidates and political committees to ensure that the creation and settlement of such debts do not result in excessive or prohibited contributions to the debtor committees, and to promote the timely public disclosure of such transactions. During the course of this rulemaking, the Commission has re-examined several fundamental issues regarding debts owed by political committees, such as which types of committees should be permitted to seek debt settlement, whether debt settlements should be reviewed as agreements are reached or only after all creditors have ratified settlements, the scope of the Commission's review of debt settlements, and the relationship between the Commission's procedures and the procedures established by Congress in the Federal Bankruptcy Code.

The principal areas in which new 11 CFR part 116 differs from the previous language of 11 CFR 114.10 are as follows:

(1) Under the new rules, ongoing committees will no longer be permitted to settle debts (*see* 11 CFR 116.2).

(2) New procedures are included regarding situations in which either the political committee's creditors have gone out of business (*see* 11 CFR 116.9) or the political committee is essentially defunct (*see* 11 CFR 116.8).

(3) Special provisions have been added regarding authorized committees (including authorized committees of publicly-funded Presidential candidates) that wish to settle debts, terminate, or assign debts to other committees authorized by the same candidate (*see* 11 CFR 116.2(c)).

(4) New provisions have been added which address debts owed to unincorporated commercial vendors (*see* 11 CFR 116.3 and 116.4), committee employees (*see* 11 CFR 116.6), or other individuals who have advanced funds to or on behalf of a political committee (*see* 11 CFR 116.5).

(5) A more complete explanation of the procedures for submitting debt settlements for Commission review and a more detailed list of the information that must be provided have been added. (*see* 11 CFR 116.7).

(6) The treatment and reporting of disputed debts is clarified (*see* 11 CFR 116.10).

After considering the public comments and testimony regarding the Commission's role in bankruptcy proceedings under chapters 7 and 11 of the Federal Bankruptcy Code (11 U.S.C. Ch. 7 and 11), the Commission has decided to add a provision regarding the submission of debt settlement plans by terminating committees that have obtained releases from debts subject to chapter 7 bankruptcies. However, the new rules do not specifically address chapter 11 proceedings. Nevertheless, as explained more fully below, the promulgation of the new debt settlement rules may affect such proceedings.

The Commission has also decided to continue the current approach of permitting committees to file debt settlement requests as they reach agreements with creditors. Thus, the Commission is not adopting the previous proposals that would have required committees to present all their debt settlements at one time in a single unified plan for Commission review.

The Commission also notes that federal tax questions may arise concerning the proper treatment of bad debts owed to taxpayers by political parties or political committees. The reader should consult section 271 of the Internal Revenue Code regarding such matters. 26 U.S.C. 271.

## Section 116.1 Definitions

New § 116.1 sets out definitions for the terms "terminating committee," "ongoing committee," "commercial vendor," "disputed debt," "extension of credit," and "creditor."

The previously proposed definition of "terminating committee" in paragraph (a) has been reworked to exclude committees that are continuing to make or accept contributions or expenditures for purposes other than winding down and paying outstanding bills. This is consistent with § 116.7(e)(6), which requires committees to demonstrate that they qualify as terminating committees. They should do so when they file their first debt settlement plan. The classification of a political committee as a terminating committee is of significance because only terminating committees are permitted to settle debts. While the new rules do not require terminating committees to terminate

within any set amount of time after they have settled all their outstanding debts, the Commission anticipates that most committees will file a termination report shortly after the Commission has concluded its debt settlement reviews. Failure to do so may raise questions about the committee's *bona fide* intent to terminate.

A definition of "commercial vendor" has been included in § 116.1(c) to clarify that debts owed to commercial vendors may be settled under these rules only if the vendor's usual and normal business involves providing goods or services of the type provided to the candidate or political committee. The Commission has modified the definition that appeared in the NPRM by deleting the language indicating that the provision of such goods or services must be "for profit." Transactions involving nonprofit entities and transactions between political committees will be addressed on a case-by-case basis. See, e.g. Advisory Opinion ("AO") 1989-4.

The Commission has also added a definition of "extension of credit." See 11 CFR 116.1(e). This term includes unintended credit which results when payment is due upon delivery but the political committee simply does not pay, as well as situations where the committee's creditor either decides in advance to provide goods or services on credit, or decides on or after the due date to allow more time for payment.

Finally, a new definition of "creditor" has been added to ensure that the term is correctly read to include both commercial vendors and other entities or persons, including individuals, to whom a debt is owed. See 11 CFR 116.1(f).

#### Section 116.2 Debts Owed by Terminating Committees, Ongoing Committees and Authorized Committees

The previous debt settlement regulations at 11 CFR 114.10 did not expressly limit debt settlements to political committees that are in the process of winding down their activities and preparing to terminate, although the vast majority of those seeking debt settlement are in that posture. Thus, questions arose as to the appropriateness of permitting ongoing committees, including party committees, separate segregated funds and nonconnected committees, to settle their debts for less than the full amount owed, particularly since these committees may have the ability and intention to continue soliciting funds for political purposes. Consequently, the NPRM sought comments on proposed regulatory language limiting debt settlements to political committees in

the process of termination, and prohibiting ongoing committees from settling their previous debts.

The Commission heard testimony from one commenter who favored continuing to allow ongoing committees to seek debt settlements. The commenter stated that fairness to creditors would be promoted if the creditors could accept a generous settlement immediately, rather than being forced to wait substantially longer with little assurance that complete payment would be forthcoming. The commenter also pointed out that ongoing committees may have little choice other than to continue to support candidates and carry on normal operations while they are negotiating timetables for payment of previous debts.

The Commission has now decided to adopt the proposed language prohibiting ongoing committees from settling debts for less than the full amount owed. As the comment indicates, these committees have the intention to continue to solicit funds and to engage in election-related activities. Consequently, the settlement of an ongoing committee's debts cannot be considered to be commercially reasonable given that the committee is continuing to receive funds that could be used to pay its past debts. Moreover, by freeing additional funds for future electoral activity, such a practice could result in indirect corporate subsidization of a political committee's speech, and amplification of such speech beyond the committee's ordinary capacity. Cf. *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 257-58 (1986) (individual contributions to political committees "reflect popular support for the political positions of the committee," while "corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used to provide unfair advantage in the political marketplace"). Permitting settlement of an ongoing committee's debts is also inconsistent with section 433(d)(2) of the Act. That section contemplates the orderly application of a political committee's assets to reduce its outstanding debts only in the situation where the committee is insolvent and preparing to terminate.

Please note that under the new rules, "ongoing committee" includes party committees, separate segregated funds and nonconnected committees while such committees continue to engage in political activities. However, if a party committee, separate segregated fund or nonconnected committee decides to end its election-related activities, it may

settle debts once it has qualified as a terminating committee.

Although the Commission has concluded that it is inappropriate to permit ongoing committees to settle debts, the Commission is adopting provisions that give ongoing committees the necessary flexibility to resolve certain concerns. Thus, ongoing committees may continue to resolve *bona fide* disputes with creditors regarding debts under new § 116.10. Ongoing committees, as well as terminating committees, will also be able to resolve difficulties created when their creditors have gone out of business. See 11 CFR 116.9. The Commission has also encountered the opposite situation, where the creditor is unable to locate the committee, or the committee is essentially defunct. Under certain limited conditions, the creditor may seek Commission approval of a complete forgiveness of the remaining debt. See 11 CFR 116.8.

The NPRM observed that there have been debt settlement requests in which different creditors were offered and accepted very different terms and payments from the same political committee. Thus, the NPRM sought suggestions as to whether the Commission should encourage political committees to pay each creditor approximately the same percentage for each outstanding debt. It also presented the possibility of establishing mandatory or suggested priorities for the settlement of debts owed to different categories of creditors and possibly requiring committees to adhere to the priorities set out in Federal Bankruptcy Code. See 11 U.S.C. 507. The Commission noted that section 433(d)(2) of the FECA refers to the Commission's authority to establish procedures to determine the insolvency of political committees, to liquidate the assets of insolvent committees for the reduction of outstanding debts, and to terminate insolvent committees after liquidation.

The commenters and witnesses at the hearing strongly opposed the creation of such priorities and pointed out several difficulties that the Commission could expect to encounter if it sought to oversee the liquidation of insolvent committees. It was also suggested that the Commission lacks the practical experience needed to resolve issues traditionally handled by the bankruptcy courts.

The Commission has now decided not to establish mandatory or suggested priorities for payment of creditors and not to implement new insolvency rules or procedures. Instead, the Commission will use its limited resources to ensure

that debt settlements presented to the Commission do not conceal transactions involving the making and acceptance of prohibited or excessive contributions.

The NPRM also sought comments on the related question of the Commission's role when an insolvent political committee files a petition under chapter 7 or chapter 11 of the Federal Bankruptcy Code. See 11 U.S.C. 301. In the past, the Commission has concluded that where candidates first sought release from dischargeable debts under chapter 7, the debts were settled for purposes of Commission review. *E.g.* Debt Settlement Request 87-11. The Commission received comments and testimony to the effect that the Commission should petition Congress to amend the Bankruptcy Code to permit the Commission to be notified, and if appropriate, to become a party in interest in bankruptcy cases involving political committees so that it could ensure compliance with the FECA. The comments preferred to let bankruptcy courts handle the liquidation or reorganization of a political committee's assets to the alternative of Commission supervision of insolvency proceedings for indebted committees. After further consideration, the Commission has decided that it should add language to the new rules to clarify how a release from dischargeable debts under chapter 7 affects the subsequent filing of a debt settlement plan by a terminating committee. See discussion below of new 11 CFR 116.7(g).

The reorganization of a political committee under chapter 11 presents many of the same concerns as are raised by the settlement of an ongoing committee's debts. As one federal bankruptcy court has acknowledged, such chapter 11 reorganizations implicate important policy considerations, such as the potential for the debtor committees to "deceiv[e] new donors by failing to inform them of the pending petition" for reorganization, as well as the "unfair advantage of chapter 11 political committees allowed to compromise debts while others may pay in full, and the potential for indirect corporate subsidization of a political committee's speech." *In Re: Fund for a Conservative Majority*, 100 Bankr. 307, 309 (Bankr. E.D. Va. 1989). The court concluded that some of the Commission's concerns in this area could be addressed by providing the Commission with an opportunity to review the reorganization plan submitted by the debtor committee. Unfortunately, the types of information needed to determine whether FECA violations have occurred may not be

available in a committee's reorganization plan. While the new part 116 regulations prohibit ongoing committees from settling debts absent special circumstances, the new rules do not specifically address chapter 11 reorganizations involving political committees. Nevertheless, the Commission may seek to participate in bankruptcy cases presenting FECA questions and will continue to examine chapter 11 reorganizations of ongoing committees for evidence of FECA violations.

The NPRM also contained draft language that would have required terminating committees to submit all debt settlements as part of a single unified debt settlement package. This was intended to facilitate a more orderly review by the Commission of debt settlements and to enable the Commission to ascertain how the terminating committee plans to dispose of its remaining debts. This is a concern in situations where the committee had substantially more debts and obligations than cash on hand, and only limited fundraising prospects.

One commenter expressed the concern that the proposal for submission of all debt settlements in a single document would substantially delay creditors who reach settlements quickly from receiving any payments for lengthy periods of time while the political committee is negotiating agreements with all its other creditors.

In light of this concern, the Commission has revised §§ 116.2(a) and 116.7 so that the submission of all debt settlements in a single unified plan is not required. Thus, terminating committees may submit debt settlement plans in which agreements have been reached with some creditors but not others. However, the debtor committees will be required to include in their submissions summaries of their overall financial situation, including their plans for settling or resolving all remaining debts. This information is needed to enable the Commission to evaluate the commercial reasonableness of the debt settlements presented. In many cases, this approach will ensure that the details of a committee's earlier debt settlements will be placed on the public record more quickly than if the settlements were delayed until every creditor has signed an agreement to settle. Further information on submitting debt settlement plans and the scope of Commission review are explained below in 11 CFR 116.7.

New § 116.2(c)(1) prohibits authorized committees from settling debts if the candidate has another authorized

committee with permissible funds available to pay part or all of the amount owed. This language also prohibits authorized committees from terminating if they have funds or assets to pay the outstanding debts of another authorized committee that cannot meet its own obligations.

The Commission received no public comments on proposed language in another section that expressly stated that the availability of funds to transfer from one authorized committee to another is a factor the Commission would consider in reviewing debt settlements. Such language has now been deleted since new § 116.2(c)(1) addresses this situation. Another comment expressed concern that new part 116 could well permit candidates to eliminate their previous campaign debts and then form new committees that would receive substantial extensions of credit from the same incorporated vendors, thereby allowing these candidates to put impermissible corporate contributions behind them. The language in new § 116.2(c) should alleviate such concerns. Moreover, the debt settlement review procedures set out in new § 116.7 will enable the Commission to question whether vendors have engaged in this type of activity with selected candidates, and to initiate enforcement actions in appropriate cases.

The new language in § 116.2(c)(1) regarding authorized committees parallels the provisions prohibiting ongoing committees from settling debts. The Commission notes that many candidates form a new principal campaign committee for each election cycle rather than simply rolling over their previous committee. Thus, a series of principal campaign committees is in many respects equivalent to an ongoing committee. The Commission has determined that the reasons for not permitting ongoing committees to settle debts should also prevent principal campaign committees from settling debts in situations where the candidate has another campaign committee capable of paying the amount owed.

For the same reasons, paragraph (c)(2) has been added to prohibit transfers of funds between a candidate's authorized committees for different elections if the transferor committee has net debts outstanding.

New paragraph (c)(3) has been added to assist authorized committees that would like to terminate but are unable to do so because they have outstanding debts which they are unable to pay. It permits indebted authorized committees to assign their debts to other authorized

committees of the same candidate and then terminate. Such assignments may not be made until after the election has been held, to prevent the formation of a new committee solely for the purpose of avoiding payment of debts. However, if either committee is an authorized committee of a Presidential candidate receiving public funding, the assignment may not take place until after the audit, repayment and enforcement processes have ended. The original committee must notify the creditors of the debt assignment. The authorized committee receiving the assigned debts must accept the obligation to pay the amount owed and must assume the reporting responsibilities for the assigned debts. This committee should report financial activity related to such debts and contributions received for their payment on a separate FEC Schedule A and Schedule D, but should include these figures in the totals reported on the committee's summary page. The Commission notes that contributions designated to pay the previous debts would be subject to the contribution limits for the previous election, rather than the upcoming election, under the net debts outstanding rules set forth in 11 CFR 110.1(b)(3). Thus, a separate schedule will assist the committee and the Commission in tracking these separate limits.

The concept of assigning debts is based in part on proposed activity approved by the Commission in AOs 1980-43 and 1977-52. One witness indicated that this approach would serve a useful disclosure function. Another commenter expressed the concern that the ability of the creditors of the committee accepting the assigned debts to obtain payment could be jeopardized by the committee's increased indebtedness. In practice, the Commission has not encountered such difficulties in the time since this approach was originally approved in AOs 1977-52 and 1980-43.

Another issue on which the NPRM sought comments was whether publicly-funded committees of Presidential candidates should be permitted to settle debts, and if so, whether higher standards should be used to evaluate their debt settlements. The NPRM also questioned whether such settlements should be submitted for Commission review as soon as practical, or whether the campaign committees should be permitted to wait until the Commission's audit process has been completed.

The Commission heard testimony from one commenter who proposed an alternative approach under which the contribution limits would be removed

for Presidential candidates who are defeated and do not run again for President in the succeeding election. This would enable such indebted Presidential committees to seek additional contributions from those who have already given the maximum amount permitted under the Act. However, another commenter opposed this suggestion and argued that it would encourage more liberal campaign spending rather than responsibility and accountability. The Commission is not adopting the proposal regarding waiving the contribution limitations because this would be contrary to the plain wording of the statute as well as some of the basic principles underlying the FECA and the public financing statutes.

The Commission has now concluded that debts owed by publicly-funded Presidential committees should not be treated differently than debts owed by authorized committees of nonpresidential candidates. Thus, new § 116.2(c) of the Commission's regulations allows publicly-funded Presidential committees to settle debts if no other committee authorized by the same candidate has permissible funds available to pay the amounts outstanding. The indebted Presidential campaign committee is subject to the same requirements and procedures as other political committees eligible to settle debts. Furthermore, the original amounts of their debts will continue to be counted against their spending limits under 11 CFR 9035.1(a)(2). Under current 11 CFR 9038.2(b)(1)(v), the settlement of debts also reduces the indebted Presidential campaign committee's remaining entitlement to matching funds on its statement of net outstanding campaign obligations, which could affect the committee's repayment obligations. The new provisions in § 116.2(c) will not change this.

The Commission notes that questions were raised in Advisory Opinion 1988-5 as to whether a current publicly-funded Presidential committee may contribute or transfer funds to another publicly-funded committee of the same candidate for a previous election cycle to pay debts from the earlier campaign. The opinion concluded that such transfers or contributions are not qualified campaign expenses under 11 CFR 9034.4 and are not includable in the candidate's statement of net outstanding campaign obligations under 11 CFR 9034.5. However, such payments could be made from excess campaign funds once the audit process is concluded and any repayment or possible penalty obligations have been satisfied. Nothing

in new 11 CFR part 116 would alter this conclusion.

### *Section 116.3 Extensions of Credit by Commercial Vendors*

This new section generally follows previous § 114.10 by setting forth the standards for the extension of credit by corporations in the ordinary course of their business as commercial vendors. As under the previous rules, the failure to meet these standards results in an impermissible corporate contribution. New § 116.3 also adds corresponding standards for unincorporated commercial vendors who extend credit to candidates or political committees. An unincorporated vendor's failure to comply with these standards results in the making of a contribution subject to the dollar limits set forth in 11 CFR 110.1.

Paragraph (c) of § 116.3 lists the factors the Commission will consider in determining whether credit was extended in the ordinary course of business. These factors are intended to provide guidance so that commercial vendors and political committees may avoid situations resulting in the making or acceptance of excessive or prohibited contributions. The factors need not be accorded equal weight and in some cases a single factor may not be dispositive. In determining whether the ordinary course of business standard has been met, the Commission will also consider compliance or noncompliance with regulations issued by other Federal agencies.

One comment suggested that, instead of relying on these factors, the Commission adopt a presumption that a commercial vendor's credit arrangements reflect sound business judgment and that the presumption may be overcome with compelling evidence of a noncommercial motivation. The Commission has decided not to adopt this approach because it would provide committees and their creditors with little, if any, guidance as to what types of evidence would be evaluated or would be considered compelling.

Another witness at the public hearing suggested that it would be preferable for the Commission to rely upon judicial interpretations of the Federal Bankruptcy Code and the Internal Revenue Code regarding the meaning of "ordinary course of business," as well as the meaning of "commercially reasonable," a term which is used in § 116.4. Although the Commission will take these judicial interpretations into account in an appropriate case, these terms must be interpreted in light of the special focus of the FECA.

*Section 116.4 Forgiveness or Settlement of Debts Owed to Commercial Vendors*

Section 116.4 addresses the forgiveness or settlement of a political committee's debts owed to both incorporated and unincorporated commercial vendors. Previously, § 114.10 covered debts owed to corporations, but did not address debts owed to unincorporated commercial vendors. The forgiveness or settlement of such debts will result in the making of a prohibited corporate contribution or possibly an excessive contribution by an unincorporated vendor unless the debt settlement is commercially reasonable or unless the amount is not treated as a contribution under 11 CFR 100.7(b). In determining whether a debt settlement is commercially reasonable, the Commission will evaluate both the political committee's efforts to satisfy the debt and the creditor's efforts to obtain payment. However, the rules do not require the creditor or the debtor to undertake particular activities that are not likely to result in the reduction of the debt. For example, the commercial vendor is not required to go beyond its usual efforts to collect debts of similar amount from non-political entities.

One commenter questioned the validity of comparisons to non-political debtors and suggested instead that the Commission should focus on whether the vendor's actions were motivated by commercial or political considerations. The Commission recognizes that there are significant differences between political committees and other entities seeking to do business on credit, but believes that the standard suggested by the commenter is too subjective. Thus, reliance upon the "ordinary course of business" and "commercially reasonable" standards found in both the new rules and the previous regulations provides clearer guidelines for determining whether a commercial vendor's actions comply with the FECA than would be provided if the commenter's suggestion were adopted.

The Commission has revised the language of the previously proposed rules to clarify the political committee's obligations to make reasonable efforts to pay the debt and to comply with the debt settlement procedures specified in 11 CFR 116.7 and 116.8, including Commission review. See 11 CFR 116.4(c). Paragraph (d)(2) of § 116.4 lists the types of actions that the debtor committee may undertake to satisfy the reasonable efforts requirement.

Although the proposed rules had stated that a debt settlement would be considered commercially reasonable if

the initial extension of credit was made in accordance with regulations issued by other agencies pursuant to 2 U.S.C. 451, this language has now been deleted to avoid creating the appearance that noncompliance with rules regarding such matters as reporting requirements of other agencies would automatically be viewed as not commercially reasonable. Nonetheless, regulations issued under section 451 may be used by the Commission as guidance in determining whether the activity in question was commercially reasonable under the FECA.

New paragraph (e) indicates that the Commission's regulations are not intended to force a commercial vendor to forgive or settle a political debt if the vendor does not wish to do so. This is consistent with the previous Commission practice of examining debt settlement statements for indications that creditors have agreed to the terms of the settlements. See Federal Election Commission Directive No. 3, Agenda Document #82-110 (effective July 22, 1982). Please note that a sentence has been deleted from the previously published version of paragraph (e) which merely restated the idea that committees and their vendors could agree to debt settlement or debt forgiveness.

In 11 CFR 116.4, new paragraph (f) has been added to clarify that the reporting obligations continue until the debt is paid, or until Commission review of the settlement or forgiveness is completed. This language parallels the corresponding reporting provisions in §§ 116.5 and 116.6, and is consistent with the continuous reporting requirements set out at current 11 CFR 104.11.

*Section 116.5 Advances by Committee Staff and Other Individuals*

New § 116.5 has been prepared to clarify the Commission's treatment of payments by individuals, including campaign staff, from personal funds and personal credit cards to purchase various goods or services for political committees with the expectation of subsequent reimbursement. The Commission has encountered situations, for example, where individuals have used, or sought to use, personal funds to purchase airfare, rental cars, meals, lodging, postage, office supplies, messenger services and a variety of other election-related items on behalf of political committees. See, e.g., MUR 1349 and AO 1984-37. Although many campaign workers may only be able to advance relatively small amounts, individuals with sizable resources may have the ability to circumvent the

contribution limitations by paying committee expenses and not expecting reimbursement for substantial periods of time. The Commission is concerned that this could occur during critical periods in a campaign when a candidate's authorized committee may be experiencing financial difficulties.

Under current § 100.7(b)(8), payments for personal transportation expenses incurred by individuals while traveling on behalf of candidates or political party committees are not contributions if they do not exceed \$1000 per candidate per election or \$2000 per year for the political committees of a political party. Personal funds used by volunteers for usual and normal subsistence expenses incidental to volunteer activity are also not considered contributions under 11 CFR 100.7(b)(8). However, payments by individuals for travel expenses that do not fall within these two exemptions are contributions under FECA.

The Commission has now decided to add new § 116.5 to clarify that payments by individuals using personal funds or personal credit cards to obtain goods or services for or on behalf of a political committee are contributions to that committee unless they fall within one of the exemptions set forth in § 100.7(b), as outlined above. In addition, this new provision sets out a limited exception for an individual's personal transportation expenses, and for usual and normal subsistence expenses of an individual who is not a volunteer, where such expenses are incurred while the individual is traveling on behalf of a candidate or party committee. These exemptions only apply, however, if the individual's transportation and subsistence expenses are reimbursed within sixty days for credit card transactions or thirty days in other cases. On the other hand, an in-kind contribution will result if an individual pays the transportation or subsistence expenses of others or pays other types of campaign expenses, such as the costs of meeting rooms or telephone services, regardless of how long reimbursement, if any, takes.

The purpose of this provision is to provide flexibility in situations where individuals may find it necessary to pay personal travel and subsistence expenses. The Commission recognizes that campaign committees may not want to provide credit cards to their field workers. This regulation is also consistent with the treatment of credit card transactions in the public financing regulations. See 11 CFR 9035.2(a)(2).

One commenter testified that campaign staff should be able to make

advances of up to \$500 for legitimate campaign expenses beyond the personal travel and subsistence expenses, provided the campaign reimburses the staff member within thirty or sixty days after receipt of a request for reimbursement. If such a request is not forthcoming, the campaign should seek it. The commenter argued that the expenses in question are usually for caterers, hotel rooms, and rental cars, not the staff's personal transportation or subsistence and, therefore, the commenter believed the proposed approach was simply too restrictive.

The Commission has decided not to adopt the commenter's suggested approach because it is inconsistent with the limited nature of the exemption from the definition of contribution in section 431(8)(B)(iv) of the FECA. Thus, under the final rules, advances made by individual staff members for expenses other than personal transportation or subsistence expenses are treated as in-kind contributions subject to the applicable contribution limits. Consequently, reimbursements for these nonexempt expenses are treated as refunds of the staff members' contributions.

Another commenter urged the Commission to extend this provision to committees other than campaign committees and party committees. The Commission believes that limiting this provision to candidates' committees and party committees parallels the transportation and subsistence exemption in section 431(8)(B)(iv) of the FECA. The Commission notes, however, that individuals may advance funds to separate segregated funds, and other unauthorized committees to the extent permitted by the contribution limits of the Act. See AO 1984-37 n. 2.

Paragraphs (b) and (d) of the new rule indicate that an unreimbursed payment must be treated as a debt and reported as such until the debt has been paid or settled or forgiven and the Commission's review of the debt settlement or forgiveness has been completed. The Commission wishes to emphasize that this rule does not require individual creditors to settle or forgive debts if they do not wish to do so.

A new "scope" paragraph has also been added to the final version of this regulation to clarify that individuals who are acting as commercial vendors are covered by the commercial vendor provisions of §§ 116.3 and 116.4. Thus, they are not covered by § 116.5, which is intended to apply to individuals extending credit or using credit cards in their personal capacities. The subsequent paragraphs of § 116.5 have been renumbered accordingly.

Finally, the Commission notes that individuals may also lend funds directly to political committees. Under both the old and new regulations, such loans are contributions until repaid, and if not repaid, such loans are contributions to the extent forgiven by the lender. 11 CFR 100.7(a)(1)(i)(B). Under new part 116 of the regulations, such personal loans must also be treated as outstanding debts, and if settled, the settlements are subject to Commission review under 11 CFR 116.7. Please note that the Commission's treatment of bank loans is discussed below in the Explanation and Justification for § 116.7.

#### *Section 116.6 Salary Payments Owed to Employees*

New § 116.6 addresses several situations which have arisen concerning unpaid salaries owed to committee staff. For example, a political committee and its campaign workers may agree that salary will be paid only as funds are available. In other cases, the committee may wish to treat the individuals as volunteers retroactively. Under section 431(8) of the Act and 11 CFR 100.7(b)(3), the value of services provided by a volunteer is not a contribution.

The language of new § 116.6 permits committees to treat the unpaid amount either as a debt owed to the employee or as volunteer services under 11 CFR 100.7(b)(3), provided the employee agrees in writing to be considered a volunteer. This decision may be made at any time, thereby allowing committees and their staffs to set up arrangements in which the staff members are paid up until the point at which the campaign is low on funding. If, on the other hand, the committee and the employee agree that the unpaid salary is to be treated as a debt, the amount owed is reportable as a debt under 11 CFR 104.3 and 104.11 and must be addressed in a debt settlement plan filed under 11 CFR 116.7. The new rules do not treat unpaid salary obligations as contributions, although the NPRM sought comments on situations in which it might be advisable to do so.

The Commission received one comment on § 116.6. The commenter stated that the Commission should avoid becoming involved in contractual disputes between committees and their employees, and supported the language in paragraph (a) which states that unpaid salaries shall not be treated as contributions. The commenter also questioned whether paragraph (b) would permit the settlement of such debts owed to employees, but would prohibit the complete forgiveness of these obligations. The new rules do permit such employees to forgive in full these

unpaid amounts. Commission review of such forgiveness is not needed because the amounts would not be potential contributions, and a complete forgiveness would not adversely affect the committee's funds available to pay other creditors. The Commission notes that although an employee of a committee may become a volunteer, an individual who is an independent contractor, such as a consultant, may not convert to volunteer status. Such person is selling his or her services as a commercial vendor, and is therefore subject to the requirements of §§ 116.3 and 116.4. Consequently, an individual who is an independent contractor may agree to the settlement of a debt arising from the committee's failure to pay his or her fee, provided that such settlement is commercially reasonable and the settlement otherwise satisfies the Commission's debt settlement standards.

#### *Section 116.7 Debt Settlement Plans Filed by Terminating Committees; Commission Review*

New § 116.7 contains guidelines concerning the submission of debt settlement plans by terminating committees and explains the Commission's review procedures. For the reasons stated above, these rules differ from previous § 114.10 in that ongoing committees may no longer settle debts or file debt settlement requests. Another change is that the new regulations no longer provide for the filing of debt settlements by creditors. However, creditors wishing to write off bad debts should refer to new § 116.8, below.

New § 116.7 continues to permit terminating committees to file debt settlements once they have reached agreements with some of their creditors. Thus, the Commission has decided not to adopt the proposal published in the NPRM that would have required committees to postpone the filing of a debt settlement plan until they have reached agreements with every creditor. That approach would have enabled a single creditor to refuse to settle, thereby adversely affecting the ability of other creditors to be paid. However, the new rules encourage terminating committees to include as many proposed settlement agreements as possible in a debt settlement plan. In an appropriate case, the Commission may require the submission of additional debt settlement agreements before reviewing a terminating committee's debt settlement plan. This may be necessary to permit the Commission to conduct a realistic evaluation of the debt settlement plan.

The new rules do not establish a deadline for submitting a debt settlement for review once an agreement with a creditor has been reached. However, under new § 116.7(a), the terminating committee must postpone payment of the amount agreed to in the settlement with the creditor until the settlement has been submitted as part of a debt settlement plan and the Commission has completed its review of that plan. Please note that terminating committees are not required to settle all their debts or terminate within any prescribed amount of time. One commenter found the lack of a timetable to be troubling. Unfortunately, the establishment of an overall time limit is not feasible because different committees and different creditors may need different amounts of time to reach settlements.

The language of § 116.7(a) has been reworded from the proposals published in the NPRM to clarify that all debts and obligations must be paid, settled, forgiven, extinguished, or otherwise discharged, or become unpayable, prior to the political committee's termination.

Paragraphs (b) and (c) of § 116.7 indicate which types of debts may be settled subject to Commission review, which types may be settled but are not subject to review, and which debts may not be settled. New paragraph (b) has been added to explain that debts owed to commercial vendors, committee staff, employees, and debts arising from loans made by political committees and individuals, including candidates, may be settled and that the Commission will review such settlements. Under paragraph (c), publicly-funded Presidential candidates may not settle repayment obligations arising under 26 U.S.C. chapters 95 and 96. In addition, disputed debts are specifically excluded from the Commission's debt settlement process. This is based on current Commission policy and FEC Directive Number 3. Other debts or obligations owed to the United States government are not specifically mentioned in paragraph (b) or (c) because they may be governed by other applicable laws. Obligations to pay civil penalties are also omitted from these two paragraphs.

At the time the Commission issued the NPRM, it indicated that the revised debt settlement rules would not apply to bank loans, since the Commission does not generally consider bank loans in the debt settlement process, and does not intend to change its approach. Further guidance on this may be provided in a separate rulemaking regarding the bank loan rules at 11 CFR 100.7(b)(11) and

100.8(b)(12). See NPRM, 54 FR 31286 (July 27, 1989).

The reporting provisions of this section have been removed from draft paragraph (a) and placed in a separate paragraph (d) for the convenience of the reader.

Paragraph (e) sets forth a list of the information to be provided when the terminating committee submits a debt settlement plan for Commission review. From now on, the indebted committee will be required to include a signed statement from each creditor included in the plan evidencing agreement to the terms of the settlement of the debt owed to that creditor.

The wording of paragraph (e)(4) has been amended from the language presented in the NPRM to indicate that if the debt settlement plan does not provide for the settlement of all debts, the terminating committee must state how it intends to resolve all remaining debts and obligations, regardless of whether such debts may be settled. The purposes of this provision are to aid the Commission's evaluation of the debt settlements presented thus far in light of the terminating committee's overall financial picture, and to indicate how the terminating committee intends to complete its financial activities.

New paragraph (f) of § 116.7 sets out the factors the Commission may consider in reviewing debt settlement plans. Most of these factors have been drawn from FEC Directive Number 3. They are now listed in the new rule to enable political committees and their creditors to better understand how the Commission evaluates debt settlement requests.

The Commission received one comment expressing concern that the Commission's review would be based on intuitive judgments rather than fixed standards. The Commission believes that it is impractical to establish fixed standards, given the potential for varying circumstances in debt settlement requests. However, the inclusion of these factors will offer sufficient guidance regarding the Commission's process. The commenter also stated that settlement agreements should become effective when made, and should not be delayed until completion of the Commission's review process. This concern may be alleviated, to some extent, by the Commission's decision to return to the current procedure of reviewing debt settlements as they are presented to the Commission, rather than waiting until all settlements have been reached.

New paragraph (g) has been added to this section to clarify the Commission's treatment of debts and obligations that

are released through Bankruptcy Court decrees pursuant to 11 U.S.C. chapter 7. The terminating committee should attach a copy of the court order to its debt settlement plan, along with a list specifying which debts are covered by the order. For each debt covered, the terminating committee need not provide the signed affidavit from the creditor or the information regarding the initial extension of credit, subsequent efforts to collect, settlement terms, or the committee's ability to pay. However, the terminating committee is required to demonstrate that it qualifies as a terminating committee, and it must list in the debt settlement plan all debts not released, as well as the disposition of any residual funds or assets. Although a political committee may not be eligible for a chapter 7 discharge, the Commission will treat the debts as settled for FECA purposes if the candidate received a discharge under chapter 7 that applies to those debts.

#### *116.8 Creditor Forgiveness of Debts Owed by Ongoing Committees; Commission Review*

Section 116.8 establishes conditions under which creditors may forgive the outstanding balances of debts owed by committees not intending to terminate. For the reasons stated above, part 116 does not permit ongoing committees to settle debts with creditors if those committees have the ability and the intention to continue fundraising for election-related purposes. Consequently, new § 116.8 only allows creditors to forgive ongoing committees' debts if the creditors cannot locate the ongoing committees or if the ongoing committees meet certain conditions demonstrating that they are essentially defunct and clearly unable to pay their bills. An additional requirement has been added to those set out in the proposed rule: that the ongoing committee's disbursements not exceed \$1000 during the previous twenty-four month period. Without this restriction, ongoing committees would be able to pay part of their debts and settle the rest simply by having the creditor declare that it has "forgiven" the outstanding balance. This section also establishes review procedures so that the Commission may ascertain whether the creditor's actions are commercially reasonable or whether the forgiveness would result in an apparent violation of the Act or the regulations.

#### *Section 116.9 Creditors That Cannot be Found or That Are Out of Business*

During the course of this rulemaking, the Commission determined that it is

advisable to address the situation where either an ongoing or a terminating committee cannot locate a creditor or the creditor has gone out of business. Consequently, new § 116.9 has now been added to permit committees in such circumstances to request that the debt be determined to be "unpayable" for purposes of the Act. Such a determination does not mean that the debt has been extinguished or is no longer owed. The political committee must demonstrate that it made the necessary efforts to reach the creditor. Once the Commission determines that a debt is "unpayable," the political committee may so indicate on its next due report, and then omit the debt from subsequent reports until there is a change in the status of the debt. Political committees with "unpayable" debts may terminate under 11 CFR 102.3.

#### Section 116.10 Disputed Debts

New § 116.10 has been added to the regulations to clarify the reporting of disputed debts, and to indicate what information concerning disputed debts should be included in a terminating committee's debt settlement plan.

The Commission has now revised the proposals presented in the NPRM in two respects. First, the final rule does not require the committee to report the fair market value of what was provided, since that may be in dispute. Secondly, paragraph (b) has been rewritten to more clearly state what information must be disclosed in the debt settlement plan regarding the disputed debt. The Commission received one comment on this new provision, which supported the draft rule.

#### Conforming Amendments

The Commission has determined that conforming amendments to §§ 100.7, 104.3, and 104.11 of the regulations are needed to clarify those provisions, and to make them consistent with the language of new part 116. One public comment was received, which supported the proposed changes to § 104.11.

The Notice of Proposed Rulemaking also suggested revising the definition of excess campaign funds in § 113.1(e) to prevent campaign committees from declaring excess campaign funds until after the campaign has ended and the committee has determined that it is not in a net debt situation. This proposal was intended to ensure that campaign funds would be used to pay for goods and services provided to the campaign rather than for a variety of political or nonpolitical purposes unrelated to the campaign. One comment opposed this revision in the absence of evidence that it is a common problem. The

Commission has now concluded that the proposed language is not needed because the new requirements set out in § 116.2(c) adequately address these concerns.

#### Section 100.7 Contribution (2 U.S.C. 431(8))

The language of 11 CFR 100.7(a)(4) has been revised to clarify when the extension of credit, or the failure to attempt to collect the amount owed, or the settlement of a debt will result in a contribution by the creditor. The revised language more closely parallels the requirements set out in new 11 CFR part 116. In addition, new cross-references to 11 CFR 116.3 and 116.4 have been included to replace the current cross-references to 11 CFR 114.10.

#### Section 104.3 Contents of Reports (2 U.S.C. 434(b))

There are no substantive changes in this section. However, in paragraph (d), the cross-reference to previous § 114.10 has been revised to refer to new § 116.7.

#### Section 104.11 Continuous Reporting of Debts and Obligations

The Notice of Proposed Rulemaking sought comments on possible conforming amendments to 11 CFR 104.11(b), which concerns continuous reporting of debts and obligations. The Commission has now decided to make several changes to this regulation. First, the new language clarifies that debts exceeding \$500 should be reported as of the date the debts are incurred. The current language says "as of the time of the transaction." Second, as the NPRM indicated, for amounts exceeding \$500, disclosure is currently required for "any loan, debt or obligation," whereas for smaller amounts committees must disclose any "debt, obligation or other promise to make an expenditure." The revised language makes these two provisions consistent, since in practice the Commission has not drawn distinctions between these two categories. The revisions also clarify that periodic administrative costs incurred for rent and staff salaries need not be reported as debts if payment is not due before the end of the reporting period. However, if payment is not made on the due date, the amount outstanding must be reported as a debt. Finally, new language is also included which follows the current policy that if the exact amount of a debt is not known, the committee should report an estimated amount on schedule D, and then either amend the report or include the correct figure in a subsequent report when the exact amount has been determined. See AO 1980-38.

#### List of Subjects

##### 11 CFR Part 100

Elections, Political committees and parties.

##### 11 CFR Part 104

Political candidates, Political committees and parties, Reporting requirements.

##### 11 CFR Part 114

Business and industry, Elections, Labor.

##### 11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

##### Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the requirements of the Act in these areas.

For the reasons set out in the preamble, subchapter A, chapter I, title 11 of the Code of Federal Regulations is amended as follows:

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

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. 11 CFR part 100 is amended by revising § 100.7(a)(4) to read as follows:

##### § 100.7 Contribution (2 U.S.C. 431(8)).

(a) \* \* \*

(4) The extension of credit by any person is a contribution unless the credit is extended in the ordinary course of the person's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. If a creditor fails to make a commercially reasonable attempt to collect the debt, a contribution will result. (See 11 CFR 116.3 and 116.4.) If a debt owed by a political committee is forgiven or settled for less than the amount owed, a contribution results unless such debt is settled in accordance with the standards set forth at 11 CFR 116.3 and 116.4.

\* \* \* \* \*

### PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), and 438(b).

4. 11 CFR part 104 is amended by revising § 104.3(d) to read as follows:

#### § 104.3 Contents of reports (2 U.S.C. 434(b)).

(d) *Reporting debts and obligations.* Each report filed under 11 CFR 104.1 shall, on schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee. Loans obtained by an individual prior to becoming a candidate for use in connection with that individual's campaign shall be reported as an outstanding loan owed to the lender by the candidate's principal campaign committee, if such loans are outstanding at the time the individual becomes a candidate. Where such debts and obligations are settled for less than their reported amount or value, each report filed under 11 CFR 104.1 shall contain a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the amount paid. See 11 CFR 116.7.

5. 11 CFR part 104 is amended by revising § 104.11(b) to read as follows:

#### § 104.11 Continuous reporting of debts and obligations.

(b) A debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is over \$500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date. See 11 CFR 116.8. If the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate. Once the exact amount is determined, the political committee shall either amend the report(s) containing the estimate or indicate the correct amount on the

report for the reporting period in which such amount is determined.

### PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

6. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

#### § 114.10 [Removed and reserved]

7. 11 CFR part 114 is amended by removing and reserving § 114.10.

8. 11 CFR part 116 is added to read as follows:

### PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

Sec.

- 116.1 Definitions.
- 116.2 Debts owed by terminating committees, ongoing committees, and authorized committees.
- 116.3 Extensions of credit by commercial vendors.
- 116.4 Forgiveness or settlement of debts owed to commercial vendors.
- 116.5 Advances by committee staff and other individuals.
- 116.6 Salary payments owed to employees.
- 116.7 Debt settlement plans filed by terminating committees; Commission review.
- 116.8 Creditor forgiveness of debts owed by ongoing committees; Commission review.
- 116.9 Creditors that cannot be found or that are out of business.
- 116.10 Disputed debts.

Authority: 2 U.S.C. 433(d), 434(b)(8), 438(a)(8), 441a, 441b, and 451.

#### § 116.1 Definitions.

(a) *Terminating committee.* For purposes of this part, "terminating committee" means any political committee that is winding down its political activities in preparation for filing a termination report, and that would be able to terminate under 11 CFR 102.3 except that it has outstanding debts or obligations. A political committee will be considered to be winding down its political activities if it has ceased to make or accept contributions and expenditures, other than contributions accepted for debt retirement purposes and expenditures representing payments of debts or obligations previously incurred or payments for the costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act, if applicable, and other necessary administrative costs associated with winding down a campaign or winding down committee activities, including office space rental, staff salaries and office supplies.

(b) *Ongoing committee.* For purposes of this part, "ongoing committee" means any political committee that has not terminated and does not qualify as a terminating committee.

(c) *Commercial vendor.* For purposes of this part, "commercial vendor" means any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of these goods or services.

(d) *Disputed debt.* For purposes of this part, "disputed debt" means an actual or potential debt or obligation owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the political committee.

(e) *Extension of credit.* For purposes of this part, "extension of credit" includes but is not limited to:

(1) Any agreement between the creditor and political committee that full payment is not due until after the creditor provides goods or services to the political committee;

(2) Any agreement between the creditor and the political committee that the political committee will have additional time to pay the creditor beyond the previously agreed to due date; and

(3) The failure of the political committee to make full payment to the creditor by a previously agreed to due date.

(f) *Creditor.* For purposes of this part, "creditor" means any person or entity to whom a debt is owed.

#### § 116.2 Debts owed by terminating committees, ongoing committees, and authorized committees.

(a) *Terminating committees.* A terminating committee may settle outstanding debts provided that the terminating committee files a debt settlement plan and the requirements of 11 CFR 116.7 are satisfied. The Commission will review each debt settlement plan filed to determine whether or not the terminating committee appears to have complied with the requirements set forth in this part, and whether or not the proposed debt settlement plan would result in an apparent violation of the Act or the Commission's regulations.

(b) *Ongoing committees.* Ongoing committees shall not settle any outstanding debts for less than the entire amount owed, but may request a Commission determination that such

debts are not payable under 11 CFR 116.9, and may resolve disputed debts under 11 CFR 116.10. Creditors may forgive debts owed by ongoing committees under the limited circumstances provided in 11 CFR 116.8.

(c) *Authorized committees.*

(1) An authorized committee shall not settle any outstanding debts for less than the entire amount owed if any other authorized committee of the same candidate has permissible funds available to pay part or all of the amount outstanding. Except as provided in paragraph (c)(3), of this section, an authorized committee shall not terminate under 11 CFR 102.3 if—

(i) It has any outstanding debts or obligations; or  
(ii) It has any funds or assets available to pay part or all of the outstanding debts or obligations owed by another authorized committee of the same candidate and that other authorized committee is unable to pay such debts or obligations.

(2) No transfers of funds may be made from a candidate's authorized committee to another authorized committee of the same candidate if the transferor committee has net debts outstanding at the time of the transfer under the formula described in 11 CFR 110.1(b)(3)(ii).

(3) An authorized committee that qualifies as a terminating committee may assign debts to another authorized committee of the same candidate to the extent permitted under applicable state law provided that the authorized committee assigning the debts has no cash on hand or assets available to pay any part of the outstanding debts, and provided that the authorized committee assigning the debts was not organized to further the candidate's campaign in an election not yet held. If a Presidential candidate elects to receive federal funds pursuant to 11 CFR part 9001 *et seq.* or 11 CFR part 9031 *et seq.*, the authorized committee(s) of the Presidential candidate shall not assign debts or receive assigned debts until after the authorized committee(s) or the Presidential candidate has made all required repayments pursuant to 11 CFR parts 9007 and 9038 and has paid all civil penalties pursuant to 2 U.S.C. 437g. An authorized committee that has assigned all its outstanding debts may terminate if—

(i) The authorized committee that has assigned the debts otherwise qualifies for termination under 11 CFR 102.3; and

(ii) The authorized committee that received the assigned debts notifies the Commission in writing that it has assumed the obligation to pay the entire amount owed and that it has assumed

the obligation to report the debts, and any contributions received for retirement of the assigned debts, in accordance with 11 CFR part 104. The assigned debts shall be disclosed on a separate schedule of debts and obligations attached to the authorized committee's reports. Contributions received for retirement of the assigned debts shall be disclosed on a separate schedule of receipts attached to the authorized committee's reports. See 11 CFR 110.1 (b)(3) and (b)(4) and 110.2 (b)(3) and (b)(4). The authorized committee that has assigned the debts shall notify each creditor in writing of the assignment no later than thirty days before the assignment takes effect and shall include the name and address of the authorized committee that will receive the assigned debts.

§ 116.3 *Extensions of credit by commercial vendors.*

(a) *Unincorporated vendor.* A commercial vendor that is not a corporation may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee. An extension of credit will not be considered a contribution to the candidate or political committee provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

(b) *Incorporated vendor.* A corporation in its capacity as a commercial vendor may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

(c) *Ordinary course of business.* In determining whether credit was extended in the ordinary course of business, the Commission will consider—

(1) Whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit;

(2) Whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and

(3) Whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.

(d) *Extension of credit by regulated industries.* The Commission may rely on the regulations prescribed by the Federal Communications Commission, the Interstate Commerce Commission, and the Department of Transportation on behalf of the Civil Aeronautics Board, issued pursuant to 2 U.S.C. 451 and any other regulations prescribed by other Federal agencies to determine whether extensions of credit by the entities regulated by those Federal agencies were made in the ordinary course of business.

§ 116.4 *Forgiveness or settlement of debts owed to commercial vendors.*

(a) *Unincorporated vendor.* A commercial vendor that is not a corporation may forgive or settle a debt incurred by a candidate, a political committee or another person on behalf of a candidate or political committee for less than the entire amount owed on the debt. The amount forgiven will not be considered a contribution by the commercial vendor to the candidate or political committee if—

(1) The amount forgiven is exempted from the definition of contribution in 11 CFR 100.7(b); or

(2) The commercial vendor has treated the debt in a commercially reasonable manner and the requirements of 11 CFR 116.7 or 116.8, as appropriate, are satisfied.

(b) *Incorporated vendor.* A corporation may not forgive or settle a debt incurred by a candidate, a political committee or another person on behalf of a candidate or political committee for less than the entire amount owed on the debt unless—

(1) The amount forgiven is exempted from the definition of contribution in 11 CFR 100.7(b); or

(2) The corporation has treated the debt in a commercially reasonable manner and the requirements of 11 CFR 116.7 or 116.8, as appropriate, are satisfied.

(c) *Reasonable efforts by a political committee.* A debt or obligation owed by a candidate or a political committee may be totally forgiven (*see* 11 CFR 116.8), or settled (*see* 11 CFR 116.7), provided that—

(1) The amount forgiven is exempted from the definition of contribution in 11 CFR 100.7(b); or

(2) The candidate and the political committee have undertaken all reasonable efforts to satisfy the outstanding debt and the requirements of 11 CFR 116.7 or 116.8, as appropriate, including the submission of the information specified in those sections and Commission review, are satisfied.

(d) *Commercially reasonable.* The Commission will determine that a debt settlement between a political committee and a commercial vendor is commercially reasonable if—

(1) The initial extension of credit was made in accordance with 11 CFR 116.3;

(2) The candidate or political committee has undertaken all reasonable efforts to satisfy the outstanding debt. Such efforts may include, but are not limited to, the following—

(i) Engaging in fundraising efforts;

(ii) Reducing overhead and administrative costs; and

(iii) Liquidating assets; and

(3) The commercial vendor has pursued its remedies as vigorously as it would pursue its remedies against a nonpolitical debtor in similar circumstances. Such remedies may include, but are not limited to, the following—

(i) Oral and written requests for payment;

(ii) Withholding delivery of additional goods or services until overdue debts are satisfied;

(iii) Imposition of additional charges or penalties for late payment;

(iv) Referral of overdue debts to a commercial debt collection service; and

(v) Litigation.

(e) *Settlement or forgiveness not required.* The provisions of this part shall not be construed to require a commercial vendor to forgive or settle the debt for less than the entire amount owed.

(f) *Reporting.* The political committee shall continue to report the debt in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to 11 CFR 116.7(f) or until the Commission has completed a review of the request to forgive the debt pursuant to 11 CFR 116.8, or until the political committee pays the debt, whichever occurs first.

**§ 116.5 Advances by committee staff and other individuals.**

(a) *Scope.* This section applies to individuals who are not acting as commercial vendors. Individuals who are acting as commercial vendors shall follow the requirements of 11 CFR 116.3 and 116.4.

(b) *Treatment as contributions.* The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee is a contribution unless the payment is exempted from

the definition of contribution under 11 CFR 100.7(b)(8). If the payment is not exempted under 11 CFR 100.7(b)(8), it shall be considered a contribution by the individual unless—

(1) The payment is for the individual's transportation expenses incurred while traveling on behalf of a candidate or political committee of a political party or for usual and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate or political committee of a political party; and

(2) The individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. For purposes of this section, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

(c) *Treatment as debts.* A political committee shall treat the obligation arising from a payment described in paragraph (b) of this section as an outstanding debt until reimbursed.

(d) *Settlement or forgiveness of the debt.* The individual and the political committee may agree to the total forgiveness of the debt (See 11 CFR 116.8) or a settlement of the debt for less than the entire amount owed (See 11 CFR 116.7), provided that the requirements of 11 CFR 116.7 or 116.8, as appropriate, including the submission of the information specified in these sections and Commission review, are satisfied. The provisions of this part shall not be construed to require the individual to forgive or settle the debt for less than the entire amount owed.

(e) *Reporting.* The political committee shall continue to report the obligation arising from the payment as a debt in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to 11 CFR 116.7(f) or until the Commission has completed a review of the request to forgive the debt pursuant to 11 CFR 116.8, or until the political committee pays the debt, whichever occurs first.

**§ 116.6 Salary payments owed to employees.**

(a) *Treatment as debts or volunteer services.* If a political committee does not pay an employee for services rendered to the political committee in accordance with an employment contract or a formal or informal

agreement to do so, the unpaid amount either may be treated as a debt owed by the political committee to the employee or, provided that the employee signs a written statement agreeing to be considered a volunteer, converted to a volunteer services arrangement under 11 CFR 100.7(b)(3). The unpaid amount shall not be treated as a contribution under 11 CFR 100.7.

(b) *Settlement or forgiveness of the debt.* If the unpaid amount is treated as a debt, the employee and the political committee may agree to a settlement of the debt for less than the entire amount owed pursuant to 11 CFR 116.7. The provisions of this part shall not be construed to require the employee to settle the debt for less than the entire amount owed.

(c) *Reporting.* If the unpaid amount is treated as a debt, the political committee shall continue to report the debt in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to 11 CFR 116.7(f) or until the employee agrees to be considered a volunteer, or until the political committee pays the debt, whichever occurs first.

**§ 116.7 Debt settlement plans filed by terminating committees; Commission review.**

(a) *Procedures for filing debt settlement plans.* Every terminating committee as defined in 11 CFR 116.1(a) shall file at least one debt settlement plan with the Commission prior to filing its termination report under 11 CFR 102.3. The terminating committee shall file a debt settlement plan after the creditors included in the debt settlement plan have agreed to the settlement or forgiveness of the particular debt(s) owed to each of them. The terminating committee shall not make any payments to the creditors included in the debt settlement plan until completion of Commission review. The Commission encourages terminating committees to include as many debt settlement agreements as possible in a debt settlement plan. The terminating committee shall not file its termination report under 11 CFR 102.3 and shall not terminate until each debt or obligation owed either:

(1) Has been paid in full;

(2) Has been settled and the requirements of this section, including Commission review, have been satisfied;

(3) Has been forgiven by the creditor and the requirements of 11 CFR 116.8, including Commission review, have been satisfied;

(4) Has been determined not to be payable pursuant to 11 CFR 116.9; or  
 (5) Has been otherwise extinguished or discharged.

(b) *Debts subject to settlement.* Debts and obligations subject to the debt settlement and Commission review requirements and procedures set forth in this section include:

(1) Amounts owed to commercial vendors (See 11 CFR 116.3 and 116.4);

(2) Debts arising from advances by committee staff and other individuals (See 11 CFR 116.5);

(3) Salary owed to committee employees (See 11 CFR 116.6); and

(4) Debts arising from loans from political committees or individuals, including candidates, to the extent permitted under 11 CFR part 110.

(c) *Debts that shall not be settled; Disputed debts.*

(1) Debts and obligations that shall not be forgiven or settled for less than the entire amount owed include repayment obligations pursuant to 11 CFR 9007.2, 9008.10, 9008.11, 9038.2 or 9038.3 of funds received from the Presidential Election Campaign Fund or the Presidential Primary Matching Payment Account.

(2) Disputed debts are not subject to the debt settlement and Commission review requirements and procedures. (See CFR 116.10).

(d) *Reporting.* The terminating committee shall continue to report each outstanding debt or obligation included in a debt settlement plan in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to paragraph (f) of this section. The terminating committee shall continue to report all remaining debts and obligations not included in the debt settlement plan in accordance with 11 CFR 104.3 and 104.11.

(e) *Contents of debt settlement plans.*

(1) The debt settlement plan shall provide the following information on each debt covered by the plan—

(i) The terms of the initial extension of credit and a description of the terms under which the creditor has extended credit to nonpolitical debtors of similar risk and size of obligation;

(ii) A description of the efforts made by the candidate or the terminating committee to satisfy the debt;

(iii) A description of the remedies pursued by the creditor to obtain payment of the debt and a comparison to the remedies customarily pursued by the creditor in similar circumstances involving nonpolitical debtors; and

(iv) The terms of the debt settlement and a comparison to the terms of the creditor's other debt settlements

involving nonpolitical debtors in similar circumstances, if any.

(2) Each debt settlement plan filed under this section shall include a signed statement from each creditor covered indicating agreement to the terms of the settlement of the debt owed to that creditor.

(3) The debt settlement plan shall include a statement as to whether the terminating committee has sufficient cash on hand to pay the total amount indicated in the debt settlement plan, and if not, a statement as to what steps the terminating committee will take to obtain the funds needed to make the payments.

(4) If a debt settlement plan does not include settlements for all of the terminating committee's outstanding debts and obligations, the debt settlement plan shall include a separate list of all of the terminating committee's remaining debts and obligations, including debts that are not subject to debt settlement as set forth in paragraph (c) of this section. The debt settlement plan shall indicate—

(i) Whether the terminating committee intends to pay the entire amount still owed on each remaining debt or obligation or to settle such debts and obligations, and if settlement is contemplated, the terms that were or will be offered to the creditor(s); and

(ii) Whether the terminating committee has sufficient cash on hand to pay such remaining debts and obligations, or to pay a lesser portion of such amounts, and if not, what steps the terminating committee will take to obtain the funds needed to make such payments.

(5) If the terminating committee expects to have residual funds or assets after disposing of all its outstanding debts and obligations, the debt settlement plan shall include a statement as to the purpose for which such residual funds or assets will be used. See 11 CFR 110.1(b)(3)(iii) regarding contributions received to pay net debts outstanding owed by authorized committees.

(6) The political committee filing the debt settlement plan shall demonstrate in the debt settlement plan that such political committee qualifies as a terminating committee under 11 CFR 116.1(a) and shall state when the political committee expects to file a termination report under 11 CFR 102.3.

(7) Upon the Commission's request, the candidate, the terminating committee or the creditor shall provide such additional information as the Commission may require to review the debt settlement plan. The Commission may also require the submission of

additional debt settlement agreements prior to Commission review of the debt settlement plan.

(f) *Commission review of debt settlement plans.* In reviewing the debt settlement plan, the Commission will consider—

(1) The information provided by the terminating committee and the creditors under this section;

(2) The amount of each debt that remains unpaid and the length of time each debt has been overdue;

(3) The amount and percentage of each debt that would be forgiven under the plan;

(4) The total amount of debts and obligations owed by the terminating committee to all creditors, compared to the total amount of cash on hand and other amounts available to pay those debts and obligations;

(5) The year to date expenditures and receipts of the terminating committee; and

(6) Whether the total percentage that was or will be repaid on any loans made by the candidate to the terminating committee is comparable to the total percentage that was or will be paid to other creditors.

(g) *Debts dischargeable in bankruptcy.* If a terminating committee is released from debts or obligations pursuant to a discharge under 11 U.S.C. chapter 7, the terminating committee's debt settlement plan shall include a copy of the order issued by the Bankruptcy Court of the United States so indicating, and a list of all debts and obligations from which the terminating committee is released, in lieu of the information specified in paragraphs (e)(1), (e)(2), and (e)(3) of this section.

#### § 116.8 Creditor forgiveness of debts owed by ongoing committees; Commission review.

(a) *General requirements.* A creditor may forgive the outstanding balance of a debt owed by an ongoing committee if the creditor and the ongoing committee have satisfied the requirements of 11 CFR 116.3 or 116.5, as appropriate, regarding extensions of credit by commercial vendors and advances by committee staff and other individuals, and the debt has been outstanding for at least twenty-four months, and—

(1) The creditor has exercised reasonable diligence in attempting to locate the ongoing committee and has been unable to do so; or

(2) The ongoing committee—

(i) Does not have sufficient cash on hand to pay the creditor;

(ii) Has receipts of less than \$1000 during the previous twenty-four months;

(iii) Has disbursements of less than \$1000 during the previous twenty-four months; and

(iv) Owes debts to other creditors of such magnitude that the creditor could reasonably conclude that the ongoing committee will not pay this particular debt.

(b) *Procedures for forgiving debts.* A creditor that intends to forgive a debt owed by an ongoing committee shall notify the Commission by letter of its intent. The letter shall demonstrate that the requirements set forth in paragraph (a) of this section are satisfied. The letter shall provide the following information—

(1) The terms of the initial extension of credit and a description of the terms under which the creditor has extended credit to nonpolitical debtors of similar risk and size of obligation;

(2) A description of the efforts made by the candidate or the ongoing committee to satisfy the debt;

(3) A description of the remedies pursued by the creditor to obtain payment of the debt and a comparison to the remedies customarily pursued by the creditor in similar circumstances involving nonpolitical debtors; and

(4) An indication that the creditor has forgiven other debts involving nonpolitical debtors in similar circumstances, if any.

(c) *Commission review.* Upon the Commission's request, the ongoing committee or the creditor shall provide such additional information as the Commission may require to review the creditor's request. The Commission will review each request to forgive a debt to determine whether the candidate, the ongoing committee, and the creditor have complied with the requirements of 11 CFR part 116, and whether or not the forgiveness of the debt would result in an apparent violation of the Act or the Commission's regulations.

**§ 116.9 Creditors that cannot be found or that are out of business.**

(a) *General requirements.* A political committee may request that the Commission determine that a debt owed to a creditor is not payable for purposes of the Act if the debt has been

outstanding for at least twenty-four months, and the requirements of paragraph (b) or (c) of this section, as appropriate, have been satisfied, and—

(1) The creditor has gone out of business and no other entity has a right to be paid the amount owed; or

(2) The political committee has exercised reasonable diligence in attempting to locate the creditor and has been unable to do so. "Reasonable diligence in attempting to locate the creditor" means the political committee has attempted to ascertain the current address and telephone number, and has attempted to contact the creditor by registered or certified mail, and either in person or by telephone.

(b) *Terminating committees.* If the political committee making the request is a terminating committee, the terminating committee shall include the request in a debt settlement plan filed with the Commission, and shall demonstrate that the requirements of 11 CFR 116.3, 116.5 or 116.6, as appropriate, and 116.9(a) are satisfied. The terminating committee shall continue to disclose the debt on its schedules of outstanding debts and obligations until the Commission has completed its review of the debt settlement plan pursuant to 11 CFR 116.7(f) and has determined that the debt is not payable for purposes of the Act.

(c) *Ongoing committees.* If the political committee making the request is an ongoing committee, the ongoing committee shall make the request in writing and shall demonstrate that the requirements of 11 CFR 116.3, 116.5 or 116.6, as appropriate, and 116.9(a) are satisfied. The Commission will review the request to determine whether the ongoing committee and the creditor have complied with the requirements of 11 CFR part 116, and to determine whether reporting the debt as not payable would result in an apparent violation of the Act or the Commission's regulations. The ongoing committee shall continue to disclose the debt on its schedules of outstanding debts and obligations until the Commission has completed its review of the request and has determined that the debt is not payable for purposes of the Act.

(d) *Reporting.* Upon notification that the Commission has determined that the debt is not payable for purposes of the Act, the political committee may list the debt as not payable on the next due report. Notwithstanding 11 CFR 104.11, the debt does not have to be included in subsequent reports unless the status of the debt changes. The presence of a debt that the Commission has determined is not payable shall not bar the political committee from terminating its registration pursuant to 11 CFR 102.3.

**§ 116.10 Disputed debts.**

(a) *Reporting disputed debts.* A political committee shall report a disputed debt in accordance with 11 CFR 104.3(d) and 104.11 if the creditor has provided something of value to the political committee. Until the dispute is resolved, the political committee shall disclose on the appropriate reports any amounts paid to the creditor, any amount the political committee admits it owes and the amount the creditor claims is owed. The political committee may also note on the appropriate reports that the disclosure of the disputed debt does not constitute an admission of liability or a waiver of any claims the political committee may have against the creditor. (See also 11 CFR 9035.1(a)(2) regarding the effect of disputed debts on a candidate's expenditure limitations under 11 CFR part 9035.)

(b) *Disputed debts owed by terminating committees.* If a terminating committee and a creditor have been unable to resolve a disputed debt, and the terminating committee files a debt settlement plan covering other debts or other creditors, the terminating committee shall include in the debt settlement plan a brief description as to the nature of the dispute and the status of the terminating committee's efforts to resolve the dispute. The debt settlement plan need not include a signed affidavit from the creditor involved in the dispute pursuant to 11 CFR 116.7(e)(2).

Dated: June 22, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

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