

Table of Contents

	Page
Explanation	v
Title 11:	
Chapter I—Federal Election Commission.....	3
Supplement A—Other regulations implementing section 401 of the Federal Election Campaign Act of 1971.....	251
Finding Aids:	
Indexes to Regulations:	
General, Parts 100-116	265
General Election Financing, Parts 9001-9007 and 9012	311
Federal Financing of Presidential Nominating Conventions, Part 9008	323
Presidential Primary Matching Funds, Parts 9031-9039	331
Table of CFR Titles and Chapters.....	349
Alphabetical List of Agencies Appearing in the CFR.....	365
List of CFR Sections Affected	375

Cite this Code: CFR

*To cite the regulations in
this volume use title,
part and section
number. Thus, 11 CFR
1.1 refers to title 11, part
1, section 1.*

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....	as of January 1
Title 17 through Title 27.....	as of April 1
Title 28 through Title 41.....	as of July 1
Title 42 through Title 50.....	as of October 1

The appropriate revision date is printed on the cover of each volume.

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MARTHA L. GIRARD,
Director,
Office of the Federal Register.

January 1, 1991.

THIS TITLE

Title 11—**FEDERAL ELECTIONS**, is composed of one volume. The contents of this volume represent all current regulations issued by the Federal Election Commission codified under this title of the CFR as of January 1, 1991.

Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 are contained in Supplement A of this volume as follows: Civil Aeronautics Board, 14 CFR Part 374a; Federal Communications Commission, 47 CFR Part 64 (Subpart H), Parts 73 and 76; and Interstate Commerce Commission, 49 CFR Part 1325.

Indexes to regulations for "Parts 100-116," "Parts 9001-9007 and 9012," "Part 9008," and "Parts 9031-9039," appear in the Finding Aids section of this volume.

For this volume, Jacquelyn J. Demsky was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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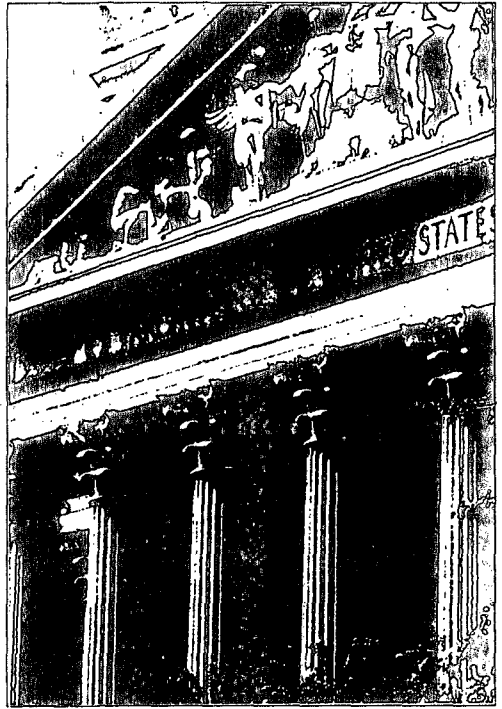
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Title 11—Federal Elections

CHAPTER I—Federal Election Commission..... *Part* 1

SUPPLEMENT A—Other regulations implementing section 401 of the Federal Election Campaign Act of 1971.

CHAPTER I—FEDERAL ELECTION COMMISSION

<i>Part</i>		<i>Page</i>
1	Privacy Act	5
2	Sunshine regulations; meetings	9
4	Public records and the Freedom of Information Act.....	13
5	Access to Public Disclosure Division documents	22
6	Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the Federal Election Commission	25
7	Standards of conduct.....	31
SUBCHAPTER A—GENERAL		
100	Scope and definitions (2 U.S.C. 431)	43
101	Candidate status and designations (2 U.S.C. 432(e)).....	61
102	Registration, organization, and recordkeeping by political committees (2 U.S.C. 433)	62
103	Campaign depositories (2 U.S.C. 432(h)).....	75
104	Reports by political committees (2 U.S.C. 434).....	76
105	Document filing (2 U.S.C. 432(g))	94
106	Allocations of candidate and committee activities..	95
107	Presidential nominating convention, registration and reports	107
108	Filing copies of reports and statements with State officers (2 U.S.C. 439).....	108
109	Independent expenditures (2 U.S.C. 431(17), 434(c)).....	109
110	Contribution and expenditure limitations and prohibitions.....	111
111	Compliance procedure (2 U.S.C. 437g, 437d(a))	135
112	Advisory opinions (2 U.S.C. 437f)	141
113	Excess campaign funds and funds donated to support Federal officeholder activities (2 U.S.C. 439a)	143
114	Corporate and labor organization activity.....	144
115	Federal contractors	162

<i>Part</i>		<i>Page</i>
116	Debts owed by candidates and political committees.....	164

SUBCHAPTERS B-D—[RESERVED]

SUBCHAPTER E—PRESIDENTIAL ELECTION CAMPAIGN FUND:
GENERAL ELECTION FINANCING

9001	Scope.....	172
9002	Definitions.....	172
9003	Eligibility for payments.....	175
9004	Entitlement of eligible candidates to payments; use of payments.....	184
9005	Certification by Commission.....	191
9006	Reports and recordkeeping.....	193
9007	Examinations and audits; Repayments.....	193
9008	Federal financing of Presidential nominating conventions.....	200
9009-9011	[Reserved]	
9012	Unauthorized expenditures and contributions.....	211

SUBCHAPTER F—PRESIDENTIAL ELECTION CAMPAIGN FUND:
PRESIDENTIAL PRIMARY MATCHING FUND

9031	Scope.....	213
9032	Definitions.....	213
9033	Eligibility for payments.....	215
9034	Entitlements.....	223
9035	Expenditure limitations.....	233
9036	Review of submission and certification of payments by Commission.....	235
9037	Payments.....	240
9038	Examinations and audits.....	240
9039	Review and investigation authority.....	248
Supplement A	—Other regulations implementing section 401 of the Federal Election Campaign Act of 1971.....	251

PART 1—PRIVACY ACT

Sec.

- 1.1 Purpose and scope.
- 1.2 Definitions.
- 1.3 Procedures for requests pertaining to individual records in a record system.
- 1.4 Times, places, and requirements for identification of individuals making requests.
- 1.5 Disclosure of requested information to individuals.
- 1.6 Special procedure: Medical records. [Reserved]
- 1.7 Request for correction or amendment to record.
- 1.8 Agency review of request for correction or amendment of record.
- 1.9 Appeal of initial adverse agency determination on amendment or correction.
- 1.10 Disclosure of record to person other than the individual to whom it pertains.
- 1.11 Fees.
- 1.12 Penalties.
- 1.13 General exemptions. [Reserved]
- 1.14 Specific exemptions.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 41 FR 43064, Sept. 29, 1976, unless otherwise noted.

§ 1.1 Purpose and scope.

(a) The purpose of this part is to set forth rules informing the public as to what information is maintained by the Federal Election Commission about identifiable individuals and to inform those individuals how they may gain access to and correct or amend information about themselves.

(b) The regulations in this part carry out the requirements of the Privacy Act of 1974 (Pub. L. 93-579) and in particular 5 U.S.C. Section 552a as added by that Act.

(c) The regulations in this part apply only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to 5 U.S.C. 552, the Freedom of Information Act, or requests for reports and statements filed with the Federal Election Commission which are public records and available for inspection and copying pursuant to 2 U.S.C. 437g(a)(4)(C) and 438(a)(4).

[41 FR 43064, Sept. 29, 1976, as amended at 45 FR 21209, Apr. 1, 1980]

§ 1.2 Definitions.

As defined in the Privacy Act of 1974 and for the purposes of this part, unless otherwise required by the context, the following terms shall have these meanings:

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Maintain includes maintain, collect, use, or disseminate.

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

Systems of Records means a group of any records under the control of the Federal Election Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Routine use means the use of such record for a purpose compatible with the purpose for which the information was collected.

Commission means the Federal Election Commission, its Commissioners and employees.

Commissioners means the six appointees confirmed by the Senate who are voting members of the Commission.

Act means the Federal Election Campaign Act of 1971, as amended and Chapters 95 and 96 of the Internal Revenue Code of 1954.

§ 1.3 Procedures for requests pertaining to individual records in a record system.

(a) Any individual may request the Commission to inform him or her whether a particular record system named by the individual contains a record pertaining to him or her. The request may be made in person or in writing at the location and to the person specified in the notice describing that record system.

(b) An individual who believes that the Commission maintains records pertaining to him or her but who cannot determine which record system contains those records, may request assistance by mail or in person from the Staff Director, Federal Election Commission, 999 E Street, NW., Washington, DC 20463 during the hours of 9 a.m. to 5:30 p.m.

(c) Requests under paragraphs (a) or (b) of this section shall be acknowledged by the Commission within 15 days from the date of receipt of the request. If the Commission is unable to locate the information requested under paragraphs (a) or (b) of this section, it shall so notify the individual within 15 days after receipt of the request. Such acknowledgement may request additional information to assist the Commission in locating the record or it may advise the individual that no record or document exists about that individual.

[41 FR 43064, Sept. 29, 1976, as amended at 50 FR 50778, Dec. 12, 1985]

§ 1.4 Times, places, and requirements for identification of individuals making requests.

(a) After being informed by the Commission that a record system contains a record pertaining to him or her, an individual may request the Commission to disclose that record in the manner described in this section. Each request for the disclosure of a record or a copy of it shall be made at the Federal Election Commission, 999 E Street, NW., Washington, DC 20463 and to the system manager identified in the notice describing the systems of records, either in writing or in person. Requests may be made by specifically authorized agents or by parents or guardians of individuals.

(b) Each individual requesting the disclosure of a record or copy of a record shall furnish the following information with his or her request:

(1) The name of the record system containing the record;

(2) Proof as described in paragraph (c) of this section that he or she is the individual to whom the requested record relates;

(3) Any other information required by the notice describing the record system.

(c) Proof of identity as required by paragraph (b)(2) of this section shall be provided as described in paragraphs (c)(1) and (2) of this section. Requests made by an agent, parent, or guardian, shall be in accordance with the procedures described in § 1.10.

(1) Requests made in writing shall include a statement, signed by the individual and either notarized or witnessed by two persons (including witnesses' addresses). If the individual appears before a notary, he or she shall submit adequate proof of identification in the form of a drivers license, birth certificate, passport or other identification acceptable to the notary. If the statement is witnessed, it shall include a sentence above the witnesses' signatures that they personally know the individual or that the individual has submitted proof of his or her identification to their satisfaction. In any case in which, because of the extreme sensitivity of the record sought to be seen or copied, the Commission determines that the identification is not adequate, it may request the individual to submit additional proof of identification.

(2) If the request is made in person, the requestor shall submit proof of identification similar to that described in paragraph (c)(1) of this section, acceptable to the Commission. The individual may have a person of his or her own choosing accompany him or her when the record is disclosed.

[41 FR 43064, Sept. 29, 1976, as amended at 50 FR 50778, Dec. 12, 1985]

§ 1.5 Disclosure of requested information to individuals.

(a) Upon submission of proof of identification as required by § 1.4, the Commission shall allow the individual to see and/or obtain a copy of the requested record or shall send a copy of the record to the individual by registered mail. If the individual requests to see the record, the Commission may make the record available either at the location where the record is maintained or at a place more suitable to the requestor, if possible. The record

shall be made available as soon as possible but in no event later than 15 days after proof of identification.

(b) The Commission must furnish each record requested by an individual under this part in a form intelligible to that individual.

(c) If the Commission denies access to a record to an individual, he or she shall be advised of the reason for the denial and advised of the right to judicial review.

(d) Upon request, an individual will be provided access to the accounting of disclosures from his or her record under the same procedures as provided above and in § 1.4.

**§ 1.6 Special procedure: Medical records.
[Reserved]**

§ 1.7 Request for correction or amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished under this part, may request the Commission to correct or amend all or any part of that record.

(b) Each individual requesting a correction or amendment shall send the request to the Commission through the person who furnished the record.

(c) Each request for a correction or amendment of a record shall contain the following information:

- (1) The name of the individual requesting the correction or amendment;
- (2) The name of the system of records in which the record sought to be amended is maintained;
- (3) The location of the system of records from which the individual record was obtained;
- (4) A copy of the record sought to be amended or corrected or a sufficiently detailed description of that record;
- (5) A statement of the material in the record that the individual desires to correct or amend;
- (6) A statement of the basis for the requested correction or amendment including any material that the individual can furnish to substantiate the reasons for the correction or amendment sought.

§ 1.8 Agency review of request for correction or amendment of record.

(a) The Commission shall, not later than ten (10) days (excluding Saturdays, Sundays and legal holidays) after the receipt of the request for a correction or amendment of a record under § 1.7, acknowledge receipt of the request and inform the individual whether information is required before the correction or amendment can be considered.

(b) If no additional information is required, within ten (10) days from receipt of the request, the Commission shall either make the requested correction or amendment or notify the individual of its refusal to do so, including in the notification the reasons for the refusal, and the appeal procedures provided in § 1.9.

(c) The Commission shall make each requested correction or amendment to a record if that correction or amendment will tend to negate inaccurate, irrelevant, untimely, or incomplete matter in the record.

(d) The Commission shall inform prior recipients of any amendment or correction or notation of dispute of such individual's record if an accounting of the disclosure was made. The individual may request a list of prior recipients if an accounting of the disclosure was made.

§ 1.9 Appeal of initial adverse agency determination on amendment or correction.

(a) Any individual whose request for a correction or amendment has been denied in whole or in part, may appeal that decision to the Commissioners no later than one hundred eighty (180) days after the adverse decision is rendered.

(b) The appeal shall be in writing and shall contain the following information:

- (1) The name of the individual making the appeal;
- (2) Identification of the record sought to be amended;
- (3) The record system in which that record is contained;
- (4) A short statement describing the amendment sought; and

(5) The name and location of the agency official who initially denied the correction or amendment.

(c) Not later than thirty (30) days (excluding Saturdays, Sundays and legal holidays) after the date on which the Commission receives the appeal, the Commissioners shall complete their review of the appeal and make a final decision thereon. However, for good cause shown, the Commissioners may extend that thirty (30) day period. If the Commissioners extend the period, the individual requesting the review shall be promptly notified of the extension and the anticipated date of a decision.

(d) After review of an appeal, the Commission shall send a written notice to the requestor containing the following information:

(1) The decision and, if the denial is upheld, the reasons for the decision;

(2) The right of the requestor to institute a civil action in a Federal District Court for judicial review of the decision; and

(3) The right of the requestor to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission denial of the correction or amendment. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if appropriate, of the Commission's reasons for denying the requested correction or amendment. The Commission shall also send a copy of the statement to prior recipients of the individual's record if an accounting of the disclosures was made.

§ 1.10 Disclosure of record to person other than the individual to whom it pertains.

(a) Any individual who desires to have a record covered by this part disclosed to or mailed to another person may designate such person and authorize such person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual and notarized or witnessed as provided in § 1.4(c).

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a

court of competent jurisdiction to be incompetent, due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this part. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, certified copy of a court order, or similar documents, and proof of the individual's identity in a form that complies with § 1.4(c) of this part.

(c) An individual to whom a record is to be disclosed in person, pursuant to this part may have a person of his or her own choosing accompany him or her when the record is disclosed.

§ 1.11 Fees.

(a) The Commission shall not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of the Process of disclosing the record to an individual, the Commission shall not charge the individual for the cost of making that copy.

(b) If an individual requests the Commission to furnish a copy of the record, the Commission shall charge the individual for the costs of making the copy. The fee that the Commission has established for making a copy is ten cents (\$.10) per page.

§ 1.12 Penalties.

Any person who makes a false statement in connection with any request for a record, or an amendment or correction thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§ 1.13 General exemptions. [Reserved]

§ 1.14 Specific exemptions.

(a) No individual, under the provisions of these regulations, shall be entitled to access to materials compiled in its systems of records identified as FEC audits and investigations (FEC 2) or FEC compliance actions (FEC 3). These exempted systems relate to the Commission's power to exercise exclusive civil jurisdiction over the enforcement of the Act under 2 U.S.C.

437d(a)(6) and (e); and to defend itself in actions filed against it under 2 U.S.C. 437d(a)(6). Further the Commission has a duty to investigate violations of the Act under 2 U.S.C. 437g(a)(2); to conduct audits and investigations pursuant to 2 U.S.C. 438(b); 26 U.S.C. 9007 and 9038; and to refer apparent violations of the Act to the Attorney General or other law enforcement authorities under 2 U.S.C. 437g(a)(5) and 437d(9). Information contained in FEC systems 2 and 3 contain the working papers of the Commission staff and form the basis for either civil and/or criminal proceedings pursuant to the exercise of the powers and duties of the Commission. These materials must be protected until such time as they are subject to public access under the provision of 2 U.S.C. 437g(a)(4)(B) or 5 U.S.C. 552, or other relevant statutes.

(b) The provisions of paragraph (a) of this section shall not apply to the extent that application of the subsection would deny any individual any right, privilege or benefit to which he or she would otherwise be entitled to receive.

[41 FR 43064, Sept. 29, 1976, as amended at 45 FR 21209, Apr. 1, 1980]

PART 2—SUNSHINE REGULATIONS; MEETINGS

Sec.

- 2.1 Scope.
- 2.2 Definitions.
- 2.3 General rules.
- 2.4 Exempted meetings.
- 2.5 Procedures for closing meetings.
- 2.6 Transcripts and recordings.
- 2.7 Announcement of meetings and schedule changes.
- 2.8 Annual report.

AUTHORITY: Sec. 3(a), Pub. L. 94-409, 5 U.S.C. 552b.

SOURCE: 50 FR 39972, Oct. 1, 1985, unless otherwise noted.

§ 2.1 Scope.

These regulations are promulgated pursuant to the directive of 5 U.S.C. 552b(g) which was added by section 3(a) of Pub. L. 94-409, the Government in the Sunshine Act, and specifically implement section 3 of that Act.

§ 2.2 Definitions.

(a) *Commission.* *Commission* means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(b) *Commissioner or Member.* *Commissioner or Member* means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c and section 101(e) of Pub. L. 94-283 and shall also include ex-officio non-voting Commissioners or Members, the Secretary of the Senate and the Clerk of the House, but does not include a proxy or other designated representative of a Commissioner.

(c) *Person.* *Person* means an individual, including employees of the Commission, partnership, corporation, association, or public or private organization, other than an agency of the United States Government.

(d) *Meeting.* (1) *Meeting* means the deliberation of at least four voting members of the Commission in collegia where such deliberations determine or result in the joint conduct or disposition of official Commission business. For the purpose of this section, *joint conduct* does not include, for example, situations where the requisite number of members is physically present in one place but not conducting agency business as a body (e.g., at a meeting at which one member is giving a speech while a number of other members are present in the audience). A deliberation conducted through telephone or similar communications equipment by means of which all persons participating can hear each other will be considered a *meeting* under this section.

(2) The term *meeting* does not include the process of notation voting by circulated memorandum for the purpose of expediting consideration of routine matters. It also does not include deliberations to schedule a meeting, to take action to open or close a meeting, or to release or withhold information, or to change the subject matter of a meeting under 11 CFR 2.5, 2.6 and 2.7.

[50 FR 39972, Oct. 1, 1985, as amended at 50 FR 50778, Dec. 12, 1985]

§ 2.3 General rules.

(a) Commissioners shall not jointly conduct, determine or dispose of Commission business other than in accordance with this part.

(b) Except as provided in 11 CFR 2.4, every portion of every Commission meeting shall be open to public observation.

(c) No additional right to participate in Commission meetings is granted to any person by this part. A meeting is not part of the formal or informal record of decision of the matters discussed therein except as otherwise required by law. Statements of views or expressions of opinions made by Commissioners or FEC employees at meetings are not intended to represent final determinations or beliefs.

(d) Members of the public attending open Commission meetings may use small electronic sound recorders to record the meeting, but the use of other electronic recording equipment and cameras requires advance notice to and coordination with the Commission's Press Officer.

§ 2.4 Exempted meetings.

(a) *Meetings Required by Statute to be Closed.* Meetings concerning matters specifically exempted from disclosure by statutes which require public withholding in such a manner as to leave no discretion for the Commission on the issue, or which establish particular types of matters to be withheld, shall be closed to public observation in accordance with the procedures of 11 CFR 2.5.

(1) As required by 2 U.S.C. 437g(a)(12), all Commission meetings, or portions of meetings, pertaining to any notification or investigation that a violation of the Act has occurred, shall be closed to the public.

(2) For the purpose of this section, *any notification or investigation that a violation of the Act has occurred* includes, but is not limited to, determinations pursuant to 2 U.S.C. 437g, the issuance of subpoenas, discussion of referrals to the Department of Justice, or consideration of any other matter related to the Commission's enforcement activity, as set forth in 11 CFR part 111.

(b) *Meetings Closed by Commission Determination.* Except as provided in 11 CFR 2.4(c), the requirement of open meetings will not apply where the Commission finds, in accordance with 11 CFR 2.5, that an open meeting or the release of information is likely to result in the disclosure of:

(1) Matters that relate solely to the Commission's internal personnel decisions, or internal rules and practices.

(i) This provision includes, but is not limited to, matters relating to Commission policies on working conditions, or materials prepared predominantly for internal use, the disclosure of which would risk circumvention of Commission regulations; but

(ii) This provision does not include discussions or materials regarding employees' dealings with the public, such as personnel manuals or Commission directives setting forth job functions or procedures;

(2) Financial or commercial information obtained from any person which is privileged or confidential;

(3) Matters which involve the consideration of a proceeding of a formal nature by the Commission against a specific person or the formal censure of any person;

(4) Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(5) Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(6) Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action, as long as the

Commission has not already disclosed the content or nature of its proposed action, or is not required by law to disclose it prior to final action; or.

(7) Matters that specifically concern the Commission's participation in a civil action or proceeding, or an arbitration, or involving a determination on the record after opportunity for a hearing.

(c) Notwithstanding the applicability of any exemptions set forth in 11 CFR 2.4(b), the Commission may determine that the public interest requires a meeting to be open.

§ 2.5. Procedures for closing meetings.

(a) *General.* No meeting or portion of a meeting may be closed to the public observation under this section unless a majority of the Commissioners (not including ex officio non-voting Commissioners) votes to take such action. The closing of one portion of a meeting shall not justify closing any other portion of a meeting.

(b) *Certification.* Each time the Commission votes to close a meeting, the General Counsel shall publicly certify that, in his or her opinion, each item on the agenda may properly be closed to public observation. The certification shall state each relevant exemption provision. The original copy of the certification shall be attached to, and preserved with, the statement required by 11 CFR 2.5(d).

(c) *Voting Procedures.* (1) No meeting need be held to consider closing a meeting. The Commission may vote to close a meeting or any portion thereof by using its notation vote procedures.

(i) A separate vote shall be taken with respect to each item on an agenda proposed to be closed in whole or in part pursuant to 11 CFR 2.4, or with respect to any information proposed to be withheld under 11 CFR 2.4.

(ii) A single vote may be taken with respect to a particular matter to be discussed in a series of closed meetings, or with respect to any information concerning such series of meetings, so long as each meeting in the series is scheduled to be held no more than 30 days after the initial meeting.

(iii) This section shall not affect the Commission's practice of setting dates

for closed meetings more than 30 days in advance of such meetings.

(2) The Commission Secretary shall record the vote of each Commissioner participating in the vote. No proxies, written or otherwise, shall be counted.

(3)(i) A Commissioner may object to a recommendation to close the discussion of a particular matter or may assert a claim of exemption for a matter scheduled to be discussed in an open meeting. Such objection or assertion will be discussed by the Commission at the next scheduled closed meeting, to determine whether the matter in question should be discussed in a closed meeting.

(ii) An objection for the record only will not cause the objection to be placed on any agenda.

(d) *Public Statement of Vote.* (1) If the Commission votes to close a meeting, or any portion thereof, under this section, it shall make publicly available within 24 hours a written statement of the vote. The written statement shall contain:

(i) A citation to the provision(s) of 11 CFR 2.4 under which the meeting was closed to public observation and an explanation of why the specific discussion comes within the cited exemption(s);

(ii) The vote of each Commissioner participating in the vote;

(iii) A list of the names of all persons expected to attend the closed meeting and their affiliation. For purposes of this section, affiliation means title or position, and name of employer, and in the case of a representative, the name of the person represented. In the case of Commission employees, the statement will reflect, through the use of titles rather than individual names, that the Commissioners, specified division heads and their staff will attend; and

(iv) The signature of the Commission Secretary.

(2) The original copy of the statement shall be maintained by the Commission Secretary. A copy shall be posted on a public bulletin board located in the Commission's Public Records Office.

(e) *Public Request to Close a Meeting.* A person whose interests may be directly affected by a portion of a

meeting may request that the Commission close that portion to the public for any of the reasons referred to in 11 CFR 2.4. The following procedures shall apply to such requests:

(1) The request must be made in writing and shall be directed to the Chairman of the Commission.

(2) The request shall identify the provisions of 11 CFR 2.4 under which the requestor seeks to close all or a portion of the meeting.

(3) A recorded vote to close the meeting or a portion thereof shall be taken.

(4) Requests made under this section shall become part of the official record of the underlying matter and shall be disclosed in accordance with 11 CFR 2.6 on completion of the matter.

(5) If the Commission decides to approve a request to close, the Commission will then follow the procedures for closing a meeting set forth in 11 CFR 2.5 (a) through (d).

§ 2.6 Transcripts and recordings.

(a) The Commission Secretary shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to public observation. An electronic recording of a meeting shall be coded, or other records shall be kept in a manner adequate to identify each speaker.

(b)(1) In the case of any meeting closed pursuant to 11 CFR 2.4(b), as the last item of business, the Commission will determine which, if any, portions of the electronic recording or transcript and which if any, items of information withheld under 11 CFR 2.5 contain information which should be withheld pursuant to 11 CFR 2.4.

(2) Portions of transcripts or recordings determined to be outside the scope of any exemptions under 11 CFR 2.6(b)(1) shall be promptly made available to the public through the Commission's Public Records Office at a cost sufficient to cover the Commission's actual cost of duplication or transcription. Requests for such copies shall be made and processed in accordance with the provisions of 11 CFR part 5.

(3) Portions of transcripts or electronic recordings not made available immediately pursuant to 11 CFR 2.6(b)(1), and portions of transcripts or recordings withheld pursuant to 11 CFR 2.4(a), will be made available on request when the relevant exemptions no longer apply. Such materials shall be requested and processed under the provisions of 11 CFR 2.6(b)(2).

(c) A complete verbatim copy of the transcript or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, shall be maintained by the Commission Secretary in confidential files of the Commission, for a minimum of two years subsequent to such meeting, or a minimum of one year after the conclusion of any agency proceeding with respect to which the meeting, or portion of the meeting was held, whichever occurs later.

§ 2.7 Announcement of meetings and schedule changes.

(a)(1) In the case of each meeting, the Commission shall publicly announce and shall submit such announcement for publication in the FEDERAL REGISTER at least seven days prior to the day on which the meeting is to be called to order. The Commission Secretary shall also forward a copy of such announcement for posting in the Commission's Public Records Office.

(2) Announcements made under this section shall contain the following information:

- (i) The date of the meeting;
- (ii) The place of the meeting;
- (iii) The subject matter of the meeting;
- (iv) Whether the meeting is to be open or closed to the public; and
- (v) The name and telephone number of the official designated by the agency to respond to requests for information about the meeting.

(b) The public announcement and submission for publication shall be made when required by 11 CFR 2.7(a) in the case of every Commission meeting unless a majority of the Commissioners decide by recorded vote that Commission business requires that the meeting be called at an earlier date, in

which case the Commission shall make at the earliest practicable time, the announcement required by this section and a concurrent submission for publication of that announcement in the FEDERAL REGISTER.

(c) The time or place of a meeting may be changed following the public announcement required by 11 CFR 2.7 (a) or (b) only if the Commission announces the change at the earliest practicable time.

(d) The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portions of a meeting, to the public may be changed following the public announcement required by 11 CFR 2.7 (a) or (b) only if:

(1) A majority of the entire membership of the Commission determines by recorded vote that Commission business so requires and that no earlier announcement of the change was possible; and

(2) The Commission publicly announces the change and the vote of each member upon the change at the earliest practicable time. Immediately following this announcement, the Commission shall submit for publication in the FEDERAL REGISTER a notice containing the information required by 11 CFR 2.7(a)(2), including a description of any change from the earlier published notice.

§ 2.8 Annual report.

The Commission shall report annually to Congress regarding its compliance with the requirements of the Government in the Sunshine Act and of this part, including:

(a) A tabulation of the total number of Commission meetings open to the public;

(b) The total number of such meetings closed to the public;

(c) The reasons for closing such meetings; and

(d) A description of any litigation brought against the Commission under the Sunshine Act, including any costs assessed against the Commission in such litigation (whether or not paid by the Commission).

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

Sec.

4.1 Definitions.

4.2 Policy on disclosure of records.

4.3 Scope.

4.4 Availability of records.

4.5 Categories of exemptions.

4.6 Discretionary release of exempt records.

4.7 Requests for records.

4.8 Appeal of denial.

4.9 Fees.

AUTHORITY: 5 U.S.C. 552, as amended.

SOURCE: 44 FR 33368, June 8, 1979, unless otherwise noted.

§ 4.1 Definitions.

As used in this part:

(a) *Commission* means the Federal Election Commission, established by the Federal Election Campaign Act of 1971, as amended.

(b) *Commissioner* means the Secretary of the Senate, the Clerk of the House, or their designees ex officio, or an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).

(c) *Request* means to seek the release of records under 5 U.S.C. 552.

(d) *Requestor* is any person who submits a request to the Commission.

(e) *Act* means the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974, 1976, and 1979, and unless specifically excluded, includes Chapters 95 and 96 of the Internal Revenue Code of 1954 relating to public financing of Federal elections.

(f) *Public Disclosure Division* of the Commission is that division which is responsible for, among other things, the processing of requests for public access to records which are submitted to the Commission pursuant to 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), and 438(a).

(g) *Direct costs* means those expenditures which the Commission actually incurs in searching for and duplicating (and, in the case of commercial use requestors, reviewing) documents to respond to a FOIA request. Direct costs include the salary of the employee performing the work (the basic rate of

pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating equipment. Direct costs do not include overhead expenses such as the cost of space and heating or lighting the facility in which the records are stored.

(h) *Search* means all time spent looking for material that is responsive to a FOIA request, including page-by-page or line-by-line identification of material within documents. This includes both manual searches and searches conducted with a computer using existing programming. Search time does not include review of material in order to determine whether the material is exempt from disclosure.

(i) *Review* means the process of examining a document located in response to a commercial use request to determine whether any portion of the document located is exempt from disclosure. Review also refers to processing any document for disclosure, i.e., doing all that is necessary to excise exempt portions of the document and otherwise prepare the document for release. Review does not include time spent by the Commission resolving general legal or policy issues regarding the application of exemptions.

(j) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Examples of the form such copies can take include, but are not limited to, paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk).

(k) *Commercial use* means a purpose that furthers the commercial, trade, or profit interests of the requestor or the person on whose behalf the request is made. The Commission's determination as to whether documents are being requested for a commercial use will be based on the purpose for which the documents are being requested. Where the Commission has reasonable cause to doubt the use for which the requestor claims to have made the request or where that use is not clear from the request itself, the Commission will seek additional clarification before assigning the request to a specific category.

(l) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(m) *Non-commercial scientific institution* means an organization that is not operated on a commercial basis, as that term is defined in paragraph (k) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(n) *Representative of the news media* means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news, as defined in this paragraph) who make their products available for purchase or subscription by the general public. A freelance journalist may be regarded as working for a news organization and therefore considered a representative of the news media if that person can demonstrate a solid basis for expecting publication by that news organization, even though that person is not actually employed by that organization. The best means by which a freelance journalist can demonstrate a solid basis for expecting publication by a news organization is by having a publication contract with that news organization. When no such contract is present, the Commission will look to the freelance journalist's past publication record in making this determination.

[44 FR 33368, June 8, 1979, as amended at 45 FR 31291, May 13, 1980; 52 FR 39212, Oct. 21, 1987]

§ 4.2 Policy on disclosure of records.

(a) The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons contracting with the Commission with respect to trade secret and commercial or financial information entitled to confidential treatment, and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

(b) All Commission records shall be available to the public unless they are specifically exempt under this part.

(c) To carry out this policy, the Commission shall designate a Freedom of Information Act Officer.

§ 4.3 Scope.

The regulations in this part implement the provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to the availability of records for inspection and copying.

[44 FR 33368, June 8, 1979, as amended at 45 FR 31291, May 13, 1980]

§ 4.4 Availability of records.

(a) In accordance with 5 U.S.C. 552 (a)(2) and (a)(3) the Commission shall make the following materials available for public inspection and copying:

(1) Statements of policy and interpretation which have been adopted by the Commission;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Opinions of Commissioners rendered in enforcement cases and General Counsel's reports and non-exempt 2 U.S.C. 437g investigatory materials in enforcement files will be made available no later than 30 days from the date on which a respondent is notified that the Commission has voted to take no further action and to close such an enforcement file.

(4) Letter requests for guidance and responses thereto;

(5) The minutes of Commission meetings and transcripts made from tapes of Commission meetings;

(6) Material routinely prepared for public distribution, e.g. campaign guidelines, FEC Record, press releases,

speeches, notices to candidates and committees.

(7) Proposals submitted in response to a request for proposals formulated pursuant to the Federal Procurement Regulations, 41 CFR 1-1.001 *et seq.*

(8) Contracts for services and supplies entered into by the Commission.

(9) Statements and certifications (with respect to closing meetings) as required by the Government in the Sunshine Act, 5 U.S.C. 552b.

(10) Reports of receipts and expenditures, designations of campaign depositories, statements of organization, candidate designations of committees, and the indices compiled from the filings therein.

(11) Requests for advisory opinions, written comments submitted in connection therewith, and responses approved by the Commission.

(12) With respect to enforcement matters, any conciliation agreement entered into between the Commission and any respondent.

(13) Copies of studies published pursuant to the Commission's duty to serve as a national clearinghouse on election law administration.

(14) Audit reports (if discussed in open session).

(15) Agendas for Commission meetings.

(b) Public access to the materials described in subparagraphs (a)(3) and (a)(10) through (a)(15) of this section is also available pursuant to the Federal Election Campaign Act of 1971, as amended, in accordance with the provisions of part 5 of this chapter.

(c) The Commission shall maintain and make available current indexes and supplements providing identifying information regarding any matter issued, adopted or promulgated after April 15, 1975 as required by 5 U.S.C. 552(a)(2)(c). These indexes and supplements shall be published and made available on at least a quarterly basis for public distribution unless the Commission determines by Notice in the FEDERAL REGISTER that publication would be unnecessary, impracticable, or not feasible due to budgetary considerations. Nevertheless, copies of any index or supplement shall be made available upon request at a cost

not to exceed the direct cost of duplication.

(d) The Freedom of Information Act and the provisions of this part apply only to existing records; they do not require the creation of new records.

(e) If documents or files contain both disclosable and nondisclosable information, the nondisclosable information will be deleted and the disclosable information released unless the disclosable portions cannot be reasonably segregated from the other portions in a manner which will allow meaningful information to be disclosed.

(f) All records created in the process of implementing provisions of 5 U.S.C. 552 will be maintained by the Commission in accordance with the authority granted by General Records Schedule 14, approved by the National Archives and Records Service of the General Services Administration.

[44 FR 33368, June 8, 1979, as amended at 45 FR 31291, May 13, 1980]

§ 4.5 Categories of exemptions.

(a) No requests under 5 U.S.C. 552 shall be denied release unless the record contains, or its disclosure would reveal, matters that are:

(1) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute, provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person which are privileged or confidential. Such information includes confidential business information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers,

inventories, or amount of source of income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, if the disclosure is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. These procedures shall be used for submitting business information in confidence:

(i) A request for confidential treatment shall be addressed to the FOIA officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, and shall indicate clearly on the envelope that it is a request for confidential treatment.

(ii) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential under paragraph (a)(4) of this section, the submitter shall provide the following, which may be disclosed to the public: (A) A written description of the nature of the subject information, and a justification for the request for its confidential treatment, and (B) a certification in writing under oath that substantially identical information is not available to the public.

(iii) Approval or denial of requests shall be made only by the FOIA officer or his or her designees. A denial shall be in writing, shall specify the reason therefore, and shall advise the submitter of the right to appeal to the Commission.

(iv) For good cause shown, the Commission may grant an appeal from a denial by the FOIA Officer or his or her designee if the appeal is filed within fifteen (15) days after receipt of the denial. An appeal shall be addressed to the FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463 and shall clearly indicate that it is a confidential submission appeal. An appeal will be decided within twenty (20) days after its receipt (excluding Saturdays, Sundays and legal holidays) unless an ex-

tension, stated in writing with the reasons therefore, has been provided the person making the appeal.

(v) Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender unless it is the subject of a request under the Freedom of Information Act or of judicial discovery proceedings.

(vi) Since enforcement actions under 2 U.S.C. 437g are confidential by statute, the procedures outlined in § 4.5(a)(4) (i) thru (v) are not applicable.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the Commission.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement inves-

tigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) Whenever a request is made which involves access to records described in 11 CFR 4.5(a)(7): and

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that—

(i) The subject of the investigation or proceeding is not aware of its pendency, and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings;

The agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the Freedom of Information Act.

(c) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.

(d) If a requested record is one of another government agency or deals with subject matter to which a government agency other than the Commission has exclusive or primary responsibility, the request for such a record shall be promptly referred by the Commission to that agency for disposition or guidance as to disposition.

(e) Nothing in this part authorizes withholding of information or limiting the availability of records to the public, except as specifically provided in this part; nor is this part authority to withhold information from Congress.

[44 FR 33368, June 8, 1979, as amended at 50 FR 50778, Dec. 12, 1985; 52 FR 23638, June 24, 1987; 52 FR 39212, Oct. 21, 1987]

§ 4.6 Discretionary release of exempt records.

The Commission may, in its discretion, release requested records despite the applicability of the exemptions in § 4.5(a), if it determines that it is in

the public interest and that the rights of third parties would not be prejudiced.

§ 4.7 Requests for records.

(a) A request to inspect or copy Commission public records of the type referred to in 11 CFR 4.4(b) may be made in person or by mail. The Public Records Office is open Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. and is located on the first floor, 999 E Street, NW., Washington, DC 20463.

(b) Requests for copies of records pursuant to the Freedom of Information Act shall be addressed to FOIA officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The request shall reasonably describe the records sought with sufficient specificity with respect to names, dates, and subject matter, to permit the records to be located. A requester will be promptly advised if the records cannot be located on the basis of the description given and that further identifying information must be provided before the request can be satisfied.

(c) Records or copies thereof will normally be made available either immediately upon receipt of a request or within ten working days thereafter, or twenty working days in the case of an appeal, unless in unusual circumstances the time is extended or subject to 11 CFR 4.9(f)(3), which governs advance payments. In the event the time is extended, the requestor shall be notified of the reasons for the extension and the date on which a determination is expected to be made, but in no case shall the extended time exceed ten working days. An extension may be made if it is—

(1) Necessary to locate records or transfer them from physically separate facilities; or

(2) Necessary to search for, collect, and appropriately examine a large quantity of separate and distinct records which are the subject of a single request; or

(3) Necessary for consultation with another agency which has a substantial interest in the determination of the request, or with two or more components of the Commission which

have a substantial subject matter interest therein.

(d) Any person denied access to records by the Commission shall be notified immediately giving reasons therefore, and notified of the right of such person to appeal such adverse determination to the Commission.

(e) The date of receipt of a request under this part shall be the date on which the FOIA Officer actually receives the request.

[44 FR 33368, June 8, 1979, as amended at 45 FR 31292, May 13, 1980; 50 FR 50778, Dec. 12, 1985; 52 FR 39213, Oct. 21, 1987]

§ 4.8 Appeal of denial.

(a) Any person who has been notified pursuant to § 4.6(d) of this part that his/her request for inspection of a record or for a copy has been denied, or who has received no response within ten working days (or within such extended period as is permitted under § 4.7(c) of this part) after the request has been received by the Commission, may appeal the adverse determination or the failure to respond by requesting the Commission to direct that the record be made available.

(b) The appeal request shall be in writing, shall clearly and prominently state on the envelope or other cover and at the top of the first page "FOIA Appeal", and shall identify the record in the form in which it was originally requested.

(c) The appeal request should be delivered or addressed to the FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(d) The requestor may state facts and cite legal or other authorities as he/she deems appropriate in support of the appeal request.

(e) For good cause shown, the Commission may disclose a record which is subject to one of the exemptions listed in § 4.5 of this part.

(f) The Commission will make a determination with respect to any appeal within twenty days (excluding Saturdays, Sundays and legal holidays) after receipt of the appeal (or within such extended period as is permitted under § 4.7(c) of this part). If on appeal, the denial of the request for a record or a copy is in whole or in part

upheld, the Commission shall advise the requestor of the denial and shall notify him/her of the provisions for judicial review of that determination as set forth in 5 U.S.C. 552(a)(4).

(g) Because of the risk of misunderstanding inherent in oral communications, the Commission will not entertain any appeal from an alleged denial or failure to comply with an oral request. Any person who has orally requested a copy of a record that he/she believes to have been improperly denied should resubmit the request in writing as set forth in § 4.7.

[44 FR 33368, June 8, 1979, as amended at 50 FR 50778, Dec. 12, 1985]

§ 4.9 Fees.

(a) *Exceptions to fee charges*—(1) *General.* Except for a commercial use requestor, the Commission will not charge a fee to any requestor for the first two hours of search time and the first 100 pages of duplication in response to any FOIA request.

(2) *Free computer search time.* For purposes of this paragraph, the term *search time* is based on the concept of a manual search. To apply this to a search conducted by a computer, the Commission will provide the equivalent dollar value of two hours of professional staff time, calculated according to paragraph (c)(4) of this section, in computer search time. Computer search time is determined by adding the cost of the computer connect time actually used for the search, calculated at the rate of \$25.00 per hour, to the cost of the operator's salary for the time spent conducting the computer search, calculated at the professional staff time rate set forth at paragraph (c)(4) of this section.

(3) *Definition of pages.* For purposes of this paragraph, the word *pages* refers to paper copies of a standard agency size which will normally be 8½" x 11" or 8½" x 14". Thus, while a requestor would not be entitled to 100 free computer disks, for example, a requestor would be entitled to 100 free pages of a computer printout.

(4) *Minimum charge.* The Commission will not charge a fee to any requestor when the allowable direct cost of that FOIA request is equal to or less than the Commission's cost of

routinely collecting and processing a FOIA request fee.

(b) *Fee reduction or waiver*—(1) The Commission will consider requests for the reduction or waiver of any fees assessed pursuant to paragraph (c)(1) of this section if it determines, either as a result of its own motion or in response to a written submission by the requester, that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and that disclosure of the information is not primarily in the commercial interest of the requester.

(2) A request for a reduction or waiver of fees shall be made in writing by the FOIA requestor; shall accompany the relevant FOIA request so as to be considered timely; and shall include a specific explanation as to why the fee for that FOIA request should be reduced or waived, applying the standard stated in paragraph (b)(1) of this section to the facts of that particular request. In addition, the explanation shall include: the requester's (and user's, if the requester and the user are different persons or entities) identity, qualifications and expertise in the subject area, and ability and intention to disseminate the information to the public; and a discussion of any commercial or personal benefit that the requestor (and user, if the requestor and user are different persons or entities) expects as a result of disclosure, including whether the information disclosed would be resold in any form at a fee above actual cost.

(c) *Fees to be charged.* (1) The FOIA services provided by the Commission in response to a FOIA request for which the requestor will be charged will depend upon the category of the requestor. The categories of FOIA requestors are as follows:

(i) *Commercial use requestors.* A requestor of documents for commercial use will be assessed reasonable standard charges for the full allowable direct costs of searching for, reviewing for release and duplicating the records sought, according to the Commission's schedule of fees for those services as set forth at paragraph (c)(4) of this section. A commercial use requestor is

not entitled to two hours of free search time nor 100 free pages of duplication of documents.

(ii) *Educational and non-commercial scientific institution requestors.* The Commission will provide documents to requestors in this category for the cost of duplication of the records provided by the Commission in response to the request, according to the Commission's schedule of fees as set forth at paragraph (c)(4) of this section, excluding charges for the first 100 pages of duplication. Requestors in this category will not be charged for search time. To be eligible for inclusion in this category, requestors must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(iii) *Requestors who are representatives of the news media.* The Commission will provide documents to requestors in this category for the cost of duplication of the records provided by the Commission in response to the request, according to the Commission's schedule of fees as set forth at paragraph (c)(4) of this section, excluding charges for the first 100 pages of duplication. Requestors in this category will not be charged for search time. To be eligible for inclusion in this category, the requestor must meet the criteria listed at 11 CFR 4.1(n) and his or her request must not be made for a commercial use. A request for records supporting the news dissemination function of the requestor shall not be considered to be a request that is for a commercial use.

(iv) *All other requestors.* The Commission will charge requestors who do not fit into any of the categories listed in paragraph (c)(1)(i), (ii) or (iii) of this section the full direct costs of searching for and duplicating records in response to the request, according to the Commission's schedule of fees as set forth at paragraph (c)(4) of this section, excluding charges for the first two hours of search time and the first

100 pages of duplication. Requests from record subjects for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication.

(2) The Commission may assess fees for the full allowable direct costs of searching for documents in response to a request even if the Commission fails to locate any documents which are responsive to that request and, in the case of commercial use requestors, of reviewing documents located in response to a request which the Commission determines are exempt from disclosure.

(3) If the Commission estimates that search or duplication charges are likely to exceed \$25.00, it will notify the requestor of the estimated amount of the fee unless the requestor has indicated in advance a willingness to pay a fee as high as that estimated by the Commission. Through this notification, the Commission will offer the requestor the opportunity to confer with Commission staff to reformulate the original request in order to meet the requestor's needs at a lower cost.

(4) The following is the schedule of the Commission's standard fees. The cost of staff time will be added to all of the following fees, generally at the *Professional* rate listed below, except for the cost of *Photocopying from photocopying machines* which has been calculated to include staff time.

Photocopying

Photocopying from photocopying machines—\$.07 per page
Photocopying from microfilm reader-printer—\$.15 per page
Paper copies from microfilm-paper print machine—\$.05 per frame page

Reels of Microfilm

Daily film (partial or complete roll)—\$2.85 per roll
Other film (partial or complete roll)—\$5.00 per roll

Publications: (new or not from available stocks)

Cost of photocopying document—\$.07 per page
Cost of binding document—\$.30 per inch

Publications: (available stock)

If available from stock on hand, cost is based on previously calculated cost as stated in the publication; (based on actual cost per copy, including reproduction and binding). Commission publications for which fees will be charged include, but are not limited to, the following: Advisory Opinion Index, Report on Financial Activity, Financial Control and Compliance Manual, MUR Index, and Guideline for Presentation in Good Order.

Computer Tapes

Cost to process the request at the rate of \$25.00 per hour connect time plus the cost of the computer tape: (\$25.00) and professional staff time (see Staff Time).

Computer Indexes (including Name Searches)

Cost to process the request at the rate of \$25.00 per hour connect time plus the cost of professional staff time (see Staff Time).

Staff Time

Clerical: \$4.50 per each half hour (agency average of staff below a GS-11) for each request.

Professional: \$12.40 per each half hour (agency average of staff at GS-11 and above) for each request.

Other Charges

Certification of a Document: \$7.35 per quarter hour.

Transcripts of Commission meetings not previously transcribed: \$7.50 per half hour (equivalent of a GS-11 executive secretary).

The Commission will not charge a fee for ordinary packaging and mailing of records requested. When a request for special mailing or delivery services is received the Commission will package the records requested. The requestor will make all arrangements for pick-up and delivery of the requested materials. The requestor shall pay all costs associated with special mailing or delivery services directly to the courier or mail service.

(5) Upon receipt of any request for the production of computer tape or microfilm, the Commission will advise the requestor of the identity of the private contractor who will perform the duplication services. If fees are charged for the production of computer tape or microfilm, they shall be made payable to that private contractor and shall be forwarded to the Commission.

(d). *Interest charges.* FOIA requestors should pay fees within 30 days

following the day on which the invoice for that request was sent to the requestor. If the invoice is unpaid on the 31st day following the day on which the invoice was sent, the Commission will begin assessing interest charges, which will accrue from the date the invoice was mailed. Interest will be charged at a rate that is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage point, pursuant to 31 U.S.C. 3717. The accrual of interest will be stayed by the Commission's receipt of the fee, even if the fee has not yet been processed.

(e) *Aggregating requests.* A requestor may not file multiple requests, each seeking portions of a document or documents, in order to avoid payment of fees. When the Commission reasonably believes that a FOIA requestor or group of requestors acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Commission will aggregate any such requests and charge the appropriate fees. In making this determination, the Commission will consider the time period in which the requests have occurred, the relationship of the requestors, and the subject matter of the requests.

(f) *Advance payments.* The Commission will require a requestor to make an advance payment, i.e., a payment before work is commenced or continued on a request, when:

(1) The Commission estimates or determines that allowable charges that a requestor may be required to pay are likely to exceed \$250. In such a case, the Commission will notify the requestor of the likely cost and, where the requestor has a history of prompt payment of FOIA fees, obtain satisfactory assurance of full payment, or in the case of a requestor with no FOIA fee payment history, the Commission will require an advance payment of an amount up to the full estimated charges; or

(2) A requestor has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing). In such a case, the Commission

may require that the requestor pay the full amount owed plus any applicable interest or demonstrate that the fee has been paid and make an advance payment of the full amount of the estimated fee before the Commission begins to process a new request or a pending request from that requestor.

(3) If the provisions of paragraph (f)(1) or (2) of this section apply, the administrative time limits prescribed in 11 CFR 4.7(c) will begin only after the Commission has received the payments or the requestor has made acceptable arrangements to make the payments required by paragraph (f)(1) or (2) of this section.

[52 FR 39213, Oct. 21, 1987]

PART 5—ACCESS TO PUBLIC DISCLOSURE DIVISION DOCUMENTS

Sec.

- 5.1 Definitions.
- 5.2 Policy on disclosure of records.
- 5.3 Scope.
- 5.4 Availability of records.
- 5.5 Request for records.
- 5.6 Fees.

AUTHORITY: 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), 438(a), and 31 U.S.C. 9701.

SOURCE: 45 FR 31293, May 13, 1980, unless otherwise noted.

§ 5.1 Definitions.

(a) *Commission* means the Federal Election Commission established by the Federal Election Campaign Act of 1971, as amended.

(b) *Commissioner* means the Secretary of the Senate, the Clerk of the House, or their designees, ex officio, or an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).

(c) *Request* means to seek access to Commission materials subject to the provisions of the Federal Election Campaign Act of 1971, as amended.

(d) *Requestor* is any person who submits a request to the Commission.

(e) *Act* means the Federal Election Campaign Act, as amended by the Federal Election Campaign Act Amendments of 1974, 1976, and 1979, and unless specifically excluded, includes Chapters 95 and 96 of the Internal Revenue Code of 1954 relating

to public financing of Federal elections.

(f) *Public Disclosure Division* of the Commission is that division which is responsible for, among other things, the processing of requests for public access to records which are submitted to the Commission pursuant to 2 U.S.C. 437g(a)(4)(B)(ii), and 438(a).

§ 5.2 Policy on disclosure of records.

(a) The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons contracting with the Commission with respect to trade secrets and commercial or financial information entitled to confidential treatment, and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

(b) Nothing herein shall be deemed to restrict the public availability of Commission records falling outside provisions of the Act, or to restrict such public access to Commission records as is available pursuant to the Freedom of Information Act and the rules set forth as part 4 of this chapter.

§ 5.3 Scope.

(a) The regulations in this part implement the provisions of 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), and 438(a).

(b) Public access to such Commission records as are subject to the collateral provisions of the Freedom of Information Act and are not included in the material subject to disclosure under this part (described in 11 CFR 5.4(a)) shall be governed by the rules set forth as part 4 of this chapter.

§ 5.4 Availability of records.

(a) In accordance with 2 U.S.C. 438(a), the Commission shall make the following material available for public inspection and copying through the Commission's Public Disclosure Division:

(1) Reports of receipts and expenditures, designations of campaign depositories, statements of organization, candidate designations of campaign

committees and the indices compiled from the filings therein.

(2) Requests for advisory opinions, written comments submitted in connection therewith, and responses issued by the Commission.

(3) With respect to enforcement matters, any conciliation agreement entered into between the Commission and any respondent.

(4) Opinions of Commissioners rendered in enforcement cases and General Counsel's reports and non-exempt 2 U.S.C. 437g investigatory materials in enforcement files will be made available no later than 30 days from the date on which a respondent is notified that the Commission has voted to take no further action and to close such an enforcement file.

(b) The provisions of this part apply only to existing records; nothing herein shall be construed as requiring the creation of new records.

(c) In order to ensure the integrity of the Commission records subject to the Act and the maximum availability of such records to the public, nothing herein shall be construed as permitting the physical removal of any Commission records from the public facilities maintained by the Public Disclosure Division other than copies of such records obtained in accordance with the provisions of this part.

(d) Release of records under this section is subject to the provisions of 5 U.S.C. 552a.

§ 5.5 Request for records.

(a) A request to inspect or copy those public records described in 11 CFR 5.4(a) may be made in person or by mail. The Public Disclosure Division is open Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. and is located on the first floor, 999 E Street, NW., Washington, DC 20463.

(b) Each request shall describe the records sought with sufficient specificity with respect to names, dates and subject matter to permit the records to be located with a reasonable amount of effort. A requester will be promptly advised if the requested records cannot be located on the basis of the description given and that further identifying information must be

provided before the request can be satisfied.

(c) Requests for copies of records not available through the Public Disclosure Division shall be addressed to the FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Requests for Commission records not described in 11 CFR 5.4(a) shall be treated as requests made pursuant to the Freedom of Information Act (5 U.S.C. 552) and shall be governed by 11 CFR part 4. In the event that the Public Disclosure Division receives a written request for access to materials not described in 11 CFR 5.4(a), it shall promptly forward such request to the Commission FOIA Officer for processing in accordance with the provisions of part 4 of this chapter.

[45 FR 31293, May 13, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

§ 5.6 Fees.

(a)(1) Fees will be charged for copies of records which are furnished to a requester under this part and for the staff time spent in locating and reproducing such records. The fees to be levied for services rendered under this part shall not exceed the Commission's direct cost of processing requests for those records computed on the basis of the actual number of copies produced and the staff time expended in fulfilling the particular request, in accordance with the following schedule of standard fees:

Photocopying from microfilm reader-printer—\$.15 per page
 Photocopying from photocopying machines—\$.05 per page
 Paper copies from microfilm—Paper Print Machine—\$.05 per frame/page

Reels of Microfilm

Daily film (partial or complete roll)—\$2.85 per roll
 Other film (partial or complete roll)—\$5.00 per roll

Publications: (new or not from stocks available)

Cost of photocopying (reproducing) document—\$.05 per page
 Cost of binding document—\$.30 per inch
 Plus cost of staff research time after first ½ hour (see Research Time)

Publications: (available stock)

If available from stock on hand, cost is based on previously calculated cost as stated in the publication (based on actual cost per copy, including reproduction and binding).

Computer Tapes:

Cost (\$.0006 per Computer Resource Unit Utilized—CRU) to process the request plus the cost of the computer tape (\$.25) and professional staff time (see Research Time). The cost varies based upon request.

Computer Indexes:

No charge for 20 or fewer requests for computer indexes, except for a name search as described below.

C Index—Committee Index of Disclosure Documents—No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost \$.05 for each ID number requested.

E Index (Parts 1-4)—Candidate Index of Supporting Documents—No charge for requests of 20 or fewer candidate ID numbers. Requests for more than 20 ID numbers will cost \$.10 for each ID number requested.

D Index—Committee Index of Candidates Supported/Opposed—No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost \$.30 for each committee ID number requested.

E Index (Complete)—Candidate Index of Supporting Documents—No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost \$2.00 for each candidate ID number requested.

G Index—Selected List of Receipts and Expenditures—No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost \$2.00 for each ID number requested.

Other computer index requests for more than 20 ID numbers will cost \$.0006 per CRU (Computer Resource Unit) utilized.

Name Search—A computer search of an entire individual contributor file for contributions made by a particular individual or individuals will cost \$.0006 per CRU (Computer Resource Unit) utilized.

Research Time/Photocopying Time

Clerical: First ½ hour is free; remaining time costs \$4.50 per each half hour (agency average of staff below a GS-11) for each request.

Professional: First ½ hour is free; remaining time costs \$12.40 per each half hour (agency average of staff at GS-11 and above) for each request.

Other Charges

Certification of a Document: \$7.35 per quarter hour.

Transcripts of Commission meetings not previously transcribed: \$7.50 per half hour (equivalent of a GS-11 executive secretary).

(2) Upon receipt of any request for the production of computer tape or microfilm, the Commission will advise the requester of the identity of the private contractor who will perform the duplication services. The fee for the production of computer tape or microfilm shall be made payable to that private contractor and shall be forwarded to the Commission.

(b) Commission publications for which fees will be charged under 11 CFR 5.6(a) include, but are not limited to, the following:

- Advisory Opinion Index
- Report on Financial Activity
- Financial Control and Compliance Manual
- MUR Index
- Guideline for Presentation in Good Order
- Office Account Index

(c) In the event the anticipated fees for all pending requests from the same requester exceed \$25.00, records will not be searched, nor copies furnished, until the requester pays, or makes acceptable arrangements to pay, the total amount due.

Similarly, if the records requested require the production of microfilm or of computer tapes, the Commission will not instruct its contractor to duplicate the records until the requester has submitted payment as directed or has made acceptable arrangements to pay the total amount due. If any fee is not precisely ascertainable, an estimate will be made by the Commission and the requester will be required to forward the fee so estimated. In the event any advance payment differs from the actual fee, an appropriate adjustment will be made at the time the copies are made available by the Commission.

(d) The Commission may reduce or waive payments of fees hereunder if it determines that such waiver or reduction is in the public interest because the furnishing of the requested infor-

mation to the particular requester involved can be considered as primarily benefiting the general public as opposed to primarily benefiting the person or organization requesting the information.

[49 FR 30460, July 31, 1984, as amended at 52 FR 39214, Oct. 21, 1987]

PART 6—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL ELECTION COMMISSION

Sec.

- 6.101 Purpose.
- 6.102 Application.
- 6.103 Definitions.
- 6.104—6.109 [Reserved]
- 6.110 Evaluation.
- 6.111 Notice.
- 6.112—6.129 [Reserved]
- 6.130 General prohibitions against discrimination.
- 6.131—6.139 [Reserved]
- 6.140 Employment.
- 6.141—6.148 [Reserved]
- 6.149 Program accessibility: Discrimination prohibited.
- 6.150 Program accessibility: Existing facilities.
- 6.151 Program accessibility: New construction and alterations.
- 6.152—6.159 [Reserved]
- 6.160 Communications.
- 6.161—6.169 [Reserved]
- 6.170 Compliance procedures.
- 6.171—6.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 49 FR 33211, Aug. 22, 1984, unless otherwise noted.

§ 6.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 6.102 Application.

This part applies to all programs or activities conducted by the Commission.

§ 6.103 Definitions.

For purposes of this part, the term—

(a) *Auxiliary aids* means services, including attendant services, or devices that enable handicapped persons, including those with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Commission. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. Although auxiliary aids are explicitly required only by 11 CFR 6.160(a)(1), they may also be used to meet other requirements of this part.

(b) *Commission* means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(c) *Complete complaint* means a written statement that contains the complainant's name and address and describes the Commission's actions in sufficient detail to inform the Commission of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(d) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property whether owned, leased or used on some other basis by the Commission.

(e) *Handicapped person* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Commission as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in 11 CFR 6.103(e)(1) but is treated by the agency as having such an impairment.

(f) *Qualified handicapped person* means—

(1) With respect to any Commission program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who, with reasonable accommodation, meets the

essential eligibility requirements and who can achieve the purpose of the program or activity; and

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(g) *Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by the Commission and not to any federally assisted programs or activities that it administers.

[49 FR 33211, Aug. 22, 1984, as amended at 50 FR 50778, Dec. 12, 1985]

§§ 6.104—6.109 [Reserved]

§ 6.110 Evaluation.

(a) Within one year of the effective date of this part, the Commission will conduct, with the assistance of interested persons, including handicapped persons and organizations representing handicapped persons, and evaluation of its compliance with section 504. This evaluation will include a determination of whether the Commission's policies and practices, and the effects thereof, meet the requirements of this part and whether modification of any such policies or practices is required to comply with section 504. If modification of any policy or practice is found to be required as a result of this evaluation, the Commission will proceed to make the necessary modifications.

(b) For at least three years following completion of the evaluation required under paragraph (a), the Commission will maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 6.111 Notice.

The Commission will make available to employees, applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the programs or activities conducted by the Commission. The Commission will make such information available to them in a manner it finds necessary to effectively apprise such persons of the protections against discrimination assured them by section 504 and the provisions of this part.

§§ 6.112—6.129 [Reserved]

§ 6.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

(b)(1) The Commission, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assist-

ance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program, except that this paragraph does not apply to candidates or conventions receiving public financing under title 26, United States Code;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Commission may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Commission may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap;

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons; or

(iii) Perpetuate the discrimination of another agency.

(4) The Commission may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Commission; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The Commission, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The Commission may not administer a certification program in a

manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the Commission establish requirements for the programs or activities of certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are certified by the Commission are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this part.

(d) The Commission will administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 6.131—6.139 [Reserved]

§ 6.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Commission. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 6.141—6.148 [Reserved]

§ 6.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in 11 CFR 6.150 and 11 CFR 6.151, no qualified handicapped person shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Commission because its facilities are inaccessible to or unusable by handicapped persons.

§ 6.150 Program accessibility: Existing facilities.

(a) *General.* The Commission will operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the Commission to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The Commission has the burden of proving that compliance with 11 CFR 6.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Commission after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Commission will take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The Commission may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The Commission is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Commission, in making alterations to existing buildings, will meet accessibil-

ity requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157) and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Commission will give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The Commission will comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes will be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Commission will develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan will be developed with the assistance of interested persons, including handicapped persons and organizations representing handicapped persons. A copy of the transition plan will be made available for public inspection. The plan will, at a minimum—

(1) Identify physical obstacles in the Commission's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 6.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act, 42 U.S.C. 4151-4157, as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 6.152—6.159 [Reserved]

§ 6.160 Communications.

(a) The Commission will take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Commission will furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Commission.

(i) In determination what type of auxiliary aid is necessary, the Commission will give primary consideration to the requests of the handicapped person.

(ii) The Commission need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Commission communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's), or equally effective telecommunication systems will be used.

(b) The Commission will ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Commission will provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for

accessibility shall be used at each primary entrance of an accessible facility.

(d) The Commission will take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the Commission's programs of activities.

(e) This section does not require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The Commission has the burden of proving that compliance with this section would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Commission after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Commission will take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 6.161—6.169 [Reserved]

§6.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Commission.

(b) The Commission will process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Rehabilitation Act Officer.

(d)(1)(i) Any person who believes that he or she or any specific class of persons of which he or she is a

member has been subjected to discrimination prohibited by this part may file a complaint with the Rehabilitation Act Officer.

(ii) Any person who believes that a denial of his or her services will result or has resulted in discrimination prohibited by this part may file a complaint with the Rehabilitation Act Officer.

(2) All complete complaints must be filed within 180 days of the alleged act of discrimination. The Commission may extend this time period for good cause.

(3) Complaints filed under this part shall be addressed to the Rehabilitation Act Officer, 999 E Street, NW., Washington, DC 20463.

(e) The Commission will notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), are not readily accessible and usable to handicapped persons.

(f)(1) The Commission will accept and investigate a complete complaint that is filed in accordance with paragraph (d) of this section and over which it has jurisdiction. The Rehabilitation Act Officer will notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the Rehabilitation Act Officer receives a complaint that is not complete (See 11 CFR 6.101(c)), he or she will notify the complainant within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Rehabilitation Act Officer will dismiss the complaint without prejudice.

(3) If the Rehabilitation Act Officer receives a complaint over which the Commission does not have jurisdiction, the Commission will promptly notify the complainant and will make reasonable efforts to refer the complaint to the appropriate governmental entity.

(g) Within 180 days of receipt of a complete complaint for which it has

jurisdiction, the Commission will notify the complainant of the results of the investigation in a letter containing—

- (1) Findings of fact and conclusions of law;
- (2) A description or a remedy for each violation found; and
- (3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Commission of the letter required by § 6.170(g). The Commission may extend this time for good cause.

(i) Timely appeals to the Commission shall be addressed to the Rehabilitation Act Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(j) The Commission will notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Commission determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The Commission may extend the time limits in paragraphs (g) and (j) of this section for good cause.

(l) The Commission may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

[49 FR 33211, Aug. 22, 1984, as amended at 50 FR 50778, Dec. 12, 1985]

§§ 6.171—6.999 [Reserved]

PART 7—STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec.

- 7.1 Purpose and applicability.
- 7.2 Definitions.
- 7.3 Notification to employees and special Commission employees.
- 7.4 Interpretation and advisory service.
- 7.5 Reporting suspected violations.
- 7.6 Disciplinary and other remedial action.

Sec.

Subpart B—Conduct and Responsibilities of Employees or Commissioners

- 7.7 Prohibited conduct—General.
- 7.8 Gifts, entertainment, and favors.
- 7.9 Outside employment or activities.
- 7.10 Financial interests.
- 7.11 Political and organization activity.
- 7.12 Membership in associations.
- 7.13 Use of Government property.
- 7.14 Prohibition against making complaints and investigations public.
- 7.15 Ex parte communications.
- 7.16 Miscellaneous statutory provisions.

Subpart C—Conduct and Responsibilities of Special Commission Employees

- 7.17 Use of Commission employment.
- 7.18 Use of inside information.
- 7.19 Coercion.
- 7.20 Gifts, entertainment, and favors.
- 7.21 Miscellaneous statutory provisions.

Subpart D—Post Employment Conflict of Interest: Procedures for Administrative Enforcement Proceedings

- 7.22 Scope.
- 7.23 Initiation of investigation.
- 7.24 Conduct of preliminary investigation.
- 7.25 Initiation of administrative disciplinary proceeding.
- 7.26 Notice to former employee.
- 7.27 Hearing examiner designation and qualifications.
- 7.28 Hearing date.
- 7.29 Hearing rights of former employee.
- 7.30 Hearing procedures.
- 7.31 Examiner's decision.
- 7.32 Appeal.
- 7.33 Administrative sanctions.

AUTHORITY: 5 U.S.C. 7321 *et seq.*; 18 U.S.C. 207.

SOURCE: 51 FR 34446, Sept. 29, 1986, unless otherwise noted.

Subpart A—General Provisions

§ 7.1 Purpose and applicability.

(a) The Federal Election Commission is committed to honest, independent and impartial monitoring and enforcement of federal election law. To ensure public trust in the fairness and integrity of the federal elections process, all employees must observe the highest standards of conduct. This part prescribes standards of ethical conduct for Commissioners, employees and special Government employees of the Federal Election Commission re-

lating to conflicts of interest arising out of outside employment, private business and professional activities, political activities, and financial interests. The avoidance of misconduct and conflicts of interest on the part of Commission employees through informed judgment is indispensable to the maintenance of these prescribed ethical standards. Attainment of these goals necessitates strict and absolute fairness and impartiality in the administration of the law.

(b) This part applies to all persons included within the terms *employee* and *special Commission employees* of the Commission as defined in 11 CFR 7.2, except to the extent otherwise indicated herein, and is consistent with Executive Order 11222 and part 735 of title 5, Code of Federal Regulations, relating to employee responsibilities and conduct.

(c) These Standards of Conduct shall be construed in accordance with any applicable laws, regulations and agreements between the Federal Election Commission and a labor organization.

§ 7.2 Definitions.

As used in this part:

(a) *Commission* means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(b) *Commissioner* means a voting member of the Federal Election Commission, in accordance with 2 U.S.C. 437c.

(c) *Conflict of interest* means a situation in which an employee's private interest is inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities.

(d) *Designated Agency Ethics Officer* or *Ethics Officer* means the employee designated by the Commission to administer the provisions of the Ethics in Government Act of 1978 (Pub. L. 95-521), as amended, and includes a designee of the Ethics Officer.

(e) *Employee* means an employee of the Federal Election Commission, but does not include a special Commission employee.

(f) *Former employee* means one who was, and is no longer, an employee of the Commission.

(g) *Official responsibility* means the direct administrative or operating authority, whether intermediate or final, to approve, disapprove, or otherwise direct Commission action. Official responsibility may be exercised alone or with others and either personally or through subordinates.

(h) *Outside employment or other outside activity* means any work, service or other activity performed by an employee, but not a Commissioner, other than in the performance of the employee's official duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting, self-employment, and other services or work performed, with or without compensation.

(i) *Person* means an individual, corporation, company, association, firm, partnership, society, joint stock company, political committee, or other group, organization, or institution.

(j) *Special Commission employee* means an individual who is retained, designated, appointed or employed by the Federal Election Commission to perform, with or without compensation, temporary duties either on a full-time or intermittent basis, for not to exceed 130 days during any period of 365 consecutive days, as defined at 18 U.S.C. 202.

§ 7.3 Notification to employees and special Commission employees.

(a) The provisions of this part shall be brought to the attention of, and made available to, each employee and special Commission employee by furnishing a copy at the time of final publication. The provisions of this part shall further be brought to the attention of such employees at least annually thereafter.

(b) The provisions of this part shall be brought to the attention of each new employee and new special Commission employee by furnishing a copy at the time of entrance of duty, and by such other methods of information and education as the Ethics Officer may prescribe.

§ 7.4 Interpretation and advisory service.

A Commissioner or employee seeking advice and guidance on questions

of conflict of interest and on other matters covered by this part should consult with the Commission's General Counsel, who serves as Ethics Officer. The Ethics Officer should be consulted prior to the undertaking of any action which might violate this part governing the conduct of Commissioners or employees.

§ 7.5 Reporting suspected violations.

(a) Personnel who have information which causes them to believe that there has been a violation of a statute or policy set forth in this part should promptly report such incident to the Ethics Officer. If a report is made orally, the Ethics Officer shall require a written report from the complainant before proceeding further.

(b) When information available to the Commission indicates a conflict between the interests of an employee or special Commission employee and the performance of his or her Commission duties, the employee or special Commission employee shall be provided an opportunity to explain the conflict or appearance of conflict in writing.

§ 7.6 Disciplinary and other remedial action.

(a) A violation of this part by an employee or special Commission employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) When the Ethics Officer determines that an employee may have or appears to have a conflict of interest, the Ethics Officer, the employee's supervisor, the employee's division head, and the Staff Director or General Counsel may question the employee in the matter and gather other information. The Ethics Officer, the employee's supervisor, the employee's division head, and the Staff Director or General Counsel shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If the Ethics Officer, after consultation with the employee's supervisor, the employee's division head, and the Staff Director or General Counsel, concludes that remedial action should be taken, he or she shall refer a statement to the Commission containing

his or her recommendation for such action. The Commission, after consideration of the employee's explanation and the results of any investigation, may direct appropriate remedial action as it deems necessary.

(c) Remedial action pursuant to paragraph (b) of this section may include, but is not limited to:

- (1) Changes in assigned duties;
- (2) Divestment by the employee of his or her conflicting interest;
- (3) Disqualification for a particular action; or
- (4) Disciplinary action.

Subpart B—Conduct and Responsibilities of Employees or Commissioners

§ 7.7 Prohibited conduct—General.

A Commissioner or employee shall avoid any action whether or not specifically prohibited by this subpart which might result in, or create the appearance of:

- (a) Using public office for unlawful private gain;
- (b) Giving favorable or unfavorable treatment to any person or organization due to any partisan, political, or other consideration;
- (c) Impeding Government efficiency or economy;
- (d) Losing independence or impartiality;
- (e) Making a Government decision outside official channels; or
- (f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 7.8 Gifts, entertainment, and favors.

(a) A Commissioner or employee of the Federal Election Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

- (1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;
- (2) Conducts operations or activities that are regulated or examined by the Commission; or
- (3) Has interests that may be substantially affected by the performance

or nonperformance of the Commissioner or employee's official duty.

(b) Paragraph (a) of this section shall not apply:

(1) Where obvious family or personal relationships govern when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) To the acceptance of food, refreshments, and accompanying entertainment of nominal value in the ordinary course of a social occasion or a luncheon or dinner meeting or other function where a Commissioner or an employee is properly in attendance;

(3) To the acceptance of unsolicited advertising or promotional material or other items of nominal intrinsic value such as pens, pencils, note pads, calendars; and

(4) To the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans.

(c) A Commissioner or an employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself. However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as birthday, holiday, marriage, illness, or retirement.

(d) A Commissioner or employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in section 7342 of title 5, United States Code.

(e) Neither this section nor 11 CFR 7.7 precludes a Commissioner or employee from receipt of a bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this section does not allow an employee or Commissioner to be reimbursed, or payment to be made on his or her behalf, for excessive personal living expenses,

gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967 (46 Comp. Gen. 689).

§ 7.9 Outside employment or activities.

(a) A member of the Commission shall not devote a substantial portion of his or her time to any other business, vocation, or employment. Any individual who is engaging substantially in any other business, vocation, or employment at the time such individual begins to serve as a member of the Commission shall appropriately limit such activity no later than 90 days after beginning to serve as such a member.

(b) An employee shall not engage in outside employment that is not compatible with the full discharge of this or her Government employment and not in compliance with any labor-management agreement between the Federal Election Commission and a labor organization. Incompatible outside employment or other activities include but are not limited to:

(1) Outside employment or other activities which would involve the violation of a Federal or State statute, local ordinance, Executive Order, or regulation to which the employee is subject;

(2) Outside employment or other activities which would give rise to a real or apparent conflict of interest situation even though no violation of a specific statutory provision was involved;

(3) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, a conflict of interest;

(4) Outside employment or other activities that might bring discredit upon the Government or Commission;

(5) Outside employment or other activities that establish relationships or property interests that may result in a conflict between the employee's private interests and official duties;

(6) Outside employment or other activities which would involve any con-

tractor or subcontractor connected with any work performed for the Commission or would involve any person or organization in a position to gain advantage in its dealings with the Government through the employee's exercise of his or her official duties;

(7) Outside employment of other activities that may be construed by the public to be the official acts of the Federal Election Commission. In any permissible outside employment, care shall be taken to ensure that names and titles of employees are not used to give the impression that the activity is officially endorsed or approved by the Commission or is part of the Commission's activities;

(8) Outside employment or other activities which would involve use by an employee of his or her official duty time; use of official facilities, including office space, machines, or supplies, at any time; or use of the services of other employees during their official duty hours;

(9) Outside employment or other activities which tend to impair the employee's mental or physical capacities to perform Commission duties and responsibilities in an acceptable manner; or

(10) Use of information obtained as a result of Government employment which is not freely available to the general public or would not be made available upon request. However, written authorization for the use of any such information may be given when the Commission determines that such use would be in the public interest.

(c) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his or her services to the Government in violation of 18 U.S.C. 209.

(d) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, Executive Order 11222, or this part. However, an employee shall not, either for or without compensation, engage in teaching or writing that is dependent on information obtained as a result of his or her Commission employment, except when that information has been made available to the general public or will be made avail-

able on request, or when the Commission gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(e) This section does not preclude an individual from participation in the affairs of or acceptance of an award for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational, recreational, public service or civic organization.

(f) An employee of the Office of General Counsel who intends to engage in outside employment shall obtain the approval of the General Counsel/Ethics Officer. All other employees who intend to engage in outside employment shall obtain the approval of the Staff Director prior to review and approval by the Ethics Officer. The request shall include the name of the person, group, or organization for whom the work is to be performed, the nature of the services to be rendered, the proposed hours of work, or approximate dates of employment, and the employee's certification as to whether the outside employment (including teaching, writing or lecturing) will depend in any way on information obtained as a result of the employee's official Government position. The employee will receive notice of approval or disapproval of any written request in accordance with any labor-management agreement between the Commission and a labor organization. A record of the approval shall be placed in each employee's official personnel folder.

§ 7.10 Financial interests.

(a)(1) A Commissioner or employee shall not engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his or her Commission employment.

(2) A Commissioner or employee shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her Commission duties and responsibilities, except in cases where the Commissioner or employee makes full disclosure, and the

Commissioner or employee disqualifies himself or herself from participating in any decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding of the Commission in which the financial interest is or appears to be affected. The filing of public financial disclosure reports will constitute full disclosure for all individuals who are required to file such reports pursuant to the Ethics in Government Act. Until such time as the extent, shape and form of confidential financial disclosure reports required of employees by the Ethics in Government Act has been determined, full disclosure by an employee will require that that employee submit a written statement to the Ethics Officer disclosing the particular financial interest which conflicts substantially, or appears to conflict substantially, with the employee's duties and responsibilities.

(3) A Commissioner or employee should disqualify himself or herself from a proceeding in which his or her impartiality might reasonably be questioned where the Commissioner or employee knows that he or she, or his or her spouse, has an interest in the subject matter in controversy or is a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

(b) This section does not preclude a Commissioner or employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government provided that the activity is not prohibited by law, Executive Order 11222, or Commission regulations.

§ 7.11 Political and organization activity.

(a) Due to the Federal Election Commission's role in the political process, the following restrictions on political activities are required in addition to those imposed by the Hatch Act (5 U.S.C. 7324 *et seq.*):

(1) No Commissioner or employee should publicly support a candidate, political party, or political committee subject to the jurisdiction of the Commission. No Commissioner or employee should work for a candidate, politi-

cal party or political committee subject to the jurisdiction of the Commission. Commissioners and employees should be aware that contributing to candidates, political parties, or political committees subject to the jurisdiction of the Commission is likely to result in a conflict of interest.

(2) No Commissioner or employee shall display partisan buttons, badges or other insignia on Commission premises.

(b) Special Government employees are subject to the restrictions contained in this section for the entire 24 hours of any day on which the employee is on active duty status.

(c) Employees on leave, leave without pay, or on furlough or terminal leave, even though the employees' resignations have been accepted, are subject to the restrictions of this section. A separated employee who has received a lump-sum payment for annual leave, however, is not subject to the restrictions during the period covered by the lump-sum payment or thereafter, provided he or she does not return to Federal employment during that period. An employee is not permitted to take a leave of absence to work with a political candidate, committee, or organization or become a candidate for office despite any understanding that he or she will resign his or her position if nominated or elected.

(d) An employee is accountable for political activity by another person acting as his or her agent or under the employee's direction or control if the employee is thus accomplishing what he or she may not lawfully do directly and openly.

§ 7.12 Membership in associations.

Commissioners or employees who are members of nongovernmental associations or organizations shall avoid activities on behalf of those associations or organizations that are incompatible with their official governmental positions.

§ 7.13 Use of Government property.

A Commission or employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the

Government, for other than officially approved activities. Commissioners and employees have a positive duty to protect and conserve Government property including equipment, supplies, and other property entrusted or issued to him or her.

§ 7.14 Prohibition against making complaints and investigations public.

(a) Commission employees are warned that they are subject to criminal penalties if they discuss or otherwise make public any matters pertaining to a complaint or investigation under 2 U.S.C. 437g, without the written permission of the person complained against or being investigated. Such communications are prohibited by 2 U.S.C. 437g(a)(12)(A).

(b) 2 U.S.C. 437g(a)(12)(B) provides as follows: "Any member or employee of the Commission or any other person, who violates the provisions of subparagraph (A) shall be fined not more than \$2,000. Any such member, employee, or other person who knowingly and willfully violates this subsection shall be fined not more than \$5,000."

§ 7.15 Ex parte communications.

In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to 2 U.S.C. 437g(A) (1) or (2):

(a) Except to the extent required for the disposition of ex parte matters as required by law (as, for example, during the normal course of an investigation or a conciliation effort), no Commissioner or employee involved in the decisional process shall make or entertain any ex parte communications.

(b) The prohibition of this section shall apply from the time a complaint is filed with the Commission pursuant to 2 U.S.C. 437(a)(1) or from the time that the Commission determines on the basis of information ascertained in the normal course of its supervisory responsibilities that it has reason to believe that a violation has occurred or may occur pursuant to 2 U.S.C. 437g(a)(2), and shall remain in force until the Commission has concluded

all action with respect to the enforcement matter in question.

(c) Any written communication prohibited by paragraph (a) of this section shall be delivered to the Ethics Officer of the Commission who shall place the communication in the file of the case.

(d) A Commissioner or employee, other than the employee assigned to the case, involved in handling enforcement actions who receives an oral offer or any communication concerning any enforcement action pending before the Commission as described in paragraph (a) of this section shall decline to listen to such communication. If unsuccessful in preventing the communication, the Commissioner or employee shall advise the person making the communication that he or she will not consider the communication and shall prepare a statement setting forth the substance and circumstances of the communication within 48 hours of receipt of the communication and shall deliver the statement to the Ethics Officer for placing in the file in the manner set forth in paragraph (c) of this section.

§ 7.16 Miscellaneous statutory provisions.

Each employee shall acquaint himself or herself with each statute that relates to his or her ethical and other conduct as an employee of the Commission and of the Government. In particular, the attention of employees is directed to the following statutory provisions:

(a) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(b) The prohibition of 18 U.S.C. 1913 against lobbying with appropriated funds.

(c) The prohibitions of 5 U.S.C. 7311 and 18 U.S.C. 1918 against disloyalty and striking.

(d) The prohibition of 50 U.S.C. 784 against the employment of a member of a Communist organization.

(e) The prohibitions against (1) the disclosure of classified information under 18 U.S.C. 798 and 50 U.S.C. 782 and (2) the disclosure of confidential

business information under 18 U.S.C. 1905.

(f) The provisions of 5 U.S.C. 7352 relating to the habitual use of intoxicants to excess.

(g) The prohibition of 31 U.S.C. 638a(c) against the misuse of a Government vehicle.

(h) The prohibition of 18 U.S.C. 1719 against the misuse of the franking privilege.

(i) The prohibition of 18 U.S.C. 1917 against the use of deceit in an examination or personnel action in connection with Government employment.

(j) The prohibition of 18 U.S.C. 1001 against fraud or false statements in a Government matter.

(k) The prohibition of 18 U.S.C. 2071 against mutilating or destroying a public record.

(l) The prohibition of 18 U.S.C. 508 against counterfeiting and forging transportation requests.

(m) The prohibitions against

(1) Embezzlement of Government money or property under 18 U.S.C. 641;

(2) Failing to account for public money under 18 U.S.C. 643; and

(3) Embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment under 18 U.S.C. 654.

(n) The prohibition of 18 U.S.C. 285 against unauthorized use of documents relating to claims from or by the Government.

(o) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code, and 18 U.S.C. 602, 603, 607, and 608.

(p) The prohibition of 18 U.S.C. 219 against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act.

(q) The prohibition of 18 U.S.C. 207 against certain activities of departing and former employees.

(r) The prohibition of 18 U.S.C. 208 against certain acts affecting a personal financial interest.

Subpart C—Conduct and Responsibilities of Special Commission Employees

§ 7.17 Use of Commission employment.

A special Commission employee shall not use his or her Commission employment for a purpose that is, or gives the appearance of being, motivated by a desire for unlawful private gain for himself or herself, or for another person, particularly one with whom the employee has family, business or financial ties.

§ 7.18 Use of inside information.

(a) A special Commission employee shall not use inside information obtained as a result of his or her Commission employment for unlawful private gain for himself or herself, or for another person, either by direct action on the employee's part or by counsel, recommendation, or suggestion to another person, particularly one with whom the employee has family, business, or financial ties. For the purpose of this section, *inside information* means information obtained under Commission authority which has not become part of the body of public information.

(b) A special Commission employee may teach, lecture, or write in a manner consistent with 11 CFR 7.9(d) and (e).

§ 7.19 Coercion.

A special Commission employee shall not use his or her Commission employment to coerce, or give the appearance of coercing, a person to provide unlawful financial benefit to himself or herself or to another person, particularly one with whom the employee has family, business, or financial ties.

§ 7.20 Gifts, entertainment, and favors.

Except as provided at 11 CFR 7.8(b), a special Commission employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the Commission anything of value such as a gift, gratuity, loan, entertainment, or favor for himself or herself, or for another person, particu-

larly one with whom the employee has family, business, or financial ties.

§ 7.21 Miscellaneous statutory provisions.

Each special Commission employee shall acquaint himself or herself with each statute that relates to his or her ethical or other conduct as a special Commission employee. Particular attention should be directed to the statutory provisions listed in 11 CFR 7.16.

Subpart D—Post Employment Conflict of Interest: Procedures for Administrative Enforcement Proceedings

§ 7.22 Scope.

The following are procedures to be followed by the Federal Election Commission in investigating and administratively correcting violations of the post employment conflict of interest provisions contained in 18 U.S.C. 207 (a), (b), and (c), which restrict activities of former employees, including former special Commission employees, which might give the appearance of undue benefit based on prior Commission employment and affiliation. Where appropriate for purposes of this subpart, *former special Commission employee* shall be defined in accordance with 18 U.S.C. 207(c)(1).

§ 7.23 Initiation of investigation.

(a) *Filing of complaint.* (1) Any person who believes a former employee has violated the post employment conflict of interest provisions of 18 U.S.C. 207 (a), (b), or (c), or 5 CFR part 737 may file a signed complaint with the Ethics Officer.

(2) The Ethics Officer, within five days after receipt of the complaint, shall send a copy of the complaint by certified mail to the former employee named in the complaint. The former employee may, within ten days after receipt of the complaint, submit any written legal or factual materials he or she believes demonstrate that the complaint should be dismissed on its face.

(b) *Review of complaint.* (1) The Ethics Officer will review the complaint and any materials submitted by the former employee, and will prepare

a report to the Commission recommending whether the complaint should be investigated or should be dismissed on its face.

(2) If the Commission, by an affirmative vote of four members, finds that the complaint appears to be substantiated, it may order an investigation of the allegations made in the complaint.

(i) Except as may be required to coordinate with the Department of Justice under 11 CFR 7.23(b)(2)(iii) any investigation conducted under this section shall be kept confidential until such time as the Commission has determined whether there is reasonable cause to believe a violation has occurred.

(ii) The Ethics Officer shall notify the Director of the Office of Government Ethics and the Criminal Division of the Department of Justice of the Commission's finding that the complaint has merit. The notification shall contain a copy of the complaint, any materials submitted by the former employee, the Ethics Officer's report, and the certification of the Commission's action.

(iii) The Commission will coordinate any investigation or administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice notifies the Commission that it does not intend to initiate criminal proceedings.

(3) If the Commission finds the complaint to be unfounded, no investigation will be conducted and both the complainant and the former employee will be notified by the Ethics Officer of the Commission's finding.

§ 7.24 Conduct of preliminary investigation.

(a) *Ethics Officer's responsibility.* Upon a finding under 11 CFR 7.23(b)(2) that a complaint appears to be substantiated, the Ethics Officer shall conduct an investigation into the allegations of the complaint.

(b) *Opportunity to respond.* The former employee will be sent a copy of the Ethics Officer's report and will be given an opportunity to respond in writing and under oath to the allegations made in the complaint and the

findings made in the report. The former employee may provide any written legal or factual materials he or she believes demonstrate that no violation has occurred. Such response must be received by the Commission within 20 days after the former employee's receipt of the Ethics Officer's report, unless an extension is authorized in writing by the Ethics Officer.

(c) *Representation by counsel.* The former employee may be represented by counsel during the investigation. Such counsel shall notify the Ethics Officer in writing that he or she is representing the former employee. Thereafter, all communications between the Commission staff and the former employee relating to the investigation shall be made to the former employee's counsel.

(d) *Report to the Commission.* Upon completion of the investigation, the Ethics Officer shall prepare a report to the Commission, including any materials provided by the former employee. The report shall recommend whether there is reasonable cause to believe the respondent has violated 18 U.S.C. 207(a), (b), or (c).

§ 7.25 Initiation of administrative disciplinary proceeding.

(a) *Commission review of report.* The Commission shall review the Ethics Officer's investigative report in Executive Session.

(b) *Reasonable cause to believe finding.* If the Commission, by an affirmative vote of four members, determines there is reasonable cause to believe a violation has occurred, it shall initiate an administrative disciplinary proceeding by providing the former employee with the notice defined in 11 CFR 7.26.

(c) *No reasonable cause to believe finding.* If the Commission determines that there is no reasonable cause to believe a violation has occurred, it will close its file on the matter and take no further action. The Commission shall notify the Director of the Office of Government Ethics, the Criminal Division of the Department of Justice, the complainant, and the former employee of its determination. Included in this notification will be a statement of rea-

sons for the Commission's determination.

§ 7.26 Notice to former employee.

(a) *Notice requirement.* After a reasonable cause to believe finding the Ethics Officer shall provide the former Commission employee with adequate notice of an intention to institute a disciplinary proceeding and an opportunity to request a hearing.

(b) *Contents.* The notice required under this section shall contain:

(1) A statement of the allegations (and the basis thereof);

(2) Notification of the right to request a hearing;

(3) An explanation of the method by which a hearing may be requested as set forth at 11 CFR 7.26(c); and

(4) A copy of the post-employment regulations.

(c) *Request for hearing.* (1) A former employee who has received a notice under this section must notify the Commission with ten days after receipt of such notice by certified mail of his or her desire for a hearing. The request for a hearing should include the following information:

(i) The former employee's daytime telephone number;

(ii) The name, address, and telephone number of the former employee's counsel, if he or she intends to be represented by counsel; and

(iii) At least three dates and times at which the former employee will be available for a hearing.

(2) If a written request from the former employee is not received by the Ethics Officer within the stated time period, the right to a hearing shall be waived and the examiner (See 11 CFR 7.27) shall consider the evidence and make a decision.

§ 7.27 Hearing examiner designation and qualifications.

(a) *Designation.* If the Commission decides by an affirmative vote of four of its members to hold a hearing, the Ethics Officer shall designate an individual to serve as examiner at the administrative disciplinary hearing. In the absence of a hearing, the Ethics Officer shall designate an examiner to consider the written evidence and

make a decision. (See 11 CFR 7.26(b)(2)). The individual designated as examiner shall have the qualifications set forth in paragraph (b) of this section.

(b) *Qualifications.* (1) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceeding may serve as an examiner in those proceedings. Therefore, the following persons may not be designated as an examiner:

- (i) A Commissioner,
- (ii) The Ethics Officer, or
- (iii) Any Commission employee who has participated in the preliminary investigation of the complaint.

(2) The examiner shall be an attorney at the Assistant General Counsel level or higher.

§ 7.28. Hearing date.

(a) *Setting of date by examiner.* The examiner shall set the hearing at a reasonable time, date, and place.

(b) *Considerations.* Whenever practicable, the examiner shall choose a time and date from the list submitted by the former employee in the request for a hearing. In setting a hearing date, the examiner shall give due regard to the former employee's need for:

- (1) Adequate time to prepare a defense properly, and
- (2) An expeditious resolution of allegations that may be damaging to his or her reputation.

§ 7.29. Hearing rights of former employee.

A hearing conducted under these procedures shall afford the former employee the following rights:

- (a) To represent oneself or to be represented by counsel,
- (b) To introduce and examine witnesses and to submit physical evidence,
- (c) To confront and cross-examine adverse witnesses,
- (d) To present oral argument, and
- (e) To request a transcript of the recording of proceedings. The requester will be charged according to the fee schedule set out at 11 CFR 5.6.

§ 7.30. Hearing procedures.

(a) *Witness lists.* (1) No later than 10 days prior to the hearing date, the

Ethics Officer will provide the former employee with a list of the witnesses the Commission intends to introduce. The list shall include the name and position of each witness and the aspect of the allegation upon which the witness is expected to testify. If no witnesses are to be called, the former employee shall be so notified.

(2) No later than 5 days prior to the hearing date, the former employee shall provide the Ethics Officer with a list of witnesses he or she intends to introduce. The list shall include the name and position of each witness and the aspect of the allegation upon which the witness is expected to testify. If no witnesses are to be called, the Ethics Officer shall be so notified.

(3) Copies of the witness lists shall be given to the examiner by the Ethics Officer.

(b) *Representation.* (1) The Commission shall be represented at the hearing by the Ethics Officer or his or her designee.

(2) The former employee may represent himself or herself or may be represented by counsel.

(c) *Burden of proof.* The burden of proof shall be on the Commission which must establish substantial evidence of a violation.

(d) *Conduct of hearing.* (1) The following items will be introduced by the Commission and will be made part of the hearing record:

- (i) The complaint;
- (ii) The notification sent to the former employee under 11 CFR 7.27;
- (iii) The former employee's response to the notification; and
- (iv) If the Commission so chooses, a brief or memorandum of law.

(2) The former employee will then be given an opportunity to submit a brief or memorandum of law to be included in the hearing record.

(3) The Commission shall introduce its witnesses and evidence first. At the close of the Commission's examination of each witness, the former employee will be given an opportunity to cross-examine the witness.

(4) The former employee will present his or her witnesses and evidence at the close of the Commission's presentation. At the close of the former employee's examination of

each witness, the Commission shall be given an opportunity to cross-examine each witness.

(5) After the former employee has completed his or her presentation, both parties will be given an opportunity for oral argument with the Commission making its arguments first. Time shall be offered during the oral argument for Commission rebuttal.

(6) Decisions as to the admissibility of evidence or testimony shall be made under the Federal Rules of Evidence.

§ 7.31 Examiner's decision.

(a) *Initial determination.* No later than 15 days after the close of the hearing, the examiner shall make a determination exclusively on matters of record in the proceeding.

(b) *Form of determination.* The examiner's determination shall set forth all findings of fact and conclusions of law relevant to the matters at issue.

(c) *Copies.* The examiner shall provide copies of his or her determination to the former employee, the complainant, the Ethics Officer, and the Commission.

§ 7.32 Appeal.

(a) *Right of appeal.* Within ten days after receipt by certified mail of the examiner's decision, either party may appeal such decision to the members of the Commission by filing a notice of appeal with the Chairman.

(b) *Notice of appeal.* The notice of appeal shall be accompanied by a memorandum setting forth the legal and factual reasons why the examiner's decision should be reversed or modified.

(c) *Commission review of appeal.* The Commission, by an affirmative vote of four members, may affirm, modify, or reverse the examiner's decision. The Commission's decision shall be based solely on the hearing record or those portions thereof cited by the parties to limit the issues.

(d) *Commission statement on appeal.* If the Commission modifies or reverses the initial decision, it shall specify such findings of fact or conclusions of law as are different from those of the examiner.

§ 7.33 Administrative sanctions.

The Commission may take appropriate disciplinary action in the case of any individual who is found in violation of 18 U.S.C. 207 (a), (b), or (c) after a final administrative hearing, or in the absence of a hearing, after adequate notice such as by:

(a) Prohibiting the individual from making, on behalf of any person (except the United States), any formal or informal appearance before, or with the intent to influence, any oral or written communication to the Commission on any matter of business for a period not to exceed five years, which may be accomplished by directing agency employees to refuse to participate in any such appearance or to accept any such communication;

(b) Issuing a letter of reprimand;

(c) Issuing a letter of admonishment;

(d) Prohibiting a former employee from making formal or informal appearances or communications in connection with a particular matter or on behalf of a particular party.

(e) Taking other appropriate disciplinary action.

SUBCHAPTER A—GENERAL

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

- Sec.
- 100.1 Scope.
- 100.2 Election (2 U.S.C. 431(1)).
- 100.3 Candidate (2 U.S.C. 431(2)).
- 100.4 Federal office (2 U.S.C. 431(3)).
- 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).
- 100.6 Connected organization (2 U.S.C. 431(7)).
- 100.7 Contribution (2 U.S.C. 431(8)).
- 100.8 Expenditure (2 U.S.C. 431(9)).
- 100.9 Commission (2 U.S.C. 431(10)).
- 100.10 Person (2 U.S.C. 431(11)).
- 100.11 State (2 U.S.C. 431(12)).
- 100.12 Identification (2 U.S.C. 431(13)).
- 100.13 National committee (2 U.S.C. 431(14)).
- 100.14 State committee, subordinate committee (2 U.S.C. 431(15)).
- 100.15 Political party (2 U.S.C. 431(16)).
- 100.16 Independent expenditure (2 U.S.C. 431(17)).
- 100.17 Clearly identified (2 U.S.C. 431(18)).
- 100.18 Act (2 U.S.C. 431(19)).
- 100.19 File, filed or filing (2 U.S.C. 434(a)).
- 100.20 Occupation (2 U.S.C. 431(13)).
- 100.21 Employer (2 U.S.C. 431(13)).

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

SOURCE: 45 FR 15094, Mar. 7, 1980, unless otherwise noted.

§ 100.1 Scope.

This subchapter is issued by the Federal Election Commission to implement the Federal Election Campaign Act of 1971 (Pub. L. 92-225), as amended by Pub. L. 93-443, Pub. L. 94-283, Pub. L. 95-216, and Pub. L. 96-187.

§ 100.2 Election (2 U.S.C. 431(1)).

(a) *Election* means the process by which individuals, whether opposed or unopposed, seek nomination for election, or election, to Federal office. The specific types of elections, as set forth at 11 CFR 100.2(b), (c), (d), (e) and (f) are included in this definition.

(b) *General election.* A general election is an election which meets either of the following conditions:

(1) An election held in even numbered years on the Tuesday following the first Monday in November is a general election.

(2) An election which is held to fill a vacancy in a Federal office (i.e., a spe-

cial election) and which is intended to result in the final selection of a single individual to the office at stake is a general election. See 11 CFR 100.2(f).

(c) *Primary election.* A primary election is an election which meets one of the following conditions:

(1) An election which is held prior to a general election, as a direct result of which candidates are nominated, in accordance with applicable State law, for election to Federal office in a subsequent election is a primary election.

(2) An election which is held for the expression of a preference for the nomination of persons for election to the office of President of the United States is a primary election.

(3) An election which is held to elect delegates to a national nominating convention is a primary election.

(4) With respect to individuals seeking federal office as independent candidates, or without nomination by a major party (as defined in 26 U.S.C. 9002(6)), the primary election is considered to occur on one of the following dates, at the choice of the candidate:

(i) The day prescribed by applicable State law as the last day to qualify for a position on the general election ballot may be designated as the primary election for such candidate.

(ii) The date of the last major party primary election, caucus, or convention in that State may be designated as the primary election for such candidate.

(iii) In the case of non-major parties, the date of the nomination by that party may be designated as the primary election for such candidate.

(5) With respect to any major party candidate (as defined at 26 U.S.C. 9002(6)) who is unopposed for nomination within his or her own party, and who is certified to appear as that party's nominee in the general election for the office sought, the primary election is considered to have occurred on the date on which the primary election was held by the candidate's party in that State.

(d) *Runoff election.* *Runoff election* means the election which meets either of the following conditions:

(1) The election held after a primary election, and prescribed by applicable State law as the means for deciding which candidate(s) should be certified as a nominee for the Federal office sought, is a runoff election.

(2) The election held after a general election and prescribed by applicable State law as the means for deciding which candidate should be certified as an officeholder elect, is a runoff election.

(e) *Caucus or Convention.* A caucus or convention of a political party is an election if the caucus or convention has the authority to select a nominee for federal office on behalf of that party.

(f) *Special election.* *Special election* means an election which is held to fill a vacancy in a Federal office. A special election may be a primary, general, or runoff election, as defined at 11 CFR 100.2(b), (c) and (d).

§ 100.3 Candidate (2 U.S.C. 431(2)).

(a) *Definition.* *Candidate* means an individual who seeks nomination for election, or election, to federal office. An individual becomes a candidate for Federal office whenever any of the following events occur:

(1) The individual has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000.

(2) The individual has given his or her consent to another person to receive contributions or make expenditures on behalf of that individual and such person has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000.

(3) After written notification by the Commission that any other person has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000 on the individual's behalf, the individual fails to disavow such activity by letter to the Commission within 30 days of receipt of the notification.

(4) The aggregate of contributions received under 11 CFR 100.3(a) (1), (2), and (3), in any combination there-

of, exceeds \$5,000, or the aggregate of expenditures made under 11 CFR 100.3(a) (1), (2), and (3), in any combination thereof, exceeds \$5,000.

(b) *Election cycle.* For purposes of determining whether an individual is a candidate under this section, contributions or expenditures shall be aggregated on an election cycle basis. An election cycle shall begin on the first day following the date of the previous general election for the office or seat which the candidate seeks, unless contributions or expenditures are designated for another election cycle. For an individual who receives contributions or makes expenditures designated for another election cycle, the election cycle shall begin at the time such individual, or any other person acting on the individual's behalf, first receives contributions or makes expenditures in connection with the designated election. The election cycle shall end on the date on which the general election for the office or seat that the individual seeks is held.

§ 100.4 Federal office (2 U.S.C. 431(3)).

Federal office means the office of President or Vice President of the United States, Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).

Political committee means any group meeting one of the following conditions:

(a) Except as provided in 11 CFR 100.5(b), (c) and (d), any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 or which makes expenditures aggregating in excess of \$1,000 during a calendar year is a political committee.

(b) Any separate segregated fund established under 2 U.S.C. 441b(b)(2)(C) is a political committee.

(c) Any local committee of a political party is a political committee if: it receives contributions aggregating in excess of \$5,000 during a calendar year; it makes payments exempted from the definition of contribution,

under 11 CFR 100.7(b)(9), (15) and (17), and expenditure, under 11 CFR 100.8(b)(10), (16) and (18), which payments aggregate in excess of \$5,000 during a calendar year; or it makes contributions aggregating in excess of \$1,000 or makes expenditures aggregating in excess of \$1,000 during a calendar year.

(d) An individual's principal campaign committee or authorized committee(s) becomes a political committee(s) when that individual becomes a candidate pursuant to 11 CFR 100.3.

(e) The following are examples of political committees:

(1) *Principal campaign committee.* *Principal campaign committee* means a political committee designated and authorized by a candidate pursuant to 11 CFR 101.1 and 102.1.

(2) *Single candidate committee.* *Single candidate committee* means a political committee other than a principal campaign committee which makes or receives contributions or makes expenditures on behalf of only one candidate.

(3) *Multi-candidate committee.* *Multi-candidate committee* means a political committee which (i) has been registered with the Commission, Clerk of the House or Secretary of the Senate for at least 6 months; (ii) has received contributions for Federal elections from more than 50 persons; and (iii) (except for any State political party organization) has made contributions to 5 or more Federal candidates.

(4) *Party committee.* *Party committee* means a political committee which represents a political party and is part of the official party structure at the national, State, or local level.

(5) *Delegate committee.* A delegate committee is a group of persons that receives contributions or makes expenditures for the sole purpose of influencing the selection of one or more delegates to a national nominating convention. The term *delegate committee* includes a group of delegates, a group of individuals seeking selection as delegates and a group of individuals supporting delegates. A delegate committee that qualifies as a political committee under 11 CFR 100.5 must regis-

ter with the Commission pursuant to 11 CFR part 102 and report its receipts and disbursements in accordance with 11 CFR part 104. (See definition of *delegate* at 11 CFR 110.14(b)(1).)

(f) A political committee is either an authorized committee or an unauthorized committee.

(1) *Authorized committee.* An *authorized committee* means the principal campaign committee or any other political committee authorized by a candidate under 11 CFR 102.13 to receive contributions or make expenditures on behalf of such candidate, or which has not been disavowed pursuant to 11 CFR 100.3(a)(3).

(2) *Unauthorized committee.* An *unauthorized committee* is a political committee which has not been authorized in writing by a candidate to solicit or receive contributions or make expenditures on behalf of such candidate, or which has been disavowed pursuant to 11 CFR 100.3(a)(3).

(g) *Affiliated committee.* (1) All authorized committees of the same candidate for the same election to Federal office are affiliated.

(2) All committees (including a separate segregated fund, see 11 CFR part 114) established, financed, maintained or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. *Local unit* may include, in appropriate cases, a franchisee, licensee, or State or regional association.

(3) Affiliated committees sharing a single contribution limitation under paragraph (g)(2) of this section include all of the committees established, financed, maintained or controlled by—

(i) A single corporation and/or its subsidiaries;

(ii) A single national or international union and/or its local unions or other subordinate organizations;

(iii) An organization of national or international unions and/or all its State and local central bodies;

(iv) A membership organization, (other than political party committees, see 11 CFR 110.3(b)) including trade or professional associations; see 11 CFR 114.8(a), and/or related State

and local entities of that organization or group; or

(v) The same person or group of persons.

(4)(i) The Commission may examine the relationship between organizations that sponsor committees, between the committees themselves, or between one sponsoring organization and a committee established by another organization to determine whether committees are affiliated.

(ii) In determining whether committees not described in paragraphs (g)(3)(i)-(iv) of this section are affiliated, the Commission will consider the circumstantial factors described in paragraphs (g)(4)(ii) (A) through (J) of this section. The Commission will examine these factors in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained or controlled by another committee or sponsoring organization. Such factors include, but are not limited to:

(A) Whether a sponsoring organization owns controlling interest in the voting stock or securities of the sponsoring organization of another committee;

(B) Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(C) Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee;

(D) Whether a sponsoring organization or committee has a common or overlapping membership with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(E) Whether a sponsoring organization or committee has common or

overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(F) Whether a sponsoring organization or committee has any members, officers or employees who were members, officers or employees of another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees, or which indicates the creation of a successor entity;

(G) Whether a sponsoring organization or committee provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(H) Whether a sponsoring organization or committee causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization or committee, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(I) Whether a sponsoring organization or committee or its agent had an active or significant role in the formation of another sponsoring organization or committee; and

(J) Whether the sponsoring organizations or committees have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the sponsoring organizations or committees.

[45 FR 15094, Mar. 7, 1980, as amended at 45 FR 34867, May 23, 1980; 52 FR 35534, Sept. 22, 1987; 54 FR 34109, Aug. 17, 1989; 54 FR 48580, Nov. 24, 1989]

§ 100.6 *Connected organization* (2 U.S.C. 431(7)).

(a) *Connected organization* means any organization which is not a political committee but which directly or indirectly establishes, administers, or fi-

financially supports a political committee. A connected organization may be a corporation (including a corporation without capital stock), a labor organization, a membership organization, a cooperative or a trade association.

(b) For purposes of 11 CFR 100.6, organizations which are members of the entity (such as corporate members of a trade association) which establishes, administers, or financially supports a political committee are not organizations which directly or indirectly establish, administer or financially support that political committee.

(c) For purposes of 11 CFR 100.6, the term *financially supports* does not include contributions to the political committee, but does include the payment of establishment, administration and solicitation costs of such committee.

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

(a) The term *contribution* includes the following payments, services or other things of value:

(1) A gift, subscription, loan (except for a loan made in accordance with 11 CFR 100.7(b)(11)), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution.

(i) For purposes of 11 CFR 100.7(a)(1), the term *loan* includes a guarantee, endorsement, and any other form of security.

(A) A loan which exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR part 110 shall be unlawful whether or not it is repaid.

(B) A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110. A loan, to the extent it is repaid, is no longer a contribution.

(C) Except as provided in (D), a loan is a contribution by each endorser or guarantor. Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to

be liable in a written agreement. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed, or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a loan by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

(D) A candidate may obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral or security for the loan. The spouse shall not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan which is used for the candidate's campaign.

(E) If a political committee makes a loan to any person, such loan shall be subject to the limitations of 11 CFR part 110. Repayment of the principal amount of such loan to such political committee shall not be a contribution by the debtor to the lender committee. Such repayment shall be made with funds which are subject to the prohibitions of 11 CFR 110.4(a) and part 114. The payment of interest to such committee by the debtor shall be a contribution only to the extent that the interest paid exceeds a commercially reasonable rate prevailing at the time the loan is made. All payments of interest shall be made from funds subject to the prohibitions of 11 CFR 110.4(a) and part 114.

(ii) For purposes of 11 CFR 100.7(a)(1), the term *money* includes currency of the United States or of any foreign nation, checks, money orders, or any other negotiable instruments payable on demand.

(iii) (A) For purposes of 11 CFR 100.7(a)(1), the term *anything of value* includes all in-kind contributions. Unless specifically exempted under 11 CFR 100.7(b), the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or

services is a contribution. Examples of such goods or services include, but are not limited to: securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged to the political committee.

(B) For purposes of 11 CFR 100.7(a)(1)(iii)(A), *usual and normal charge* for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; and *usual and normal charge* for any services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

(2) The entire amount paid to attend a fundraiser or other political event and the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution.

(3) The payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose, except for legal and accounting services provided under 11 CFR 100.7(b)(13) or (14), is a contribution. No compensation is considered paid to any employee under any of the following conditions:

(i) If an employee is paid on an hourly or salaried basis and is expected to work a particular number of hours per period, no contribution results if the employee engages in political activity during what would otherwise be a regular work period, provided that the taken or released time is made up or completed by the employee within a reasonable time.

(ii) No contribution results where an employee engages in political activity during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee's time is

considered his or her own to use as he or she sees fit.

(iii) No contribution results where the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time.

(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.

(b) The term *contribution* does not include the following payments, services or other things of value:

(1) (i) Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such funds received. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act. Such contributions must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received.

(ii) This exemption does not apply to funds received for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(A) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(B) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(C) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(D) The individual conducts activities in close proximity to the election or over a protracted period of time.

(E) The individual has taken action to qualify for the ballot under State law.

(2) Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the cost for a news story (i) which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility, and (ii) which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a contribution.

(3) The value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is not a contribution.

(4) No contribution results where an individual, in the course of volunteering personal services on his or her residential premises, to any candidate or to any political committee of a political party, provides the use of his or her real or personal property to such candidate for candidate-related activity or to such political committee of a political party for party-related activity. For the purposes of 11 CFR 100.7(b)(4), an individual's residential premises, shall include a recreation room in a residential complex where the individual volunteering services re-

sides, provided that the room is available for use without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not a contribution.

(5) No contribution results where an individual, in the course of volunteering personal services to any candidate or political committee of a political party, obtains the use of a church or community room and provides such room to any candidate for candidate-related activity or to any political committee of a political party for party-related activity, provided that the room is used on a regular basis by members of the community for noncommercial purposes and the room is available for use by members of the community without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not a contribution.

(6) The cost of invitations, food and beverages is not a contribution where such items are voluntarily provided by an individual volunteering personal services on the individual's residential premises or in a church or community room as specified at 11 CFR 100.7(b)(4) and (5) to a candidate for candidate-related activity or to any political committee of a political party for party-related activity, to the extent that: the aggregate value of such invitations, food and beverages provided by the individual on behalf of the candidate, does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in any calendar year.

(7) The sale of any food or beverage by a vendor (whether incorporated or not) for use in a candidate's campaign, or for use by a political committee of a political party, at a charge less than the normal or comparable commercial rate, is not a contribution, provided that the charge is at least equal to the cost of such food or beverage to the vendor, to the extent that: the aggregate value of such discount given by the vendor on behalf of any single candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of

each political party does not exceed \$2,000 in a calendar year.

(8) Any unreimbursed payment for transportation expenses incurred by any individual on behalf of any candidate or any political committee of a political party is not a contribution to the extent that: the aggregate value of the payments made by such individual on behalf of a candidate does not exceed \$1,000 with respect to a single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year. Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a contribution.

(9) The payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not a contribution. The payment of the portion of such costs allocable to Federal candidates must be made from funds subject to the limitations and prohibitions of the Act. If made by a political committee, such payments shall be reported by that committee as disbursements, but need not be allocated in committee reports to specific candidates. This exemption shall not apply to costs incurred by such a committee with respect to the preparation and display of listings made on broadcasting stations, or in newspapers, magazines, and similar types of general public political advertising such as billboards.

(10) Any payment made or obligation incurred by a corporation or a labor organization is not a contribution if under the provisions of 11 CFR part 114 such payment or obligation would not constitute an expenditure by the corporation or labor organization.

(11) A loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the

Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it: bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule. Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement, except that, in the event of a signature by the candidate's spouse, the provisions of 11 CFR 100.7(a)(1)(i)(D) shall apply. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a contribution by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. For purposes of 11 CFR 100.7(b)(11), an overdraft made on a checking or savings account shall be considered a contribution by the bank or institution unless: the overdraft is made on an account which is subject to automatic overdraft protection; the overdraft is subject to a definite interest rate which is usual and customary; and there is a definite repayment schedule.

(12) A gift, subscription, loan, advance, or deposit of money or anything of value made to a national committee or a State committee of a political party is not a contribution if it is specifically designated to defray any cost incurred for construction or pur-

chase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office. If such gift, subscription, loan, advance, or deposit of money or anything of value is made to a committee which is not a political committee under 11 CFR 100.5, the amount need not be reported. However, if such gift, subscription, loan, advance, or deposit of money or anything of value is made to a political committee, it shall be reported in accordance with 11 CFR 104.3(g).

(13) Legal or accounting services rendered to or on behalf of any political committee of a political party are not contributions if the person paying for such services is the regular employer of the individual rendering the services and such services are not attributable to activities which directly further the election of any designated candidate for Federal office. For purposes of 11 CFR 100.7(b)(13), a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for such services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h).

(14) Legal or accounting services rendered to or on behalf of an authorized committee of a candidate or any other political committee are not contributions if the person paying for such services is the regular employer of the individual rendering the services and if such services are solely to ensure compliance with the Act or 26 U.S.C. 9001 *et seq.* and 9031 *et seq.* For purposes of 11 CFR 100.7(b)(14), a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for these services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h).

(15) The payment by a state or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a con-

tribution, provided that the following conditions are met:

(i) Such payment is not for cost incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public communication or political advertising. For purposes of 11 CFR 100.7(b)(15)(i), the term *direct mail* means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(ii) The portion of the cost of such materials allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.

(iii) Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate or candidates for Federal office. For purposes of 11 CFR 100.7(b)(15)(iii), a contribution shall not be considered a *designated contribution* if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(iv) Such materials are distributed by volunteers and not by commercial or for-profit operations. For the purposes of 11 CFR 100.7(b)(15)(iv), payments by the party organization for travel and subsistence or customary token payments to volunteers do not remove such individuals from the volunteer category.

(v) If made by a political committee such payments shall be reported by the political committee as disbursements in accordance with 11 CFR 104.3 but need not be allocated to specific candidates in committee reports.

(vi) Payments by a State candidate or his or her campaign committee to a State or local political party committee for the State candidate's share of expenses for such campaign materials are not contributions; provided the amount paid by the State candidate or his or her committee does not exceed his or her proportionate share of the expenses.

(vii) Campaign materials purchased by the national committee of a political party and delivered to a State or local party committee, or materials purchased with funds donated by the

national committee to such State or local committee for the purchase of such materials, shall not qualify under this exemption. Rather, the cost of such materials shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

(16) The payment by a candidate for any public office (including State or local office), or by such candidate's authorized committee, of the costs of that candidate's campaign materials which include information on or any reference to a candidate for Federal office and which are used in connection with volunteer activities (such as pins, bumper stickers, handbills, brochures, posters, and yard signs) is not a contribution to such candidate for Federal office, provided that the payment is not for the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising. The payment of the portion of the cost of such materials allocable to Federal candidates shall be made from contributions subject to the limitations and prohibitions of the Act. For purposes of 11 CFR 100.7(b)(16), the term *direct mail* means any mailing(s) by commercial vendors or mailing(s) made from lists which were not developed by the candidate.

(17) The payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party, is not a contribution to such candidate(s) provided that the following conditions are met:

(i) Such payment is not for the costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For purposes of 11 CFR 100.7(b)(17)(i), the term *direct mail* means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(ii) The portion of the costs of such activities allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.

(iii) Such payment is not made from contributions designated to be spent on behalf of a particular candidate or candidates for Federal office. For purposes of 11 CFR 100.7(b)(17)(iii), a contribution shall not be considered a *designated contribution* if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(iv) For purposes of 11 CFR 100.7(b)(17), if such activities include references to any candidate(s) for the House or Senate, the costs of such activities which are allocable to that candidate(s) shall be a contribution to such candidate(s) unless the mention of such candidate(s) is merely incidental to the overall activity.

(v) For purposes of 11 CFR 100.7(b)(17), payment of the costs incurred in the use of phone banks in connection with voter registration and get-out-the-vote activities is not a contribution when such phone banks are operated by volunteer workers. The use of paid professionals to design the phone bank system, develop calling instructions and train supervisors is permissible. The payment of the costs of such professional services is not an expenditure but shall be reported as a disbursement in accordance with 11 CFR 104.3 if made by a political committee.

(vi) If made by a political committee, such payments for voter registration and get-out-the-vote activities shall be reported by that committee as disbursements in accordance with 11 CFR 104.3, but such payments need not be allocated to specific candidates in committee reports except as provided in 11 CFR 100.7(b)(17)(iv).

(vii) Payments made from funds donated by a national committee of a political party to a State or local party committee for voter registration and get-out-the-vote activities shall not qualify under this exemption. Rather, such funds shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

(18) Payments made to any party committee by a candidate or the authorized committee of a candidate as a condition of ballot access are not contributions.

(19) The payment of any honorarium and related expenses within the meaning of 11 CFR 110.12 is not a contribution.

(20) A gift, subscription, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a Federal election, or an election contest concerning a Federal election, is not a contribution except that the prohibitions of 11 CFR 110.4(a) and part 114 apply.

(21) Funds provided to defray costs incurred in staging nonpartisan candidate debates in accordance with the provisions of 11 CFR 110.13 and 114.4(e).

(c) For purposes of 11 CFR 100.7(a) and (b), a contribution or payment made by an individual shall not be attributed to any other individual, unless otherwise specified by that other individual in accordance with 11 CFR 110.1(k).

[45 FR 15094, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980; 45 FR 23642, Apr. 8, 1980; 48 FR 19020, Apr. 27, 1983; 50 FR 9994, Mar. 13, 1985; 52 FR 773, Jan. 9, 1987; 55 FR 26385, June 27, 1990]

§ 100.8 Expenditure (2 U.S.C. 431(9)).

(a) The term *expenditure* includes the following payments, gifts or other things of value:

(1) A purchase, payment, distribution, loan (except for a loan made in accordance with 11 CFR 100.8(b)(12)), advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office is an expenditure.

(i) For purposes of 11 CFR 100.8(a)(1), the term *payment* includes payment of any interest on an obligation and any guarantee or endorsement of a loan by a candidate or a political committee.

(ii) For purposes of 11 CFR 100.8(a)(1), the term *payment* does not include the repayment by a political committee of the principal of an outstanding obligation which is owed by such committee, except that the repayment shall be reported as disbursements in accordance with 11 CFR 104.3(b).

(iii) For purposes of 11 CFR 100.8(a)(1), the term *money* includes currency of the United States or of any foreign nation, checks, money orders, or any other negotiable instrument payable on demand.

(iv)(A) For purposes of 11 CFR 100.8(a)(1), the term *anything of value* includes all in-kind contributions. Unless specifically exempted under 11 CFR 100.8(b), the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for the goods or services is an expenditure. Examples of such goods or services include, but are not limited to: securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the expenditure is the difference between the usual and normal charge for the goods or services at the time of the expenditure and the amount charged the candidate or political committee.

(B) For the purposes of 11 CFR 100.8(a)(1)(iv)(A), *usual and normal charge* for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the expenditure; and *usual and normal charge* for services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

(2) A written contract, including a media contract, promise, or agreement to make an expenditure is an expenditure as of the date such contract, promise or obligation is made.

(3) An independent expenditure which meets the requirements of 11 CFR 104.4 or part 109 is an expenditure, and such independent expenditure is to be reported by the person making the expenditure in accordance with 11 CFR 104.4 and part 109.

(b) The term *expenditure* does not include the following payments, gifts, or other things of value:

(1) (i) Payments made solely for the purpose of determining whether an individual should become a candidate are not expenditures. Examples of ac-

tivities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such payments. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the payments made are subject to the reporting requirements of the Act. Such expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the payments were made.

(ii) This exemption does not apply to payments made for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(A) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(B) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(C) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(D) The individual conducts activities in close proximity to the election or over a protracted period of time.

(E) The individual has taken action to qualify for the ballot under State law.

(2) Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not an expenditure, unless the facility is owned or controlled by any political party, political committee or candidate, in which case the cost for a news story (i) which represents a bona fide news account communicated in a publication of general

circulation or on a licensed broadcasting facility, and (ii) which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not an expenditure.

(3) Any cost incurred for nonpartisan activity designed to encourage individuals to register to vote or to vote is not an expenditure, except that corporations and labor organizations shall engage in such activity in accordance with 11 CFR 114.4(c) and (d). For purposes of 11 CFR 100.8(b)(3), *nonpartisan activity* means that no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote.

(4) Any cost incurred for any communication by a membership organization to its members, or by a corporation to its stockholders or executive or administrative personnel, is not an expenditure, so long as the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office, except that the costs incurred by a membership organization, including a labor organization, or by a corporation, directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed \$2,000 per election, be reported to the Commission on FEC Form 7 in accordance with 11 CFR 104.6

(i) For purposes of 11 CFR 100.8(b)(4), *labor organization* means an organization of any kind (any local, national, or international union, or any local or State central body of a federation of unions is each considered a separate labor organization for purposes of this section) or any agency or employee representative committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor

disputes, wages, rates of pay, hours of employment, or conditions of work.

(ii) For purposes of 11 CFR 100.8(b)(4), *stockholder* means a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends.

(iii) For purposes of 11 CFR 100.8(b)(4), *executive or administrative personnel* means individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(A) This definition includes—

(1) Individuals who run the corporation's business, such as officers, other executives, and plant, division, and section managers; and

(2) Individuals following the recognized professions, such as lawyers and engineers.

(B) This definition does not include—

(1) Professionals who are represented by a labor organization;

(2) Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees;

(3) Former or retired personnel who are not stockholders; or

(4) Individuals who may be paid by the corporation, such as consultants, but who are not employees, within the meaning of 26 CFR 31.3401(c)-(1), of the corporation for the purpose of the collection of, and liability for, employee tax under 26 CFR 31.3402(a)-(1).

(C) Individuals on commission may be considered executive or administrative personnel if they have policymaking, managerial, professional, or supervisory responsibility and if the individuals are employees, within the meaning of 26 CFR 31.3401(c)-(1), of the corporation for the purpose of the collection of, and liability for, employee tax under 26 CFR 31.3402(a)-(1).

(D) The Fair Labor Standards Act, 29 USC 201, *et seq.*, and the regulations issued pursuant to such Act, 29 CFR part 541, *et seq.*, may serve as a guideline in determining whether individuals have policymaking, managerial,

professional, or supervisory responsibilities.

(iv) For purposes of 11 CFR 100.8(b)(4), *members* means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock and in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization. Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated. A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund.

(v) For purposes of 11 CFR 100.8(b)(4), *election* means two separate processes in a calendar year, to each of which the \$2,000 threshold described above applies separately. The first process is comprised of all primary elections for Federal office, whenever and wherever held; the second process is comprised of all general elections for Federal office, whenever and wherever held. The term *election* shall also include each special election held to fill a vacancy in a Federal office (11 CFR 100.2(f)) or each runoff election (11 CFR 100.2(d)).

(vi) For purposes of 11 CFR 100.8(b)(4), *corporation* means any separately incorporated entity, whether or not affiliated.

(vii) When the aggregate costs under 11 CFR 100.8(b)(4) exceed \$2,000 per election, all costs of the communication(s) shall be reported on the filing dates specified in 11 CFR 104.6, and shall include the total amount expended for each candidate supported.

(5) No expenditure results where an individual, in the course of volunteering personal services on his or her residential premises to any candidate or political committee of a political party, provides the use of his or her real or personal property to such candidate for candidate-related activity or to such political committee of a politi-

cal party for party-related activity. For the purposes of 11 CFR 100.8(b)(5), an individual's residential premises shall include a recreation room in a residential complex where the individual volunteering services resides, provided that the room is available for use without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not an expenditure.

(6) No expenditure results where an individual, in the course of volunteering personal services to any candidate or political committee of a political party, obtains the use of a church or community room and provides such room to any candidate for candidate-related activity or to any political committee of a political party for party-related activity, provided that the room is used on a regular basis by members of the community for noncommercial purposes and the room is available for use by members of the community without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not an expenditure.

(7) The cost of invitations, food, and beverages is not an expenditure where such items are voluntarily provided by an individual in rendering voluntary personal services on the individual's residential premises or in a church or community room as specified at 11 CFR 100.8(b)(5) and (6) to a candidate for candidate-related activity or to a political committee of a political party for party-related activity, to the extent that: the aggregate value of such invitations, food and beverages provided by the individual on behalf of the candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in any calendar year.

(8) The sale of any food or beverage by a vendor (whether incorporated or not) for use in a candidate's campaign, or for use by a political committee of a political party, at a charge less than the normal or comparable commercial charge, is not an expenditure, provided that the charge is at least equal to the cost of such food or beverage to the vendor, to the extent that: the ag-

gregate value of such discount given by the vendor on behalf of any single candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year.

(9) Any unreimbursed payment for transportation expenses incurred by any individual on behalf of any candidate or political committee of a political party is not an expenditure to the extent that: the aggregate value of the payments made by such individual on behalf of a candidate does not exceed \$1,000 with respect to a single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year. Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incident to volunteer activity is not an expenditure.

(10) The payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not an expenditure. The payment of the portion of such costs allocable to Federal candidates must be made from funds subject to the limitations and prohibitions of the Act. If made by a political party committee, such payments shall be reported by that committee as disbursements, but need not be allocated in committee reports to specific candidates. This exemption shall not apply to costs incurred by such a committee with respect to the preparation and display of listings made on broadcasting stations, or in newspapers, magazines, and similar types of general public political advertising such as billboards.

(11) Any payment made or obligation incurred by a corporation or labor organization is not an expenditure if under the provisions of 11 CFR part 114 such payment or obligation would not constitute an expenditure by the corporation or labor organization.

(12) A loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration is not an expenditure by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it: bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule. Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement, except that, in the event of a signature by the candidate's spouse, the provisions of 11 CFR 100.7(a)(1)(i)(D) shall apply. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that the loan agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered an expenditure by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. For the purpose of 11 CFR 100.8(b)(12), an overdraft made on a checking or savings account shall be considered an expenditure unless the overdraft is made on an account which is subject to automatic overdraft protection; and the overdraft is subject to a definite interest rate and a definite repayment schedule.

(13) A purchase, payment, distribution, loan, advance, or deposit of money or anything of value made to a national committee or a state commit-

tee of a political party is not an expenditure if it is specifically designated to defray any cost incurred for construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office. If such purchase, payment, distribution, loan, advance, or deposit of money or anything of value is made to a committee which is not a political committee under 11 CFR 100.5, the amount need not be reported. However, if such purchase, payment, distribution, loan, advance, or deposit of money or anything of value is made to a political committee, it shall be reported in accordance with 11 CFR 104.3(g).

(14) Legal or accounting services rendered to or on behalf of any political committee of a political party are not expenditures if the person paying for such services is the regular employer of the individual rendering the services and such services are not attributable to activities which directly further the election of any designated candidate for Federal office. For purposes of 11 CFR 100.8(b)(14), a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for such services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h).

(15) Legal or accounting services rendered to or on behalf of an authorized committee of a candidate or any other political committee are not expenditures if the person paying for such services is the regular employer of the individual rendering such services and if the services are solely to ensure compliance with the Act or 26 U.S.C. 9001 *et seq.* and 9032 *et seq.* For purposes of 11 CFR 100.8(b)(15), a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for these services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h). Expenditures for these services by a candidate certified to receive Primary Matching Funds under 11 CFR part 9034 do not count against such candidate's expenditure limitations under 11 CFR part 9035 or 11 CFR 110.8.

Unless paid for with federal funds received pursuant to 11 CFR part 9005, disbursements for these services by a candidate who is certified to receive payments from the Presidential Election Campaign Fund under 11 CFR part 9005 do not count against that candidate's expenditure limitations under 11 CFR 110.8.

(16) The payment by a state or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not an expenditure, provided that the following conditions are met.

(i) Such payment is not for costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For the purposes of 11 CFR 100.8(b)(16)(i), the term *direct mail* means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(ii) The portion of the cost of such materials allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.

(iii) Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate or candidates for Federal office. For purposes of 11 CFR 100.8(b)(16)(iii), a contribution shall not be considered a *designated contribution* if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(iv) Such materials are distributed by volunteers and not by commercial or for-profit operations. For the purposes of 11 CFR 100.8(b)(16)(iv), payments by the party organization for travel and subsistence or customary token payments to volunteers do not remove such individuals from the volunteer category.

(v) If made by a political party committee, such payments shall be reported by that committee as disburse-

ments, in accordance with 11 CFR 104.3, but need not be allocated to specific candidates in committee reports.

(vi) Payments by a State candidate or his or her campaign committee to a State or local political party committee for the State candidate's share of expenses for such campaign materials are not expenditures, provided the amount paid by the State candidate or his or her committee does not exceed his or her proportionate share of the expenses.

(vii) Campaign materials purchased by the national committee of a political party and delivered to a State or local party committee, or materials purchased with funds donated by the national committee to such State or local committee for the purchase of such materials, shall not qualify under this exemption. Rather, the cost of such materials shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

(17) The payment by a candidate for any public office (including State or local office), or by such candidate's authorized committee, of the costs of that candidate's campaign materials which include information on or any reference to a candidate for Federal office and which are used in connection with volunteer activities (such as pins, bumper stickers, handbills, brochures, posters, and yard signs) is not an expenditure on behalf of such candidate for Federal office, provided that the payment is not for the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising. The payment of the portion of the cost of such materials allocable to Federal candidates shall be made from contributions subject to the limitations and prohibitions of the Act. For purposes of 11 CFR 100.8(b)(17), the term *direct mail* means mailings by commercial vendors or mailings made from lists which were not developed by the candidate.

(18) The payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party is not an expenditure for

the purpose of influencing the election of such candidates provided that the following conditions are met:

(i) Such payment is not for the costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For purposes of 11 CFR 100.8(b)(18)(i), the term *direct mail* means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(ii) The portion of the costs of such activities allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.

(iii) Such payment is not made from contributions designated to be spent on behalf of a particular candidate or candidates for Federal office. For the purposes of 11 CFR 100.8(b)(18)(iii), a contribution shall not be considered a *designated contribution* if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(iv) For purposes of 11 CFR 100.8(b)(18), if such activities include references to any candidate(s) for the House or Senate, the costs of such activities which are allocable to that candidate(s) shall be an expenditure on behalf of such candidate(s) unless the mention of such candidate(s) is merely incidental to the overall activity.

(v) For purposes of 11 CFR 100.8(b)(18), payment of the costs incurred in the use of phone banks in connection with voter registration and get-out-the-vote activities is not an expenditure when such phone banks are operated by volunteer workers. The use of paid professionals to design the phone bank system, develop calling instructions and train supervisors is permissible. The payment of the costs of such professional services is not an expenditure but shall be reported as a disbursement in accordance with 11 CFR 104.3 if made by a political committee.

(vi) If made by a political committee, such payments for voter registration and get-out-the-vote activities shall be reported by that committee as dis-

bursements, in accordance with 11 CFR 104.3 but such payments need not be allocated to specific candidates in committee reports except as provided in 11 CFR 100.8(b)(18)(iv).

(vii) Payments made from funds donated by a national committee of a political party to a State or local party committee for voter registration and get-out-the-vote activities shall not qualify under this exemption. Rather, such funds shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

(19) Amounts transferred by a party committee to another party committee or payments made to the appropriate State official of fees collected from candidates or their authorized committees as a condition of ballot access are not expenditures.

(20) A purchase, payment, distribution, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a Federal election, or an election contest concerning a Federal election, is not an expenditure except that the prohibitions of 11 CFR 110.4(a) and part 114 apply.

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

(ii) For purposes of 11 CFR 100.8(b)(21), *in connection with the solicitation of contributions* means any cost reasonably related to fundraising activity, including the costs of printing and postage, the production of and space or air time for, advertisements used for fundraising, and the costs of meals, beverages, and other costs asso-

ciated with a fundraising reception or dinner.

(iii) The fundraising expenditures need not be allocated on a State by State basis, except where the fundraising activity is aimed at a particular State and takes place within 28 days prior to a primary election, convention, or caucus. See 11 CFR 110.8(c).

(22) Payments by a candidate from his or her personal funds, as defined at 11 CFR 110.10(b), for the candidate's routine living expenses which would have been incurred without candidacy, including the costs of food and residence, are not expenditures.

(23) Funds used to defray costs incurred in staging nonpartisan candidate debates in accordance with the provisions of 11 CFR 110.13 and 114.4(e).

(c) For purposes of 11 CFR 100.8(a) and (b), a payment made by an individual shall not be attributed to any other individual, unless otherwise specified by that other individual. To the extent that a payment made by an individual qualifies as a contribution, the provisions of 11 CFR 110.1(k) shall apply.

[45 FR 15094, Mar. 7, 1980; 45 FR 23642, Apr. 8, 1980, as amended at 45 FR 43387, June 27, 1980; 48 FR 19020, Apr. 27, 1983; 50 FR 9994, Mar. 13, 1985; 52 FR 773, Jan. 9, 1987]

§ 100.9 Commission (2 U.S.C. 431(10)).

Commission means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

[45 FR 15094, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

§ 100.10 Person (2 U.S.C. 431(11)).

Person means an individual, partnership, committee, association, corporation, labor organization, and any other organization, or group of persons, but does not include the Federal government or any authority of the Federal government.

§ 100.11 State (2 U.S.C. 431(12)).

State means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 100.12 Identification (2 U.S.C. 431(13)).

Identification means, in the case of an individual, his or her full name, including: first name, middle name or initial, if available, and last name; mailing address; occupation; and the name of his or her employer; and, in the case of any other person, the person's full name and address.

§ 100.13 National committee (2 U.S.C. 431(14)).

National committee means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of the political party at the national level, as determined by the Commission.

§ 100.14 State committee, subordinate committee (2 U.S.C. 431(15)).

(a) *State committee* means the organization which by virtue of the bylaws of a political party, is responsible for the day-to-day operation of the political party at the State level, as determined by the Commission.

(b) *Subordinate committee of a State committee* means any organization which is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the control or direction of the State committee.

§ 100.15 Political party (2 U.S.C. 431(16)).

Political party means an association, committee, or organization which nominates or selects a candidate for election to any Federal office, whose name appears on an election ballot as the candidate of the association, committee, or organization.

§ 100.16 Independent expenditure (2 U.S.C. 431(17)).

The term *independent expenditure* means an expenditure for a communication by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any

candidate, or any authorized committee or agent of such candidate.

§ 100.17 Clearly identified (2 U.S.C. 431(18)).

The term *clearly identified* means that the name of the candidate involved appears; a photograph or drawing of the candidate appears; or the identity of the candidate is apparent by unambiguous reference.

§ 100.18 Act (2 U.S.C. 431(19)).

Act means the Federal Election Campaign Act of 1971 (Pub. L. 92-225), as amended in 1974 (Pub. L. 93-443), 1976 (Pub. L. 94-283), 1977 (Pub. L. 95-216) and 1980 (Pub. L. 96-187).

§ 100.19 File, filed or filing (2 U.S.C. 434(a)).

With respect to reports, statements, notices, and designations required to be filed under 11 CFR parts 101, 102, 104, 105, 107, 108 and 109, and any modifications or amendments thereto, the terms *file*, *filed* and *filing* mean either of the following actions:

(a) A document is timely filed upon delivery to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463; the Secretary of the United States Senate, Office of Public Records, 119 D Street NE., Washington, DC 20510; or the Clerk of the United States House of Representatives, House Records and Registration, 1036 Longworth House Office Building, Washington, DC 20515 as required by 11 CFR part 105, by the close of the prescribed filing date.

(b) A document is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than midnight of the day of the filing date, except that pre-election reports so mailed must be postmarked no later than midnight of the fifteenth day before the date of the election. Reports and statements sent by first class mail must be received by the close of business of the prescribed filing date to be timely filed.

[45 FR 15094, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

§ 100.20 Occupation (2 U.S.C. 431(13)).

Occupation means the principal job title or position of an individual and whether or not self-employed.

§ 100.21 Employer (2 U.S.C. 431(13)).

Employer means the organization or person by whom an individual is employed, and not the name of his or her supervisor.

PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

Sec.

101.1 Candidate designations (2, U.S.C. 432(e)(1)).

101.2 Candidate as agent of authorized committee (2 U.S.C. 432(e)(2)).

101.3 Funds received or expended prior to becoming a candidate (2 U.S.C. 432(e)(2)).

AUTHORITY: 2 U.S.C. 432(e), 438(a)(f).

§ 101.1 Candidate designations (2 U.S.C. 432(e)(1)).

(a) *Principal Campaign Committee.* Within 15 days after becoming a candidate under 11 CFR 100.3, each candidate, other than a nominee for the office of Vice President, shall designate in writing a principal campaign committee in accordance with 11 CFR 102.12. A candidate shall designate his or her principal campaign committee by filing a Statement of Candidacy on FEC Form 2, or by filing a letter containing the same information (that is, the individual's name and address, party affiliation and office sought, the District and State in which Federal office is sought, and the name and address of his or her principal campaign committee) at the place of filing specified at 11 CFR part 105. Each principal campaign committee shall register, designate a depository and report in accordance with 11 CFR parts 102, 103 and 104.

(b) *Authorized Committees.* A candidate may designate additional political committees in accordance with 11 CFR 102.13 to serve as committees which will be authorized to accept contributions or make expenditures on behalf of the candidate. For each such authorized committee, other than a principal campaign committee, the candi-

date shall file a written designation with his or her principal campaign committee. The principal campaign committee shall file such designations at the place of filing specified at 11 CFR part 105.

[45 FR 15103, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980]

§ 101.2 Candidate as agent of authorized committee (2 U.S.C. 432(e)(2)).

(a) Any candidate who receives a contribution as defined at 11 CFR 100.7, obtains any loan, or makes any disbursement, in connection with his or her campaign shall be considered as having received such contribution, obtained such loan or made such disbursement as an agent of his or her authorized committee(s).

(b) When an individual becomes a candidate, any funds received, loans obtained, or disbursements made prior to becoming a candidate in connection with his or her campaign shall be deemed to have been received, obtained or made as an agent of his or her authorized committee(s).

[45 FR 15103, Mar. 7, 1980]

§ 101.3 Funds received or expended prior to becoming a candidate (2 U.S.C. 432(e)(2)).

When an individual becomes a candidate, all funds received or payments made in connection with activities conducted under 11 CFR 100.7(b)(1) and 11 CFR 100.8(b)(1) or his or her campaign prior to becoming a candidate shall be considered contributions or expenditures under the Act and shall be reported in accordance with 11 CFR 104.3 in the first report filed by such candidate's principal campaign committee. The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received (see 11 CFR 102.9(a)), and all expenditures made (see 11 CFR 102.9(b)) in connection with activities conducted under 11 CFR 100.7(b)(1) and 11 CFR 100.8(b)(1) or the individual's campaign prior to becoming a candidate.

[50 FR 9995, Mar. 13, 1985]

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

Sec.

- 102.1 Registration of political committees (2 U.S.C. 433(a)).
- 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).
- 102.3 Termination of registration (2 U.S.C. 433(d)(1)).
- 102.4 Administrative termination (2 U.S.C. 433(d)(2)).
- 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers.
- 102.6 Transfers of funds; collecting agents.
- 102.7 Organization of political committees (2 U.S.C. 432(a)).
- 102.8 Receipt of contributions (2 U.S.C. 432(b)).
- 102.9 Accounting for contributions and expenditures (2 U.S.C. 432(c)).
- 102.10 Disbursement by check (2 U.S.C. 432(h)(1)).
- 102.11 Petty cash fund (2 U.S.C. 432(h)(2)).
- 102.12 Designation of principal campaign committee (2 U.S.C. 432(e) (1) and (3)).
- 102.13 Authorization of political committees (2 U.S.C. 432(e) (1) and (3)).
- 102.14 Names of political committees (2 U.S.C. 432(e) (4) and (5)).
- 102.15 Commingled funds (2 U.S.C. 432(a)(3)).
- 102.16 Notice: Solicitation of contributions (2 U.S.C. 441d).
- 102.17 Joint fundraising by committees other than separate segregated funds.

AUTHORITY: 2 U.S.C. 432, 433, 438(a)(8), 441d.

SOURCE: 45 FR 15104, Mar. 7, 1980, unless otherwise noted.

§ 102.1 Registration of political committees (2 U.S.C. 433(a)).

(a) *Principal Campaign Committees.* Each principal campaign committee shall file a Statement of Organization in accordance with 11 CFR 102.2 no later than 10 days after designation pursuant to 11 CFR 101.1. In addition, each principal campaign committee shall file all designations, statements and reports which are filed with such committee at the place of filing specified at 11 CFR part 105.

(b) *Authorized Committees.* Each authorized committee(s) shall file only

one Statement of Organization in accordance with 11 CFR 102.2 no later than 10 days after designation pursuant to 11 CFR 101.1. Such Statement(s) shall be filed with the principal campaign committee of the authorizing candidate.

(c) *Separate Segregated Funds.* Each separate segregated fund established under 2 U.S.C. 441b(b)(2)(C) shall file a Statement of Organization with the Federal Election Commission no later than 10 days after establishment. This requirement shall not apply to a fund established solely for the purpose of financing political activity in connection with State or local elections. Examples of establishment events, after which a fund would be required to register include, but are not limited to: a vote by the board of directors or comparable governing body of an organization to create a separate segregated fund to be used wholly or in part for federal elections; selection of initial officers to administer such a fund; or payment of the initial operating expenses of such a fund.

(d) *Other Political Committees.* All other committees shall file a Statement of Organization no later than 10 days after becoming a political committee within the meaning of 11 CFR 100.5. Such statement(s) shall be filed at the place of filing specified at 11 CFR part 105.

§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).

(a) *Forms.* (1) The Statement of Organization shall be filed in accordance with 11 CFR part 105 on Federal Election Commission Form 1, which may be obtained from the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The Statement shall be signed by the treasurer and shall include the following information:

(i) The name, address, and type of committee;

(ii) The name, address, relationship, and type of any connected organization or affiliated committee in accordance with 11 CFR 102.2(b);

(iii) The name, address, and committee position of the custodian of books and accounts of the committee;

(iv) The name and address of the treasurer of the committee;

(v) If the committee is authorized by a candidate, the name, office sought (including State and Congressional district, when applicable) and party affiliation of the candidate; and the address to which communications should be sent;

(vi) A listing of all banks, safe deposit boxes, or other depositories used by the committee.

(2) Any change or correction in the information previously filed in the Statement of Organization shall be reported no later than 10 days following the date of the change or correction by filing an amended Statement of Organization or by filing a letter noting the change(s). The amendment need list only the name of such committee and the change or correction.

(b) For purposes of 11 CFR 102.2(a)(1)(ii), political committees shall disclose the names of any connected organization(s) or affiliated committee(s) in accordance with 11 CFR 102.2(b) (1) and (2).

(1) *Affiliated committee* includes any committee defined in 11 CFR 100.5(g), 110.3(a) or (b), or 110.14(j) or (k).

(i) A principal campaign committee is required to disclose the names and addresses of all other authorized committees which have been authorized by its candidate, and all other unauthorized committees that are affiliated with the principal campaign committee. Authorized committees, and unauthorized committees that are affiliated, need only disclose the name of their principal campaign committee.

(ii)(A) Political committees established by a single parent corporation, a single national or international union, a single organization or federation of national or international unions, a single national membership organization or trade association, or any other similar group of persons (other than political party organizations) are required to disclose the names and addresses of all political committees established by any subsidiary, or by any State, local, or other subordinate unit of a national or international union or federation thereof, or by any subordinate units of a national membership organization, trade

association, or other group of persons (other than political party organizations).

(B) Political committees established by subsidiaries, or by State, local, or other subordinate units are only required to disclose the name and address of each political committee established by their parent or superior body, e.g., parent corporation, national or international union or organization or federation of such unions, or national organization or trade association.

(2) *Connected organization* includes any organization defined at 11 CFR 100.6.

(c) *Committee identification number.* Upon receipt of a Statement of Organization under 11 CFR part 102 by the Commission, an identification number shall be assigned to the committee, receipt shall be acknowledged, and the political committee shall be notified of the number assigned. This identification number shall be entered by the political committee on all subsequent reports or statements filed under the Act, as well as on all communications concerning reports and statements.

[45 FR 15104, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985; 54 FR 34109, Aug. 17, 1989; 54 FR 48580, Nov. 24, 1989]

§ 102.3 Termination of registration (2 U.S.C. 433(d)(1)).

(a) A political committee (other than a principal campaign committee) may terminate only upon filing a termination report on the appropriate FEC Form or upon filing a written statement containing the same information at the place of filing specified at 11 CFR part 105. Except as provided in 11 CFR 102.4(c), only a committee which will no longer receive any contributions or make any disbursements that would otherwise qualify it as a political committee may terminate, provided that such committee has no outstanding debts and obligations. In addition to the Notice, the committee shall also provide a final report of receipts and disbursements, which report shall include a statement as to the purpose for which such residual funds will be used, including a statement as to whether such residual

funds will be used to defray expenses incurred in connection with an individual's duties as a holder of federal office.

(b) Except as provided at 11 CFR 102.4, a principal campaign committee may not terminate until it has met the requirements of 11 CFR 102.3(a) and until all debts of any other authorized committee(s) of the candidate have been extinguished.

[45 FR 15104, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980]

§ 102.4 Administrative termination (2 U.S.C. 433(d)(2)).

(a) The Commission, on its own initiative or upon the request of the political committee itself, may administratively terminate a political committee's reporting obligation on the basis of the following factors:

(1) The committee's aggregate reported financial activity in one year is less than \$5000;

(2) The committee's reports disclose no receipt of contributions for the previous year;

(3) The committee's last report disclosed minimal expenditures;

(4) The committee's primary purpose for filing its reports has been to disclose outstanding debts and obligations;

(5) The committee has failed to file reports for the previous year;

(6) The committee's last report disclosed that the committee's outstanding debts and obligations do not appear to present a possible violation of the prohibitions and limitations of 11 CFR parts 110 and 114;

(7) The committee's last report disclosed that the Committee does not have substantial outstanding accounts receivable;

(8) The committee's outstanding debts and obligations exceed the total of the committee's reported cash on hand balance.

(b) The Commission shall send a notification to the committee treasurer of its intent to administratively terminate that committee and may request the treasurer to submit information with regard to the factors set forth at 11 CFR 102.4(a). The treasurer shall respond, in writing, within 30 days of

receipt of the Commission's notice or request and if the committee objects to such termination, the committee's response shall so state.

(c) The Commission shall administratively terminate a committee if such committee fails to object to the Commission's action under 11 CFR 102.4(b) and the Commission determines that either:

(1) The committee has complied with the debt settlement procedures set forth at 11 CFR 114.10;

(2) The Commission has approved the forgiveness of any loan(s) owed the committee which would have otherwise been considered a contribution under the Act in violation of 11 CFR part 110;

(3) It does not appear from evidence available that a contribution in violation of 11 CFR parts 110 and 114 will result.

§ 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers.

(a) Organizations that are political committees under the Act

(1) Each organization, including a party committee, which finances political activity in connection with both federal and non-federal elections and which qualifies as a political committee under 11 CFR 100.5 shall either:

(i) Establish a separate federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate federal political committee which shall comply with the requirements of the Act including the registration and reporting requirements of 11 CFR parts 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate federal account. All disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account. No transfers may be made to such federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-federal elections, except as provided in 11 CFR 106.5(g)

and 106.6(e). Administrative expenses shall be allocated pursuant to 11 CFR part 106 between such federal account and any other account maintained by such committee for the purpose of financing activity in connection with non-federal elections; or

(ii) Establish a political committee which shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with federal or non-federal elections. Such organization shall register as a political committee and comply with the requirements of the Act.

(2) Only contributions meeting the conditions set forth at subsections (i), (ii), and (iii) of this section may be deposited in a federal account established under 11 CFR 102.5(a)(1)(i) or may be received by a political committee established under 11 CFR 102.5(a)(1)(ii).

(i) Contributions designated for the federal account;

(ii) Contributions that result from a solicitation which expressly states that the contribution will be used in connection with a federal election; and

(iii) Contributions from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act.

(3) Any party committee solicitation that makes reference to a federal candidate or a federal election shall be presumed to be for the purpose of influencing a federal election, and contributions resulting from that solicitation shall be subject to the prohibitions and limitations of the Act. This presumption may be rebutted by demonstrating to the Commission that the funds were solicited with express notice that they would not be used for federal election purposes.

(b) Organizations that are not political committees under the Act

(1) Any organization that makes contributions or expenditures but does not qualify as a political committee under 11 CFR 100.5 and any State or local party organization that makes contributions, expenditures, and exempted payments under 11 CFR 100.7(b)(9), (15) and (17) and 100.8(b)(10), (16) and (18) shall either:

(i) Establish a separate account to which only funds subject to the prohibitions and limitations of the Act shall be deposited and from which contributions, expenditures and exempted payments shall be made. Such organization shall keep records of deposits to and disbursements from such account and, upon request, shall make such records available for examination by the Commission.

(ii) Demonstrate through a reasonable accounting method that whenever such organization makes a contribution, expenditure or exempted payment, that organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution, expenditure or payment. Such organization shall keep records of amounts received or expended under this subsection and, upon request, shall make such records available for examination by the Commission.

[45 FR 15104, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980; 55 FR 26067, June 26, 1990]

§ 102.6 Transfers of funds; collecting agents.

(a) *Transfers of funds; registration and reporting required*—(1) *Who may make transfers under this section.* (i) Transfers of funds may be made without limit on amount between affiliated committees whether or not they are political committees under 11 CFR 100.5.

(ii) Transfers of funds may be made without limit on amount between or among a national party committee, a State party committee and/or any subordinate party committee whether or not they are political committees under 11 CFR 100.5 and whether or not such committees are affiliated.

(iii) Transfers of joint fundraising proceeds may be made without limit on amount between organizations or committees participating in the joint fundraising activity provided that no participating committee or organization governed by 11 CFR 102.17 received more than its allocated share of the funds raised.

(iv) Transfers under paragraphs (a)(1) (i) through (iii) shall be made only from funds which are permissible

under the Act. See 11 CFR parts 110, 114 and 115.

(2) *When registration and reporting required.* Except as provided in 11 CFR 102.6(b), organizations or committees making transfers under 11 CFR 102.6(a)(1) shall count such transfers against the reporting thresholds of the Act for determining whether an organization or committee is a political committee under 11 CFR 100.5.

(b) *Fundraising by collecting agents; No reporting required*—(1) *Definition of collecting agent.* A collecting agent is an organization or committee that collects and transmits contributions to one or more separate segregated funds to which the collecting agent is related. A collecting agent may be either:

(i) A committee, whether or not it is a political committee as defined in 11 CFR 100.5, affiliated with the separate segregated fund under 11 CFR 110.3; or

(ii) The connected organization of the separate segregated fund as defined in 11 CFR 100.6; or

(iii) A parent, subsidiary, branch, division, department, or local unit of the connected organization of the separate segregated fund; or

(iv) A local, national or international union collecting contributions on behalf of the separate segregated fund of any federation with which the local, national or international union is affiliated. See 11 CFR 114.1(e).

(2) *Collecting agent not required to report.* A collecting agent that is an unregistered organization and that follows the procedures of 11 CFR 102.6(c) is not required to register and report as a political committee under 11 CFR parts 102 and 104, provided that the organization does not engage in other activities such as making contributions or expenditures for the purpose of influencing federal elections.

(3) *Who is not a collecting agent*—(i) *Commercial fundraising firm.* A separate segregated fund or a collecting agent may hire a commercial fundraising firm to assist in fundraising; however, the commercial fundraising firm shall not be considered as a collecting agent for the purpose of this section. Rather, the commercial fundraising firm shall be considered to be the

agent of the separate segregated fund or collecting agent.

(ii) *Individuals.* An individual who collects contributions for a separate segregated fund shall not be considered a collecting agent for the purpose of this section. Individuals who collect contributions are subject to the requirements of 11 CFR 102.8 and the provisions of 11 CFR part 110.

(4) *Separate segregated fund may collect contributions.* Nothing in this section shall preclude a separate segregated fund from soliciting and collecting contributions on its own behalf.

(c) *Procedures for collecting agents—*
(1) *Separate segregated fund, responsible for acts of collecting agent.* The separate segregated fund shall be responsible for ensuring that the record-keeping, reporting and transmittal requirements of this section are met.

(2) *Solicitation for contributions.* A collecting agent may include a solicitation for voluntary contributions to a separate segregated fund in a bill for membership dues or other payments such as conference registration fees or a solicitation for contributions to the collecting agent. The collecting agent may only solicit contributions from those persons permitted to be solicited under 11 CFR part 114. The solicitation for contributions must meet all of the requirements for proper solicitations under 11 CFR 114.5.

(i) The collecting agent may pay any or all of the costs incurred in soliciting and transmitting contributions to the separate segregated fund.

(ii) If the separate segregated fund pays any solicitation or other administrative expense from its own account, which expense could be paid for as an administrative expense by the collecting agent, the collecting agent may reimburse the separate segregated fund no later than 30 calendar days after the expense was paid by the separate segregated fund.

(3) *Checks combining contributions with other payments.* A contributor may write a check that represents both a contribution and payment of dues or other fees. The check must be drawn on the contributor's personal checking account or on a non-repayable corporate drawing account of the individual contributor. Under a payroll

deduction plan, an employer may write a check on behalf of its employees to a union or its agent, which check represents a combined payment of voluntary contributions to the union's separate segregated fund and union dues or other employee deductions.

(4) *Transmittal of contributions.* The full amount of each contribution collected by a collecting agent on behalf of a separate segregated fund shall be transmitted to that fund within 10 or 30 days as required by 11 CFR 102.8.

(i) Checks made payable to the separate segregated fund shall be transmitted by the collecting agent directly to the separate segregated fund in accordance with 11 CFR 102.8.

(ii) To transfer all other contributions, a collecting agent shall either:

(A) Establish a transmittal account to be used solely for the deposit and transmittal of funds collected on behalf of the separate segregated fund. Funds deposited into this account are subject to the prohibitions and limitations of the Act. If any expenditure is made from the account, other than a transfer of funds to an affiliated committee, the account shall be considered a depository of the recipient committee and all activity of that account shall be reported; or

(B) Deposit the contributions collected into the collecting agent's treasury account. The collecting agent shall keep separate records of all receipts and deposits that represent contributions to the separate segregated fund and, in the case of cash contributions, the collecting agent shall make separate deposits of such funds; or

(C) Deposit the contributions collected into an account otherwise established solely for State or local election activity. The collecting agent shall keep separate records of all receipts and deposits that represent contributions to the separate segregated fund; or

(D) In the case of cash contributions, transmit the contributions to the separate segregated fund in the form of money orders or cashier's checks.

(5) *Contributor information.* The collecting agent shall comply with the

requirements of 11 CFR 102.8 regarding transmittal of contributions and contributor information to the separate segregated fund, except that if contributions of \$50 or less are received at a mass collection, a record shall be kept of the date, the total amount collected, and the name of the function at which the collection was made.

(6) *Retention of records.* The collecting agent shall retain all records of contribution deposits and transmittals under this section for a period of three years and shall make these records available to the Commission on request. The separate segregated fund shall keep a record of all transmittals of contributions received from collecting agents under this section, and shall retain these records for a period of three years.

(7) *Reporting of funds received through collecting agents.* A separate segregated fund receiving contributions collected by a collecting agent shall report the full amount of each contribution received as a contribution from the original contributor to the extent required by 11 CFR 104.3(a).

[48 FR 26300, June 7, 1983]

§ 102.7 Organization of political committees (2 U.S.C. 432(a)).

(a) Every political committee shall have a treasurer and may designate, on the committee's Statement of Organization, an assistant treasurer who shall assume the duties and responsibilities of the treasurer in the event of a temporary or permanent vacancy in the office or in the event the treasurer is unavailable.

(b) Except as provided in subsection (a), no contribution or expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of the treasurer.

(c) No expenditure shall be made for or on behalf of a political committee without the authorization of its treasurer or of an agent authorized orally or in writing by the treasurer.

(d) Any candidate who receives a contribution, as defined at 11 CFR 100.7, obtains any loan or makes any disbursement in connection with his or her campaign, shall be considered as

having received the contribution, obtained the loan or made the disbursement as an agent of such authorized committee(s).

§ 102.8 Receipt of contributions (2 U.S.C. 432(b)).

(a) Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receipt, forward such contribution to the treasurer. If the amount of the contribution is in excess of \$50, such person shall also forward to the treasurer the name and address of the contributor and the date of receipt of the contribution. If the amount of the contribution is in excess of \$200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution.

(b) (1) Every person who receives a contribution of \$50 or less for a political committee which is not an authorized committee shall forward such contribution to the treasurer of the political committee no later than 30 days after receipt.

(2) Every person who receives a contribution in excess of \$50 for a political committee which is not an authorized committee shall, no later than 10 days after receipt of the contribution, forward to the treasurer of the political committee: the contribution; the name and address of the contributor; and the date of receipt of the contribution. If the amount of the contribution is in excess of \$200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution.

(c) The provisions of 11 CFR 102.8 concerning receipt of contributions for political committees shall also apply to earmarked contributions transmitted by an intermediary or conduit.

§ 102.9 Accounting for contributions and expenditures (2 U.S.C. 432(c)).

The treasurer of a political committee or an agent authorized by the treasurer to receive contributions and make expenditures shall fulfill all recordkeeping duties as set forth at 11 CFR 102.9(a) through (f):

(a) An account shall be kept by any reasonable accounting procedure of all contributions received by or on behalf of the political committee.

(1) For contributions in excess of \$50, such account shall include the name and address of the contributor and the date of receipt and amount of such contribution.

(2) For contributions from any person whose contributions aggregate more than \$200 during a calendar year, such account shall include the identification of the person, and the date of receipt and amount of such contribution.

(3) For contributions from a political committee, such account shall include the identification of the political committee and the date of receipt and amount of such contribution.

(b)(1) An account shall be kept of all disbursements made by or on behalf of the political committee. Such account shall consist of a record of:

(i) the name and address of every person to whom any disbursement is made;

(ii) the date, amount, and purpose of the disbursement; and

(iii) if the disbursement is made for a candidate, the name and office (including State and congressional district, if any) sought by that candidate.

(iv) For purposes of 11 CFR 102.9(b)(1), *purpose* has the same meaning given the term at 11 CFR 104.3(b)(3)(i)(A).

(2) In addition to the account to be kept under 11 CFR 102.9(b)(1), a receipt or invoice from the payee or a cancelled check to the payee shall be obtained and kept for each disbursement in excess of \$200 by or on behalf of, the committee, except that credit card transactions, shall be documented in accordance with 11 CFR 102.9(b)(2)(ii) and disbursements by share draft or check drawn on a credit union account shall be documented in

accordance with 11 CFR 102.9(b)(2)(iii).

(i)(A) For purposes of 11 CFR 102.9(b)(2), *payee* means the person who provides the goods or services to the committee or agent thereof in return for payment, except for an advance of \$500 or less for travel and subsistence to an individual who will be the recipient of the goods or services.

(B) For any advance of \$500 or less to an individual for travel and subsistence, the expense voucher or other expense account documentation and a cancelled check to the recipient of the advance shall be obtained and kept.

(ii) For any credit card transaction, documentation shall include a monthly billing statement or customer receipt for each transaction and the cancelled check used to pay the credit card account.

(iii) For purposes of 11 CFR 102.9(b)(2), a carbon copy of a share draft or check drawn on a credit union account may be used as a duplicate record of such draft or check provided that the monthly account statement showing that the share draft or check was paid by the credit union is also retained.

(c) The treasurer shall preserve all records and accounts required to be kept under 11 CFR 102.9 for 3 years after the report to which such records and accounts relate is filed.

(d) In performing recordkeeping duties, the treasurer or his or her authorized agent shall use his or her best efforts to obtain, maintain and submit the required information, and shall keep a complete record of such efforts. If there is a showing that best efforts have been made, any records of a committee shall be deemed to be in compliance with this Act. With regard to the requirements of 11 CFR 102.9(b)(2) concerning receipts, invoices and cancelled checks, the treasurer will not be deemed to have exercised best efforts to obtain, maintain and submit the records unless he or she has made at least one written effort per transaction to obtain a duplicate copy of the invoice, receipt, or cancelled check.

(e) If the candidate, or his or her authorized committee(s), receives contri-

butions prior to the date of the primary election, which contributions are designated in writing by the contributor for use in connection with the general election, such candidate or such committee(s) shall use an acceptable accounting method to distinguish between contributions received for the primary election and contributions received for the general election. Acceptable methods include, but are not limited to:

(1) The designation of separate accounts for each election, caucus or convention or

(2) The establishment of separate books and records for each election.

If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors, redesignated in accordance with 11 CFR 110.1(b)(5) or 110.2(b)(5), or reattributed in accordance with 11 CFR 110.1(k)(3), as appropriate.

(f) The treasurer shall maintain the documentation required by 11 CFR 110.1(1), concerning designations, redesignations, reattributions and the dates of contributions. If the treasurer does not maintain this documentation, 11 CFR 110.1(1)(5) shall apply.

[45 FR 15104, Mar. 7, 1980, as amended at 52 FR 773, Jan. 9, 1987]

§ 102.10 Disbursement by check (2 U.S.C. 432(h)(1)).

All disbursements by a political committee, except for disbursements from the petty cash fund under 11 CFR 102.11, shall be made by check or similar draft drawn on account(s) established at the committee's campaign depository or depositories under 11 CFR part 103.

§ 102.11 Petty cash fund (2 U.S.C. 432(h)(2)).

A political committee may maintain a petty cash fund out of which it may make expenditures not in excess of \$100 to any person per purchase or transaction. If a petty cash fund is maintained, it shall be the duty of the treasurer of the political committee to keep and maintain a written journal of all disbursements. This written journal shall include the name and address of every person to whom any disburse-

ment is made, as well as the date, amount, and purpose of such disbursement. In addition, if any disbursement is made for a candidate, the journal shall include the name of that candidate and the office (including State and Congressional district) sought by such candidate.

§ 102.12 Designation of principal campaign committee (2 U.S.C. 432(e)(1) and (3)).

(a) Each candidate for Federal office (other than a nominee of a political party to the Office of Vice President) shall designate in writing a political committee to serve as his or her principal campaign committee in accordance with 11 CFR 101.1(a) no later than 15 days after becoming a candidate. Each principal campaign committee shall register, designate a depository and report in accordance with 11 CFR parts 102, 103 and 104.

(b) No political committee may be designated as the principal campaign committee of more than one candidate.

(c)(1) No political committee which supports or has supported more than one candidate may be designated as a principal campaign committee, except that, after nomination, a candidate for the office of President of the United States nominated by a political party may designate the national committee of such political party as his or her principal campaign committee. A national committee which is so designated shall maintain separate books of account with respect to its function as a principal campaign committee.

(2) For purposes of 11 CFR 102.12(c), the term *support* does not include contributions by an authorized committee in amounts aggregating \$1,000 or less per election to an authorized committee of any other candidate, except that the national committee of a political party which has been designated as the principal campaign committee of that party's Presidential candidate may contribute to another candidate in accordance with 11 CFR part 110.

§ 102.13 Authorization of political committees (2 U.S.C. 432(e)(1) and (3)).

(a)(1) Any political committee authorized by a candidate to receive contributions or make expenditures shall be authorized in writing by the candidate. Such authorization must be filed with the principal campaign committee in accordance with 11 CFR 102.1(b).

(2) If an individual fails to disavow activity pursuant to 11 CFR 100.3(a)(3) and is therefore a candidate upon notice by the Commission, he or she shall authorize the committee in writing.

(b) A candidate is not required to authorize a national, State or subordinate State party committee which solicits funds to be expended on the candidate's behalf pursuant to 11 CFR 110.7.

(c)(1) No political committee which supports or has supported more than one candidate may be designated as an authorized committee, except that two or more candidates may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee.

(2) For purposes of 11 CFR 102.13(c), the term *support* does not include contributions by an authorized committee in amounts aggregating \$1,000 or less per election to an authorized committee of any other candidate, except that the national committee of a political party which has been designated as the principal campaign committee of that party's Presidential candidate may contribute to another candidate in accordance with 11 CFR part 110.

§ 102.14 Names of political committees (2 U.S.C. 432(e)(4) and (5)).

(a) The name of each authorized committee shall include the name of the candidate who authorized such committee. Except as provided in subsection (b) of this section, any political committee which is not an authorized committee shall not include the name of any candidate in its name.

(b)(1) A delegate committee, as defined at 11 CFR 100.5(e)(5), shall include the word *delegate(s)* in its name and may also include in its name the

name of the presidential candidate which the delegate committee supports.

(2) A political committee established solely to draft an individual or to encourage him or her to become a candidate may include the name of such individual in the name of the committee provided the committee's name clearly indicates that it is a draft committee.

(c) The name of a separate segregated fund established pursuant to 11 CFR 102.1(c) shall include the full name of its connected organization. Such fund may also use a clearly recognized abbreviation or acronym by which the connected organization is commonly known. Both the full name and such abbreviation or acronym shall be included on the fund's Statement of Organization, on all reports filed by the fund, and in all notices required by 11 CFR 109.3 and 110.11. The fund may make contributions using its acronym or abbreviated name. A fund established by a corporation which has a number of subsidiaries need not include the name of each subsidiary in its name. Similarly, a separate segregated fund established by a subsidiary need not include in its name the name of its parent or another subsidiary of its parent.

[45 FR 15104, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980]

§ 102.15 Commingled funds (2 U.S.C. 432(a)(3)).

All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members or associates of that committee, or with the personal funds of any other individual. See also 11 CFR 103.3 and part 114 and 2 U.S.C. 441b.

§ 102.16 Notice: Solicitation of contributions (2 U.S.C. 441d).

Each political committee shall comply with the notice requirements for solicitation of contributions set forth at 11 CFR 110.11.

§ 102.17 Joint fundraising by committees other than separate segregated funds.

(a) *General.* (1)(i) Political committees may engage in joint fundraising

with other political committees or with unregistered committees or organizations. The participants in a joint fundraising effort under this section shall either establish a separate committee or select a participating committee, to act as fundraising representative for all participants. The fundraising representative shall be a reporting political committee and an authorized committee of each candidate for federal office participating in the joint fundraising activity.

(i) The participants may hire a commercial fundraising firm or other agent to assist in conducting the joint fundraising activity. In that case, however, the fundraising representative shall still be responsible for ensuring that the recordkeeping and reporting requirements set forth in this section are met.

(2) The procedures in 11 CFR 102.17(c) will govern all joint fundraising activity conducted under this section. The participants in joint fundraising activity may include political party committees (whether or not they are political committees under 11 CFR 100.5), candidate committees, multicandidate committees, and unregistered organizations which do not qualify as collecting agents under 11 CFR 102.6(b).

(3) A fundraising representative conducting joint fundraising under this section is distinguished from an unregistered organization acting as a collecting agent under 11 CFR 102.6(b). If a separate segregated fund or an unregistered organization qualifies and acts as a collecting agent under 11 CFR 102.6(b), the provisions of 11 CFR 102.17 will not apply to that fundraising activity.

(b) *Fundraising representatives*—(1) *Separate fundraising committee as fundraising representative.* Participating committees may establish a separate political committee to act as fundraising representative for all participants. This separate committee shall be a reporting political committee and shall collect contributions, pay fundraising costs from gross proceeds and from funds advanced by participants, and disburse net proceeds to each participant.

(2) *Participating committee as fundraising representative.* All participating committees may select one participant to act as fundraising representative for all participants. The fundraising representative must be a political committee as defined in 11 CFR 100.5. The fundraising representative and any other participating committees may collect contributions; however, all contributions received by other participants shall be forwarded to the fundraising representative as required by 11 CFR 102.8. The fundraising representative shall pay fundraising costs from gross proceeds and from funds advanced by participants and shall disburse net proceeds to each participant.

(3) *Funds advanced for fundraising costs.* (i) Except as provided in 11 CFR 102.17(b) (3)(ii) and (iii), the amount of funds advanced by each participant for fundraising costs shall be in proportion to the allocation formula agreed upon under 11 CFR 102.17(c)(1).

(ii) A participant may advance more than its proportionate share of the fundraising costs, however, the amount advanced which is in excess of the participant's proportionate share shall not exceed the amount that participant could legally contribute to the remaining participants. See 11 CFR 102.12(c)(2) and part 110.

(iii) If all the participants are affiliated under 11 CFR 110.3 or if the participants are all party committees of the same political party, there is no limit on the amount a participant may advance for fundraising costs on behalf of the other participants.

(c) *Joint fundraising procedures.* The requirements of 11 CFR 102.17(c)(1) through (8) shall govern joint fundraising activity conducted under this section.

(1) *Written agreement.* The participants in a joint fundraising activity shall enter into a written agreement, whether or not all participants are political committees under 11 CFR 100.5. The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The participants shall also use the formula to allocate the expenses incurred for the fundraising activity. The fundraising

representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request.

(2) *Fundraising notice.* In addition to any notice required under 11 CFR 110.11, a joint fundraising notice shall be included with every solicitation for contributions.

(i) This notice shall include the following information:

(A) The names of all committees participating in the joint fundraising activity whether or not such committees are political committees under 11 CFR 100.5; and

(B) The allocation formula to be used for distributing joint fundraising proceeds; and

(C) A statement informing contributors that, notwithstanding the stated allocation formula, they may designate their contributions for a particular participant or participants; and

(D) A statement informing contributors that the allocation formula may change if a contributor makes a contribution which would exceed the amount that contributor may give to any participant.

(ii) In the following situations, the notice shall include the following additional information:

(A) If one or more participants engage in the joint fundraising activity solely to satisfy outstanding debts, a statement informing contributors that the allocation formula may change if a participant receives sufficient funds to pay its outstanding debts; and

(B) If one or more participants can lawfully accept contributions that are prohibited under the Act, a statement informing contributors that contributions from prohibited sources will be distributed only to those participants that can accept them.

(3) *Separate depository account.* (i) The participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. All contributions deposited into the separate depository account must be permissible under the Act. Each political committee shall amend its Statement of Organization to reflect

the account as an additional depository. If one or more participants can lawfully accept contributions that are prohibited under the Act, the participants may either establish a second depository account for contributions received from prohibited sources or they may forward such contributions directly to the nonfederal participants.

(ii) The fundraising representative shall deposit all joint fundraising proceeds in the separate depository account within ten days of receipt as required by 11 CFR 103.3. The fundraising representative may delay distribution of the fundraising proceeds to the participants until all contributions are received and all expenses are paid.

(iii) For contribution reporting and limitation purposes, the date of receipt of a contribution by a participating political committee is the date that the contribution is received by the fundraising representative. The fundraising representative shall report contributions in the reporting period in which they are received. Participating political committees shall report joint fundraising proceeds in accordance with 11 CFR 102.17(c)(8) when such funds are received from the fundraising representative.

(4) *Recordkeeping requirements.* (i) The fundraising representative and participating committees shall screen all contributions received to insure that the prohibitions and limitations of 11 CFR parts 110 and 114 are observed. Participating political committees shall make their contributor records available to the fundraising representative to enable the fundraising representative to carry out its duty to screen contributions.

(ii) The fundraising representative shall collect and retain contributor information with regard to gross proceeds as required under 11 CFR 102.8 and shall also forward such information to participating political committees. The fundraising representative shall also keep a record of the total amount of contributions received from prohibited sources, if any; and of all transfers of prohibited contributions to participants that can accept them.

(iii) The fundraising representative shall retain the records required under

11 CFR 102.9 regarding fundraising disbursements for a period of three years. Commercial fundraising firms or agents shall forward such information to the fundraising representative.

(5) *Contribution limitations.* Except to the extent that the contributor has previously contributed to any of the participants, a contributor may make a contribution to the joint fundraising effort which contribution represents the total amount that the contributor could contribute to all of the participants under the applicable limits of 11 CFR 110.1 and 110.2.

(6) *Allocation of gross proceeds.* (i) The fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement. If distribution according to the allocation formula extinguishes the debts of one or more participants and results in a surplus for those participants or if distribution under the formula results in a violation of the contribution limits of 11 CFR 110.1(a), the fundraising representative may reallocate the excess funds. Reallocation shall be based upon the remaining participants' proportionate shares under the allocation formula. If reallocation results in a violation of a contributor's limit under 11 CFR 110.1, the fundraising representative shall return to the contributor the amount of the contribution that exceeds the limit.

(ii) Designated contributions which exceed the contributor's limit to the designated participant under 11 CFR part 110 may not be reallocated by the fundraising representative absent the written permission of the contributor.

(iii) If any participants can lawfully accept contributions from sources prohibited under the Act, any such contributions that are received are not required to be distributed according to the allocation formula.

(7) *Allocation of expenses and distribution of net proceeds.* (i) If participating committees are not affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity and are not committees of the same political party;

(A) After gross contributions are allocated among the participants under 11 CFR 102.17(c)(6), the fundraising

representative shall calculate each participant's share of expenses based on the percentage of the total receipts each participant had been allocated. If contributions from sources prohibited under the Act have been received and distributed under 11 CFR 102.17(c)(6)(iii), those contributions need not be included in the total receipts for the purpose of allocating expenses under this section. To calculate each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds.

(B) A participant may only pay expenses on behalf of another participant subject to the contribution limits of 11 CFR part 110.

(ii) If participating committees are affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity or if participants are party committees of the same political party, expenses need not be allocated among those participants. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.

(iii) Payment of expenses may be made from gross proceeds by the fundraising representative.

(8) *Reporting of receipts and disbursements—(i) Reporting receipts.* (A) The fundraising representative shall report all funds received in the reporting period in which they are received. The fundraising representative shall report the total amount of contributions received from prohibited sources during the reporting period, if any, as a memo entry. Each Schedule A filed by the fundraising representative under this section shall clearly indicate that the contributions reported on that schedule represent joint fundraising proceeds.

(B) After distribution of net proceeds, each participating political committee shall report its share of net proceeds received as a transfer-in from the fundraising representative. Each participating political committee shall also file a memo Schedule A itemizing its share of gross receipts as contribu-

tions from original contributors to the extent required under 11 CFR 104.3(a).

(ii) *Reporting disbursements.* The fundraising representative shall report all disbursements in the reporting period in which they are made.

[48 FR 26301, June 7, 1983]

PART 103—CAMPAIGN DEPOSITORIES (2 U.S.C. 432(h))

Sec.

103.1 Notification of the commission.

103.2 Depositories (2 U.S.C. 432(h)(1)).

103.3 Deposit of receipts and disbursements (2 U.S.C. 432(h)(1)).

103.4 Vice Presidential candidate campaign depositories.

AUTHORITY: 2 U.S.C. 432(h), 438(a)(8).

SOURCE: 45 FR 15108, Mar. 7, 1980, unless otherwise noted.

§ 103.1 Notification of the commission.

Each committee shall notify the Commission of the campaign depository(ies) it has designated, pursuant to 11 CFR 101.1 and 103.2.

§ 103.2 Depositories (2 U.S.C. 432(h)(1)).

Each political committee shall designate one or more State banks, federally chartered depository institutions (including a national bank), or depository institutions the depository accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, as its campaign depository or depositories. One or more depositories may be established in one or more States. Each political committee shall maintain at least one checking account or transaction account at one of its depositories. Additional accounts may be established at each depository.

§ 103.3 Deposit of receipts and disbursements (2 U.S.C. 432(h)(1)).

(a) All receipts by a political committee shall be deposited in account(s) established pursuant to 11 CFR 103.2, except that any contribution may be, within 10 days of the treasurer's receipt, returned to the contributor without being deposited. The treasurer

of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt. A committee shall make all disbursements by check or similar drafts drawn on an account at its designated campaign depository, except for expenditures of \$100 or less made from a petty cash fund maintained pursuant to 11 CFR 102.11. Funds may be transferred from the depository for investment purposes, but shall be returned to the depository before such funds are used to make expenditures.

(b) The treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of 11 CFR 110.1 or 110.2.

(1) Contributions that present genuine questions as to whether they were made by corporations, labor organizations, foreign nationals, or Federal contractors may be, within ten days of the treasurer's receipt, either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer shall make his or her best efforts to determine the legality of the contribution. The treasurer shall make at least one written or oral request for evidence of the legality of the contribution. Such evidence includes, but is not limited to, a written statement from the contributor explaining why the contribution is legal, or a written statement by the treasurer memorializing an oral communication explaining why the contribution is legal. If the contribution cannot be determined to be legal, the treasurer shall, within thirty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

(2) If the treasurer in exercising his or her responsibilities under 11 CFR 103.3(b) determined that at the time a contribution was received and deposited, it did not appear to be made by a corporation, labor organization, foreign national or Federal contractor, or made in the name of another, but later discovers that it is illegal based

on new evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered. If the political committee does not have sufficient funds to refund the contribution at the time the illegality is discovered, the political committee shall make the refund from the next funds it receives.

(3) Contributions which on their face exceed the contribution limitations set forth in 11 CFR 110.1 or 110.2, and contributions which do not appear to be excessive on their face, but which exceed the contribution limits set forth in 11 CFR 110.1 or 110.2 when aggregated with other contributions from the same contributor, and contributions which cannot be accepted under the net debts outstanding provisions of 11 CFR 110.1(b)(3) and 110.2(b)(3) may be either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b), 110.1(k) or 110.2(b), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

(4) Any contribution which appears to be illegal under 11 CFR 103.3(b)(1) or (3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

(5) If a contribution which appears to be illegal under 11 CFR 103.3(b)(1) or (3) is deposited in a campaign depository, the treasurer shall make and retain a written record noting the basis for the appearance of illegality. A statement noting that the legality of the contribution is in question shall be included in the report noting the re-

ceipt of the contribution. If a contribution is refunded to the contributor because it cannot be determined to be legal, the treasurer shall note the refund on the report covering the reporting period in which the refund is made.

[52 FR 774, Jan. 9, 1987]

§ 103.4 Vice Presidential candidate campaign depositories.

Any campaign depository designated by the principal campaign committee of a political party's candidate for President shall be the campaign depository for that political party's candidate for the office of Vice President.

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

Sec.

- 104.1 Scope (2 U.S.C. 434(a)).
- 104.2 Forms.
- 104.3 Contents of reports (2 U.S.C. 434(b)).
- 104.4 Independent expenditures by political committees (2 U.S.C. 434(c)).
- 104.5 Filing dates (2 U.S.C. 434(a)(2)).
- 104.6 Form and content of internal communications reports (2 U.S.C. 431(9)(B)(iii)).
- 104.7 Best efforts (2 U.S.C. 432(i)).
- 104.8 Uniform reporting of receipts.
- 104.9 Uniform reporting of disbursements.
- 104.10 Reporting of expenses allocated among candidates and activities.
- 104.11 Continuous reporting of debts and obligations.
- 104.12 Beginning cash on hand for political committees.
- 104.13 Disclosure of receipt and consumption of in-kind contributions.
- 104.14 Formal requirements regarding reports and statements.
- 104.15 Sale or use restriction (2 U.S.C. 438(a)(4)).
- 104.16 Audits (2 U.S.C. 438(b)).
- 104.17 Content of reports; Presidential and Vice Presidential committees (2 U.S.C. 431 note).

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

SOURCE: 45 FR 15108, Mar. 7, 1980, unless otherwise noted.

§ 104.1 Scope (2 U.S.C. 434(a)).

(a) *Who must report.* Each treasurer of a political committee required to register under 11 CFR part 102 shall

report in accordance with 11 CFR part 104.

(b) *Who may report.* An individual seeking federal office who has not attained candidate status under 11 CFR 100.3, the committee of such an individual or any other committee may voluntarily register and report in accordance with 11 CFR parts 102 and 104. An individual shall not become a candidate solely by voluntarily filing a report, nor shall such individual the individual's committee nor any other committee be required to file all reports under 11 CFR 104.5, unless the individual becomes a candidate under 11 CFR 100.3 or unless the committee becomes a political committee under 11 CFR 100.5.

§ 104.2 Forms.

(a) Each report filed by a political committee under 11 CFR part 104 shall be filed on the appropriate FEC form as set forth below at 11 CFR 104.2(e).

(b) Forms may be obtained from the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(c) A committee may reproduce FEC forms for its own use provided they are not reduced in size.

(d) With prior approval of the Commission a committee may use, for reporting purposes, computer produced schedules of itemized receipts and disbursements provided they are reduced to the size of FEC forms. The committee shall submit a sample of the proposed format with its request for approval.

(e) The following forms shall be used by the indicated type of reporting committee:

(1) *Presidential committees.* The authorized committees of a candidate for President or Vice President shall file on FEC Form 3-P.

(2) *Congressional candidate committees.* The authorized committees of a candidate for the Senate or the House of Representatives shall file on FEC Form 3.

(3) *Political Committees Other than Authorized Committees.* Political committees other than authorized committees shall file reports on FEC Form 3-X.

[45 FR 15108; Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980; 50 FR 50778, Dec. 12, 1985]

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

(a) *Reporting of Receipts.* Except for reports filed in accordance with 11 CFR 104.17, each report filed under 11 CFR 104.1 shall disclose the total amount of receipts for the reporting period and for the calendar year and shall disclose the information set forth at 11 CFR 104.3(a) (1) through (4). The first report filed by a committee shall also include all amounts received prior to becoming a political committee under 11 CFR 100.5, even if such amounts were not received during the current reporting period.

(1) *Cash on hand.* The amount of cash on hand at the beginning of the reporting period, including currency; balance on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks owned by the committee; certificates of deposit, treasury bills and any other committee investments valued at cost.

(2) *Categories of receipts for all political committees other than authorized committees.* All committees other than authorized committees shall report the total amount of receipts received during the reporting period and, except for itemized and unitemized breakdowns, during the calendar year for each of the following categories:

(i) Contributions from persons other than any committees;

(A) Itemized contributions from persons, other than any committees, including contributions from individuals;

(B) Unitemized contributions from persons, other than any committees, including contributions from individuals;

(C) Total contributions from persons other than any committees, including contributions from individuals;

(ii) Contributions from political party committees, including contributions from party committees which are not political committees under the Act;

(iii) Contributions from political committees, including contributions from committees which are not politi-

cal committees under the Act but excluding contributions from any party committees;

(iv) Total contributions;

(v) Transfers from affiliated committees or organizations and, where the reporting committee is a political party committee, transfers from other party committees of the same party, regardless of whether such committees are affiliated;

(vi) All loans;

(vii) Offsets to operating expenditures;

(A) Itemized offsets to operating expenditures (such as rebates and refunds);

(B) Unitemized offsets to operating expenditures (such as rebates and refunds);

(C) Total offsets to operating expenditures;

(viii) Other receipts:

(A) Itemized other receipts (such as dividends and interest);

(B) Unitemized other receipts (such as dividends and interest);

(C) The total sum of all other receipts.

(ix) The total sum of all receipts.

(3) *Categories of receipts for authorized committees.* An authorized committee of a candidate for Federal office shall report the total amount of receipts received during the reporting period and, except for itemized and unitemized breakdowns, during the calendar year in each of the following categories:

(i) Contributions from persons other than any committees;

(A) Itemized contributions from persons, other than any committees, including contributions from individuals, but excluding contributions from a candidate to his or her authorized committees;

(B) Unitemized contributions from persons, other than any committees, including contributions from individuals, but excluding contributions from a candidate to his or her authorized committees;

(C) Total contributions from persons other than any committees, including contributions from individuals, but excluding contributions from a candidate to his or her authorized committees;

(ii) Contributions from the candidate, excluding loans which are reported under 11 CFR 104.3(a)(3)(vii);

(iii) Contributions from political party committees, including party committees which are not political committees under the Act, except that expenditures made under 11 CFR 110.7 (2 U.S.C. 441a(d)), by a party committee shall not be reported as contributions by the authorized committee on whose behalf they are made;

(iv) Contributions from committees, including contributions from committees which are not political committees under the Act, but excluding contributions from any party committees;

(v) Total contributions;

(vi) Transfers from other authorized committee(s) of the same candidate, regardless of amount;

(vii) Loans;

(A) All loans to the committee, except loans made, guaranteed, or endorsed by a candidate to his or her authorized committee;

(B) Loans made, guaranteed, or endorsed by a candidate to his or her authorized committee;

(C) Total loans;

(viii) For authorized committee(s) of Presidential candidates, federal funds received under Chapters 95 and 96 of the Internal Revenue Code of 1954 (Title 26, United States Code);

(ix) Offsets to operating expenditures;

(A) Itemized offsets to operating expenditures (such as refunds and rebates);

(B) Unitemized offsets to operating expenditures (such as refunds and rebates);

(C) Total offsets to operating expenditures;

(x) Other receipts;

(A) Itemized other receipts (such as dividends and interest);

(B) Unitemized other receipts (such as dividends and interest);

(C) Total other receipts;

(xi) Total receipts.

(4) *Itemization of receipts for all committees including authorized and unauthorized committees.* The identification (as defined at 11 CFR 100.12) of each contributor and the aggregate year-to-date total for such contributor

in each of the following categories shall be reported.

(i) Each person, other than any committee, who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions aggregate in excess of \$200 per calendar year, together with the date of receipt and amount of any such contributions, except that the reporting committee may elect to report such information for contributors of lesser amount(s) on a separate schedule;

(ii) All committees (including political committees and committees which do not qualify as political committees under the Act) which make contributions to the reporting committee during the reporting period, together with the date of receipt and amount of any such contribution;

(iii) Transfers;

(A) For authorized committees of a candidate for Federal office, each authorized committee which makes a transfer to the reporting committee, together with the date and amount of such transfer;

(B) For committees which are not authorized by a candidate for Federal office, each affiliated committee or organization which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee; each transfer of funds to the reporting committee from another party committee regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(iv) Each person who makes a loan to the reporting committee or to the candidate acting as an agent of the committee, during the reporting period, together with the identification of any endorser or guarantor of such loan, the date such loan was made and the amount or value of such loan;

(v) Each person who provides a rebate, refund or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such receipt; and

(vi) Each person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of \$200 within the calendar year, together with the date and amount of any such receipt.

(b) *Reporting of Disbursements.* Except for reports filed in accordance with 11 CFR 104.17, each report filed under 11 CFR 104.1 shall disclose the total amount of all disbursements for the reporting period and for the calendar year and shall disclose the information set forth at 11 CFR 104.3(b) (1) through (4). The first report filed by a committee shall also include all amounts disbursed prior to becoming a political committee under 11 CFR 100.5; even if such amounts were not disbursed during the current reporting period.

(1) *Categories of disbursements for political committees other than authorized committees.* All political committees other than authorized committees shall report the total amount of disbursements made during the reporting period and, except for itemized and unitemized breakdowns, during the calendar year in each of the following categories:

(i) Operating expenditures;

(A) Itemized operating expenditures;

(B) Unitemized operating expenditures;

(C) Total operating expenditures;

(ii) Transfers to affiliated committees or organizations and, where the reporting committee is a political party committee, transfers to other political party committees regardless of whether they are affiliated;

(iii) Repayment of all loans;

(iv) Offsets;

(A) Itemized offsets to contributions (including contribution refunds);

(B) Unitemized offsets to contributions (including contribution refunds);

(C) Total offsets to contributions;

(v) Contributions made to other political committees;

(vi) Loans made by the reporting committee;

(vii) Independent expenditures made by the reporting committee;

(viii) Expenditures made under 11 CFR 110.7 (2 U.S.C. 441a(d)). See 11 CFR 104.3(a)(3)(iii);

- (ix) Other disbursements;
- (A) Itemized other disbursements;
- (B) Unitemized other disbursements;
- (C) Total other disbursements;
- (x) Total disbursements.

(2) *Categories of disbursements for authorized committees.* An authorized committee of a candidate for Federal office shall report the total amount of disbursements made during the reporting period and, except for itemized and unitemized breakdowns, during the calendar year in each of the following categories:

- (i) Operating expenditures;
- (A) Itemized operating expenditures;
- (B) Unitemized operating expenditures;

- (C) Total operating expenditures;
- (ii) Transfers to other committees authorized by the same candidate;

- (iii) Repayment of loans;
- (A) Repayment of loans made by or guaranteed by the candidate;
- (B) Repayment of all other loans;
- (C) Total loan repayments;

- (iv) For an authorized committee of a candidate for the office of President, disbursements not subject to the limitations of 11 CFR 110.8 (2 U.S.C. 441a(b));

- (v) Offsets;
- (A) Itemized offsets to contributions (including contribution refunds);
- (B) Unitemized offsets to contributions (including contribution refunds);

- (C) Total offsets to contributions;
- (vi) Other disbursements;
- (A) Itemized other disbursements;
- (B) Unitemized other disbursements;
- (C) Total other disbursements;
- (vii) Total disbursements.

(3) *Itemization of disbursements by political committees other than authorized committees.* Each political committee, other than an authorized committee, shall report the full name and address of each person in each of the following categories, as well as the information required by each category;

- (i) Each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet the committee's operating expenses, together with the date, amount, and purpose of such operating expenditure;

- (A) As used in 11 CFR 104.3(b)(3), *purpose* means a brief statement or description of why the disbursement was made.

- (B) Examples of statements or descriptions which meet the requirements of 11 CFR 104.3(b)(3) include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as *advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote* and *voter registration* would not meet the requirements of 11 CFR 104.3(b)(3) for reporting the purpose of an expenditure.

- (ii) Each affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer;

- (iii) Each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment;

- (iv) Each person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution refund was reported under 11 CFR 104.3(b)(1)(iv), together with the date and amount of such refund or offset;

- (v) Each political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of any such contribution, and, in the case of a contribution to an authorized committee, the candidate's name and office sought (including State and Congressional district, if applicable);

- (vi) Each person who has received a loan from the reporting committee during the reporting period, together with the date and amount or value of such loan;

(vii) (A) Each person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure(s);

(B) For each independent expenditure reported, the committee must also provide a statement which indicates whether such independent expenditure is in support of, or in opposition to a particular candidate, as well as the name of the candidate and office sought by such candidate (including State and Congressional district, when applicable), and a certification, under penalty of perjury, as to whether such independent expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee;

(C) The information required by 11 CFR 104.3(b)(3)(vii)(A) and (B) shall be reported on Schedule E as part of a report covering the reporting period in which the aggregate disbursements for any independent expenditure to any person exceed \$200 per calendar year. Schedule E shall also include the total of all such expenditures of \$200 or less made during the reporting period.

(viii) Each person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under 11 CFR 110.7 (2 USC 441a(d)), together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by (including State and Congressional district, when applicable), the candidate on whose behalf the expenditure is made; and

(ix) Each person who has received any disbursement within the reporting period not otherwise disclosed in accordance with 11 CFR 104.3(b)(3) to whom the aggregate amount or value of disbursements made by the reporting committee exceeds \$200 within the calendar year, together with the date, amount and purpose of any such disbursement.

(4) *Itemization of disbursements by authorized committees.* Each authorized committee shall report the full name and address of each person in each of the following categories, as well as the information required by each category.

(i) Each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet the committee's operating expenses, together with the date, amount and purpose of each expenditure.

(A) As used in 11 CFR 104.3(b)(4), *purpose* means a brief statement or description of why the disbursement was made. Examples of statements or descriptions which meet the requirements of 11 CFR 104.3(b)(4) include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as *advance, election day expenses, other expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote and voter registration* would not meet the requirements of 11 CFR 104.3(b)(4) for reporting the purpose of an expenditure.

(ii) Each authorized committee of the same candidate to which a transfer is made by the reporting committee during the reporting period, together with the date and amount of such transfer;

(iii) Each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment;

(iv) Each person who receives a loan repayment from the candidate, if the proceeds of such loan were used in connection with the candidate's campaign;

(v) Each person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution refund was reported under 11 CFR 104.3(b)(2)(v), together with the date and amount of such refund or offset.

(vi) Each person who has received any disbursement(s) not otherwise dis-

closed under 11 CFR 104.3(b)(4) to whom the aggregate amount or value of such disbursements exceeds \$200 within the calendar year, together with the date, amount, and purpose of any such disbursement.

(c) *Summary of contributions and operating expenditures.* Each report filed pursuant to 11 CFR 104.1 shall disclose for both the reporting period and the calendar year:

(1) (i) The total contributions to the reporting committee;

(ii) The total offsets to contributions;

(iii) The net contributions (subtract total offsets from total contributions);

(2) (i) The reporting committee's total operating expenditures;

(ii) The total offsets to operating expenditures;

(iii) The net operating expenditures (subtract total offsets from total operating expenditures).

(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.

(e) *Use of pseudonyms.* (1) To determine whether the names and addresses of its contributors are being used in violation of 11 CFR 104.15 to solicit contributions or for commercial purposes, a political committee may submit up to ten (10) pseudonyms on each report filed.

(2) For purposes of this section, a pseudonym is a wholly fictitious name which does not represent the name of an actual contributor to a committee.

(3) If a committee uses pseudonyms it shall subtract the total dollar amount of the fictitious contributions from the total amount listed as a memo entry on line 11(a) of the Detailed Summary page, *Unitemized contributions from individual persons other than political committees.* Thus, the committee will, for this purpose only, be overstating the amount of itemized contributions received and understating the amount of unitemized contributions received.

(4) No authorized committee of a candidate shall attribute more than \$1,000 in contributions to the same pseudonym for each election and no other political committee shall attribute more than \$5,000 in contributions to the same pseudonym in any calendar year.

(5) A committee using pseudonyms shall send a list of such pseudonyms under separate cover directly to the Reports Analysis Division, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, on or before the date on which any report containing such pseudonyms is filed with the Clerk of the House of Representatives, the Secretary of the Senate, or the Commission. The Commission shall maintain the list, but shall exclude it from the public record. A committee shall not send any list of pseudonyms to the Clerk of the House of Representatives, the Secretary of the Senate, or to any Secretary of State or equivalent state officer.

(6) A political committee shall not use pseudonyms for the purpose of circumventing the reporting requirements or the limitations and prohibitions of the Act.

(f) *Consolidated reports.* Each principal campaign committee shall consolidate in each report those reports required to be filed with it. Such consolidated reports shall include: (1) Reports submitted to it by any authorized committees and (2) the principal campaign committee's own report. Such consolidation shall be made on FEC Form 3-Z and shall be submitted with the reports of the principal campaign committee and with the reports, or applicable portions thereof, of the committees shown on the consolidation.

(g) *Building funds.* Gifts, subscriptions, loans, advances, deposits of money or anything of value made to defray costs of construction or purchase of office facilities received by a political committee in accordance with 11 CFR 100.7(b)(12) shall be reported as a memo entry on Schedule A.

(h) *Legal and accounting services.* A committee which receives legal or accounting services pursuant to 11 CFR 100.7(b)(13) and (14) shall report as a memo entry, on Schedule A, the amounts paid for these services by the regular employer of the person(s) providing such services; the date(s) such services were performed; and the name of each person performing such services.

(i) *Cumulative reports.* The reports required to be filed under 11 CFR 104.5 shall be cumulative for the calendar year to which they relate, but if there has been no change in a category reported in a previous report during that year, only the amount thereof need be carried forward.

(j) *Earmarked contributions.* Earmarked contributions shall be reported in accordance with 11 CFR 110.6. See also 11 CFR 102.8(c).

[45 FR 15108, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 11, 1980; 50 FR 50778, Dec. 12, 1985; 55 FR 26386, June 27, 1990.]

§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(c)).

(a) Every political committee which makes independent expenditures shall report all such expenditures on Schedule E in accordance with 11 CFR 104.3(b)(3)(vii). Every person (other than a political committee) shall report independent expenditures in accordance with 11 CFR part 109.

(b) *24 Hour reports.* Any independent expenditures aggregating \$1,000 or more made after the 20th day but more than 24 hours before 12:01 A.M. of the day of the election, shall be reported within 24 hours after such independent expenditure is made. Such report shall be filed with the appropriate officers listed in 11 CFR 104.4(c) and shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved.

(c) *Where to file.* Reports of independent expenditures under 11 CFR 104.4 and part 109 shall be filed as set forth at 11 CFR 104.4(c)(1) through (3).

(1) For independent expenditures in support of or in opposition to, a candidate for President or Vice-President: with the Commission and the Secretary of State for the State in which the expenditure is made.

(2) For independent expenditures in support of, or in opposition to, a candidate for the Senate: with the Secretary of the Senate and the Secretary of State for the State in which the candidate is seeking election.

(3) For independent expenditures in support of, or in opposition to, a candidate for the House of Representatives: with the Clerk of the House and the Secretary of State for the State in which the candidate is seeking election.

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

(a) *Principal Campaign Committee of House or Senate Candidate.* Each treasurer of a principal campaign committee supporting a candidate for the House of Representatives or to the Senate shall file reports on the dates specified at 11 CFR 104.5(a)(1) and (2).

(1) *Election year reports.* (i) *Pre-election reports.* (A) Pre-election reports for the primary and general election shall be filed no later than 12 days before any primary or general election in which the candidate seeks election. If sent by registered or certified mail, the report shall be mailed no later than the 15th day before any election.

(B) The report shall disclose all receipts and disbursements as of the 20th day before a primary or general election.

(ii) *Post-general election report.* (A) The post-general election report shall be filed no later than 30 days after any general election in which the candidate seeks election.

(B) The report shall be complete as of the 20th day after the general election.

(iii) *Quarterly reports.* (A) Quarterly reports shall be filed no later than the 15th day following the close of the im-

mediately preceding calendar quarter (on April 15, July 15, and October 15), except that the report for the final calendar quarter of the year shall be filed on January 31 of the following calendar year.

(B) The report shall be complete as of the last day of each calendar quarter.

(C) The requirement for a quarterly report shall be waived if, under 11 CFR 104.5(a)(1)(i), a pre-election report is required to be filed during the period beginning on the fifth day after the close of the calendar quarter and ending on the fifteenth day after the close of the calendar quarter.

(2) *Non-election year reports*—(i) *Semi-annual reports.* (A) The first report shall cover January 1 through June 30, and shall be filed no later than July 31.

(B) The second report shall cover July 1 through December 31, and shall be filed no later than January 31 of the following year.

(b) *Principal campaign committee of Presidential candidate.* Each treasurer of a principal campaign committee of a candidate for President shall file reports on the dates specified at 11 CFR 104.5(b)(1) and (2).

(1) *Election year reports.* (i) If on January 1 of the election year, the committee has received or anticipates receiving contributions aggregating \$100,000 or more, or has made or anticipates making expenditures aggregating \$100,000 or more, it shall file monthly reports.

(A) Each report shall be filed no later than the 20th day after the last day of each month.

(B) The report shall be complete as of the last day of each month.

(C) In lieu of the monthly reports due in November and December, a pre-election report shall be filed as prescribed at 11 CFR 104.5(a)(1)(i), a post-general election report shall be filed as prescribed at 11 CFR 104.5(a)(1)(ii), and a year-end report shall be filed no later than January 31 of the following calendar year.

(ii) If on January 1 of the election year, the committee does not anticipate receiving or has not received contributions aggregating \$100,000 or does not anticipate making or has not

made expenditures aggregating \$100,000, the committee shall file a pre-election report or reports, a post general election report and, quarterly reports, as prescribed in 11 CFR 104.5(a)(1).

(iii) If during the election year, a committee filing under 11 CFR 104.5(b)(1)(ii) receives contributions aggregating \$100,000 or makes expenditures aggregating \$100,000, the treasurer shall begin filing monthly reports at the next reporting period.

(2) *Non-election year reports.* During a non-election year, the treasurer shall file either (i) monthly reports as prescribed at 11 CFR 104.5(b)(1)(i); or (ii) quarterly reports as prescribed at 11 CFR 104.5(a)(1).

(c) *Committees other than authorized committees of candidates.* Each political committee which is not the authorized committee of a candidate shall file either: election year and non-election year reports as prescribed at 11 CFR 104.5(c)(1) and (2); or monthly reports as prescribed at 11 CFR 104.5(c)(3). A political committee reporting under 11 CFR 104.5(c) may elect to change the frequency of its reporting from monthly to quarterly and semi-annually or vice versa. A committee may change its filing frequency only after notifying the Commission in writing of its intention at the time it files a required report under its current filing frequency. Such committee will then be required to file the next required report under its new filing frequency. A committee may change its filing frequency no more than once per calendar year.

(1) *Election year reports*—(i) *Quarterly reports.* (A) Quarterly reports shall be filed no later than the 15th day following the close of the immediately preceding calendar quarter, (on April 15, July 15, and October 15), except that the report for the final calendar quarter of the year shall be filed on January 31 of the following calendar year.

(B) The reports shall be complete as of the last day of the calendar quarter for which the report is filed.

(C) The requirement for a quarterly report shall be waived if under 11 CFR 104.5(c)(1)(ii) a pre-election report is required to be filed during the period

beginning on the fifth day after the close of the calendar quarter and ending on the fifteenth day after the close of the calendar quarter.

(ii) *Pre-election reports.* (A) Pre-election reports for the primary and general election shall be filed by a political committee which makes contributions or expenditures in connection with any such election if such disbursements have not been previously disclosed. Pre-election reports shall be filed no later than 12 days before any primary or general election. If sent by registered or certified mail, the report shall be mailed no later than the 15th day before any election.

(B) The report shall disclose all receipts and disbursements as of the 20th day before a primary or general election.

(iii) *Post-general election reports.* (A) A post-general election report shall be filed no later than 30 days after any general election.

(B) The report shall be complete as of the 20th day after the general election.

(2) *Non-election year reports—(i) Semi-annual reports.* (A) The first report shall cover January 1 through June 30, and shall be filed no later than July 31.

(B) The second report shall cover July 1 through December 31, and shall be filed no later than January 31 of the following year.

(3) *Monthly reports.* (i) Except as provided at 11 CFR 104.5(c)(3)(ii), monthly reports shall be filed no later than 20 days after the last day of the month.

(ii) In lieu of the monthly reports due in November and December, in any year in which a regularly scheduled general election is held, a pre-election report shall be filed as prescribed at 11 CFR 104.5(a)(1)(i), a post general election report shall be filed as prescribed at 11 CFR 104.5(a)(1)(ii), and a year-end report shall be filed no later than January 31 of the following calendar year.

(d) *Committees supporting Vice Presidential candidates.* The treasurer of a committee supporting a candidate for the office of Vice President (other than a nominee of a political party) shall file reports on the same basis

that the principal campaign committee of a Presidential candidate must file reports under 11 CFR 104.5(b).

(e) *U.S. post mark.* A designation, report or statement sent by registered or certified mail shall be considered filed on the date of the U.S. post mark except that a twelve day pre-election report sent by certified or registered mail shall be mailed no later than the 15th day before any election. Designations, reports or statements sent by first class mail must be received by the close of business of the prescribed filing date to be timely filed.

(f) *48 hour notification of contributions.* If any contribution of \$1,000 or more is received by any authorized committee of a candidate after the 20th day, but more than 48 hours, before 12:01 A.M. of the day of the election, the principal campaign committee of that candidate shall notify the Commission, the Clerk of the House, the Secretary of the Senate and the Secretary of State, as appropriate, within 48 hours of receipt of the contribution. The notification shall be in writing and shall include the name of the candidate and office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be in addition to the reporting of these contributions on the post-election report.

(g) *24 hour report of independent expenditures.* Any independent expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours, before 12:01 A.M. of the day of the election, shall be reported within 24 hours after such independent expenditure is made. Such report shall be filed with the appropriate officers listed in 11 CFR 104.4(c) and shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved.

(h) *Special election reports.* (1) Within 5 days of the setting of a special election, the Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and for political committees, other

than authorized committees, which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall publish such reporting dates in the FEDERAL REGISTER and shall notify the principal campaign committees of all candidates in such election of the reporting dates. The Commission shall not require such committees to file more than one pre-election report for each election and one post-election report for the election which fills the vacancy.

(2) Reports required to be filed under 11 CFR 104.5(a) or (c) may be waived by the Commission for committees filing special election reports if a report under 11 CFR 104.5(a) or (c) is due within 10 days of the date a special election report is due. The Commission shall notify all appropriate committees of reports so waived.

§ 104.6 Form and content of internal communications reports (2 U.S.C. 431(9)(B)(iii)).

(a) *Form.* Every membership organization or corporation which makes disbursements for communications pursuant to 11 CFR 100.8(b)(4) and 114.3 shall report to the Commission on FEC Form 7 such costs which are directly attributable to any communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the election or defeat of a clearly identified candidate), if such costs exceed \$2,000 for any election.

(1) For the purposes of 11 CFR 104.6(a), *election* means two separate processes in a calendar year, to each of which the \$2,000 threshold described above applies separately. The first process is comprised of all primary elections for federal office, wherever and whenever held; the second process is comprised of all general elections for federal office, wherever and whenever held.

(2) The term election shall also include each special election held to fill a vacancy in a Federal office (11 CFR 100.2(f)) or each runoff election (11 CFR 100.2(d)).

(b) *Filing dates.* Organizations required to report under 11 CFR

104.6(a) shall file such reports during a calendar year in which a regularly scheduled general election is held. Such reports shall be filed quarterly in accordance with 11 CFR 104.5(a)(1)(iii) and, with respect to any general election, in accordance with 11 CFR 104.5(a)(1)(i). The organization shall be required to file reports beginning with the first reporting period during which the aggregate cost for such communications exceeds \$2,000 per election as defined in 11 CFR 104.6(a)(1), and for each quarter thereafter in which the organization makes additional disbursements in connection with the same election.

(c) Each report filed under 11 CFR 104.6 shall include, for each communication:

(1) The type of communication (such as direct mail, telephone or telegram);

(2) The date(s) of the communication;

(3) The name of the candidate, the office sought (and the district and state of the office, if applicable), and whether the communication was for the primary or general election;

(4) Whether the communication was in support of or in opposition to, a particular candidate; and

(5) The cost of the communication.

§ 104.7 Best efforts (2 U.S.C. 432(i)).

(a) When the treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act.

(b) With regard to reporting the identification as defined at 11 CFR 100.12 of each person whose contribution(s) to the committee and its affiliated committees aggregate in excess of \$200 in a calendar year (pursuant to 11 CFR 104.3(a)(4)), the treasurer will not be deemed to have exercised best efforts to obtain the required information unless he or she has made at least one effort per solicitation either by a written request or by an oral request documented in writing to obtain such information from the contributor. For purposes of 11

CFR 104.7(b), such effort shall consist of a clear request for the information (i.e., name, mailing address, occupation, and name of employer) which request informs the contributor that the reporting of such information is required by law.

§ 104.8 Uniform reporting of receipts.

(a) A reporting committee shall disclose the identification of each individual who contributes an amount in excess of \$200 to the committee's federal account(s). This identification shall include the individual's name, mailing address, occupation, the name of his or her employer, if any, and the date of receipt and amount of any such contribution. If an individual contributor's name is known to have changed since an earlier contribution reported during the calendar year, the exact name or address previously used shall be noted with the first reported contribution from that contributor subsequent to the name change.

(b) In each case where a contribution received from an individual in a reporting period is added to previously unitemized contributions from the same individual and the aggregate exceeds \$200 in a calendar year the reporting committee shall disclose the identification of such individual along with the date of receipt and amount of any such contribution. Except for contributions by payroll deduction, each additional contribution from the individual shall be separately itemized. In the case of a political committee other than an authorized committee which receives contributions through a payroll deduction plan, such committee is not required to separately itemize each additional contribution received from the contributor during the reporting period. In lieu of separate itemization, such committee may report the aggregate amount of contributions received from the contributor through the payroll deduction plan during the reporting period; the identification of the individual; and a statement of the amount deducted per pay period.

(c) Absent evidence to the contrary, any contribution made by check, money order, or other written instrument shall be reported as a contribu-

tion by the last person signing the instrument prior to delivery to the candidate or committee.

(d) (1) If an itemized contribution is made by more than one person in a single written instrument, the treasurer shall report the amount to be attributed to each contributor.

(2)(i) If a contribution is redesignated by a contributor, in accordance with 11 CFR 110.1(b) or 110.2(b), the treasurer of the authorized political committee receiving the contribution shall report the redesignation in a memo entry on Schedule A of the report covering the reporting period in which the redesignation is received. The memo entry for each redesignated contribution shall be reported in the following manner—

(A) The first part of the memo entry shall disclose all of the information for the contribution as it was originally reported on Schedule A;

(B) The second part of the memo entry shall disclose all of the information for the contribution as it was redesignated by the contributor, including the election for which the contribution was redesignated and the date on which the redesignation was received.

(ii) If a contribution from a political committee is redesignated by the contributing political committee in accordance with 11 CFR 110.1(b) or 110.2(b), the treasurer of such political committee shall report the redesignation in a memo entry on Schedule B of the report covering the reporting period in which the redesignation is made. The memo entry for each redesignated contribution shall be reported in the following manner—

(A) The first part of the memo entry shall disclose all of the information for the contribution as it was originally reported on Schedule B;

(B) The second part of the memo entry shall disclose all of the information for the contribution as it was redesignated by the contributing political committee, including the election for which the contribution was redesignated and the date on which the redesignation was made.

(3) If an itemized contribution is reattributed by the contributor(s) in accordance with 11 CFR 110.1(k), the

treasurer shall report the reattribution in a memo entry on Schedule A of the report covering the reporting period in which the reattribution is received. The memo entry for each reattributed contribution shall be reported in the following manner—

(i) The first part of the memo entry shall disclose all of the information for the contribution as it was originally reported on Schedule A;

(ii) The second part of the memo entry shall disclose all of the information for the contribution as it was reattributed by the contributors, including the date on which the reattribution was received.

(4) If a contribution is refunded to the contributor, the treasurer of the political committee making the refund shall report the refund on Schedule B of the report covering the reporting period in which the refund is made, in accordance with 11 CFR 103.3(b)(5) and 104.3(b). If a contribution is refunded to a political committee, the treasurer of the political committee receiving the refund shall report the refund on Schedule A of the report covering the reporting period in which the refund is received, in accordance with 11 CFR 104.3(a).

(e) National party committees shall disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of \$200 in a calendar year to the committee's non-federal account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

(f) National party committees shall also disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an

aggregate amount in excess of \$200 in a calendar year to the committee's building fund account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

[45 FR 15108, Mar. 7, 1980, as amended at 52 FR 774, Jan. 9, 1987; 55 FR 26067, June 26, 1990]

§ 104.9 Uniform reporting of disbursements.

(a) Political committees shall report the full name and mailing address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made from the reporting committee's federal account(s), together with the date, amount and purpose of such expenditure, in accordance with 11 CFR 104.9(b). As used in 11 CFR 104.9, *purpose* means a brief statement or description as to the reasons for the expenditure. See 11 CFR 104.3(b)(3)(i)(A).

(b) In each case when an expenditure made to a recipient in a reporting period is added to previously unitemized expenditures to the same recipient and the total exceeds \$200 for the calendar year, the reporting committee shall disclose the recipient's full name and mailing address on the prescribed reporting forms, together with the date, amount and purpose of such expenditure. As used in 11 CFR 104.9, *purpose means a brief statement or description as to the reason for the disbursement as defined at 11 CFR 104.3(b)(3)(i)(A).*

(c) National party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of

\$200 within the calendar year is made from the committee's non-federal account(s), together with the date, amount and purpose of such disbursement, in accordance with 11 CFR 104.9(b). As used in 11 CFR 104.9, *purpose* means a brief statement or description as to the reasons for the disbursement. See 11 CFR 104.3(b)(3)(i)(A).

(d) National party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of \$200 within the calendar year is made from the committee's building fund account(s), together with the date, amount and purpose of such disbursement, in accordance with 11 CFR 104.9(b). As used in 11 CFR 104.9, *purpose* means a brief statement or description as to the reasons for the disbursement. See 11 CFR 104.3(b)(3)(i)(A).

(e) National party committees shall report in a memo Schedule B each transfer from their non-federal account(s) to the non-federal account(s) of a state or local party committee.

[45 FR 15108, Mar. 7, 1980, as amended at 55 FR 26067, June 26, 1990]

§ 104.10 Reporting of expenses allocated among candidates and activities.

(a) *Expenses allocated among candidates.* A political committee making an expenditure on behalf of more than one clearly identified candidate for federal office shall allocate the expenditure among the candidates pursuant to 11 CFR part 106. Payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates shall also be allocated pursuant to 11 CFR part 106. For allocated expenditures, the committee shall report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each federal candidate. If a payment also includes amounts attributable to one or more non-federal candidates, and is made by a political committee with separate federal and non-federal accounts, then

the payment shall be made according to the procedures set forth in 11 CFR 106.5(g) or 106.6(e), as appropriate, but shall be reported pursuant to paragraphs (a)(1) through (a)(4), as follows:

(1) *Reporting of allocation of expenses attributable to specific federal and non-federal candidates.* In each report disclosing a payment that includes both expenditures on behalf of one or more federal candidates and disbursements on behalf of one or more non-federal candidates, the committee shall assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, shall state the allocation ratio calculated for the program or activity, and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts attributed to each candidate, to date, for each joint program or activity.

(2) *Reporting of transfers between accounts for the purpose of paying expenses attributable to specific federal and non-federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall report each transfer of funds from its non-federal account to its federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one program or activity, the committee shall itemize the transfer, showing the amounts designated for each program or activity conducted on behalf of one or more clearly identified federal candidates and one or more clearly identified non-federal candidates.

(3) *Reporting of allocated disbursements attributable to specific federal and non-federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall also report each disbursement from its federal account or its separate allocation ac-

count in payment for a program or activity conducted on behalf of one or more clearly identified federal candidates and one or more clearly identified non-federal candidates. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one program or activity, the committee shall itemize the disbursement, showing the amounts designated for payment of each program or activity conducted on behalf of one or more clearly identified federal candidates and one or more clearly identified non-federal candidates. The committee shall also report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each federal candidate, and the total amount attributed to the non-federal candidate(s). In addition, the committee shall report the total amount expended by the committee that year, to date, for each joint program or activity.

(4) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocation on behalf of specific federal and non-federal candidates, in accordance with 11 CFR 104.14.

(b) *Expenses allocated among activities.* A political committee that has established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those accounts its administrative expenses and its costs for fundraising, exempt activities, and generic voter drives according to 11 CFR 106.5 or 106.6, as appropriate, and shall report those allocations according to paragraphs (b) (1) through (5), as follows:

(1) *Reporting of allocation of administrative expenses and costs of generic voter drives.* (i) In the first report in a calendar year disclosing a disbursement for administrative expenses or generic voter drives, as described in 11 CFR 106.5(a)(2) or 106.6(b), the committee shall state the allocation ratio to be applied to these categories of ac-

tivity according to 11 CFR 106.5 (b), (c) or (d) or 106.6(c), and the manner in which it was derived. The Senate and House campaign committees of each political party shall also state whether the calculated ratio or the minimum federal percentage required by 11 CFR 106.5(c)(2) will be used.

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement for administrative expenses or generic voter drives:

(A) The committee shall state the category of activity for which each allocated disbursement was made, and shall summarize the total amount spent by the federal and non-federal accounts that year, to date, for each such category.

(B) Nonconnected committees, separate segregated funds, and Senate and House campaign committees of a national party that have allocated expenses according to the funds expended method as described in 11 CFR 106.5(c)(1) or 106.6(c) shall also report in a memo entry the total amounts expended in donations and direct disbursements on behalf of specific state and local candidates, to date, in that calendar year.

(2) *Reporting of allocation of the direct costs of fundraising and costs of exempt activities.* In each report disclosing a disbursement for the direct costs of a fundraising program or an exempt activity, as described in 11 CFR 106.5(a)(2) or 106.6(b), the committee shall assign a unique identifying title or code to each such program or activity, shall state the allocation ratio calculated for the program or activity according to 11 CFR 106.5 (e) and (f) or 106.6(d), and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts spent by the federal and non-federal accounts that year, to date, for each such program or activity.

(3) *Reporting of transfers between accounts for the purpose of paying allocable expenses.* A political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall report each transfer of funds from its non-federal account to its federal account or to its separate allocation account for the purpose of paying

such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the committee shall itemize the transfer, showing the amounts designated for administrative expenses and generic voter drives, and for each fundraising program or exempt activity, as described in 11 CFR 106.5(a)(2) or 106.6(b).

(4) *Reporting of allocated disbursements.* A political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall also report each disbursement from its federal account or its separate allocation account in payment for a joint federal and non-federal expense or activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payment of administrative expenses and generic voter drives, and for each fundraising program or exempt activity, as described in 11 CFR 106.5(a)(2) or 106.6(b). The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

(5) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocated disbursements for three years, in accordance with 11 CFR 104.14.

[55 FR 26068, June 26, 1990; 55 FR 34007, Aug. 20, 1990]

§ 104.11 Continuous reporting of debts and obligations.

(a) Debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. See 11 CFR 104.3(d). These debts and obligations shall be reported on separate sched-

ules together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. Where such debts and obligations are settled for less than their reported amount or value, the reporting committee shall include a statement as to the circumstances and conditions under which the debt or obligation was extinguished and the amount paid.

(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 116.6. 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.

[45 FR 15108, Mar. 7, 1980, as amended at 55 FR 26386, June 27, 1990]

§ 104.12 Beginning cash on hand for political committees.

Political committees which have cash on hand at the time of registration shall disclose on their first report the source(s) of such funds, including the information required by 11 CFR 104.3(a)(1). The cash on hand balance is assumed to be composed of those contributions most recently received by the committee. The committee shall exclude from funds to be used for Federal elections any contributions

not permissible under the Act. See 11 CFR parts 110, 114, and 115.

§ 104.13 Disclosure of receipt and consumption of in-kind contributions.

(a) (1) The amount of an in-kind contribution shall be equal to the usual and normal value on the date received. Each in-kind contribution shall be reported as a contribution in accordance with 11 CFR 104.3(a).

(2) Except for items noted in 11 CFR 104.13(b), each in-kind contribution shall also be reported as an expenditure at the same usual and normal value and reported on the appropriate expenditure schedule, in accordance with 11 CFR 104.3(b).

(b) Contributions of stocks, bonds, art objects, and other similar items to be liquidated shall be reported as follows:

(1) If the item has not been liquidated at the close of a reporting period, the committee shall record as a memo entry (not as cash) the item's fair market value on the date received, including the name and mailing address (and, where in excess of \$200, the occupation and name of employer) of the contributor.

(2) When the item is sold, the committee shall record the proceeds. It shall also report the (i) name and mailing address (and, where in excess of \$200, the occupation and name of employer) of the purchaser, if purchased directly from the candidate or committee (as the purchaser shall be considered to have made a contribution to the committee), and (ii) the identification of the original contributor.

§ 104.14 Formal requirements regarding reports and statements.

(a) Each individual having the responsibility to file a designation, report or statement required under this subchapter shall sign the original designation, report or statement.

(b) Each political committee or other person required to file any report or statement under this subchapter shall maintain all records relevant to such reports or statements as follows:

(1) Maintain records, including bank records, with respect to the matters re-

quired to be reported, including vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness;

(2) Preserve a copy of each report or statement required to be filed under 11 CFR parts 102 and 104;

(3) Keep all reports required to be preserved under 11 CFR 104.14 available for audit, inspection, or examination by the Commission or its authorized representative(s) for a period of not less than 3 years after the report or statement is filed. (See 11 CFR 102.9(c) for requirements relating to preservation of records and accounts.)

(c) Acknowledgements by the Commission, the Clerk of the House, or the Secretary of the Senate, of the receipt of Statements of Organization, reports or other statements filed under 11 CFR parts 101, 102 and 104 are intended solely to inform the person filing the report of its receipt and neither the acknowledgement nor the acceptance of a report or statement shall constitute express or implied approval, or in any manner indicate that the contents of any report or statement fulfill the filing or other requirements of the Act or of these regulations.

(d) Each treasurer of a political committee, and any other person required to file any report or statement under these regulations and under the Act, shall be personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it.

§ 104.15 Sale or use restriction (2 U.S.C. 438(a)(4)).

(a) Any information copied, or otherwise obtained, from any report or statement, or any copy, reproduction, or publication thereof, filed with the Commission, Clerk of the House, Secretary of the Senate, or any Secretary of State or other equivalent State officer, shall not be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose, except that the name and ad-

dress of any political committee may be used to solicit contributions from such committee.

(b) For purposes of 11 CFR 104.15, *soliciting contributions* includes soliciting any type of contribution or donation, such as political or charitable contributions.

(c) The use of information, which is copied or otherwise obtained from reports filed under 11 CFR part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.

§ 104.16 Audits (2 U.S.C. 438(b)).

(a) The Commission may conduct audits of any political committee required to register under 11 CFR part 102 and to report under 11 CFR part 104. Prior to conducting any such audit or investigation, the Commission shall conduct an internal review of reports filed by selected committees to determine whether reports filed by a particular committee meet thresholds established by the Commission for substantial compliance with the Act. Such thresholds may vary according to the type of political committee being reviewed.

(b) The Commission may, upon affirmative vote of four members, conduct an audit and field investigation of any committee which meets the thresholds established pursuant to 11 CFR 104.16(a). All such audits and investigations shall commence within 30 days of such vote except that any audit or investigation of an authorized committee of a candidate shall be commenced within 6 months of the election for which such committee was authorized.

(c) The Commission may, upon affirmative vote of four members, conduct an audit and field investigation of any committee pursuant to 11 CFR 111.10.

(d) All audits and field investigations concerning the verification for and the receipt and use of payments under Chapters 95 and 96 of Title 26 shall be given priority over any audit or inves-

tigation of committees not receiving such payments.

§ 104.17 Content of reports; Presidential and Vice Presidential committees (2 U.S.C. 431 note).

(a) For all elections occurring prior to January 1, 1981, authorized committees of candidates for President and Vice President may comply with the requirements of 11 CFR 104.17 in lieu of 11 CFR 104.3 (a) and (b).

(b) Each report filed under 11 CFR 104.17 shall include all receipts and disbursements from the close of the last period reported to the close of the current reporting period, and shall disclose—

(1) The amount of cash on hand at the beginning of the calendar year and at the beginning of the reporting period, including currency, balance on deposit in banks and savings and loan institutions, checks, negotiable money orders, and other paper commonly accepted by a bank in a deposit;

(2) The identification, occupation, and principal place of business, if any, of each person who has made a contribution to or for the committee or candidate during the reporting period in an amount or value in excess of \$100, or in an amount of less than \$100 if the person's contributions within a calendar year total more than \$100, together with the amount and date of such contributions;

(3)(i) The total of contributions made to or for a committee or candidate during the reporting period and not reported under (b)(2) above;

(ii) Candidates and committees, which, in addition to the required totals, choose to itemize contributions not in excess of \$100, shall itemize these by attaching a separate schedule. Contributions of \$100 or less shall not be reported on the same schedule with the required itemized contributions in excess of \$100;

(4) The identification of each political committee or other political organization from which the reporting committee or the candidate received, or to which the reporting committee or the candidate made, any transfer of funds in any amount during the reporting period, together with the

amounts and dates of all transfers, including aggregate year to date transfers, received from non-affiliated committees, and complete disclosure, pursuant to 11 CFR 110.6 of each transaction involving earmarked funds;

(5) Each loan—

(i)(A) To or from any political committee; or

(B) To a candidate or his or her authorized committees which is—

(ii)(A) Over \$100 in value and made during the reporting period; or

(B) Less than \$100 in value and the total of the loans from one person is over \$100 shall be reported together with the identification, occupation, and principal place of business, if any, of each lender, endorser, or guarantor, as the case may be. The report shall include the date and amount of the loan;

(6) The total amount of proceeds from—

(i) The sale of tickets of each dinner, luncheon, rally, and other fundraising event;

(ii) Mass collections made at these events; and

(iii) Sales of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, jewelry, and similar materials, as long as the items are sold by the candidate or an authorized committee;

(7) Each receipt in excess of \$100 received during the reporting period, not otherwise listed under (b) (2) through (6) above, together with the identification, date and amount received, occupation, and principal place of business of each such person from whom such receipts have been received during the reporting period; including—

(i) The interest or other proceeds from the investment, in an interest-bearing account, note, bill, stock, bond, or other similar device, of funds transferred out of a checking account in a campaign depository; and

(ii) Rebates and refunds received by the candidate or committee;

(8)(i) The total of all receipts by or for the committee or candidate during the reporting period and the calendar year; and

(ii) Total receipts less transfers between affiliated political committees (as defined in 11 CFR 100.5(g));

(9) The identification of each person to whom expenditures have been made by or on behalf of the committee or candidate within the reporting period which total more than \$100, or in an amount less than \$100 if the total exceeds \$100 within a calendar year, together with the amount, date and particulars of each such expenditure and the name, address of, and office sought by, each candidate on whose behalf such expenditures were made;

(10) The total of expenditures made by or on behalf of the committee or candidate during the reporting period and the calendar year together with total expenditures less transfers between affiliated political committees (as defined in 11 CFR 100.5) of the candidate;

(11) The amount and nature of outstanding debts and obligations owed by or to the committee including any written contracts, agreements, or promises to make expenditures, see 11 CFR 104.9;

(12) Independent expenditures; see 11 CFR part 104.4.

PART 105—DOCUMENT FILING (2 U.S.C. 432(g))

Sec.

105.1 Place of filing; House candidates, their principal campaign committees, and committees supporting only House candidates (2 U.S.C. 432(g)(1)).

105.2 Place of filing; Senate candidates, their principal campaign committees, and committees supporting only Senate candidates (2 U.S.C. 432(g)(2)).

105.3 Place of filing; Presidential candidates and their principal campaign committees (2 U.S.C. 432(g)(4)).

105.4 Place of filing; political committees and other persons (2 U.S.C. 432(g)(4)).

105.5 Transmittal of microfilm copies and photocopies of original reports filed with the Clerk of the House and the Secretary of the Senate to the Commission (2 U.S.C. 432(g)(3)).

AUTHORITY: 2 U.S.C. 432(g), 438(a)(8).

SOURCE: 45 FR 15116, Mar. 7, 1980, unless otherwise noted.

§ 105.1 Place of filing; House candidates, their principal campaign committees, and committees supporting only House candidates (2 U.S.C. 432(g)(1)).

All designations, statements, reports, and notices, as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a candidate for nomination or election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress, by his or her principal campaign committee or by any other political committee(s) which supports only candidates for nomination for election or election to the House of Representatives, shall be filed in original form with, and received by, the Clerk of the House of Representatives as custodian for the Federal Election Commission.

§ 105.2 Place of filing; Senate candidates, their principal campaign committees, and committees supporting only Senate candidates (2 U.S.C. 432(g)(2)).

All designations, statements, reports, and notices as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a candidate for nomination or election to the office of United States Senator, by his or her principal campaign committee or by any other political committee(s) which supports only candidates for nomination for election or election to the Senate of the United States shall be filed in original form with, and received by, the Secretary of the Senate, as custodian for the Federal Election Commission.

§ 105.3 Place of filing; Presidential candidates and their principal campaign committees (2 U.S.C. 432(g)(4)).

All designations, statements, reports, and notices, as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102 and 104 by a candidate for nomination for election or election to the office of President or Vice President of the United States or by his or her principal campaign committee shall be filed in original form with the Federal Election Commission.

§ 105.4 Place of filing; political committees and other persons (2 U.S.C. 432(g)(4)).

All designations, statements, reports, and notices, as well as any modifications or amendments thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a political committee other than any principal campaign committee or any committee referred to in 11 CFR 105.1, 105.2, or 105.3, by persons other than political committees making independent expenditures under 11 CFR part 109, and by persons required to report the cost of communications under 11 CFR 104.6, shall be filed in original form with the Federal Election Commission.

§ 105.5 Transmittal of microfilm copies and photocopies of original reports filed with the Clerk of the House and the Secretary of the Senate to the Commission (2 U.S.C. 432(g)(3)).

(a) Either a microfilmed copy or photocopy of all original designations, statements, reports, modifications or amendments required to be filed pursuant to 11 CFR 105.1 and 105.2 shall be transmitted by the Clerk of the House or the Secretary of the Senate to the Commission as soon as possible, but in any case no later than two (2) working days after receiving such designations, statements, reports, modifications, or amendments.

(b) The Clerk of the House and the Secretary of the Senate shall then forward to the Commission a microfilm copy and a photocopy of each designation, statement, and report, or any modification or amendment thereto, filed with them pursuant to 11 CFR 105.1 and 105.2.

(c) The Clerk of the House and the Secretary of the Senate shall place a time and date stamp on each original designation, statement, report, modification or amendment received.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

Sec.

106.1 Allocation of expenses between candidates.

Sec.

- 106.2 State allocation of expenditures incurred by authorized committees of Presidential primary candidates receiving matching funds.
- 106.3 Allocation of expenses between campaign and non-campaign related travel.
- 106.4 Allocation of polling expenses.
- 106.5 Allocation of expenses between federal and non-federal activities by party committees.
- 106.6 Allocation of expenses between federal and non-federal activities by separate segregated funds and nonconnected committees.

AUTHORITY: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

§ 106.1 Allocation of expenses between candidates.

(a) *General rule.* (1) Expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates. In the case of a fundraising program or event where funds are collected by one committee for more than one clearly identified candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates. These methods shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates.

(2) An expenditure made on behalf of more than one clearly identified federal candidate shall be reported pursuant to 11 CFR 104.10(a). A payment that also includes amounts attributable to one or more non-federal candidates, and that is made by a political committee with separate federal and non-federal accounts, shall be made according to the procedures set forth in 11 CFR 106.5(g) or 106.6(e), as

appropriate, but shall be reported pursuant to 11 CFR 104.10(a).

(b) An authorized expenditure made by a candidate or political committee on behalf of another candidate shall be reported as a contribution in-kind (transfer) to the candidate on whose behalf the expenditure was made, except that expenditures made by party committees pursuant to § 110.7 need only be reported as an expenditure.

(c) *Exceptions:* (1) Expenditures for rent, personnel, overhead, general administrative, fund-raising, and other day-to-day costs of political committees need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.

(2) Expenditures for educational campaign seminars, for training of campaign workers, and for registration or get-out-the-vote drives of committees need not be attributed to individual candidates unless these expenditures are made on behalf of a clearly identified candidate, and the expenditure can be directly attributed to that candidate.

(3) Payments made for the cost of certain voter registration and get-out-the-vote activities conducted by State or local party organizations on behalf of any Presidential or Vice-Presidential candidate(s) are exempt from the definition of a contribution or an expenditure under 11 CFR 100.7(b)(17) and 100.8(b)(18). If the State or local party organization includes references to any candidate(s) seeking nomination or election to the House of Representatives or Senate of the United States the portion of the cost of such activities allocable to such candidate(s) shall be considered a contribution to or an expenditure on behalf of such candidate(s), unless such reference is incidental to the overall activity. If such reference is incidental to the overall activity, such costs shall not be considered a contribution to or expenditure on behalf of any candidate(s).

(d) For purposes of this section, *clearly identified* means—

- (1) The candidate's name appears;
- (2) A photograph or drawing of the candidate appears; or
- (3) The identity of the candidate is apparent by unambiguous reference.
- (e) Party committees, separate segregated funds, and nonconnected committees that make disbursements for administrative expenses, fundraising, exempt activities, or generic voter drives in connection with both federal and non-federal elections shall allocate their expenses in accordance with § 106.5 or § 106.6, as appropriate.

(2 U.S.C. 438(a)(8))

[41 FR 35944, Aug. 25, 1976, as amended at 45 FR 15117, Mar. 7, 1980; 45 FR 21209, Apr. 1, 1980; 55 FR 26069, June 26, 1990]

§ 106.2 State allocation of expenditures incurred by authorized committees of Presidential primary candidates receiving matching funds.

(a) *General.* (1) This section applies to Presidential primary candidates receiving or expecting to receive federal matching funds pursuant to 11 CFR parts 9031 *et seq.* Except for expenditures exempted under 11 CFR 106.2(c), expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular State shall be allocated to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid. In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with supporting documentation, that his or her proposed method of allocation or claim of exemption was reasonable.

(2) Disbursements made prior to the time an individual becomes a candidate for the purpose of determining whether that individual should become a candidate pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1), i.e., payments for testing the waters, shall be allocable expenditures under this section if the individual becomes a candidate.

(b) *Method of allocating expenditures among states.*—(1) *General allocation method.* Unless otherwise specified under 11 CFR 106.2(b)(2), an ex-

penditure incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate in more than one State shall be allocated to each State on a reasonable and uniformly applied basis.

(2) *Specific allocation methods.* Expenditures that fall within the categories listed below shall be allocated based on the following methods. The method used to allocate a category of expenditures shall be based on consistent data for each State to which an allocation is made.

(i) *Media expenditures.*—(A) *Print media.* Except for expenditures exempted under 11 CFR 106.2(c), allocation of expenditures for the publication and distribution of newspaper, magazine and other types of printed advertisements distributed in more than one State, including any commission charged for the purchase of print media, shall be made using relative circulation percentages in each State or an estimate thereof. For purposes of this section, allocation to a particular State will not be required if less than 3% of the total estimated readership of the publication is in that State.

(B) *Broadcast media.* Except for expenditures exempted under 11 CFR 106.2(c), expenditures for radio, television and similar types of advertisements purchased in a particular media market that covers more than one State shall be allocated to each State in proportion to the estimated audience. This allocation of expenditures, including any commission charged for the purchase of broadcast media, shall be made using industry market data.

(C) *Refunds for media expenditures.* Refunds for broadcast time or advertisement space, purchased but not used, shall be credited to the States on the same basis as the original allocation.

(D) *Limits on allocation of media expenditures.* No allocation of media expenditures shall be made to any State in which the primary election has already been held.

(ii) *Salaries.* Except for expenditures exempted under 11 CFR 106.2(c), salaries paid to persons working in a particular State for five consecutive days or more, including advance staff, shall

be allocated to each State in proportion to the amount of time spent in that State during a payroll period.

(iii) *Intra-state travel and subsistence expenditures.* Travel and subsistence expenditures for persons working in a State for five consecutive days or more shall be allocated to that State in proportion to the amount of time spent in each State during a payroll period. This same allocation method shall apply to intra-state travel and subsistence expenditures of the candidate and his family or the candidate's representatives. For purposes of this section, *subsistence* includes only expenditures for personal living expenses related to a particular individual travelling on committee business, such as food or lodging.

(iv) *Overhead expenditures—(A) Overhead expenditures of State offices.* Except for expenditures exempted under 11 CFR 106.2(c), overhead expenditures of committee offices located in a particular State shall be allocated to that State. For purposes of this section, overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges. *Telephone service base charges* include any regular monthly charges for committee phone service, and charges for phone installation and intra-state phone calls other than charges related to a special use such as voter registration or get out the vote efforts. Inter-state calls are not included in *telephone service base charges*.

(B) *Overhead expenditures of regional offices.* Except for expenditures exempted under 11 CFR 106.2(c), overhead expenditures of a committee regional office or any committee office with responsibilities in two or more States shall be allocated to each state on a reasonable and uniformly applied basis. For purposes of this section, overhead expenditures include but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges. *Telephone service base charges* include any regular monthly charges for committee phone service, and charges for phone installation and intra-state phone calls other than charges related to a special use such as voter registra-

tion or get out the vote efforts. Inter-state calls are not included in *telephone service base charges*.

(v) *Expenditures for Inter-state telephone calls.* Expenditures for telephone calls between two States need not be allocated to any State.

(vi) *Public opinion poll expenditures.* Expenditures incurred for the taking of a public opinion poll covering only one State shall be allocated to that State. Except for expenditures incurred in conducting a nationwide poll, expenditures incurred for the taking of a public opinion poll covering two or more States shall be allocated to those States based on the number of people interviewed in each State.

(c) *Expenditures exempted from allocation—(1) National campaign expenditures—(i) Operating expenditures.* Expenditures incurred for administrative, staff, and overhead expenditures of the national campaign headquarters need not be allocated to any State. Overhead expenditures shall be defined as in 11 CFR 106.2(b)(2)(iv).

(ii) *National advertising.* Expenditures incurred for advertisements on national networks, national cable or in publications distributed nationwide need not be allocated to any State.

(iii) *Nationwide polls.* Expenditures incurred for the taking of a public opinion poll which is conducted on a nationwide basis need not be allocated to any State.

(2) *Media production costs.* Expenditures incurred for production of media advertising, whether or not that advertising is used in more than one State, need not be allocated to any State.

(3) *Expenditures for transportation and services made available to media.* Expenditures incurred by the candidate's authorized committee(s) to provide transportation and services for media personnel need not be allocated to any State. Reimbursement for such expenditures shall be made in accordance with 11 CFR 9034.6.

(4) *Inter-state travel.* Expenditures incurred for inter-state travel costs, such as travel between State campaigns or between State offices and national campaign headquarters, need not be allocated to any State.

(5) *Compliance costs and fundraising expenditures.* An amount equal to 10% of campaign workers' salaries and overhead expenditures in a particular State may be excluded from allocation to that State as an exempt compliance cost. An additional amount equal to 10% of such salaries and overhead expenditures in a particular State may be excluded from allocation to that State as exempt fundraising expenditures, but this exemption shall not apply within 28 calendar days of the primary election as specified in 11 CFR 110.8(c)(2). Any amounts excluded for fundraising expenditures shall be applied against the fundraising expenditure limitation under 11 CFR 100.8(b)(21). If the candidate wishes to claim a larger compliance or fundraising exemption for any person, the candidate shall establish allocation percentages for each individual working in that State. The candidate shall keep detailed records to support the derivation of each percentage in accordance with 11 CFR 106.2(e). Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates contains some other accepted allocation methods for calculating a compliance or fundraising exemption.

(i) Exempt compliance costs are those legal and accounting compliance costs incurred solely to ensure compliance with 26 U.S.C. 9031 *et seq.*, 2 U.S.C. 431 *et seq.*, and 11 CFR chapter I, including the costs of preparing matching fund submissions, and the costs of producing, delivering and explaining computerized information and materials provided pursuant to 11 CFR 9033.12 and explaining the operation of the computer system's software. The costs of preparing matching fund submissions shall be limited to those functions not required for general contribution processing and shall include the costs associated with: Generating the matching funds submission list and the matching fund computer tape or other form of magnetic media for each submission, edits of the contributor data base that are related to preparing a matching fund submission, making photocopies of contributor checks, and seeking additional documentation from contributors for

matching purposes. The costs associated with general contribution processing shall include those normally performed for fundraising purposes, or for compliance with the recordkeeping and reporting requirements of 11 CFR part 100 *et seq.*, such as data entry, batching contributions for deposit, and preparation of FEC reports.

(ii) Exempt fundraising expenditures are those expenses associated with the solicitation of contributions. They include printing and postage for solicitations; airtime for fundraising advertisements and the cost of meals and beverages for fundraising receptions or dinners.

(d) *Reporting:* All expenditures allocated under this section shall be reported on FEC Form 3P, page 3.

(e) *Recordkeeping.* All assumptions and supporting calculations for allocations made under this section shall be documented and retained for Commission inspection. For compliance and fundraising deductions that exceed the 10% exemptions under 11 CFR 106.2(c)(5), such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(52 FR 20874, June 3, 1987, as amended at 55 FR 26395, June 27, 1990)

§ 106.3 Allocation of expenses between campaign and non-campaign related travel.

(a) This section applies to allocation for expenses between campaign and non-campaign related travel with respect to campaigns of candidates for Federal office, other than Presidential and Vice Presidential candidates who receive federal funds pursuant to 11 CFR part 9005 or 9036. (See 11 CFR 9004.7 and 9034.7) All expenditures for campaign-related travel paid for by a candidate from a campaign account or by his or her authorized committees or by any other political committee shall be reported.

(b)(1) Travel expenses paid for by a candidate from personal funds, or from a source other than a political committee, shall constitute reportable expenditures if the travel is campaign-related.

(2) Where a candidate's trip involves both campaign-related and non-campaign-related stops, the expenditures allocable for campaign purposes are reportable, and are calculated on the actual cost-per-mile of the means of transportation actually used, starting at the point of origin of the trip, via every campaign-related stop and ending at the point of origin.

(3) Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable. Campaign-related activity shall not include any incidental contacts.

(c)(1) Where an individual, other than a candidate, conducts campaign-related activities on a trip, the portion of the trip attributed to each candidate shall be allocated on a reasonable basis.

(2) Travel expenses of a candidate's spouse and family are reportable as expenditures only if the spouse or family members conduct campaign-related activities.

(d) Costs incurred by a candidate for the United States Senate or House of Representatives for travel between Washington, DC, and the State or district in which he or she is a candidate need not be reported herein unless the costs are paid by a candidate's authorized committee(s), or by any other political committee(s).

(e) Notwithstanding paragraphs (b) and (c) of this section, the reportable expenditure for a candidate who uses government conveyance or accommodations for travel which is campaign-related is the rate for comparable commercial conveyance or accommodation. In the case of a candidate authorized by law or required by national security to be accompanied by staff and equipment, the allocable expenditures are the costs of facilities sufficient to accommodate the party, less authorized or required personnel and equipment. If such a trip includes both campaign and noncampaign stops, equivalent costs are calculated in accordance with paragraphs (b) and (c) of this section.

(2 U.S.C. 438(a)(8))

[41 FR 35944, Aug. 25, 1976, as amended at 45 FR 15117, Mar. 7, 1980; 45 FR 43387, June 27, 1980; 48 FR 5234, Feb. 4, 1983]

§ 106.4 Allocation of polling expenses.

(a) The purchase of opinion poll results by a candidate or a candidate's authorized political committee or agent is an expenditure by the candidate. Regarding the purchase of opinion poll results for the purpose of determining whether an individual should become a candidate, see 11 CFR 100.8(b)(1).

(b) The purchase of opinion poll results by a political committee or other person not authorized by a candidate to make expenditures and the subsequent acceptance of the poll results by a candidate or a candidate's authorized political committee or agent or by another unauthorized political committee is a contribution in-kind by the purchaser to the candidate or other political committee and an expenditure by the candidate or other political committee. Regarding the purchase of opinion poll results for the purpose of determining whether an individual should become a candidate, see 11 CFR 100.7(b)(1). The poll results are accepted by a candidate or other political committee if the candidate or the candidate's authorized political committee or agent or the other unauthorized political committee—

(1) Requested the poll results before their receipt;

(2) Uses the poll results; or

(3) Does not notify the contributor that the results are refused.

(c) The acceptance of any part of a poll's results which part, prior to receipt, has been made public without any request, authorization, prearrangement, or coordination by the candidate-recipient or political committee-recipient, shall not be treated as a contribution in-kind and expenditure under paragraph (b) of this section.

(d) The purchase of opinion poll results by an unauthorized political committee for its own use, in whole or in part, is an overhead expenditure by the political committee under § 106.1(c)(1) to the extent of the benefit derived by the committee.

(e) The amount of a contribution under paragraph (b) of this section or of any expenditure under paragraphs (a) and (b) of this section attributable to each candidate-recipient or political committee-recipient shall be—

(1) That share of the overall cost of the poll which is allocable to each candidate (including State and local candidates) or political committee, based upon the cost allocation formula of the polling firm from which the results are purchased. Under this method the size of the sample, the number of computer column codes, the extent of computer tabulations, and the extent of written analysis and verbal consultation, if applicable, may be used to determine the shares; or

(2) An amount computed by dividing the overall cost of the poll equally among candidates (including State and local candidates) or political committees receiving the results; or

(3) A proportion of the overall cost of the poll equal to the proportion that the number of question results received by the candidate or political committee bears to the total number of question results received by all candidates (including State and local candidates) and political committees; or

(4) An amount computed by any other method which reasonably reflects the benefit derived.

(f) The first candidate(s), or committee(s) receiving poll results under paragraph (b) or (d) of this section and any candidate or political committee receiving poll results under paragraph (b) of this section within 15 days after receipt by the initial recipient(s) shall compute the amount of the contribution in-kind and the expenditure as provided in paragraph (e) of this section.

(g) The amount of the contribution and expenditure reported by a candidate or a political committee receiving poll results under paragraph (b) of this section more than 15 days after receipt of such poll results by the initial recipient(s) shall be—

(1) If the results are received during the period 16 to 60 days following receipt by the initial recipient(s), 50 percent of the amount allocated to an initial recipient of the same results;

(2) If the results are received during the period 61 to 180 days after receipt by the initial recipient(s), 5 percent of the amount allocated to an initial recipient of the same results;

(3) If the results are received more than 180 days after receipt by the initial recipient(s), no amount need be allocated.

(h) A contributor of poll results under paragraph (b) of this section shall maintain records sufficient to support the valuation of the contribution(s) in-kind and shall inform the candidate-recipient(s) or political committee-recipient(s) of the value of the contribution(s).

[41 FR 35944, Aug. 25, 1976, as amended at 45 FR 21209, Apr. 1, 1980]

§ 106.5 Allocation of expenses between federal and non-federal activities by party committees.

(a) *General rules.* (1) Party committees that make disbursements in connection with federal and non-federal elections shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Political committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to this section. Organizations that are not political committees but have established separate federal and non-federal accounts under 11 CFR 102.5(b)(1)(i), or that make federal and non-federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii) shall also allocate their federal and non-federal expenses according to this section. This section covers (i) general rules regarding allocation of federal and non-federal expenses by party committees; (ii) percentages to be allocated for administrative expenses and costs of generic voter drives by national party committees, (iii) methods for allocation of administrative expenses, costs of generic voter drives, and exempt activities by state and local party committees, and of fundraising costs by all party committees, and (iv) procedures for payment of allocable expenses. Require-

ments for reporting of allocated disbursements are set forth in 11 CFR 104.10.

(2) *Costs to be allocated.* Committees that make disbursements in connection with federal and non-federal elections shall allocate expenses according to this section for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where federal and non-federal funds are collected by one committee through such program or event;

(iii) State and local party activities exempt from the definitions of *contribution* and *expenditure* under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18) (*exempt activities*) including the production and distribution of slate cards and sample ballots, campaign materials distributed by volunteers, and voter registration and get-out-the-vote drives on behalf of the party's presidential and vice-presidential nominees, where such activities are conducted in conjunction with non-federal election activities; and

(iv) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(b) *National party committees other than Senate or House campaign committees; fixed percentages for allocating administrative expenses and costs of generic voter drives—*(1) *General rule.* Each national party committee other than a Senate or House campaign committee shall allocate a fixed percentage of its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, to its federal and non-federal account(s) each year. These percentages shall differ according to whether or not the allocable expenses

were incurred in a presidential election year. Such committees shall allocate the costs of each combined federal and non-federal fundraising program or event according to paragraph (f) of this section, with no fixed percentages required.

(2) *Fixed percentages according to type of election year.* National party committees other than the Senate or House campaign committees shall allocate their administrative expenses and costs of generic voter drives according to paragraphs (b)(2) (i) and (ii) as follows:

(i) *Presidential election years.* In presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their federal accounts at least 65% each of their administrative expenses and costs of generic voter drives.

(ii) *Non-presidential election years.* In all years other than presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their federal accounts at least 60% each of their administrative expenses and costs of generic voter drives.

(c) *Senate and House campaign committees of a national party; method and minimum federal percentage for allocating administrative expenses and costs of generic voter drives—*(1) *Method for allocating administrative expenses and costs of generic voter drives.* Subject to the minimum percentage set forth in paragraph (c)(2) of this section, each Senate or House campaign committee of a national party shall allocate its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, according to the funds expended method, described in paragraphs (c)(1) (i) and (ii) as follows:

(i) Under this method, expenses shall be allocated based on the ratio of federal expenditures to total federal and non-federal disbursements made by the committee during the two-year federal election cycle. This ratio shall be estimated and reported at the beginning of each federal election cycle, based upon the committee's federal and non-federal disbursements in a prior comparable federal election cycle

or upon the committee's reasonable prediction of its disbursements for the coming two years. In calculating its federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total federal and non-federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

(ii) On each of its periodic reports, the committee shall adjust its allocation ratio to reconcile it with the ratio of actual federal and non-federal disbursements made, to date. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers on its periodic reports, submitted pursuant to 11 CFR 104.5.

(2) *Minimum federal percentage for administrative expenses and costs of generic voter drives.* Regardless of the allocation ratio calculated under paragraph (c)(1) of this section, each Senate or House campaign committee of a national party shall allocate to its federal account at least 65% each of its administrative expenses and costs of generic voter drives each year. If the committee's own allocation calculation under paragraph (c)(1) of this section yields a federal share greater than 65%, then the higher percentage shall be applied. If such calculation yields a federal share lower than 65%, then the committee shall report its calculated ratio according to 11 CFR 104.10(b), and shall apply the required minimum federal percentage.

(3) *Allocation of fundraising costs.* Senate and House campaign committees shall allocate the costs of each combined federal and non-federal fundraising program or event according to paragraph (f) of this section, with no minimum percentages required.

(d) *State and local party committees; method for allocating administrative expenses and costs of generic voter drives—(1) General rule.* All state and local party committees except those

covered by paragraph (d)(2) of this section shall allocate their administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, according to the ballot composition method, described in paragraphs (d)(1)(i) and (ii) as follows:

(i) Under this method, expenses shall be allocated based on the ratio of federal offices expected on the ballot to total federal and non-federal offices expected on the ballot in the next general election to be held in the committee's state or geographic area. This ratio shall be determined by the number of categories of federal offices on the ballot and the number of categories of non-federal offices on the ballot, as described in paragraph (d)(1)(ii) of this section.

(ii) In calculating a ballot composition ratio, a state or local party committee shall count the federal offices of President, United States Senator, and United States Representative, if expected on the ballot in the next general election, as one federal office each. The committee shall count the non-federal offices of Governor, State Senator, and State Representative, if expected on the ballot in the next general election, as one non-federal office each. The committee shall count the total of all other partisan statewide executive candidates, if expected on the ballot in the next general election, as a maximum of two non-federal offices. State party committees shall also include in the ratio one additional non-federal office if any partisan local candidates are expected on the ballot in that election. Local party committees shall also include in the ratio a maximum of two additional non-federal offices if any partisan local candidates are expected on the ballot in that election.

(2) *Exception for states that do not hold federal and non-federal elections in the same year.* State and local party committees in states that do not hold federal and non-federal elections in the same year shall allocate the costs of generic voter drives according to the ballot composition method described in paragraph (d)(1) of this section, based on a ratio calculated for that calendar year. These committees

shall allocate their administrative expenses according to the ballot composition method described in paragraph (d)(1) of this section, based on a ratio calculated for the two-year Congressional election cycle.

(e) *State and local party committees; method for allocating costs of exempt activities.* Each state or local party committee shall allocate its expenses for activities exempt from the definitions of *contribution* and *expenditure* under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18), when conducted in conjunction with non-federal election activities, as described in paragraph (a)(2) of this section, according to the proportion of time or space devoted to a communication. Under this method, the committee shall allocate expenses of a particular communication based on the ratio of the portion of the communication devoted to federal candidates or elections as compared to the entire communication. In the case of a publication, this ratio shall be determined by the space devoted to federal candidates or elections as compared to the total space devoted to all federal and non-federal candidates or elections. In the case of a phone bank, the ratio shall be determined by the number of questions or statements devoted to federal candidates or elections as compared to the total number of questions or statements devoted to all federal and non-federal candidates or elections.

(f) *All party committees; method for allocating direct costs of fundraising.* If federal and non-federal funds are collected by one committee through a joint activity, that committee shall allocate its direct costs of fundraising, as described in paragraph (a)(2) of this section, according to the funds received method. Under this method, the committee shall allocate its fundraising costs based on the ratio of funds received into its federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its federal and non-federal revenue from that program or event, and shall be noted in the committee's report for

the period in which the first disbursement for such program or event occurred, submitted pursuant to 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event shall be allocated according to this estimated ratio. The committee shall adjust its estimated allocation ratio following each fundraising program or event from which both federal and non-federal funds are collected, to reflect the actual ratio of funds received. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers in its report for the period in which the fundraising program or event occurred.

(g) *Payment of allocable expenses by committees with separate federal and non-federal accounts—(1) Payment options.* Committees that have established separate federal and non-federal accounts under 11 CFR 102.5 (a)(1)(i) or (b)(1)(i) shall pay the expenses of joint federal and non-federal activities described in paragraph (a)(2) of this section according to either paragraph (g)(1) (i) or (ii), as follows:

(i) *Payment by federal account; transfers from non-federal account to federal account.* The committee shall pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense.

(ii) *Payment by separate allocation account; transfers from federal and non-federal accounts to allocation account.* (A) The committee shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities. Once a committee has established a separate allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

(B) The committee shall transfer funds from its federal and non-federal

accounts to its allocation account in amounts proportionate to the federal or non-federal share of each allocable expense.

(C) No funds contained in the allocation account may be transferred to any other account maintained by the committee.

(2) *Timing of transfers between accounts.* (i) Under either payment option described in paragraphs (g)(1)(i) or (ii) of this section, the committee shall transfer funds from its non-federal account to its federal account or from its federal and non-federal accounts to its separate allocation account following determination of the final cost of each joint federal and non-federal activity, or in advance of such determination if advance payment is required by the vendor and if such payment is based on a reasonable estimate of the activity's final cost as determined by the committee and the vendor(s) involved.

(ii) Funds transferred from a committee's non-federal account to its federal account or its allocation account are subject to the following requirements:

(A) For each such transfer, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay, as required by 11 CFR 104.10(b)(3); and

(B) Such funds may not be transferred more than 10 days before or more than 30 days after the payment for which they are designated is made.

(iii) Any portion of a transfer from a committee's non-federal account to its federal account or its allocation account that does not meet the requirements of paragraph (g)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-federal account to a federal account, in violation of the Act.

(3) *Reporting transfers of funds and allocated disbursements.* A political committee that transfers funds between accounts and pays allocable expenses according to this section shall report each such transfer and disbursement pursuant to 11 CFR 104.10(b).

[55 FR 26069, June 26, 1990]

§ 106.6 Allocation of expenses between federal and non-federal activities by separate segregated funds and nonconnected committees.

(a) *General rule.* Separate segregated funds and nonconnected committees that make disbursements in connection with federal and non-federal elections shall make those disbursements either entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Separate segregated funds and nonconnected committees that have established separate federal and non-federal accounts under 11 CFR 102.5 (a)(1)(i) or (b)(1)(i), or that make federal and non-federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii), shall allocate their federal and non-federal expenses according to paragraphs (c) and (d) of this section. For purposes of this section, "nonconnected committee" includes any committee which conducts activities in connection with an election, but which is not a party committee, an authorized committee of any candidate for federal election, or a separate segregated fund.

(b) *Costs to be allocated.*—(1) *Separate segregated funds.* Separate segregated funds that make disbursements in connection with federal and non-federal elections shall allocate expenses for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries not attributable to a clearly identified candidate, if such expenses are not paid by the separate segregated fund's connected organization;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where federal and non-federal funds are collected through such program or event, if such expenses are not paid by the separate segregated fund's connected organization; and

(iii) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general

public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(2) *Nonconnected committees.* Non-connected committees that make disbursements in connection with federal and non-federal elections shall allocate expenses for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where federal and non-federal funds are collected through such program or event; and

(iii) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(c) *Method for allocating administrative expenses and costs of generic voter drives.* Nonconnected committees and separate segregated funds shall allocate their administrative expenses and costs of generic voter drives, as described in paragraph (b) of this section, according to the funds expended method, described in paragraphs (c) (1) and (2) as follows:

(1) Under this method, expenses shall be allocated based on the ratio of federal expenditures to total federal and non-federal disbursements made by the committee during the two-year federal election cycle. This ratio shall be estimated and reported at the beginning of each federal election cycle, based upon the committee's federal and non-federal disbursements in a prior comparable federal election cycle or upon the committee's reasonable prediction of its disbursements for the coming two years. In calculating its federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total federal and non-federal

disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

(2) On each of its periodic reports, the committee shall adjust its allocation ratio to reconcile it with the ratio of actual federal and non-federal disbursements made, to date. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers on its periodic reports, submitted pursuant to 11 CFR 104.5.

(d) *Method for allocating direct costs of fundraising.* If federal and non-federal funds are collected by one committee through a joint activity, that committee shall allocate its direct costs of fundraising according to the funds received method. Under this method, the committee shall allocate its fundraising costs based on the ratio of funds received into its federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its federal and non-federal revenue from that program or event, and shall be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant to 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event shall be allocated according to this estimated ratio. The committee shall adjust its estimated allocation ratio following each fundraising program or event from which both federal and non-federal funds are collected, to reflect the actual ratio of funds received. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers in its report for the period in which the fundraising program or event occurred.

(e) *Payment of allocable expenses by committees with separate federal and non-federal accounts*—(1) *Payment options*: Nonconnected committees and separate segregated funds that have established separate federal and non-federal accounts under 11 CFR 102.5 (a)(1)(i) or (b)(1)(i) shall pay the expenses of joint federal and non-federal activities described in paragraph (b) of this section according to either paragraph (e)(1)(i) or (ii), as follows:

(i) *Payment by federal account; transfers from non-federal account to federal account*. The committee shall pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense.

(ii) *Payment by separate allocation account; transfers from federal and non-federal accounts to allocation account*. (A) The committee shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities. Once a committee has established an allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

(B) The committee shall transfer funds from its federal and non-federal accounts to its allocation account in amounts proportionate to the federal or non-federal share of each allocable expense.

(C) No funds contained in the allocation account may be transferred to any other account maintained by the committee.

(2) *Timing of transfers between accounts*. (i) Under either payment option described in paragraphs (e)(1)(i) or (ii) of this section, the committee shall transfer funds from its non-federal account or from its federal and non-federal accounts to its separate allocation account following determination of the final cost of each

joint federal and non-federal activity, or in advance of such determination if advance payment is required by the vendor and if such payment is based on a reasonable estimate of the activity's final cost as determined by the committee and the vendor(s) involved.

(ii) Funds transferred from a committee's non-federal account to its federal account or its allocation account are subject to the following requirements:

(A) For each such transfer, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay, as required by 11 CFR 104.10(b)(3); and

(B) Such funds may not be transferred more than 10 days before or more than 30 days after the payment for which they are designated is made.

(iii) Any portion of a transfer from a committee's non-federal account to its federal account or its allocation account that does not meet the requirements of paragraph (e)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-federal account to a federal account, in violation of the Act.

(3) *Reporting transfers of funds and allocated disbursements*. A political committee that transfers funds between accounts and pays allocable expenses according to this section shall report each such transfer and disbursement pursuant to 11 CFR 104.10(b).

[55 FR 26071, June 26, 1990]

PART 107—PRESIDENTIAL NOMINATING CONVENTION, REGISTRATION AND REPORTS

AUTHORITY: 2 U.S.C. 437.

§ 107.1 Registration and reports by committees including host committees, organizations or other groups representing a State, city or other local government agency.

Each committee, including a host committee other organization or group

§ 107.2

of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention shall register and report in accordance with 11 CFR 9008.12(a).

[44 FR 63045, Nov. 1, 1979]

§ 107.2 Registration and reports by political parties.

Each convention committee established under 11 CFR 9008.8(b)(2) by a national committee of a political party and each committee or other organization, including a national committee, which represents a political party in making arrangements for that party's convention held to nominate a presidential or vice presidential candidate shall register and report in accordance with 11 CFR 9008.12(b).

[44 FR 63045, Nov. 1, 1979]

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)

Sec.

108.1 Filing requirements (2 U.S.C. 439(a)(1)).

108.2 Filing copies of reports and statements in connection with the campaign of any candidate seeking nomination for election to the Office of President or Vice-President (2 U.S.C. 439(a)(2)).

108.3 Filing copies of reports and statements in connection with the campaign of any congressional candidate (2 U.S.C. 439(a)(2)).

108.4 Filing copies of reports by committees other than principal campaign committees (2 U.S.C. 439(a)(2)).

108.5 Time and manner of filing copies (2 U.S.C. 434(a)(2)).

108.6 Duties of State officers (2 U.S.C. 439(b)).

108.7 Effect on State law (2 U.S.C. 453).

108.8 Exemption for the District of Columbia.

AUTHORITY: 2 U.S.C. 434(a)(2) 438(a)(8), 439, 453.

SOURCE: 45 FR 15117, Mar. 7, 1980, unless otherwise noted.

§ 108.1 Filing requirements (2 U.S.C. 439(a)(1)).

A copy of each report and statement required to be filed by any person under the Act shall be filed either with the Secretary of State of the appropriate State or with the State offi-

11 CFR Ch. I (1-1-91 Edition)

cer who is charge by State law with maintaining state election campaign reports. In States where reports are to be filed with a designated officer other than the Secretary of State, the chief executive officer of that State shall notify the Commission of such designation.

§ 108.2 Filing copies of reports and statements in connection with the campaign of any candidate seeking nomination for election to the Office of President or Vice-President (2 U.S.C. 439(a)(2)).

A copy of each report and statement required to be filed by a Presidential or Vice Presidential candidate's principal campaign committee under the Act, including 11 CFR part 104, or by any other person making independent expenditures in connection with a candidate seeking nomination for election to the office of President or Vice-President under 11 CFR 104.4 or part 109, shall be filed with the State officer of each State in which an expenditure is made in connection with the campaign of a candidate seeking nomination for election to the office of President or Vice-President. The report and statement shall contain all transactions pertaining to that State during the reporting period. Any committee, other than a Presidential or Vice Presidential candidate's principal campaign committee and the candidate's authorized committee(s) shall also file a copy of each report and statement with the appropriate State officer of the State in which such committee has its headquarters pursuant to 11 CFR 108.4.

§ 108.3 Filing copies of reports and statements in connection with the campaign of any congressional candidate (2 U.S.C. 439(a)(2)).

A copy of each report and statement required to be filed by a committee under 11 CFR part 104, or by any other person under 11 CFR part 109 shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign of a candidate for nomination for election or election, to the office of Senator, Representative in, Delegate or Resident Commissioner

to the Congress except that political committees other than authorized committees are required to file, and the Secretary of State is required to retain only that portion of the report applicable to candidates seeking election in that State.

§ 108.4 Filing copies of reports by committees other than principal campaign committees (2 U.S.C. 439(a)(2)).

Any unauthorized committee, which makes contributions in connection with a Presidential election and which is required to file a report(s) and statement(s) under the Act shall file a copy of such report(s) and statement(s) with the State officer of the State in which both the recipient and contributing committees have their headquarters.

[45 FR 15117, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980]

§ 108.5 Time and manner of filing copies (2 U.S.C. 434(a)(2)).

A copy of any report or statement required to be filed with a State officer under 11 CFR part 108 shall be filed at the same time as the original report is filed. Each copy of such report or statement shall be a complete, true, and legible copy of the original report or statement filed.

§ 108.6 Duties of State officers (2 U.S.C. 439(b)).

The Secretary of State, or the equivalent State officer shall carry out the duties set forth in 11 CFR 108.5(a) through (d):

(a) Receive and maintain in an orderly manner all reports and statements required to be filed;

(b) Preserve such reports and statements (either in original form or in facsimile copy by microfilm or otherwise) filed under the Act for a period of 2 years from the date of receipt;

(c) Make the reports and statements filed available as soon as practicable (but within 48 hours of receipt) for public inspection and copying during office hours and permit copying of any such reports or statements by hand or by duplicating machine, at the request of any person except that such copying shall be at the expense of the

person making the request and at a reasonable fee;

(d) Compile and maintain a current list of all reports and statements or parts of such reports and statements pertaining to each candidate.

§ 108.7 Effect on State law (2 U.S.C. 453).

(a) The provisions of the Federal Election Campaign Act of 1971, as amended, and rules and regulations issued thereunder, supersede and preempt any provision of State law with respect to election to Federal office.

(b) Federal law supersedes State law concerning the—

(1) Organization and registration of political committees supporting Federal candidates;

(2) Disclosure of receipts and expenditures by Federal candidates and political committees; and

(3) Limitation on contributions and expenditures regarding Federal candidates and political committees.

(c) The Act does not supersede State laws which provide for the—

(1) Manner of qualifying as a candidate or political party organization;

(2) Dates and places of elections;

(3) Voter registration;

(4) Prohibition of false registration, voting fraud, theft of ballots, and similar offenses; or

(5) Candidate's personal financial disclosure.

§ 108.8 Exemption for the District of Columbia

Any copy of a report required to be filed with the equivalent officer in the District of Columbia shall be deemed to be filed if the original has been filed with the Clerk, Secretary, or the Commission, as appropriate.

PART 109—INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 434(c))

Sec.

109.1 Definitions (2 U.S.C. 431(17)).

109.2 Reporting of independent expenditures by persons other than a political committee (2 U.S.C. 434(c)).

109.3 Non-authorization notice (2 U.S.C. 441d).

AUTHORITY: 2 U.S.C. 431(17), 434(c), 438(a)(8), 441d.

SOURCE: 45 FR 15118, Mar. 7, 1980, unless otherwise noted.

§ 109.1 Definitions (2 U.S.C. 431(17)).

(a) *Independent expenditure* means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.

(b) For purposes of this definition—

(1) *Person* means an individual, partnership, committee, association, or any organization or group of persons, including a separate segregated fund established by a labor organization, corporation, or national bank (see part 114) but does not mean a labor organization, corporation, or national bank.

(2) *Expressly advocating* means any communication containing a message advocating election or defeat, including but not limited to the name of the candidate, or expressions such as *vote for*, *elect*, *support*, *cast your ballot for*, and *Smith for Congress*, or *vote against*, *defeat*, or *reject*.

(3) *Clearly identified candidate* means that the name of the candidate appears, a photograph or drawing of the candidate appears, or the identity of the candidate is otherwise apparent by unambiguous reference.

(4) *Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate* means—

(i) Any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is—

(A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made;

(B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been,

an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent;

(ii) But does not include providing to the expending person upon request Commission guidelines on independent expenditures.

(5) *Agent* means any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.

(c) An expenditure not qualifying under this section as an independent expenditure shall be a contribution in-kind to the candidate and an expenditure by the candidate, unless otherwise exempted.

(d)(1) The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered a contribution for the purpose of contribution limitations and reporting responsibilities by the person making the expenditure but shall not be considered an expenditure by the candidate or his authorized committees unless made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any authorized agent or committee thereof.

(2) This paragraph does not affect the right of a State or subordinate party committee to engage in such dissemination, distribution, or republication as agents designated by the national committee pursuant to § 110.7(a)(4).

(e) No expenditure by an authorized committee of a candidate on behalf of that candidate shall qualify as an independent expenditure.

§ 109.2 Reporting of independent expenditures by persons other than a political committee (2 U.S.C. 434(c)).

(a) Every person other than a political committee who makes independent expenditures aggregating in excess of \$250 during a calendar year shall file a signed statement or report on FEC Form 5 with the Commission, the Clerk of the House or Secretary of the Senate in accordance with 11 CFR 104.4(c).

(1) If a signed statement is submitted, the statement shall include:

(i) The reporting person's name mailing address, occupation and the name of his or her employer, if any;

(ii) The identification (name and mailing address) of the person to whom the expenditure was made;

(iii) The amount, date and purpose of each expenditure;

(iv) A statement which indicates whether such expenditure was in support of, or in opposition to a candidate, together with the candidate's name and office sought;

(v) A notarized certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation or concert with, or at the request or suggestion of any candidate or any authorized committee or agent thereof; and

(vi) The identification of each person who made a contribution in excess of \$200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure.

(2) Reports or statements filed under this section shall be filed at the end of the reporting period (quarterly pre-election post-election semi-annual annual) (See 11 CFR 104.5) during which any independent expenditure which aggregates in excess of \$250 is made and in any reporting period thereafter in which additional independent expenditures are made.

(b) Independent expenditures aggregating \$1,000 or more made by any person after the twentieth day, but more than 24 hours before 12:01 A.M. of the day of an election shall be reported within 24 hours after such independent expenditure is made. Such report or statement shall contain the

information required by 11 CFR 109.2(a) indicating whether the independent expenditure is made in support of, or in opposition to, a particular candidate and shall be filed with the appropriate officers in accordance with 11 CFR 104.4(c).

§ 109.3 Non-authorization notice (2 U.S.C. 441d).

Whenever any person makes an independent expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such person shall comply with the requirements of 11 CFR 110.11.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

Sec.

- 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).
- 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).
- 110.3 Contribution limitations for affiliated committees and political party committees; Transfers (2 U.S.C. 441a(a)(5), 441a(a)(4)).
- 110.4 Prohibited contributions (2 U.S.C. 441e, 441f, 441g, 432(c)(2)).
- 110.5 Annual contribution limitation for individuals (2 U.S.C. 441a(a)(3)).
- 110.6 Earmarked contributions (2 U.S.C. 441a(a)(8)).
- 110.7 Party committee expenditure limitation (2 U.S.C. 441a(d)).
- 110.8 Presidential candidate expenditure limitations.
- 110.9 Miscellaneous provisions.
- 110.10 Expenditures by candidates.
- 110.11 Communications; advertising (2 U.S.C. 441d).
- 110.12 Honoraria (2 U.S.C. 441i).
- 110.13 Nonpartisan candidate debates.
- 110.14 Contributions to and expenditures by delegates and delegate committees.

AUTHORITY: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441i.

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

(a) Scope. This section applies to all contributions made by any person as defined in 11 CFR 100.10, except mul-

candidate political committees as defined in 11 CFR 100.5(e)(3) or entities and individuals prohibited from making contributions under 11 CFR 110.4 and 11 CFR parts 114 and 115.

(b) *Contributions to candidates; designations; and redesignations.*

(1) No person shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

(2) For purposes of this section, *with respect to any election* means—

(i) In the case of a contribution designated in writing by the contributor for a particular election, the election so designated. Contributors to candidates are encouraged to designate their contributions in writing for particular elections. See 11 CFR 110.1(b)(4).

(ii) In the case of a contribution not designated in writing by the contributor for a particular election, the next election for that Federal office after the contribution is made.

(3)(i) A contribution designated in writing for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election. To the extent that such contribution exceeds net debts outstanding, the candidate or the candidate's authorized political committee shall return or deposit the contribution within ten days from the date of the treasurer's receipt of the contribution as provided by 11 CFR 103.3(a), and if deposited, then within sixty days from the date of the treasurer's receipt the treasurer shall take the following action, as appropriate:

(A) Refund the contribution using a committee check or draft; or

(B) Obtain a written redesignation by the contributor for another election in accordance with 11 CFR 110.1(b)(5); or

(C) Obtain a written reattribution to another contributor in accordance with 11 CFR 110.1(k)(3).

If the candidate is not a candidate in the general election, all contributions made for the general election shall be either returned or refunded to the

contributors or redesignated in accordance with 11 CFR 110.1(b)(5), or reattributed in accordance with 11 CFR 110.1(k)(3), as appropriate.

(ii) In order to determine whether there are net debts outstanding from a particular election, the treasurer of the candidate's authorized political committee shall calculate net debts outstanding as of the date of the election. For purposes of this section, *net debts outstanding* means the total amount of unpaid debts and obligations incurred with respect to an election, including the estimated cost of raising funds to liquidate debts incurred with respect to the election and, if the candidate's authorized committee terminates or if the candidate will not be a candidate for the next election, estimated necessary costs associated with termination of political activity, such as the costs of complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies, less the sum of:

(A) The total cash on hand available to pay those debts and obligations, including: currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value; and

(B) The total amounts owed to the candidate or political committee in the form of credits, refunds of deposits, returns, or receivables, or a commercially reasonable amount based on the collectibility of those credits, refunds, returns, or receivables.

(iii) The amount of the net debts outstanding shall be adjusted as additional funds are received and expenditures are made. The candidate and his or her authorized political committee(s) may accept contributions made after the date of the election if such contributions are designated in writing by the contributor for that election and if such contributions do not exceed the adjusted amount of net debts outstanding on the date the contribution is received.

(iv) This paragraph shall not be construed to prevent a candidate who is a candidate in the general election or his or her authorized political committee(s) from paying primary election debts and obligations with funds which represent contributions made with respect to the general election.

(4) For purposes of this section, a contribution shall be considered to be designated in writing for a particular election if—

(i) The contribution is made by check, money order, or other negotiable instrument which clearly indicates the particular election with respect to which the contribution is made;

(ii) The contribution is accompanied by a writing, signed by the contributor, which clearly indicates the particular election with respect to which the contribution is made; or

(iii) The contribution is redesignated in accordance with 11 CFR 110.1(b)(5).

(5)(i) The treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if—

(A) The contribution was designated in writing for a particular election, and the contribution, either on its face or when aggregated with other contributions from the same contributor for the same election, exceeds the limitation on contributions set forth in 11 CFR 110.1(b)(1);

(B) The contribution was designated in writing for a particular election and the contribution was made after that election and the contribution cannot be accepted under the net debts outstanding provisions of 11 CFR 110.1(b)(3);

(C) The contribution was not designated in writing for a particular election, and the contribution exceeds the limitation on contributions set forth in 11 CFR 110.1(b)(1); or

(D) The contribution was not designated in writing for a particular election, and the contribution was received after the date of an election for which there are net debts outstanding on the date the contribution is received.

(ii) A contribution shall be considered to be redesignated for another election if—

(A) The treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation; and

(B) Within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

(iii) A contribution redesignated for another election shall not exceed the limitations on contributions made with respect to that election. A contribution redesignated for a previous election shall be subject to the requirements of 11 CFR 110.1(b)(3) regarding net debts outstanding.

(6) For the purposes of this section, a contribution shall be considered to be made when the contributor relinquishes control over the contribution. A contributor shall be considered to relinquish control over the contribution when it is delivered by the contributor to the candidate, to the political committee, or to an agent of the political committee. A contribution that is mailed to the candidate, or to the political committee or to an agent of the political committee, shall be considered to be made on the date of the postmark. See 11 CFR 110.1(1)(4). An in-kind contribution shall be considered to be made on the date that the goods or services are provided by the contributor.

(c) *Contributions to political party committees.* (1) No person shall make contributions to the political committees established and maintained by a national political party in any calendar year, which, in the aggregate, exceed \$20,000.

(2) For purposes of this section, *political committees established and maintained by a national political party* means—

- (i) The national committee;
- (ii) The House campaign committee; and
- (iii) The Senate campaign committee.

(3) Each recipient committee referred to in 11 CFR 110.1(c)(2) may receive up to the \$20,000 limitation from a contributor, but the limits of 11 CFR 110.5 shall also apply to contributions made by an individual.

(4) The recipient committee shall not be an authorized political committee of any candidate, except as provided in 11 CFR 9002.1(c).

(d) *Contributions to other political committees.* (1) No person shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

(2) The limitation on contributions of this paragraph also applies to contributions made to political committees making independent expenditures under 11 CFR part 109.

(e) *Contributions by partnerships.* A contribution by a partnership shall be attributed to the partnership and to each partner—

(1) In direct proportion to his or her share of the partnership profits, according to instructions which shall be provided by the partnership to the political committee or candidate; or

(2) By agreement of the partners, as long as—

(i) Only the profits of the partners to whom the contribution is attributed are reduced (or losses increased), and

(ii) These partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them.

A contribution by a partnership shall not exceed the limitations on contributions in 11 CFR 110.1 (b), (c), and (d). No portion of such contribution may be made from the profits of a corporation that is a partner.

(f) *Contributions to candidates for more than one Federal office.* If an individual is a candidate for more than one Federal office, a person may make contributions which do not exceed \$1,000 to the candidate, or his or her authorized political committees for each election for each office, as long as—

(1) Each contribution is designated in writing by the contributor for a particular office;

(2) The candidate maintains separate campaign organizations, including

separate principal campaign committees and separate accounts; and

(3) No principal campaign committee or other authorized political committee of that candidate for one election for one Federal office transfers funds to, loans funds to, makes contributions to, or makes expenditures on behalf of another principal campaign committee or other authorized political committee of that candidate for another election for another Federal office, except as provided in 11 CFR 110.3(c)(4).

(g) *Contributions to retire pre-1975 debts.* Contributions made to retire debts resulting from elections held prior to January 1, 1975 are not subject to the limitations of 11 CFR part 110, as long as contributions and solicitations to retire these debts are designated in writing and used for that purpose. Contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of 11 CFR part 110.

(h) *Contributions to committees supporting the same candidate.* A person may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting, the same candidate in the same election, as long as—

(1) The political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee;

(2) The contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election; and

(3) The contributor does not retain control over the funds.

(i) *Contributions by spouses and minors.* (1) The limitations on contributions of this section shall apply separately to contributions made by each spouse even if only one spouse has income.

(2) Minor children (children under 18 years of age) may make contributions to any candidate or political committee which in the aggregate do not exceed the limitations on contributions of this section, if—

(i) The decision to contribute is made knowingly and voluntarily by the minor child;

(ii) The funds, goods, or services contributed are owned or controlled exclusively by the minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(iii) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual.

(j) *Application of limitations to elections.* (1) The limitations on contributions of this section shall apply separately with respect to each election as defined in 11 CFR 100.2, except that all elections held in a calendar year for the office of President of the United States (except a general election for that office) shall be considered to be one election.

(2) An election in which a candidate is unopposed is a separate election for the purposes of the limitations on contributions of this section.

(3) A primary or general election which is not held because a candidate is unopposed or received a majority of votes in a previous election is a separate election for the purposes of the limitations on contributions of this section. The date on which the election would have been held shall be considered to be the date of the election.

(4) A primary election which is not held because a candidate was nominated by a caucus or convention with authority to nominate is not a separate election for the purposes of the limitations on contributions of this section.

(k) *Joint contributions and reattributions.* (1) Any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing.

(2) If a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor.

(3)(i) If a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR 110.1 (b), (c) or (d), as appropriate, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person.

(ii) A contribution shall be considered to be reattributed to another contributor if—

(A) The treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and

(B) Within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

(l) *Supporting evidence.* (1) If a political committee receives a contribution designated in writing for a particular election, the treasurer shall retain a copy of the written designation, as required by 11 CFR 110.1(b)(4) or 110.2(b)(4), as appropriate. If the written designation is made on a check or other written instrument, the treasurer shall retain a full-size photocopy of the check or written instrument.

(2) If a political committee receives a written redesignation of a contribution for a different election, the treasurer shall retain the written redesignation provided by the contributor, as required by 11 CFR 110.1(b)(5) or 110.2(b)(5), as appropriate.

(3) If a political committee receives a written reattribution of a contribution to a different contributor, the treasurer shall retain the written reattribution signed by each contributor, as required by 11 CFR 110.1(k).

(4) If a political committee chooses to rely on a postmark as evidence of the date on which a contribution was

made, the treasurer shall retain the envelope or a copy of the envelope containing the postmark and other identifying information.

(5) If a political committee does not retain the written records concerning designation required under 11 CFR 110.1(l)(1), the contribution shall not be considered to be designated in writing for a particular election, and the provisions of 11 CFR 110.1(b)(2)(ii) or 110.2(b)(2)(ii) shall apply. If a political committee does not retain the written records concerning redesignation or reattribution required under 11 CFR 110.1(l)(2) or (3), the redesignation or reattribution shall not be effective, and the original designation or attribution shall control.

(m) *Contributions to delegates and delegate committees.* (1) Contributions to delegates for the purpose of furthering their selection under 11 CFR 110.14 are not subject to the limitations of this section.

(2) Contributions to delegate committees under 11 CFR 110.14 are subject to the limitations of this section.

[52 FR 769, Jan. 9, 1987, as amended at 52 FR 35534, Sept. 22, 1987; 54 FR 34110, Aug. 17, 1989; 54 FR 48580, Nov. 24, 1989; 55 FR 2281, Jan. 23, 1990]

§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).

(a) *Scope.* This section applies to all contributions made by any multicandidate political committee as defined in 11 CFR 100.5(e)(3).

(b) *Contributions to candidates; designations; and redesignations.* (1) No multicandidate political committee shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

(2) For purposes of this section, *with respect to any election* means—

(i) In the case of a contribution designated in writing by the contributor for a particular election, the election so designated. Multicandidate political committees making contributions to candidates are encouraged to designate their contributions in writing for particular elections. See 11 CFR 110.2(b)(4).

(ii) In the case of a contribution not designated in writing by the contributor for a particular election, the next election for that Federal office after the contribution is made.

(3)(i) A contribution designated in writing for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election. To the extent that such contribution exceeds net debts outstanding, the candidate or the candidate's authorized political committee shall return or deposit the contribution within ten days from the date of the treasurer's receipt of the contribution as provided by 11 CFR 103.3(a), and if deposited, then within sixty days from the date of the treasurer's receipt the treasurer shall take the following action, as appropriate:

(A) Refund the contribution using a committee check or draft; or

(B) Obtain a written redesignation by the contributor for another election in accordance with 11 CFR 110.2(b)(5).

If the candidate is not a candidate in the general election, all contributions made for the general election shall be either returned or refunded to the contributors or redesignated in accordance with 11 CFR 110.2(b)(5).

(ii) The treasurer of the candidate's authorized political committee shall calculate net debts outstanding in accordance with 11 CFR 110.1(b)(3)(ii). The amount of the net debts outstanding shall be adjusted as additional funds are received and expenditures are made. The candidate and his or her authorized political committee(s) may accept contributions made after the date of the election if such contributions are designated in writing by the contributor for that election and if such contributions do not exceed the adjusted amount of net debts outstanding on the date the contribution is received.

(4) For purposes of this section, a contribution shall be considered to be designated in writing for a particular election if—

(i) The contribution is made by check, money order, or other negotiable instrument which clearly indicates

the particular election with respect to which the contribution is made;

(ii) The contribution is accompanied by a writing, signed by the contributor, which clearly indicates the particular election with respect to which the contribution is made; or

(iii) The contribution is redesignated in accordance with 11 CFR 110.2(b)(5).

(5)(i) The treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if—

(A) The contribution was designated in writing for a particular election, and the contribution, either on its face or when aggregated with other contributions from the same contributor for the same election, exceeds the limitation on contributions set forth in 11 CFR 110.2(b)(1);

(B) The contribution was designated in writing for a particular election and the contribution was made after that election and the contribution cannot be accepted under the net debts outstanding provisions of 11 CFR 110.2(b)(3);

(C) The contribution was not designated in writing for a particular election, and the contribution exceeds the limitation on contributions set forth in 11 CFR 110.2(b)(1); or

(D) The contribution was not designated in writing for a particular election and the contribution was received after the date of an election for which there are net debts outstanding on the date the contribution is received.

(ii) A contribution shall be considered to be redesignated for another election if—

(A) The treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation; and

(B) Within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

(iii) A contribution redesignated for another election shall not exceed the limitations on contributions made with respect to that election. A contribution redesignated for a previous election shall be subject to the requirements of 11 CFR 110.2(b)(3) regarding net debts outstanding.

(6) For the purposes of this section, a contribution shall be considered to be made when the contributor relinquishes control over the contribution. A contributor shall be considered to relinquish control over the contribution when it is delivered by the contributor to the candidate, to the political committee, or to an agent of the political committee. A contribution that is mailed to the candidate, or to the political committee or to an agent of the political committee, shall be considered to be made on the date of the postmark. See 11 CFR 110.1(1)(4). An in-kind contribution shall be considered to be made on the date that the goods or services are provided by the contributor.

(c) *Contributions to political party committees.* (1) No multicandidate political committee shall make contributions to the political committees established and maintained by a national political party in any calendar year which, in the aggregate, exceed \$15,000.

(2) For purposes of this section, *political committees established and maintained by a national political party means—*

- (i) The national committee;
- (ii) The House campaign committee; and
- (iii) The Senate campaign committee.

(3) Each recipient committee referred to in 11 CFR 110.2(c)(2) may receive up to the \$15,000 limitation from a multicandidate political committee.

(4) The recipient committee shall not be an authorized political committee of any candidate, except as provided in 11 CFR 9002.1(c).

(d) *Contributions to other political committees.* (1) No multicandidate political committee shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

(2) The limitation on contributions of this paragraph also applies to contributions made to political committees making independent expenditures under 11 CFR part 109.

(e) *Contributions by political party committees to Senatorial candidates.* Notwithstanding any other provision of the Act, or of these regulations, the Republican and Democratic Senatorial campaign committees, or the national committee of a political party, may make contributions of not more than a combined total of \$17,500 to a candidate for nomination or election to the Senate during the calendar year of the election for which he or she is a candidate. Any contribution made by such committee to a Senatorial candidate under this paragraph in a year other than the calendar year in which the election is held shall be considered to be made during the calendar year in which the election is held.

(f) *Contributions to candidates for more than one Federal office.* If an individual is a candidate for more than one Federal office, a multicandidate political committee may make contributions which do not exceed \$5,000 to the candidate, or his or her authorized political committees for each election for each office, provided that the requirements set forth in 11 CFR 110.1(f)(1), (2), and (3) are satisfied.

(g) *Contributions to retire pre-1975 debts.* Contributions made to retire debts resulting from elections held prior to January 1, 1975 are not subject to the limitations of 11 CFR part 110, as long as contributions and solicitations to retire these debts are designated in writing and used for that purpose. Contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of 11 CFR part 110.

(h) *Contributions to committees supporting the same candidate.* A multicandidate political committee may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting, the same candidate in the same election, as long as—

(1) The recipient political committee is not the candidate's principal cam-

paign committee or other authorized political committee or a single candidate committee;

(2) The multicandidate political committee does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election; and

(3) The multicandidate political committee does not retain control over the funds.

(i) *Application of limitations to elections.* (1) The limitations on contributions of this section (other than paragraph (e) of this section) shall apply separately with respect to each election as defined in 11 CFR 100.2, except that all elections held in a calendar year for the office of President of the United States (except a general election for that office) shall be considered to be one election.

(2) An election in which a candidate is unopposed is a separate election for the purposes of the limitations on contributions of this section.

(3) A primary or general election which is not held because a candidate is unopposed or received a majority of votes in a previous election is a separate election for the purposes of the limitations on contributions of this section. The date on which the election would have been held shall be considered to be the date of the election.

(4) A primary election which is not held because a candidate was nominated by a caucus or convention with authority to nominate is not a separate election for the purposes of the limitations on contributions of this section.

(j) *Contributions to delegates and delegate committees.* (1) Contributions to delegates for the purpose of furthering their selection under 11 CFR 110.14 are not subject to the limitations of this section.

(2) Contributions to delegate committees under 11 CFR 110.14 are subject to the limitations of this section.

[52 FR 772, Jan. 9, 1987, as amended at 52 FR 3534, Sept. 22, 1987]

§ 110.3. Contribution limitations for affiliated committees and political party committees; Transfers (2 U.S.C. 441a(a)(5), 441a(a)(4)).

(a) *Contribution limitations for affiliated committees.* (1) For the purposes of the contribution limitations of 11 CFR 110.1 and 110.2, all contributions made or received by more than one affiliated committee, regardless of whether they are political committees under 11 CFR 100.5, shall be considered to be made or received by a single political committee. See 11 CFR 100.5(g). Application of this paragraph means that all contributions made or received by the following committees shall be considered to be made or received by a single political committee—

(i) Authorized committees of the same candidate for the same election to Federal office; or

(ii) Committees (including a separate segregated fund, see 11 CFR part 114) established, financed, maintained or controlled by the same corporation, labor organization, person or group of persons, including any parent, subsidiary, branch, division, department or local unit thereof. For the purposes of this section, *local unit* may include, in appropriate cases, a franchisee, licensee, or State or regional association.

(2) Affiliated committees sharing a single contribution limitation under paragraph (a)(1)(ii) of this section include all of the committees established, financed, maintained or controlled by—

(i) A single corporation and/or its subsidiaries;

(ii) A single national or international union and/or its local unions or other subordinate organizations;

(iii) An organization of national or international unions and/or all its State and local central bodies;

(iv) A membership organization, (other than political party committees, see paragraph (b) of this section) including trade or professional associations, see 11 CFR 114.8(a), and/or related State and local entities of that organization or group; or

(v) The same person or group of persons.

(3)(i) The Commission may examine the relationship between organizations

that sponsor committees, between the committees themselves, or between one sponsoring organization and a committee established by another organization to determine whether committees are affiliated.

(ii) In determining whether committees not described in paragraphs (a)(2)(i)-(iv) of this section are affiliated, the Commission will consider the circumstantial factors described in paragraphs (a)(3)(ii) (A) through (J) of this section. The Commission will examine these factors in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained or controlled by another committee or sponsoring organization. Such factors include, but are not limited to:

(A) Whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee;

(B) Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(C) Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee;

(D) Whether a sponsoring organization or committee has a common or overlapping membership with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(E) Whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(F) Whether a sponsoring organization or committee has any members, officers or employees who were members, officers or employees of another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees, or which indicates the creation of a successor entity;

(G) Whether a sponsoring organization or committee provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(H) Whether a sponsoring organization or committee causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization or committee, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(I) Whether a sponsoring organization or a committee or its agent had an active or significant role in the formation of another sponsoring organization or committee; and

(J) Whether the sponsoring organizations or committees have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the sponsoring organizations or committees.

(b) *Contribution limitations for political party committees.* (1) For the purposes of the contribution limitations of 11 CFR 110.1 and 110.2, all contributions made or received by the following political committees shall be considered to be made or received by separate political committees—

(i) The national committee of a political party and any political committees established, financed, maintained, or controlled by the same national committee; and

(ii) The State committee of the same political party.

(2) Application of paragraph (b)(1)(i) of this section means that—

(i) The House campaign committee and the national committee of a political party shall have separate limitations on contributions under 11 CFR 110.1 and 110.2.

(ii) The Senate campaign committee and the national committee of a political party shall have separate limitations on contributions, except that contributions to a senatorial candidate made by the Senate campaign committee and the national committee of a political party are subject to a single contribution limitation under 11 CFR 110.2(e).

(3) All contributions made by the political committees established, financed, maintained, or controlled by a State party committee and by subordinate State party committees shall be presumed to be made by one political committee. This presumption shall not apply if—

(i) The political committee of the party unit in question has not received funds from any other political committee established, financed, maintained, or controlled by any party unit; and

(ii) The political committee of the party unit in question does not make its contributions in cooperation, consultation or concert with, or at the request or suggestion of any other party unit or political committee established, financed, maintained, or controlled by another party unit.

(c) *Transfers.* The contribution limitations of 11 CFR 110.1 and 110.2 shall not limit the transfers set forth below in 11 CFR 110.3(c) (1) through (6)—

(1) Transfers of funds between affiliated committees or between party committees of the same political party whether or not they are affiliated or by collecting agents to a separate segregated fund made pursuant to 11 CFR 102.6;

(2) Transfers of joint fundraising proceeds between organizations or committees participating in the joint fundraising activity provided that no participating committee or organization governed by 11 CFR 102.17 received more than its allocated share of the funds raised;

(3) Transfers of funds between the primary campaign and general elec-

tion campaign of a candidate of funds unused for the primary;

(4) Transfers of funds between a candidate's previous Federal campaign committee and his or her current Federal campaign committee, or between previous Federal campaign committees, provided that the candidate is not a candidate for more than one Federal office at the same time, and provided that the funds transferred are not composed of contributions that would be in violation of the Act. The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred.

(i) *Previous Federal campaign committee* means a principal campaign committee, or other authorized committee, that was organized to further the candidate's campaign in a Federal election that has already been held.

(ii) *Current Federal campaign committee* means a principal campaign committee, or other authorized committee, organized to further the candidate's campaign in a future Federal election.

(iii) For purposes of the contribution limits, a contribution made after an election has been held, or after an individual ceases to be a candidate in an election, shall be aggregated with other contributions from the same contributor for the next election unless the contribution is designated for the previous election, or is designated for another election, and the candidate has net debts outstanding for the election so designated pursuant to 11 CFR 110.1(b)(3).

(iv) For purposes of this section, an individual ceases to be a candidate in an election as of the earlier of the following dates—

(A) The date on which the candidate publicly announces that he or she will no longer be a candidate in that election for that office and ceases to conduct campaign activities with respect to that election; or

(B) The date on which the candidate is or becomes ineligible for nomination or election to that office by operation of law;

(5) Transfers of funds between the principal campaign committees of an individual seeking nomination or election to more than one Federal office, as long as the conditions in 11 CFR 110.3(c)(5) (i), (ii) and (iii) are met. An individual will be considered to be seeking nomination or election to more than one Federal office if the individual is concurrently a candidate for more than one Federal office during the same or overlapping election cycles.

(i) The transfer shall not be made when the individual is actively seeking nomination or election to more than one Federal office. An individual will not be considered to be actively seeking nomination or election to a Federal office if:

(A) The individual publicly announces that he or she will no longer seek nomination or election to that office and ceases to conduct campaign activities with respect to that election, except in connection with the retirement of debts outstanding at the time of the announcement;

(B) The individual is or becomes ineligible for nomination or election to that office by operation of law;

(C) The individual has filed a proper termination report with the Commission under 11 CFR 102.3; or

(D) The individual has notified the Commission in writing that the individual and his or her authorized committees will conduct no further campaign activities with respect to that election, except in connection with the retirement of debts outstanding at the time of the notification;

(ii) The limitations on contributions by persons shall not be exceeded by the transfer. The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred. A contribution shall be

excluded from the amount transferred to the extent that such contribution, when aggregated with other contributions from the same contributor to the transferee principal campaign committee, exceeds the contribution limits set forth at 11 CFR 110.1 or 110.2, as appropriate; and

(iii) The candidate has not elected to receive funds under 26 U.S.C. 9006 or 9037 for either election; or

(6) Transfers of funds from a candidate's campaign committee for a non-federal election to his or her principal campaign committee or other authorized committee for a federal election, provided that the funds transferred are not composed of contributions that would be in violation of the Act.

(i) The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred. A contribution shall be excluded from the amount transferred if the making or acceptance of such contribution in connection with an election for Federal office is prohibited by the Act. The amount transferred per contributor shall not exceed the limitations on contributions set forth at 11 CFR 110.1 or 110.2, as appropriate. The campaign committee transferring the funds shall keep records of the sources of the funds in the account from which the transfer is made and, upon request, shall make such records available for examination by the Commission.

(ii) For purposes of the contribution limits, a contribution made after a nonfederal election has been held, or after an individual ceases to be a candidate in a nonfederal election pursuant to paragraph (c)(4)(iv) of this section, or after an individual has publicly announced that he or she is or will become a candidate in a particular election for Federal office, shall be aggregated with other contributions from the same contributor for that next election unless the contribution is designated for the previous nonfed-

eral election or is designated for another election, and the candidate has net debts outstanding for the election so designated.

(iii) If a candidate's nonfederal campaign committee transfers funds exceeding \$1,000 to such candidate's principal campaign committee or other authorized committee for a federal election, the nonfederal campaign committee shall become a political committee pursuant to 11 CFR 100.5(a) and shall file a Statement of Organization in accordance with 11 CFR 102.2 no later than ten days after transferring the funds. Such committee shall be subject to the recordkeeping and reporting obligations of 11 CFR parts 102 and 104 and shall disclose in its first report its cash on hand balance, the source(s) of such funds, and the amount transferred to the federal campaign committee. See 11 CFR 104.12. The funds transferred shall be deemed composed of the funds most recently received until the amount transferred is reached, excluding any amounts in excess of the contribution limits or the prohibitions of the Act. The nonfederal campaign committee shall itemize the source(s) of the funds transferred in a memo Schedule A as required by 11 CFR 104.3(a)(4). The first report may be the termination report under 11 CFR 102.3.

(7) The authorized committees of a candidate for more than one Federal office, or for a Federal office and a nonfederal office, shall follow the requirements for separate campaign organizations set forth at 11 CFR 110.8(d).

[54 FR 34110, Aug. 17, 1989, and 54 FR 48580, Nov. 24, 1989]

§ 110.4 Prohibited contributions (2 U.S.C. 441e, 441f, 441g, 432(c)(2)).

(a) *Contributions or expenditures by foreign nationals.* (1) A foreign national shall not directly or through any other person make a contribution, or an expenditure, or expressly or impliedly promise to make a contribution, or an expenditure, in connection with a convention, a caucus, or a primary, general, special, or runoff elec-

tion in connection with any local, State, or Federal public office.

(2) No person shall solicit, accept, or receive a contribution as set out above from a foreign national.

(3) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

(4) For purposes of this section, *foreign national* means—

(i) A foreign principal, as defined in 22 U.S.C. 611(b); or

(ii) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20);

(iii) Except that *foreign national* shall not include any individual who is a citizen of the United States.

(b) *Contributions in the name of another.* (1) No person shall—

(i) Make a contribution in the name of another;

(ii) Knowingly permit his or her name to be used to effect that contribution;

(iii) Knowingly help or assist any person in making a contribution in the name of another; or

(iv) Knowingly accept a contribution made by one person in the name of another.

(2) Examples of contributions in the name of another include—

(i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made, see 11 CFR 110.6; or

(ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.

(c) *Cash contributions.* (1) With respect to any campaign for nomination for election or election to Federal office, no person shall make contributions to a candidate or political committee of currency of the United States, or of any foreign country, which in the aggregate exceed \$100.

(2) A candidate or committee receiving a cash contribution in excess of \$100 shall promptly return the amount over \$100 to the contributor.

(3) A candidate or committee receiving an anonymous cash contribution in excess of \$50 shall promptly dispose of the amount over \$50. The amount over \$50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate.

154 FR 34112, Aug. 17, 1989, and 54 FR 48580, Nov. 24, 1989, as amended at 54 FR 48582, Nov. 24, 1989; 55 FR 1139, Jan. 11, 1990]

§ 110.5 Annual contribution limitation for individuals (2 U.S.C. 411a(a)(3)).

(a) *Scope.* This section applies to all contributions made by any individual, except individuals prohibited from making contributions under 11 CFR 110.4 and 11 CFR part 115.

(b) *Annual limitation.* No individual shall make contributions in any calendar year which aggregate more than \$25,000.

(c) *Contributions made in a nonelection year.* (1) For the purposes of this section, *nonelection year* means a year other than the calendar year in which a particular election is held.

(2) For purposes of this section, any contribution to a candidate or his or her authorized committee with respect to a particular election made in a nonelection year shall be considered to be made during the calendar year in which such election is held.

(3) For purposes of this section, any contribution to an unauthorized committee which is made in a nonelection year shall not be considered to be made during the calendar year in which an election is held unless:

(i) The political committee is a single candidate committee which has supported or anticipates supporting the candidate; or

(ii) The contribution is earmarked by the contributor for a particular candidate with respect to a particular election.

(d) *Independent expenditures.* The annual limitation on contributions in this section applies to contributions made to persons, including political committees, making independent expenditures under 11 CFR part 109.

(e) *Contributions to delegates and delegate committees.* The annual limitation on contributions in this section applies to contributions to delegates and delegate committees under 11 CFR 110.14.

[54 FR 34112, Aug. 17, 1989 and 54 FR 48580, Nov. 24, 1989]

§ 110.6 Earmarked contributions (2 U.S.C. 441a(a)(8)).

(a) *General.* All contributions by a person made on behalf of or to a candidate, including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate.

(b) *Definitions.* (1) For purposes of this section, *earmarked* means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

(2) For purposes of this section, *conduit or intermediary* means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee, except as provided in paragraph (b)(2)(i) of this section.

(i) For purposes of this section, the following persons shall not be considered to be conduits or intermediaries:

(A) An individual who is an employee or a full-time volunteer working for the candidate's authorized committee, provided that the individual is not acting in his or her capacity as a representative of an entity prohibited from making contributions;

(B) A fundraising representative conducting joint fundraising with the

candidate's authorized committee pursuant to 11 CFR 102.17 or 9034.8;

(C) An affiliated committee, as defined in 11 CFR 100.5(g);

(D) A commercial fundraising firm retained by the candidate or the candidate's authorized committee to assist in fundraising; and

(E) An individual who is expressly authorized by the candidate or the candidate's authorized committee to engage in fundraising, and who occupies a significant position within the candidate's campaign organization, provided that the individual is not acting in his or her capacity as a representative of an entity prohibited from making contributions.

(ii) Any person who is prohibited from making contributions or expenditures in connection with an election for Federal office shall be prohibited from acting as a conduit for contributions earmarked to candidates or their authorized committees. The provisions of this section shall not restrict the ability of an organization or committee to serve as a collecting agent for a separate segregated fund pursuant to 11 CFR 102.6.

(iii) Any person who receives an earmarked contribution shall forward such earmarked contribution to the candidate or authorized committee in accordance with 11 CFR 102.8, except that—

(A) A fundraising representative shall follow the joint fundraising procedures set forth at 11 CFR 102.17.

(B) A person who is prohibited from acting as a conduit pursuant to paragraph (b)(2)(ii) of this section shall return the earmarked contribution to the contributor.

(c) *Reporting of earmarked contributions—(1) Reports by conduits and intermediaries.* (i) The intermediary or conduit of the earmarked contribution shall report the original source and the recipient candidate or authorized committee to the Commission, the Clerk of the House of Representatives, or the Secretary of the Senate, as appropriate (see 11 CFR part 105), and to the recipient candidate or authorized committee.

(ii) The report to the Commission, Clerk or Secretary shall be included in the conduit's or intermediary's report

for the reporting period in which the earmarked contribution was received, or, if the conduit or intermediary is not required to report under 11 CFR part 104, by letter to the Commission within thirty days after forwarding the earmarked contribution.

(iii) The report to the recipient candidate or authorized committee shall be made when the earmarked contribution is forwarded to the recipient candidate or authorized committee pursuant to 11 CFR 102.8.

(iv) The report by the conduit or intermediary shall contain the following information:

(A) The name and mailing address of each contributor and, for each earmarked contribution in excess of \$200, the contributor's occupation and the name of his or her employer;

(B) The amount of each earmarked contribution, the date received by the conduit, and the intended recipient as designated by the contributor; and

(C) The date each earmarked contribution was forwarded to the recipient candidate or authorized committee and whether the earmarked contribution was forwarded in cash or by the contributor's check or by the conduit's check.

(v) For each earmarked contribution passed through the conduit's or intermediary's account, the information specified in paragraph (c)(1)(iv) (A) through (C) of this section shall be itemized on the appropriate schedules of receipts and disbursements attached to the conduit's or intermediary's report, or shall be disclosed by letter, as appropriate. For each earmarked contribution forwarded in the form of the contributor's check or other written instrument, the information specified in paragraph (c)(1)(iv) (A) through (C) of this section shall be disclosed as a memo entry on the appropriate schedules of receipts and disbursements attached to the conduit's or intermediary's report, or shall be disclosed by letter, as appropriate.

(2) *Reports by recipient candidates and authorized committees.* (i) The recipient candidate or authorized committee shall report each conduit or intermediary who forwards one or more earmarked contributions which in the

aggregate exceed \$200 in any calendar year.

(ii) The report by the recipient candidate or authorized committee shall contain the following information:

(A) The identification of the conduit or intermediary, as defined in 11 CFR 100.12;

(B) The total amount of earmarked contributions received from the conduit or intermediary and the date of receipt; and

(C) The information required under 11 CFR 104.3(a) (3) and (4) for each earmarked contribution which in the aggregate exceeds \$200 in any calendar year.

(iii) The information specified in paragraph (c)(2)(ii) (A) through (C) of this section shall be itemized on Schedule A attached to the report for the reporting period in which the earmarked contribution is received.

(d) *Direction or control.* (1) A conduit's or intermediary's contribution limits are not affected by the forwarding of an earmarked contribution except where the conduit or intermediary exercises any direction or control over the choice of the recipient candidate.

(2) If a conduit or intermediary exercises any direction or control over the choice of the recipient candidate, the earmarked contribution shall be considered a contribution by both the original contributor and the conduit or intermediary. If the conduit or intermediary exercises any direction or control over the choice of the recipient candidate, the report filed by the conduit or intermediary and the report filed by the recipient candidate or authorized committee shall indicate that the earmarked contribution is made by both the original contributor and the conduit or intermediary, and that the entire amount of the contribution is attributed to each.

[54 FR 34113, Aug. 17, 1989 and 54 FR 48580, Nov. 24, 1989]

§ 110.7 Party committee expenditure limitations (2 U.S.C. 441a(d)).

(a)(1) The national committee of a political party may make expenditures in connection with the general election campaign of any candidate for

President of the United States affiliated with the party.

(2) The expenditures shall not exceed an amount equal to 2 cents multiplied by the voting age population of the United States.

(3) Any expenditure under this paragraph (a) shall be in addition to—

(i) Any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for President of the United States; and

(ii) Any contribution by the national committee to the candidate permissible under § 110.1 or § 110.2.

(4) The national committee of a political party may make expenditures authorized by this section through any designated agent, including State and subordinate party committees.

(5) The national committee of a political party may not make independent expenditures (see part 109) in connection with the general election campaign of a candidate for President of the United States.

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

(b)(1) The national committee of a political party, and a State committee of a political party, including any subordinate committee of a State committee, may each make expenditures in connection with the general election campaign of a candidate for Federal office in that State who is affiliated with the party.

(2) The expenditures shall not exceed—

(i) In the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(A) Two cents multiplied by the voting age population of the State; or

(B) Twenty thousand dollars; and

(ii) In the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, \$10,000.

(3) Any expenditure under paragraph (b) shall be in addition to any contribution by a committee to the candidate permissible under § 110.1 or § 110.2.

(4) The party committees identified in (b)(1) shall not make independent expenditures in connection with the general election campaign of candidates for Federal office.

(c) For limitation purposes, State committee includes subordinate State committees. State committees and subordinate State committees combined shall not exceed the limits in paragraph (b)(2) of this section. To ensure compliance with the limitations, the State committee shall administer the limitation in one of the following ways:

(1) The State central committee shall be responsible for insuring that the expenditures of the entire party organization are within the limitations, including receiving reports from any subordinate committee making expenditures under paragraph (b) of this section, and filing consolidated reports showing all expenditures in the State with the Commission; or

(2) Any other method, submitted in advance and approved by the Commission which permits control over expenditures.

(2 U.S.C. 438(a)(8), 441a, 441d, 441e, 441f, 441g, 441h, 441i)

[41 FR 35948, Aug. 25, 1976, as amended at 45 FR 15119, Mar. 7, 1980; 45 FR 27435, Apr. 23, 1980; 45 FR 43387, June 27, 1980]

§ 110.8 Presidential candidate expenditure limitations.

(a) No candidate for the office of President of the United States who is eligible under 26 U.S.C. 9003 (relating to conditions for eligibility for payments) or under 26 U.S.C. 9033 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury and has received payments, may make expenditures in excess of—

(1) \$10,000,000 in the case of a campaign for nomination for election to the office, except the aggregate of expenditures under this paragraph in any one State shall not exceed the greater of 16 cents multiplied by the

voting age population of the State or \$200,000; or

(2) \$20,000,000 in the case of a campaign for election to the office.

(b) The expenditure limitations shall not be considered violated if, after the date of the primary or general election, convention or caucus, receipt of refunds and rebates causes a candidate's expenditures to be within the limitations.

(c) For the State limitations in paragraph (a)(1) of this section—

(1) Expenditures made in a State after the date of the primary election, convention or caucus relating to the primary election, convention or caucus count toward that State's expenditure limitation;

(2) Expenditures for fundraising activities targeted at a particular State and occurring within 28 days before that state's primary election, convention, or caucus shall be presumed to be attributable to the expenditure limitation for that State, 11 CFR 100.8(b)(21) (relating to the 20% fundraising exemption) notwithstanding.

(d)(1) If an individual is a candidate for more than one Federal office, or for a Federal office and a State office, he or she must designate separate principal campaign committees and establish completely separate campaign organizations.

(2) No funds, goods, or services, including loans and loan guarantees, may be transferred between or used by the separate campaigns, except as provided in 11 CFR 110.3(c)(5).

(3) Except for Presidential candidates receiving Presidential Primary Matching Funds, see 26 U.S.C. 9032, or General Election Public Financing, see 26 U.S.C. 9002, campaigns may share personnel and facilities, as long as expenditures are allocated between the campaigns, and the payment made from each campaign account reflects the allocation.

(e)(1) A political party may make reimbursement for the expenses of a candidate who is engaging in party-building activities, without the payment being considered a contribution to the candidate, and without the unreimbursed expense being considered an expenditure counting against the

limitations in paragraph (a)(1) or (2) of this section, as long as—

(i) The event is a bona fide party event or appearance; and

(ii) No aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election.

(2)(i) An event or appearance meeting the requirements of paragraph (e)(1) of this section and occurring prior to January 1 of the year of the election for which the individual is a candidate is presumptively party-related;

(ii) Notwithstanding the requirements of paragraph (e)(1) of this section, an event or appearance occurring on or after January 1 of the year of the election for which the individual is a candidate is presumptively for the purpose of influencing the candidate's election, and any contributions or expenditures are governed by the contribution and expenditure limitations of this part 110.

(iii) The presumptions in paragraphs (e)(2)(i) and (ii) of this section may be rebutted by a showing to the Commission that the appearance or event was, or was not, party-related, as the case may be.

(f)(1) Expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States.

(2) Expenditures from personal funds made by a candidate for Vice President shall be considered to be expenditures by the candidate for President, if the candidate is receiving General Election Public Financing, see § 141.2(c).

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

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

(2) Any person authorized or requested by the candidate, an author-

§ 110.9

ized committee of the candidate, or an agent of the candidate to make the expenditure; or

(3) A committee not authorized in writing, so long as it is requested by the candidate, an authorized committee of the candidate, or an agent of the candidate to make the expenditure.

[41 FR 35948, Aug. 25, 1976, as amended at 45 FR 21210, Apr. 1, 1980; 54 FR 34114, Aug. 17, 1989; 54 FR 48580, Nov. 24, 1989]

§ 110.9 Miscellaneous provisions.

(a) *Violation of limitations.* No candidate or political committee shall accept any contribution or make any expenditure in violation of the provisions of part 110. No officer or employee of a political committee shall accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

(b) *Fraudulent misrepresentation.* No person who is a candidate for Federal office or an employee or agent of such a candidate shall—

(1) Fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof; or

(2) Willfully and knowingly participate in or conspire to participate in any plan or design to violate paragraph (b)(1) of this section.

(c) *Price index increase.* (1) Each limitation established by §§ 110.7 and 110.8 shall be increased by the annual percent difference of the price index, as certified to the Commission by the Secretary of Labor. Each amount so increased shall be the amount in effect for that calendar year.

(2) For purposes of paragraph (c)(1) of this section, the term *price index* means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

11 CFR Ch. I (1-1-91 Edition)

(d) *Voting age population.* The Commission shall assure that there is annually published in the FEDERAL REGISTER an estimate of the voting age population based on an estimate of the voting age population of the United States, of each State, and of each congressional district. The term *voting age population* means resident population, 18 years of age or older.

[41 FR 35948, Aug. 25, 1976]

§ 110.10 Expenditures by candidates.

(a) Except as provided in 11 CFR parts 9001, *et seq.* and 9031, *et seq.*, candidates for Federal office may make unlimited expenditures from personal funds.

(b) For purposes of this section, *personal funds* means—

(1) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

- (i) Legal and rightful title, or
- (ii) An equitable interest.

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

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

[41 FR 35948, Aug. 25, 1976, as amended at 48 FR 19021, Apr. 27, 1983]

§ 110.11 Communications; advertising (2 U.S.C. 441d).

(a)(1) Except as provided at 11 CFR 110.11(a)(2), whenever any person makes an expenditure for the purpose of financing a communication that expressly advocates the election or defeat of a clearly identified candidate, or that solicits any contribution, through any broadcasting station, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing or any other form of general public political advertising, a disclaimer meeting the requirements of 11 CFR 110.11(a)(1) (i), (ii), (iii) or (iv) shall appear and be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for and, where required, who authorized the communication. Such person is not required to place the disclaimer on the front face or page of any such material, as long as a disclaimer appears within the communication, except on communications, such as billboards, that contain only a front face.

(i) Such communication, including any solicitation, if paid for and authorized by a candidate, an authorized committee of a candidate, or its agent, shall clearly state that the communication has been paid for by the authorized political committee; or

(ii) Such communication, including any solicitation, if authorized by a candidate, an authorized committee of a candidate or an agent thereof, but paid for by any other person, shall clearly state that the communication is paid for by such other person and, is authorized by such candidate, authorized committee, or agent; or

(iii) Such communication, including any solicitation, if made on behalf of or in opposition to a candidate, but paid for by any other person and not authorized by a candidate, authorized committee of a candidate or its agent, shall clearly state that the communication has been paid for by such person and is not authorized by any candidate or candidate's committee.

(iv)(A) For solicitations directed to the general public on behalf of a political committee which is not an authorized committee of a candidate, such so-

licitation shall clearly state the full name of the person who paid for the communication.

(B) For purposes of this section, whenever a separate segregated fund solicits contributions to the fund from those persons it may solicit under the applicable provisions of 11 CFR part 114, such communication shall not be considered a form of general public advertising and need not contain the disclaimer set forth in 11 CFR 110.11(a)(1)(iv)(A).

(2) The requirements of 11 CFR 110.11(a)(1) do not apply to bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed. The requirements of 11 CFR 110.11(a)(1) do not apply to skywriting, watertowers or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable.

(b)(1) No person who sells space in a newspaper or magazine to a candidate, an authorized committee of a candidate, or an agent of the candidate, for use in connection with the candidate's campaign for nomination or for election, shall charge an amount for the space which exceeds the comparable rate for the space for non-campaign purposes.

(2) For purposes of this section, *comparable rate* means the rate charged to a national or general rate advertiser, and shall include discount privileges usually and normally available to a national or general rate advertiser.

(2 U.S.C. 438(a)(8), 441a, 441d, 441e, 441f, 441g, 441h, 441i)

[41 FR 35948, Aug. 25, 1976, as amended at 45 FR 15122, Mar. 7, 1980; 48 FR 8809, Mar. 2, 1983]

§ 110.12 Honoraria (2 U.S.C. 441i).

(a) No individual while an elected or appointed officer or employee of any branch of the Federal government shall accept any honorarium of more than \$2,000.

(b) The term *honorarium* means a payment of money or anything of value received by an officer or employee of the Federal government, if it is accepted as consideration for an appearance, speech, or article. An hono-

honorarium does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals for the officer or employee and spouse or an aide, and does not include amounts paid or incurred for any agents' fees or commissions.

(1) *Officer or employee.* The term *officer or employee of the Federal government*, or *officer or employee* means any person appointed or elected to a position of responsibility or authority in the United States government, regardless of whether the person is compensated for this position; and any other person receiving a salary, compensation, or reimbursement from the United States government, who accepts an honorarium for an appearance, speech, or article. Included within this class is the President; the Vice President; any Member of Congress; any judge of any court of the United States; any Cabinet officer; and any other elected or appointed officer or employee of any branch of the Federal government.

(2) *Appearance.* *Appearance* means attendance at a public or private conference, convention, meeting, social event, or like gathering, and the incidental conversation or remarks made at that time.

(3) *Speech.* *Speech* means an address, oration, or other form of oral presentation, regardless of whether presented in person, recorded, or broadcast over the media.

(4) *Article.* *Article* means a writing other than a book, which has been or is intended to be published.

(5) *Accepted.* *Accepted* means that there has been actual or constructive receipt of the honorarium and that the federal officeholder or employee exercises dominion or control over it and determines its subsequent use. However, an honorarium is not deemed accepted for the purposes of 11 CFR 110.12 if the federal officeholder or employee pays the honorarium to a charitable organization, or if the honorarium is paid to a charitable organization on behalf of the federal officeholder or employee. Nothing in this paragraph shall be construed as an interpretation of relevant provi-

sions of the Internal Revenue Code (Title 26, United States Code).

(6) *Charitable organization.* *Charitable organization* means any organization described in 26 U.S.C. 170(c).

(c) The term *honorarium* does not include—

(1) *An award.* An award is a gift of money or anything of value given—

(i) Primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civil achievement;

(ii) Based on a selection process with established criteria and which does not require the officer or employee to apply for or take any other action in the way of competition for the award;

(iii) Gratuitously under circumstances which do not require the recipient to make an appearance or speech, or write an article as a condition for receiving the award; and

(iv) Which is not made to serve in place of an honorarium or a contribution.

(2) *A gift.* A gift is a voluntary conveyance of real or personal property which is made gratuitously, and is not supported by consideration, and is not made to serve in place of an honorarium or a contribution. $\frac{1}{2}$

(3) *A stipend.* A stipend is a payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated. A stipend cannot be paid by a political committee other than a candidate's principal campaign committee or other authorized committee to that candidate.

(2 U.S.C. 438(a)(8), 441a, 441d, 441e, 441f, 441g, 441h, 441i)

[41 FR 35948, Aug. 25, 1976, as amended at 45 FR 15120, Mar. 7, 1980; 47 FR 15098, Apr. 8, 1982; 48 FR 52567, Nov. 21, 1983]

§ 110.13 Nonpartisan candidate debates.

(a) *Staging organizations.* (1) A nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c)(3), and a nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c)(4) and which does not endorse, support or oppose political candidates or political parties

may stage nonpartisan candidate debates in accordance with 11 CFR 110.13(b) and 114.4(e).

(2) Broadcasters, bona fide newspapers, magazines and other periodical publications may stage nonpartisan candidate debates in accordance with 11 CFR 110.13(b) and 114.4(e).

(b) *Debate structure.* The structure of debates staged in accordance with 11 CFR 110.13 and 114.4(e) is left to the discretion of the staging organization, provided that (1) such debates include at least two candidates, and (2) such debates are nonpartisan in that they do not promote or advance one candidate over another.

(2 U.S.C. 431(e), 431(f) and 441b)
[44 FR 76736, Dec. 27, 1979]

§ 110.14 Contributions to and expenditures by delegates and delegate committees.

(a) *Scope.* This section sets forth the prohibitions, limitations and reporting requirements under the Act applicable to all levels of a delegate selection process.

(b) *Definitions.*—(1) *Delegate.* Delegate means an individual who becomes or seeks to become a delegate, as defined by State law or party rule, to a national nominating convention or to a State, district, or local convention, caucus or primary that is held to select delegates to a national nominating convention.

(2) *Delegate committee.* A delegate committee is a group of persons that receives contributions or makes expenditures for the sole purpose of influencing the selection of one or more delegates to a national nominating convention. The term *delegate committee* includes a group of delegates, a group of individuals seeking selection as delegates and a group of individuals supporting delegates. A delegate committee that qualifies as a political committee under 11 CFR 100.5 must register with the Commission pursuant to 11 CFR part 102 and report its receipts and disbursements in accordance with 11 CFR part 104.

(c) *Funds received and expended; Prohibited funds.* (1) Funds received or disbursements made for the purpose of furthering the selection of a delegate to a national nominating con-

vention are contributions or expenditures for the purpose of influencing a federal election, see 11 CFR 100.2 (c)(3) and (e), except that—

(i) Payments made by an individual to a State committee or subordinate State committee as a condition for ballot access as a delegate are not contributions or expenditures. Such payments are neither required to be reported under 11 CFR part 104 nor subject to limitation under 11 CFR 110.1; and

(ii) Payments made by a State committee or subordinate State party committee for administrative expenses incurred in connection with sponsoring conventions or caucuses during which delegates to a national nominating convention are selected are not contributions or expenditures. Such payments are neither required to be reported under 11 CFR part 104 nor subject to limitation under 11 CFR 110.1 and 110.2.

(2) All funds received or disbursements made for the purpose of furthering the selection of a delegate to a national nominating convention, including payments made under paragraphs (c)(1)(i) and (c)(1)(ii) of this section, shall be made from funds permissible under the Act. See 11 CFR parts 110, 114 and 115.

(d) *Contributions to a delegate.* (1) The limitations on contributions to candidates and political committees under 11 CFR 110.1 and 110.2 do not apply to contributions made to a delegate for the purpose of furthering his or her selection; however, such contributions do count against the limitation on contributions made by an individual in a calendar year under 11 CFR 110.5.

(2) Contributions to a delegate made by the authorized committee of a presidential candidate count against the presidential candidate's expenditure limitation under 11 CFR 110.8(a).

(3) A delegate is not required to report contributions received for the purpose of furthering his or her selection.

(e) *Expenditures by delegate to advocate only his or her selection.* (1) Expenditures by a delegate that advocate only his or her selection are neither contributions to a candidate, subject

to limitation under 11 CFR 110.1, nor chargeable to the expenditure limits of any Presidential candidate under 11 CFR 110.8(a). Such expenditures may include, but are not limited to: Payments for travel and subsistence during the delegate selection process, including the national nominating convention, and payments for any communications advocating only the delegate's selection.

(2) A delegate is not required to report expenditures made to advocate only his or her selection.

(f) *Expenditures by a delegate referring to a candidate for public office—*

(1) *Volunteer activities that do not use public political advertising.* (i) Expenditures by a delegate to defray the costs of certain campaign materials (such as pins, bumper stickers, handbills, brochures, posters and yard signs) that advocate his or her selection and also include information on or reference to a candidate for the office of President or any other public office are neither contributions to the candidate referred to nor subject to limitation under 11 CFR 110.1 provided that:

(A) The materials are used in connection with volunteer activities; and

(B) The expenditures are not for costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising.

(ii) Such expenditures are not chargeable to the expenditure limitation of a presidential candidate under 11 CFR 110.8(a).

(iii) A delegate is not required to report expenditures made pursuant to this paragraph.

(2) *Use of public political advertising.* A delegate may make expenditures to defray costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising to advocate his or her selection and also include information on or reference to a candidate for the office of President or any other public office.

(i) Such expenditures are in-kind contributions to a Federal candidate if they are made in cooperation, consul-

tation or concert with, or at the request or suggestion of, the candidate, his or her authorized political committee(s), or their agents. See 11 CFR 100.7(a)(iii)(A); 2 U.S.C. 441a(a)(7)(B).

(A) The portion of the expenditure allocable to a Federal candidate is subject to the contribution limitations of 11 CFR 110.1.

(B) A Federal candidate's authorized committee must report the portion of the expenditure allocable to the candidate as a contribution pursuant to 11 CFR part 104.

(C) The portion of the expenditure allocable to a presidential candidate is chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8(a).

(ii) Such expenditures are independent expenditures under 11 CFR part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, the candidate or any agent or authorized committee of such candidate.

(A) Such independent expenditures must be made in accordance with the requirements of 11 CFR part 109.

(B) The delegate shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.2.

(3) *Republication of candidate materials.* Expenditures made to finance the dissemination, distribution or republication, in whole or in part, of any broadcast or materials prepared by a Federal candidate are in-kind contributions to the candidate.

(i) Such expenditures are subject to the contribution limits of 11 CFR 110.1.

(ii) The Federal candidate must report the expenditure as a contribution pursuant to 11 CFR part 104.

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were made with the cooperation, or with the prior consent of, or in consultation with, or at the request or suggestion of, the can-

didate or any agent or authorized committee of such candidate.

(4) For purposes of this paragraph, *direct mail* means any mailing(s) by commercial vendors or any mailing(s) made from lists that were not developed by the delegate.

(g) *Contributions made to and by a delegate committee.* (1) The limitations on contributions to political committees under 11 CFR 110.1 and 110.2 apply to contributions made to and by a delegate committee.

(2) Contributions to a delegate committee count against the limitation on contributions made by an individual in a calendar year under 11 CFR 110.5.

(3) A delegate committee shall report contributions it makes and receives pursuant to 11 CFR part 104.

(h) *Expenditures by a delegate committee to advocate only the selection of one or more delegates.* (1) Expenditures by a delegate committee that advocate only the selection of one or more delegates are neither contributions to a candidate, subject to limitation under 11 CFR 110.1 nor chargeable to the expenditure limits of any Presidential candidate under 11 CFR 110.8(a). Such expenditures may include but are not limited to: Payments for travel and subsistence during the delegate selection process, including the national nominating convention, and payments for any communications advocating only the selection of one or more delegates.

(2) A delegate committee shall report expenditures made pursuant to this paragraph.

(i) *Expenditures by a delegate committee referring to a candidate for public office—*(1) *Volunteer activities that do not use public political advertising.* (i) Expenditures by a delegate committee to defray the costs of certain campaign materials (such as pins, bumper stickers, handbills, brochures, posters and yard signs) that advocate the selection of a delegate and also include information on or reference to a candidate for the office of President or any other public office are neither contributions to the candidate referred to, nor subject to limitation under 11 CFR 110.1 provided that:

(A) The materials are used in connection with volunteer activities; and

(B) The expenditures are not for costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising.

(ii) Such expenditures are not chargeable to the expenditure limitation of a presidential candidate under 11 CFR 110.8(a).

(iii) A delegate committee shall report expenditures made pursuant to this paragraph.

(2) *Use of public political advertising.* A delegate committee may make expenditures to defray costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising to advocate the selection of one or more delegates and also include information on or reference to a candidate for the office of President or any other public office. If such expenditures are in-kind contributions or independent expenditures under paragraphs (i) or (ii) below, the delegate committee shall allocate the portion of the expenditures relating to the delegate(s) and candidate(s) referred to in the communications between them and report the portion allocable to each.

(i) Such expenditures are in-kind contributions to a Federal candidate if they are made in cooperation, consultation or concert with or at the request or suggestion of the candidate, his or her authorized political committee(s), or their agents.

(A) The portion of the expenditure allocable to a Federal candidate is subject to the contribution limitations of 11 CFR 110.1. The delegate committee shall report the portion allocable to the Federal candidate as a contribution in-kind.

(B) The Federal candidate's authorized committee shall report the portion of the expenditure allocable to the candidate as a contribution pursuant to 11 CFR part 104.

(C) The portion of the expenditure allocable to a presidential candidate is chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8(a).

(ii) Such expenditures are independent expenditures under 11 CFR part

109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, the candidate or any agent or authorized committee of such candidate.

(A) Such independent expenditures must be made in accordance with the requirements of 11 CFR part 109.

(B) The delegate committee shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.2.

(3) *Republication of candidate materials.* Expenditures made to finance the dissemination, distribution or republication, in whole or in part, of any broadcast or materials prepared by a Federal candidate are in-kind contributions to the candidate.

(i) Such expenditures are subject to the contribution limitations of 11 CFR 110.1. The delegate committee shall report the expenditure as a contribution in-kind.

(ii) The Federal candidate's authorized committee shall report the expenditure as a contribution pursuant to 11 CFR part 104.

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, the candidate or any agent or authorized committee of such candidate.

(4) For purposes of this paragraph, *direct mail* means any mailing(s) by commercial vendors or any mailing(s) made from lists that were not developed by the delegate committee or any participating delegate.

(j) *Affiliation of delegate committees with a Presidential candidate's authorized committee.* (1) For purposes of the contribution limits of 11 CFR 110.1 and 110.2, a delegate committee shall be considered to be affiliated with a Presidential candidate's authorized committee if both such committees are established, financed, maintained or controlled by the same

person, such as the Presidential candidate, or the same group of persons.

(2) Factors the Commission may consider in determining whether a delegate committee is affiliated under paragraph (j)(1) of this section with a Presidential candidate's authorized committee may include, but are not limited to:

(i) Whether the Presidential candidate or any other person associated with the Presidential authorized committee played a significant role in the formation of the delegate committee;

(ii) Whether any delegate associated with a delegate committee is or has been a staff member of the Presidential authorized committee;

(iii) Whether the committees have common or overlapping officers or employees;

(iv) Whether the Presidential authorized committee provides funds or goods in a significant amount or on an ongoing basis to the delegate committee, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17 or 9034.8;

(v) Whether the Presidential candidate or any other person associated with the Presidential authorized committee suggested, recommended or arranged for contributions to be made to the delegate committee;

(vi) Similar patterns of contributions received by the committees;

(vii) Whether one committee provides a mailing list to the other committee;

(viii) Whether the Presidential authorized committee or any person associated with that committee provides ongoing administrative support to the other committee;

(ix) Whether the Presidential authorized committee or any person associated with that committee directs or organizes the specific campaign activities of the delegate committee; and

(x) Whether the Presidential authorized committee or any person associated with that committee files statements or reports on behalf of the delegate committee.

(k) *Affiliation between delegate committees.* Delegate committees will be

considered to be affiliated with each other if they meet the criteria for affiliation set forth at 11 CFR 100.5(g).

[52 FR 35534, Sept. 22, 1987]

PART 111—COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))

Sec.

- 111.1 Scope (2 U.S.C. 437g).
- 111.2 Computation of time.
- 111.3 Initiation of compliance matters (2 U.S.C. 437g(a)(1), (2)).
- 111.4 Complaints (2 U.S.C. 437g(a)(1)).
- 111.5 Initial complaint processing; notification (2 U.S.C. 437g(a)(1)).
- 111.6 Opportunity to demonstrate that no action should be taken on complaint-generated matters (2 U.S.C. 437g(a)(1)).
- 111.7 General Counsel's recommendation on complaint-generated matters (2 U.S.C. 437g(a)(1)).
- 111.8 Internally generated matters; referrals (2 U.S.C. 437g(a)(2)).
- 111.9 The reason to believe finding; notification (2 U.S.C. 437g(a)(2)).
- 111.10 Investigation (2 U.S.C. 437g(a)(2)).
- 111.11 Written questions under order (2 U.S.C. 437d(a)(1)).
- 111.12 Subpoenas and subpoenas duces tecum; depositions (2 U.S.C. 437d(a)(3), (4)).
- 111.13 Service of subpoenas, orders and notifications (2 U.S.C. 437d(a)(3), (4)).
- 111.14 Witness fees and mileage (2 U.S.C. 437d(a)(5)).
- 111.15 Motions to quash or modify a subpoena (2 U.S.C. 437d(a)(3), (4)).
- 111.16 The probable cause to believe recommendation; briefing procedures (2 U.S.C. 437g(a)(3)).
- 111.17 The probable cause to believe finding; notification (2 U.S.C. 437g(a)(4)).
- 111.18 Conciliation (2 U.S.C. 437g(a)(4)).
- 111.19 Civil proceedings (2 U.S.C. 437g(a)(6)).
- 111.20 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).
- 111.21 Confidentiality (2 U.S.C. 437g(a)(12)).
- 111.22 Ex parte communications.
- 111.23 Representation by counsel; notification.

AUTHORITY: 2 U.S.C. 437g, 437d(a), 438(a)(8).

SOURCE: 45 FR 15120, Mar. 7, 1980, unless otherwise noted.

§ 111.1 Scope (2 U.S.C. 437g).

These regulations provide procedures for processing possible violations of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431, et

seq.) and chapters 95 and 96 of the Internal Revenue Code of 1954 (26 U.S.C. 9001, et seq. and 9031 et seq.).

§ 111.2 Computation of time.

(a) *General rule.* In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. As used in this section, the term *legal holiday* includes New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the United States by the President or the Congress of the United States.

(b) *Special rule for periods less than seven days.* When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(c) *Special rule for service by mail.* Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission or such person and the paper is served by or upon the Commission or such person by mail, three (3) days shall be added to the prescribed period.

§ 111.3 Initiation of compliance matters (2 U.S.C. 437g(a)(1), (2)).

(a) Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities.

(b) Matters initiated by complaint are subject to the provisions of 11 CFR 111.4 through 111.7. Matters initiated on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities are subject to the provisions of 11 CFR 111.8. All compliance matters are subject to the provisions of 11 CFR 111.2 and 111.9 through 111.23.

§ 111.4 Complaints (2 U.S.C. 437g(a)(1)).

(a) Any person who believes that a violation of any statute or regulation over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. If possible, three (3) copies should be submitted.

(b) A complaint shall comply with the following:

(1) It shall provide the full name and address of the complainant; and

(2) The contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.

(c) All statements made in a complaint are subject to the statutes governing perjury and to 18 U.S.C. 1001. The complaint should differentiate between statements based upon personal knowledge and statements based upon information and belief.

(d) The complaint should conform to the following provisions:

(1) It should clearly identify as a respondent each person or entity who is alleged to have committed a violation;

(2) Statements which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainants belief in the truth of such statements;

(3) It should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction; and

(4) It should be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

[45 FR 15120, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

§ 111.5 Initial complaint processing; notification (2 U.S.C. 437g(a)(1)).

(a) Upon receipt of a complaint, the General Counsel shall review the complaint for substantial compliance with the technical requirements of 11 CFR 111.4, and, if it complies with those requirements shall within five (5) days after receipt notify each respondent that the complaint has been filed, advise them of Commission compli-

ance procedures, and enclose a copy of the complaint.

(b) If a complaint does not comply with the requirements of 11 CFR 111.4, the General Counsel shall so notify the complainant and any person(s) or entity(ies) identified therein as respondent(s), within the five (5) day period specified in 11 CFR 111.5(a), that no action shall be taken on the basis of that complaint. A copy of the complaint shall be enclosed with the notification to each respondent.

§ 111.6 Opportunity to demonstrate that no action should be taken on complaint-generated matters (2 U.S.C. 437g(a)(1)).

(a) A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within fifteen (15) days from receipt of a copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.

(b) The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the fifteen (15) day period specified in 11 CFR 111.6(a).

§ 111.7 General Counsel's recommendation on complaint-generated matters (2 U.S.C. 437g(a)(1)).

(a) Following either the expiration of the fifteen (15) day period specified by 11 CFR 111.6(a) or the receipt of a response as specified by 11 CFR 111.6(a), whichever occurs first, the General Counsel may recommend to the Commission whether or not it should find reason to believe that a respondent has committed or is about to commit a violation of statutes or regulations over which the Commission has jurisdiction.

(b) The General Counsel may recommend that the Commission find that there is no reason to believe that a violation has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint

without regard to the provisions of 11 CFR 111.6(a).

§ 111.8 Internally generated matters; referrals. (2 U.S.C. 437g(a)(2)).

(a) On the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, or on the basis of a referral from an agency of the United States or of any state, the General Counsel may recommend in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of statutes or regulations over which the Commission has jurisdiction.

(b) If the Commission finds reason to believe that a violation has occurred or is about to occur the notification to respondent required by 11 CFR 111.9(a) shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.

(c) Prior to taking any action pursuant to this section against any person who has failed to file a disclosure report required by 11 CFR 104.5(a)(1)(iii) for the calendar quarter immediately preceding the election involved or by § 104.5(a)(1)(i), the Commission shall notify such person of failure to file the required reports. If a satisfactory response is not received within four (4) business days, the Commission shall publish before the election the name of the person and the report or reports such person has failed to file.

[45 FR 15120, Mar. 7, 1980, as amended at 45 FR 21210, Apr. 1, 1980]

§ 111.9 The reason to believe finding; notification (2 U.S.C. 437g(a)(2)).

(a) If the Commission, either after reviewing a complaint-generated recommendation as described in 11 CFR 111.7 and any response of a respondent submitted pursuant to 11 CFR 111.6, or after reviewing an internally-generated recommendation as described in 11 CFR 111.8, determines by an affirmative vote of four (4) of its members that it has reason to believe that a respondent has violated a statute or regulation over which the Commission has jurisdiction, its Chairman

or Vice Chairman shall notify such respondent of the Commission's finding by letter, setting forth the sections of the statute or regulations alleged to have been violated and the alleged factual basis supporting the finding.

(b) If the Commission finds no reason to believe, or otherwise terminates its proceedings, the General Counsel shall so advise both complainant and respondent by letter.

§ 111.10 Investigation (2 U.S.C. 437g(a)(2)).

(a) An investigation shall be conducted in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

(b) In its investigation, the Commission may utilize the provisions of 11 CFR 111.11 through 111.15. The investigation may include, but is not limited to, field investigations, audits, and other methods of information-gathering.

§ 111.11 Written questions under order (2 U.S.C. 437d(a)(1)).

The Commission may authorize its Chairman or Vice Chairman to issue an order requiring any person to submit sworn written answers to written questions and may specify a date by which such answers must be submitted.

§ 111.12 Subpoenas and subpoenas duces tecum; depositions (2 U.S.C. 437d(a)(3), (4)).

(a) The Commission may authorize its Chairman or Vice Chairman to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.

(b) If oral testimony is ordered to be taken by deposition or documents are ordered to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. A depo-

sition may be taken before any person having the power to administer oaths.

(c) The Federal Rules of Civil Procedure, Rule 30(e), shall govern the opportunity to review and sign depositions taken pursuant to this section.

§ 111.13 Service of subpoenas, orders and notifications (2 U.S.C. 437d(a) (3), (4)).

(a) Service of a subpoena, order or notification upon a person named therein shall be made by delivering a copy to that person in the manner described by 11 CFR 111.13 (b), (c), and (d). In the case of subpoenas, fees for one day's attendance and mileage shall be tendered as specified in 11 CFR 111.14.

(b) Whenever service is to be made upon a person who has advised the Commission of representation by an attorney pursuant to 11 CFR 111.23, the service shall be made upon the attorney by any of the methods specified in 11 CFR 111.13(c).

(c) Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with some person of suitable age and discretion residing therein, or by mailing a copy by registered or certified mail to his or her last known address, or by any other method whereby actual notice is given.

(d) When the person to be served is not a natural person delivery of subpoenas, orders and notifications may be made by mailing a copy by registered or certified mail to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by registered or certified mail to such representative at his or her last known address, or by any other method whereby actual notice is given.

§ 111.14 Witness fees and mileage (2 U.S.C. 437d(a)(5)).

Witnesses subpoenaed to appear for depositions shall be paid the same fees and mileage as witnesses in the courts of the United States. Such fees may be

tendered at the time the witness appears for such deposition, or within a reasonable time thereafter.

§ 111.15 Motions to quash or modify a subpoena (2 U.S.C. 437d(a) (3), (4)).

(a) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 5 days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefor. Motions to quash shall be filed with the General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. If possible, three (3) copies should be submitted.

(b) The Commission may deny the application or quash the subpoena or modify the subpoena.

(c) The person subpoenaed and the General Counsel may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

[45 FR 15120, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

§ 111.16 The probable cause to believe recommendation; briefing procedures (2 U.S.C. 437g(a)(3)).

(a) Upon completion of the investigation, the General Counsel shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether or not the Commission should find probable cause to believe that a violation has occurred or is about to occur.

(b) The General Counsel shall notify each respondent of the recommendation and enclose a copy of his or her brief.

(c) Within fifteen (15) days from receipt of the General Counsel's brief, respondent may file a brief with the Commission Secretary, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, setting forth respondent's position on the factual and legal issues of the case. If possible, ten (10) copies of such brief should be

filed with the Commission Secretary and three (3) copies should be submitted to the General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(d) After reviewing the respondent's brief, the General Counsel shall advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

[45 FR 15120, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

§ 111.17 The probable cause to believe finding; notification (2 U.S.C. 437g(a)(4)).

(a) If the Commission, after having found reason to believe and after following the procedures set forth in 11 CFR 111.16, determines by an affirmative vote of four (4) of its members that there is probable cause to believe that a respondent has violated a statute or regulation over which the Commission has jurisdiction, the Commission shall authorize the General Counsel to so notify the respondent by letter.

(b) If the Commission finds no probable cause to believe or otherwise orders a termination of Commission proceedings, it shall authorize the General Counsel to so notify both respondent and complainant by letter.

§ 111.18 Conciliation (2 U.S.C. 437g(a)(4)).

(a) Upon a Commission finding of probable cause to believe, the Office of General Counsel shall attempt to correct or prevent the violation by informal methods of conference conciliation and persuasion, and shall attempt to reach a tentative conciliation agreement with the respondent.

(b) A conciliation agreement is not binding upon either party unless and until it is signed by the respondent and by the General Counsel upon approval by the affirmative vote of four (4) members of the Commission.

(c) If the probable cause to believe finding is made within forty-five days prior to any election, such conciliation attempt shall continue for at least fifteen (15) days from the date of such finding. In all other cases such attempts by the Commission shall con-

tinue for at least thirty (30) days, not to exceed ninety (90) days.

(d) Nothing in these regulations shall be construed to prevent the Commission from entering into a conciliation agreement with a respondent prior to a Commission finding of probable cause if a respondent indicates by letter to the General Counsel a desire to enter into negotiations directed towards reaching such a conciliation agreement. However, the Commission is not required to enter into any negotiations directed towards reaching a conciliation agreement unless and until it makes a finding of probable cause to believe. Any conciliation agreement reached under this subsection is subject to the provisions of subsection (b) of this section and shall have the same force and effect as a conciliation agreement reached after a Commission finding of probable cause to believe.

(e) If a conciliation agreement is reached between the Commission and the respondent, the General Counsel shall send a copy of the signed agreement to both complainant and respondent.

§ 111.19 Civil proceedings (2 U.S.C. 437g(a)(6)).

(a) If no conciliation agreement is finalized within the applicable minimum period specified by 11 CFR 111.18(c) the General Counsel may recommend to the Commission that the Commission authorize a civil action for relief in an appropriate court of the United States.

(b) Upon recommendation of the General Counsel, the Commission may, by an affirmative vote of four (4) of its members, authorize the General Counsel to commence a civil action for relief in an appropriate court of the United States.

(c) The provisions of 11 CFR 111.18(c) shall not preclude the Commission upon request of a respondent, from entering into a conciliation agreement even after a recommendation to file a civil action has been made pursuant to this section. Any conciliation agreement reached under this subsection is subject to the provisions of 11 CFR 111.18(b) and shall

have the same force and effect as a conciliation agreement reached under 11 CFR 111.18(c).

§ 111.20 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).

(a) If the Commission makes a finding of no reason to believe or no probable cause to believe or otherwise terminates its proceedings, it shall make public such action and the basis therefor no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.

(b) If a conciliation agreement is finalized, the Commission shall make public such conciliation agreement forthwith.

§ 111.21 Confidentiality (2 U.S.C. 437g(a)(12)).

(a) Except as provided in 11 CFR 111.20, no complaint filed with the Commission, nor any notification sent by the Commission, nor any investigation conducted by the Commission, nor any findings made by the Commission shall be made public by the Commission or by any person or entity without the written consent of the respondent with respect to whom the complaint was filed, the notification sent, the investigation conducted, or the finding made.

(b) Except as provided in 11 CFR 111.20(b), no action by the Commission or by any person, and no information derived in connection with conciliation efforts pursuant to 11 CFR 111.18, may be made public by the Commission except upon a written request by respondent and approval thereof by the Commission.

(c) Nothing in these regulations shall be construed to prevent the introduction of evidence in the courts of the United States which could properly be introduced pursuant to the Federal Rules of Evidence or Federal Rules of Civil Procedure.

§ 111.22 Ex parte communications.

(a) In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to 11 CFR part 111, except to the extent required for the disposition of

ex parte matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of any Commissioner's staff any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of any Commissioner's staff make or entertain any such ex parte communications.

(b) The prohibition of this regulation shall apply from the time a complaint is filed with the Commission pursuant to 11 CFR part 111 or from the time that the Commission determines on the basis of information ascertained in the normal course of its supervisory responsibilities that it has reason to believe that a violation has occurred or may occur pursuant to 11 CFR part 111, and remains in force until the Commission has finally concluded all action with respect to the enforcement matter in question.

(c) Nothing in this section shall be construed to prohibit contact between a respondent or respondent's attorney and any attorney or staff member of the Office of General Counsel in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by such a Commission attorney or staff member during any such communication shall bind or estop the Commission in any way.

§ 111.23 Representation by counsel; notification.

(a) If a respondent wishes to be represented by counsel with regard to any matter pending before the Commission, respondent shall so advise the Commission by sending a letter of representation signed by the respondent, which letter shall state the following:

(1) The name, address, and telephone number of the counsel;

(2) A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of respondent.

(b) Upon receipt of a letter of representation, the Commission shall have

no contact with respondent except through the designated counsel unless authorized in writing by respondent.

PART 112—ADVISORY OPINIONS (2 U.S.C. 437f)

- Sec.
- 112.1 Requests for advisory opinions (2 U.S.C. 437f(a)(1)).
- 112.2 Public availability of requests (2 U.S.C. 437f(d)).
- 112.3 Written comments on requests (2 U.S.C. 437f(d)).
- 112.4 Issuance of advisory opinions (2 U.S.C. 437f (a) and (b)).
- 112.5 Reliance on advisory opinions (2 U.S.C. 437f(c)).
- 112.6 Reconsideration of advisory opinions.

AUTHORITY: 2 U.S.C. 437f, 438(a)(8).

SOURCE: 45 FR 15123, Mar. 7, 1980, unless otherwise noted.

§ 112.1 Requests for advisory opinions (2 U.S.C. 437f(a)(1)).

(a) Any person may request in writing an advisory opinion concerning the application of the Act, chapters 95 or 96 of the Internal Revenue Code of 1954, or any regulation prescribed by the Commission. An authorized agent of the requesting person may submit the advisory opinion request, but the agent shall disclose the identity of his or her principal.

(b) The written advisory opinion request shall set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, do not qualify as advisory opinion requests.

(c) Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.

(d) The Office of General Counsel shall review all requests for advisory opinions submitted under 11 CFR 112.1. If the Office of General Counsel determines that a request for an advisory opinion is incomplete or otherwise not qualified under 11 CFR 112.1, it shall, within 10 calendar days of receipt of such request, notify the re-

questing person, and specify the deficiencies in the request.

(e) Advisory opinion requests should be sent to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463.

(f) Upon receipt by the Commission, each request which qualifies as an advisory opinion request (AOR) under 11 CFR 112.1 shall be assigned an AOR number for reference purposes.

[45 FR 15123, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

§ 112.2 Public availability of requests (2 U.S.C. 437f(d)).

(a) Advisory opinion requests which qualify under 11 CFR 112.1 shall be made public at the Commission promptly upon their receipt.

(b) A copy of the original request and any supplements thereto, shall be available for public inspection and purchase at the Public Disclosure Division of the Commission.

§ 112.3 Written comments on requests (2 U.S.C. 437f(d)).

(a) Any interested person may submit written comments concerning advisory opinion requests made public at the Commission.

(b) The written comments shall be submitted within 10 calendar days following the date the request is made public at the Commission. However, if the 10th calendar day falls on a Saturday, Sunday, or Federal holiday, the 10 day period ends at the close of the business day next following the weekend or holiday. Additional time for submission of written comments may be granted upon written request for an extension by the person who wishes to submit comments or may be granted by the Commission without an extension request.

(c) Comments on advisory opinion requests should refer to the AOR number of the request, and statutory references should be to the United States Code citations, rather than to Public Law citations.

(d) Written comments and requests for additional time to comment shall be sent to the Federal Election Commission, Office of General Counsel,

999 E Street, NW., Washington, DC 20463.

(e) Before it issues an advisory opinion the Commission shall accept and consider all written comments submitted within the 10 day comment period or any extension thereof.

[45 FR 15123, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

§ 112.4 Issuance of advisory opinions (2 U.S.C. 437f(a) and (b)).

(a) Within 60 calendar days after receiving an advisory opinion request that qualifies under 11 CFR 112.1, the Commission shall issue to the requesting person a written advisory opinion or shall issue a written response stating that the Commission was unable to approve an advisory opinion by the required affirmative vote of 4 members.

(b) The 60 calendar day period of 11 CFR 112.4(a) is reduced to 20 calendar days for an advisory opinion request qualified under 11 CFR 112.1 provided the request:

(1) is submitted by any candidate, including any authorized committee of the candidate (or agent of either), within the 60 calendar days preceding the date of any election for Federal office in which the candidate is seeking nomination or election; and

(2) presents a specific transaction or activity related to the election that may invoke the 20 day period if the connection is explained in the request.

(c) The 60 day and 20 day periods referred to in 11 CFR 112.4(a) and (b) only apply when the Commission has received a qualified and complete advisory opinion request under 11 CFR 112.1, and when the 60th or 20th day occurs on a Saturday, Sunday or Federal holiday, the respective period ends at the close of the business day next following the weekend or holiday.

(d) The Commission may issue advisory opinions pertaining only to the Federal Election Campaign Act of 1971, as amended, chapters 95 or 96 of the Internal Revenue Code of 1954, or rules or regulations duly prescribed under those statutes.

(e) Any rule of law which is not stated in the Act or in chapters 95 or 96 of the Internal Revenue Code of

1954, or in a regulation duly prescribed by the Commission, may be initially proposed only as a rule or regulation pursuant to procedures established in 2 USC 438(d) or 26 USC 9009(c) and 9039(c) as applicable.

(f) No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with 11 CFR part 112; however, this limitation does not preclude distribution by the Commission of information consistent with the Act and chapters 95 or 96 of the Internal Revenue Code of 1954.

(g) When issued by the Commission, each advisory opinion or other response under 11 CFR 112.4(a) shall be made public and sent by mail, or personally delivered to the person who requested the opinion.

§ 112.5 Reliance on advisory opinions (2 U.S.C. 437f(c)).

(a) An advisory opinion rendered by the Commission under 11 CFR part 112 may be relied upon by:

(1) any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered, and

(2) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(b) Notwithstanding any other provision of law, any person who relies upon an advisory opinion in accordance with 11 CFR 112.5(a) and who acts in good faith in accordance with that advisory opinion shall not, as a result of any such act, be subject to any sanction provided by the Federal Election Campaign Act of 1971, as amended, or by chapters 95 or 96 of the Internal Revenue Code of 1954.

§ 112.6 Reconsideration of advisory opinions.

(a) The Commission may reconsider an advisory opinion previously issued if the person to whom the opinion was issued submits a written request for reconsideration within 30 calendar days of receipt of the opinion and if, upon the motion of a Commissioner

who voted with the majority that originally approved the opinion, the Commission adopts the motion to reconsider by the affirmative vote of 4 members.

(b) The Commission may reconsider an advisory opinion previously issued if, upon the motion of a Commissioner who voted with the majority that originally approved the opinion and within 30 calendar days after the date the Commission approved the opinion, the Commission adopts the motion to reconsider by the affirmative vote of 4 members.

(c) In the event an advisory opinion is reconsidered pursuant to 11 CFR 112.6(b), the action taken in good faith reliance on that advisory opinion by the person to whom the opinion was issued shall not result in any sanction provided by the Act or chapters 95 or 96 of the Internal Revenue Code of 1954. 11 CFR 112.6(c) shall not be effective after the date when the person to whom the advisory opinion was issued has received actual notice of the Commission's decision to reconsider that advisory opinion.

(d) Adoption of a motion to reconsider vacates the advisory opinion to which it relates.

PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT FEDERAL OFFICEHOLDER ACTIVITIES (2 U.S.C. 439a)

Sec.

113.1 Definitions (2 U.S.C. 439a).

113.2 Use of funds (2 U.S.C. 439a).

113.3 Deposits of funds donated to a Federal or State officeholder (2 U.S.C. 432(h)).

113.4 Contribution and expenditure limitations (2 U.S.C. 441a).

AUTHORITY: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

SOURCE: 45 FR 15124, Mar. 7, 1980, unless otherwise noted.

§ 113.1 Definitions (2 U.S.C. 439a).

When used in this part—

(a) *Funds donated.* *Funds donated* means all funds, including, but not limited to, gifts, loans, advances, credits or deposits of money which are donated for the purpose of supporting the activities of a Federal or State of-

ficeholder; but does not mean funds appropriated by Congress, a State legislature, or another similar public appropriating body, or personal funds of the officeholder donated to an account containing only those personal funds.

(b) *Office account.* *Office account* means an account established for the purposes of supporting the activities of a Federal or State officeholder which contains excess campaign funds and funds donated, but does not include an account used exclusively for funds appropriated by Congress, a State legislature, or another similar public appropriating body, or an account of the officeholder which contains only the personal funds of the officeholder, or an account containing only appropriated funds and only personal funds of the officeholder.

(c) *Federal officeholder.* *Federal officeholder* means an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

(d) *State officeholder.* *State officeholder* means an individual elected to or serving in any elected public office within a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any subdivision thereof.

(e) *Excess campaign funds.* *Excess campaign funds* means amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures.

§ 113.2 Use of funds (2 U.S.C. 439a).

Excess campaign funds and funds donated:

(a) May be used to defray any ordinary and necessary expenses incurred in connection with the recipient's duties as a holder of Federal office, if applicable; or

(b) May be contributed to any organization described in section 170(c) of Title 26, of the United States Code; or

(c) May be transferred without limitation to any national, State, or local committee of any political party; or

(d) May be used for any other lawful purpose, except that, with respect to any individual who is not a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress on the date of the enactment of the Federal Election Campaign Act Amendments of 1979 (January 8, 1980), no such amounts may be converted by any person to any personal use, other than: to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, or to repay to a candidate any loan the proceeds of which were used in connection with his or her campaign.

§ 113.3 Deposits of funds donated to a Federal or State officeholder (2 U.S.C. 432(h)).

All funds donated to a federal officeholder, or State officeholder who is a candidate for federal office, shall be deposited into one of the following accounts:

(a) An account of the officeholder's principal campaign committee or other authorized committee pursuant to 11 CFR part 103;

(b) An account to which only funds donated to an individual to support his or her activities as a holder of federal office are deposited (including an office account).

§ 113.4 Contribution and expenditure limitations (2 U.S.C. 441a).

(a) Any contributions to, or expenditures from an office account which are made for the purpose of influencing a federal election shall be subject to 2 U.S.C. 441a and 11 CFR part 110 of these regulations.

(b) If any treasury funds of a corporation or labor organization are donated to an office account, no funds from that office account may be transferred to a political committee account or otherwise used in connection with a federal election.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

Sec.

- 114.1 Definitions.
- 114.2 Prohibitions on contributions and expenditures.
- 114.3 Disbursements for communications in connection with a Federal election to restricted class.
- 114.4 Expenditures for communications in connection with a Federal election to the restricted class and the general public.
- 114.5 Separate segregated funds.
- 114.6 Twice yearly solicitations.
- 114.7 Membership organizations, cooperatives, or corporations without capital stock.
- 114.8 Trade associations.
- 114.9 Use of corporate or labor organization facilities and means of transportation.
- 114.10 [Reserved]
- 114.11 Employee participation plans.
- 114.12 Miscellaneous provisions.

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

SOURCE: 41 FR 35955, Aug. 25, 1976, unless otherwise noted.

§ 114.1 Definitions.

(a) For purposes of part 114 and section 12(h) of the Public Utility Holding Company Act (15 U.S.C. 791(h))—

(1) The term *contribution or expenditure* shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation, the National Savings and Loan Insurance Corporation, or the National Credit Union Administration, if such loan is made in accordance with 11 CFR 100.7(b)(11) to any candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to in § 114.2(a) or (b) as applicable.

(2) The term contribution and expenditures shall *not* include—

(i) Communications by a corporation to its stockholders and executive or

administrative personnel and their families or by a labor organization to its members and executive or administrative personnel, and their families, on any subject;

(ii) Nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families or by a labor organization aimed at its members and executive or administrative personnel, and their families;

(iii) The establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock;

(iv) An honorarium, including actual travel and subsistence, as defined in § 110.12;

(v) The sale of any food or beverage by a corporate vendor for use in a candidate's campaign or for use by a political committee of a political party at a charge less than the normal of comparable commercial rate, if the charge is at least equal to the costs of such food or beverage to the vendor, to the extent that: the aggregate value of such discount by the vendor on behalf of a single candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year.

(vi) The payment for legal or accounting services rendered to or on behalf of any political committee of a political party other than services attributable to activities which directly further the election of a designated candidate or candidates for Federal office if the corporation or labor organization paying for the services is the regular employer of the individual rendering the services. This exclusion shall not be applicable if additional employees are hired for the purpose of rendering services or if additional employees are hired in order to make regular employees available;

(vii) The payment for legal or accounting services rendered to or on behalf of an authorized committee of a candidate or any other political committee solely for the purpose of ensur-

ing compliance with this Act or chapter 95 or 96 of the Internal Revenue Code of 1954 if the corporation or labor organization paying for the services is the regular employer of the individual rendering the services, but amounts paid or incurred for these services shall be reported in accordance with part 104. This exclusion shall not be applicable if additional employees are hired for the purpose of rendering services or if additional employees are hired in order to make regular employees available;

(viii) Activity permitted under 11 CFR 9008.7 with respect to a presidential nominating convention;

(ix) A gift, subscription, loan, advance, or deposit of money or anything of value to a national committee of a political party or a State committee of a political party which is specifically designated for the purpose of defraying any cost incurred with respect to the construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office, except that any gift, subscription, loan, advance, or deposit of money or anything of value, and any such cost, shall be reported in accordance with 11 CFR 104.3(g); or

(x) Any activity which is specifically permitted by part 114.

(b) *Establishment, administration, and solicitation costs* means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fund-raising and other expenses incurred in setting up and running a separate segregated fund established by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

(c) *Executive or administrative personnel* means individuals employed by a corporation or labor organization who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(1) This definition includes—

(i) The individuals who run the corporation's business such as officers, other executives, and plant, division, and section managers; and

(ii) Individuals following the recognized professions, such as lawyers and engineers.

(2) This definition does *not* include—

(i) Professionals who are represented by a labor organization;

(ii) Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees;

(iii) Former or retired personnel who are not stockholders; or

(iv) Individuals who may be paid by the corporation or labor organization, such as consultants, but who are not employees, within the meaning of 26 CFR 31.3401(c)-1, of the corporation or labor organization for the purpose of income withholding tax: on employee wages under Internal Revenue Code of 1954, section 3402.

(3) Individuals on commission may be considered executive or administrative personnel if they have policymaking, managerial, professional, or supervisory responsibility and if the individuals are employees, within the meaning of 26 CFR 31.3401(c)-1 of the corporation for the purpose of income withholding tax on employee wages under the Internal Revenue Code of 1954, section 3402.

(4) The Fair Labor Standards Act, 29 U.S.C. 201, *et seq.* and the regulations issued pursuant to that Act, 29 CFR 541, may serve as a guideline in determining whether individuals have policymaking, managerial, professional, or supervisory responsibilities.

(d) *Labor organization* means any organization of any kind, or any agency or employee representative committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(e) *Members* means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock and in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization. Mem-

bers of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated. A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund.

(f) *Method of facilitating the making of contributions* means the manner in which the contributions are received or collected such as, but not limited to, payroll deduction or checkoff systems, other periodic payment plans, or return envelopes enclosed in a solicitation request.

(g) *Method of soliciting voluntary contributions* means the manner in which the solicitation is undertaken including, but not limited to, mailings, oral requests for contributions, and hand distribution of pamphlets.

(h) *Stockholder* means a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends.

(i) *Voluntary contributions* are contributions which have been obtained by the separate segregated fund of a corporation or labor organization in a manner which is in compliance with § 114.5(a) and which is in accordance with other provisions of the Act.

(2 U.S.C. 431(8)(B)(iii), 432(c)(3), 438(a)(8), 441b; 2 U.S.C. 441b, 437d(a)(8))

[41 FR 35955, Aug. 25, 1976, as amended at 44 FR 63045, Nov. 1, 1979; 45 FR 15125, Mar. 7, 1980; 45 FR 21210, Apr. 1, 1980; 48 FR 50508, Nov. 2, 1983]

§ 114.2. Prohibitions on contributions and expenditures.

(a) National banks, or corporations organized by authority of any law of Congress, are prohibited from making a contribution or expenditure, as defined in § 114.1(a), in connection with election to any political office, including local, State and Federal offices, or in connection with any primary election or political convention or caucus held to select candidates for any political office, including any local, State or Federal office.

(1) Such national banks and corporations may engage in the activities permitted by this part, except to the extent that such activity is foreclosed by provisions of law other than the Act.

(2) The provisions of this part apply to the activities of a national bank or corporation organized by any law of Congress in connection with both State and Federal elections.

(b) Any corporation whatever or any labor organization is prohibited from making a contribution or expenditure, as defined in § 114.1(a) in connection with any Federal election.

(c) A candidate, political committee, or other person is prohibited from knowingly accepting or receiving any contribution prohibited by this section.

(d) No officer or director of any corporation or any national bank, and no officer of any labor organization shall consent to any contribution or expenditure by the corporation, national bank, or labor organization prohibited by this section.

§ 114.3 Disbursements for communications in connection with a Federal election to restricted class.

(a) *General.* (1) A corporation may make communications including partisan communications to its stockholders and executive or administrative personnel and their families on any subject. A labor organization may make communications including partisan communications to its members and executive or administrative personnel and their families on any subject. Corporations and labor organizations may also make the nonpartisan communications permitted under 11 CFR 114.4 to their restricted class or any part of that class. No corporation or labor organization may make contributions or expenditures for partisan communications to the general public in connection with a federal election and no national bank or corporation organized by authority of any law of Congress may make contributions or expenditures for partisan communications to the general public in connection with any election to any political office including any State or local office.

(2) An incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock may communicate with its members, and executive or administrative personnel, and their families, as permitted in 11 CFR 114.3 (a)(1) and (c), and shall report disbursements for partisan communications to the extent required by 11 CFR 100.8(b)(4) and 104.6.

(b) *Reporting partisan communications.* Disbursements for partisan communications made by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and executive or administrative personnel and their families shall be reported to the extent required by 11 CFR 100.8(b)(4) and 104.6.

(c) *Means of making partisan communications.* The means of making partisan communications for which disbursements must be reported under 11 CFR 114.3(b) include, but are not limited to, the examples set forth in 11 CFR 114.3(c) (1) through (4).

(1) *Partisan publications.* Printed material of a partisan nature may be distributed by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and executive or administrative personnel and their families, provided that:

(i) The material is produced at the expense of the corporation or labor organization; and

(ii) The material constitutes a communication of the views of the corporation or the labor organization, and is not the republication or reproduction in whole or in part, of any broadcast, transcript or tape or any written, graphic, or other form of campaign materials prepared by the candidate, his or her campaign committees, or their authorized agents. A corporation, or labor organization may, under this section, use brief quotations from speeches or other materials of a candidate that demonstrate the candidate's position as part of the corporation's or labor organization's expression of its own views.

(2) *Partisan candidate and party appearances.* A corporation may allow a candidate or party representative to address its stockholders and executive or administrative personnel, and their families, at a meeting, convention or other function of the corporation. A labor organization may allow a candidate or party representative to address its members and executive or administrative personnel, and their families, at a meeting, convention or other function of the labor organization. Employees outside the restricted class of the corporation or labor organization who are necessary to administer the meeting, limited invited guests and observers, and representatives of the news media may also be present during a candidate or party representative appearance under this section. The candidate or party representative may ask for contributions to his or her campaign or party, or ask that contributions to the separate segregated fund of the corporation or labor organization be designated for his or her campaign or party. The incidental solicitation of persons outside the corporation's or labor organization's restricted class who may be present at the meeting as permitted by this section will not be a violation of 11 CFR 114.5(g).

(3) *Partisan phone banks.* A corporation may establish and operate phone banks to communicate with its stockholders and executive or administrative personnel, and their families, urging them to register and/or vote for a particular candidate or candidates, and a labor organization may establish and operate phone banks to communicate with its members and executive or administrative personnel, and their families, urging them to register and/or vote for a particular candidate or candidates.

(4) *Partisan registration and get-out-the-vote drives.* A corporation may conduct registration and get-out-the-vote drives aimed at its stockholders and executive or administrative personnel, and their families, or a labor organization may conduct registration and get-out-the-vote drives aimed at its members and executive or administrative personnel, and their families. Registration and get-out-the-vote

drives include providing transportation to the polls. Such drives may be partisan in that individuals may be urged to register with a particular party or to vote for a particular candidate or candidates, but assistance in registering or voting may not be withheld or refused on a partisan basis, and if transportation or other services are offered in connection with a registration or get-out-the-vote drive, such transportation or services may not be withheld or refused on a partisan basis.

(2 U.S.C. 441b, 437d(a)(8))
[48 FR 50505, Nov. 2, 1983]

§ 114.4 Expenditures for communications in connection with a Federal election to the restricted class and the general public.

(a) *Nonpartisan communications by a corporation or labor organization to its employees or its restricted class—*

(1) *General.* (i) A corporation may make the nonpartisan communications permitted under 11 CFR 114.4 (b) and (c) to its stockholders, executive or administrative personnel, other employees, and their families. A labor organization may make such communications to its members, executive or administrative personnel, other employees, and their families. Communications which a corporation or labor organization may make only to its solicitable class are found at 11 CFR 114.3.

(ii) An incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock may make the communications permitted under 11 CFR 114.4 (b) and (c) to its members, executive or administrative personnel, other employees, and their families, as provided by 11 CFR 114.4(d). The organizations covered under this section will be treated as corporations for the purpose of making communications to the general public under 11 CFR 114.4 (b) and (c).

(2) *Nonpartisan candidate and party appearances on corporate premises or at a meeting, convention or other function.* Corporations may permit candidates, candidates' representatives or representatives of political parties on corporate premises or at

a meeting, convention, or other function of the corporation to address or meet stockholders, executive or administrative personnel, and other employees of the corporation, and their families, under the conditions set forth in 11 CFR 114.4(a)(2) (i) through (v).

(i) If a candidate for the House or Senate or a candidate's representative is permitted to address or meet employees, all candidates for that seat who request to appear must be given the same opportunity to appear;

(ii) If a Presidential or Vice Presidential candidate or candidate's representative is permitted to address or meet employees, all candidates for that office who are seeking the nomination of a major party or who are on the general election ballot in enough States to win a majority of the electoral votes and who request to appear must be given the same opportunity to appear;

(iii) If representatives of a political party are permitted to address or meet employees, representatives of all political parties which had a candidate or candidates on the ballot in the last general election or which are actively engaged in placing or will have a candidate or candidates on the ballot in the next general election and who request to appear must be given the same opportunity to appear;

(iv) A corporation, its stockholders, executive or administrative personnel, or other employees of the corporation or its separate segregated fund shall make no effort, either oral or written, to solicit or direct or control contributions by members of the audience to any candidate or party in conjunction with any appearance by any candidate or party representative under this section; and

(v) A corporation, its stockholders, executive or administrative personnel or other employees of the corporation or its separate segregated fund shall not, in conjunction with any candidate or party representative appearance under this section, endorse, support or oppose any candidate, group of candidates or political party.

(3) *Nonpartisan candidate and party appearances on labor organization premises or at a meeting, convention or other function.* A labor organi-

zation may permit candidates, candidates' representatives or representatives of political parties, on the labor organization's premises or at a meeting, convention, or other function of the labor organization to address or meet members, executive or administrative personnel, and other employees of the labor organization, and their families, if the conditions set forth in 11 CFR 114.4 (a)(2) (i) through (iii) and 11 CFR 114.4 (a)(3) (i) and (ii) are met.

(i) An official, member, or employee of a labor organization or its separate segregated fund shall not make any effort, either oral or written, to solicit or direct or control contributions by members of the audience to any candidate or party representative under this section.

(ii) An official, member, or employee of a labor organization or its separate segregated fund shall not, in conjunction with any candidate or party representative appearance under this section, endorse, support or oppose any candidate, group of candidates or political party.

(b) *Nonpartisan communications by corporations and labor organizations to the general public*—(1) *General.* A corporation or labor organization may make the communications described in 11 CFR 114.4(b) (2) through (5) to the general public. The corporation or labor organization may include its logo or otherwise identify itself as the sponsor of the communication.

(2) *Nonpartisan registration and voting communications.* A corporation or labor organization may make nonpartisan registration and get-out-the-vote communications to the general public.

(i) For purposes of 11 CFR 114.4(b)(2), the following are factors that the Commission may consider in determining whether a registration or get-out-the-vote communication is nonpartisan:

(A) It neither names nor depicts any particular candidate(s) or it names or depicts all candidates for a particular Federal office without favoring any candidate(s) over any other(s);

(B) It names no political party(s) except that it may include the political party affiliation of all candidates

named or depicted under 11 CFR 114.4(b)(2)(i)(A);

(C) It is limited to urging acts such as voting and registering and to describing the hours and places of registration and voting.

(ii) A corporation or labor organization may make communications permitted under this section through posters, billboards, broadcasting media, newspapers, newsletters, brochures, or similar means of communication with the general public.

(3) *Official registration and voting information.* (i) A corporation or labor organization may distribute to the general public, or reprint in whole and distribute to the general public, any registration or voting information, such as instructional materials, which has been produced by the official election administrators.

(ii) A corporation or labor organization may distribute official registration-by-mail forms to the general public if registration by mail is permitted by the applicable State law.

(iii) A corporation or labor organization may donate funds to State or local agencies responsible for the administration of elections to help defray the costs of printing or distributing registration or voting information and forms.

(iv) the information and forms referred to in 11 CFR 114.4(b)(3) (i) through (iii) must be distributed in a nonpartisan manner, and the corporation or labor organization may not, in connection with the distribution, endorse, support, or otherwise promote registration with or voting for a particular party or candidate.

(4) *Voting records.* A corporation or labor organization may prepare and distribute to the general public the voting records of Members of Congress as long as the preparation and distribution is not for the purpose of influencing a Federal election.

(5) *Voter guides.* (i) A corporation or labor organization may prepare and distribute to the general public nonpartisan voter guides consisting of questions posed to candidates concerning their positions on campaign issues and the candidates' responses to those questions. The following are factors that the Commission may consider in

determining whether a voter guide is nonpartisan:

(A) The questions are directed to all of the candidates for a particular seat or office, giving the candidates equal time to respond, except that in the case of Presidential and Vice Presidential candidates the questions may be directed only to those candidates seeking the nomination of a major party or to those appearing on the general election ballot in enough States to win a majority of the electoral votes;

(B) The voter guide reprints verbatim the responses of each candidate to whom questions were sent, without any additional comment, editing, or emphasis, although the sponsoring organization may impose limitations on the number of words per response when the questions are initially sent to the candidates for their comments;

(C) The wording of the questions presented does not suggest or favor any position on the issues covered;

(D) The voter guide expresses no editorial opinion concerning the issues presented nor does it indicate any support for or opposition to any candidate or political party;

(E) The sponsor may ask each candidate to provide biographical information such as education, employment positions, offices held, and community involvement and may impose a limitation on the number of words per submission;

(F) The voter guide is made available to the general public in the geographic area in which the sponsoring organization normally operates.

(ii) A corporation or labor organization may distribute voter guides or other types of brochures describing the candidates or their positions which are obtained from a nonprofit organization which is exempt from Federal taxation under 26 U.S.C. 501(c) (3) or (4) and which does not support, endorse or oppose candidates or political parties. Publications obtained from such nonprofit organizations need not comply with the guidelines set forth at 11 CFR 114.4(b)(5)(i), but they may not favor one candidate or political party over another.

(c) *Nonpartisan registration and get-out-the-vote drives*—(1) *Requirements for conducting nonpartisan drives.* (i)

A corporation or labor organization may support nonpartisan voter registration drives which are not limited to its restricted class if the conditions in paragraphs (c)(1)(i) (A) through (C) of this section are met. A corporation or labor organization may support nonpartisan get-out-the-vote drives, such as by transporting people to the polls, which drives are not limited to its restricted class if the conditions of paragraphs (c)(1)(i) (A) through (C) of this section are met.

(A) The corporation or labor organization shall jointly sponsor the drives with a nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) and which does not support, endorse or oppose candidates or political parties, or with a State or local agency which is responsible for the administration of elections; and

(B) The activities shall be conducted by the tax-exempt organization or by persons authorized by a State or local agency; and

(C) These services shall be made available without regard to the voter's political preference.

(ii) For the purposes of 11 CFR 114.4(c)(1)(i)(B), a corporation or labor organization which provides space on the corporation's or labor organization's premises for a table, rack or booth from which official registration or voting information is distributed to the general public, and which provides its employees or members to aid in the distribution of such materials, shall not be considered to be conducting a registration or voting drive.

(2) *Donation of funds.* A corporation or labor organization may donate funds to be used for nonpartisan registration drives to State or local agencies responsible for the administration of elections and to nonprofit organizations which are exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) and which do not support, endorse or oppose candidates or political parties.

(3) *Use of personnel and facilities.* A nonpartisan tax-exempt organization, or person authorized by the State or local agency, in conducting nonpartisan registration and get-out-the-vote activities, may utilize the employees

and facilities of a corporation or the employees or members and facilities of a labor organization.

(4) *When co-sponsorship not required.* A nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) and which does not support, endorse or oppose any candidates or political parties may conduct nonpartisan voter registration and get-out-the-vote activities on its own without a cosponsor.

(5) *Identification of drive sponsors.* All materials prepared for distribution to the general public in connection with the registration or voting drive shall include the full names of all drive sponsors.

(d) *Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations-without capital stock.* An incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock may permit candidates, candidates' representatives or representatives of political parties to address or meet members and employees of the organization, and their families, on the organization's premises or at a meeting, convention or other function of the organization, provided that the conditions set forth in 11 CFR 114.4(a)(2) (i) through (v) are met.

(e) *Nonpartisan candidate debates.* (1) A nonprofit organization qualified under 11 CFR 110.13(a)(1) may use its own funds and may accept funds, donated by corporations or labor organizations under 11 CFR 114.4(e)(3) to defray costs incurred in staging nonpartisan candidate debates held in accordance with 11 CFR 110.13.

(2) A bona fide broadcaster, newspaper, magazine and other periodical publication may use its own funds to defray costs incurred in staging nonpartisan public candidate debates held in accordance with 11 CFR 110.13.

(3) A corporation or labor organization may donate funds to nonprofit organizations qualified under 11 CFR 110.13(a)(1) to stage nonpartisan candidate debates held in accordance with 11 CFR 110.13 and 114.4(e).

(2 U.S.C. 431(e), 431(f) and 441b; 2 U.S.C. 441b, 437d(a)(8))

[41 FR 35955, Aug. 25, 1976, as amended at 44 FR 76736, Dec. 27, 1979; 48 FR 50506, Nov. 2, 1983; 48 FR 52432, Nov. 18, 1983]

§ 114.5 Separate segregated funds.

(a) *Voluntary contributions to a separate segregated fund.* (1) A separate segregated fund is prohibited from making a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment or by monies obtained in any commercial transaction. For purposes of this section, fees or monies paid as a condition of acquiring or retaining membership or employment are monies required as a condition of membership or employment even though they are refundable upon request of the payor.

(2) A guideline for contributions may be suggested by a corporation or a labor organization, or the separate segregated fund of either, provided that the person soliciting or the solicitation informs the persons being solicited—

(i) That the guidelines are merely suggestions; and

(ii) That an individual is free to contribute more or less than the guidelines suggest and the corporation or labor organization will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.

A corporation or labor organization or the separate segregated fund of either may not enforce any guideline for contributions.

(3) Any person soliciting an employee or member for a contribution to a separate segregated fund must inform such employee or member of the political purposes of the fund at the time of the solicitation.

(4) Any persons soliciting an employee or member for a contribution to a separate segregated fund must inform the employee or member at the time of such solicitation of his or her right

to refuse to so contribute without any reprisal.

(5) Any written solicitation for a contribution to a separate segregated fund which is addressed to an employee or member must contain statements which comply with the requirements of paragraphs (a)(3) and (4) of this section, and if a guideline is suggested, statements which comply with the requirements of paragraph (a)(2) of this section.

(b) *Use of treasury monies.* Corporations, labor organizations, membership organizations, cooperatives, or corporations without capital stock may use general treasury monies, including monies obtained in commercial transactions and dues monies or membership fees, for the establishment, administration, and solicitation of contributions to its separate segregated fund. A corporation, labor organization, membership organization, cooperative, or corporation without capital stock may not use the establishment, administration, and solicitation process as a means of exchanging treasury monies for voluntary contributions.

(1) A contributor may not be paid for his or her contribution through a bonus, expense account, or other form of direct or indirect compensation.

(2) A corporation, labor organization, membership organization, cooperative, or corporation without capital stock may, subject to the provisions of 39 U.S.C. 3005 and Chapter 61, Title 18, United States Code, utilize a raffle or other fundraising device which involves a prize, so long as State law permits and the prize is not disproportionately valuable. Dances, parties, and other types of entertainment may also be used as fundraising devices. When using raffles or entertainment to raise funds, a reasonable practice to follow is for the separate segregated fund to reimburse the corporation or labor organization for costs which exceed one-third of the money contributed.

(3) If the separate segregated fund pays any solicitation or other administrative expense from its own account, which expense could be paid for as an administrative expense by the collecting agent, the collecting agent may reimburse the separate segregated fund

no later than 30 calendar days after the expense was paid by the separate segregated fund.

(c) *Membership in separate segregated funds.* (1) A separate segregated fund established by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock may provide that persons who contribute a certain amount to its separate segregated fund will become *members* of its separate segregated fund, so long as—

(i) The fund accepts contributions of all amounts, subject to the limitations of part 110;

(ii) Subject to paragraph (c)(1)(iii) of this section, nothing of value may be given in return for or in the course of membership;

(iii) The fund may use membership status for intangible privileges such as allowing members only to choose the candidates to whom the fund will contribute.

(2) The fact that the separate segregated fund of a corporation, labor organization, membership organization, cooperative, or corporation without capital stock is a *membership group* does not provide the corporation, labor organization, membership organization, cooperative, or corporation without capital stock with any greater right of communication or solicitation than the corporation, labor organization, membership organization, cooperative, or corporation without capital stock is otherwise granted under this part.

(d) *Control of funds.* A corporation, membership organization, cooperative, corporation without capital stock, or labor organization may exercise control over its separate segregated fund.

(e) *Disclosure.* Separate segregated funds are subject to the following disclosure requirements:

(1) A corporation or labor organization is not required to report any payment made or obligation incurred which is not a contribution or expenditure, as defined in § 114.1(a), except those reporting requirements specifically set forth in this section.

(2) A membership organization or corporation is not required to report the cost of any communication to its members or stockholders or executive

or administrative personnel, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to Federal office, except that—

(i) The costs incurred by a membership organization, including a labor organization, or by a corporation, directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed \$2,000 per election, be reported in accordance with 11 CFR 100.8(b)(4); and

(ii) The amounts paid or incurred for legal or accounting services rendered to or on behalf of a candidate or political committee solely for the purpose of ensuring compliance with the provisions of the Act or chapter 95 or 96 of the Internal Revenue Code of 1954 paid by a corporation or labor organization which is the regular employer of the individual rendering such services, shall be reported in accordance with the provisions of part 104.

(3) A separate segregated fund is subject to all other disclosure requirements of political committees as set forth in part 104.

(f) *Contribution limits.* Separate segregated funds are subject to the contribution limitations for political committees set forth in part 110. (See particularly § 110.3).

(g) *Solicitations.* Except as specifically provided in §§ 114.6, 114.7, and 114.8, a corporation and/or its separate segregated fund or a labor organization and/or its separate segregated fund is subject to the following limitations on solicitations:

(1) A corporation or a separate segregated fund established by a corporation is prohibited from soliciting contributions to such fund from any person other than its stockholders and their families and its executive or administrative personnel and their families. A corporation may solicit the executive or administrative personnel of its subsidiaries, branches, divisions, and affiliates and their families. For

purposes of this section, the factors set forth at 11 CFR 100.5(g)(4) shall be used to determine whether an organization is an affiliate of a corporation.

(2) A labor organization, or a separate segregated fund established by a labor organization is prohibited from soliciting contributions to such a fund from any person other than its members and executive or administrative personnel, and their families.

(h) *Accidental or inadvertent solicitation.* Accidental or inadvertent solicitation by a corporation or labor organization, or the separate segregated fund of either, of persons apart from and beyond those whom it is permitted to solicit will not be deemed a violation, provided that such corporation or labor organization or separate segregated fund has used its best efforts to comply with the limitations regarding the persons it may solicit and that the method of solicitation is corrected forthwith after the discovery of such erroneous solicitation.

(i) *Communications paid for with voluntary contributions.* A separate segregated fund may, using voluntary contributions, communicate with the general public, except that such communications may not solicit contributions to a separate segregated fund established by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock, unless such solicitation is permitted under paragraph (g) of this section.

(j) *Acceptance of contributions.* A separate segregated fund may accept contributions from persons otherwise permitted by law to make contributions.

(k) *Availability of methods.* Any corporation, including its subsidiaries, branches, divisions, and affiliates, that uses a method of soliciting voluntary contributions or facilitating the making of voluntary contributions from its stockholders or executive or administrative personnel and their families, shall make that method available to a labor organization representing any members working for the corporation, its subsidiaries, branches, divisions, and affiliates for soliciting voluntary contributions or facilitating

the making of voluntary contributions from its members and their families. Such method shall be made available on the written request of the labor organization and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby. For example—

(1) If a corporation, including its subsidiaries, branches, divisions, or affiliates utilizes a payroll deduction plan, check-off system, or other plan which deducts contributions from the dividend or payroll checks of stockholders or executive or administrative personnel, the corporation shall, upon written request of the labor organization, make that method available to members of the labor organization working for the corporation, its subsidiaries, branches, divisions, or affiliates, who wish to contribute to the separate segregated fund of the labor organization representing any members working for the corporation, or any of its subsidiaries, branches, divisions, or affiliates. The corporation shall make the payroll deduction plan available to the labor organization at a cost sufficient only to reimburse the corporation for the actual expenses incurred thereby.

(2) If a corporation uses a computer for addressing envelopes or labels for a solicitation to its stockholders or executive or administrative personnel, the corporation shall, upon written request, program the computer to enable the labor organization to solicit its members. The corporation shall charge the labor organization a cost sufficient only to reimburse the corporation for the actual expenses incurred in programming the computers and the allocated cost of employee time relating to the work, and the materials used.

(3) If a corporation uses corporate facilities, such as a company dining room or cafeteria, for meetings of stockholders or executive or administrative personnel at which solicitations are made, the corporation shall upon written request of the labor organization allow that labor organization to use existing corporate facilities for meetings to solicit its members. The labor organization shall be required to reimburse the corporation for any

actual expenses incurred thereby, such as any increase in the overhead to the corporation and any cost involved in setting up the facilities.

(4) If a corporation uses no method to solicit voluntary contributions or to facilitate the making of voluntary contributions from stockholders or executive or administrative personnel, it is not required by law to make any method available to the labor organization for its members. The corporation and the labor organization may agree upon making any lawful method available even though such agreement is not required by the Act.

(5) The availability of methods of twice yearly solicitations is subject to the provisions of § 114.6(e).

(1) *Methods permitted by law to labor organizations.* Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members and executive or administrative personnel.

(2 U.S.C. 441b, 437d(a)(8))

[41 FR 35955, Aug. 25, 1976, as amended at 45 FR 21210, Apr. 1, 1980; 48 FR 26303, June 7, 1983; 48 FR 50508, Nov. 2, 1983; 54 FR 34114, Aug. 17, 1989; 54 FR 48580, Nov. 24, 1989]

§ 114.6 Twice yearly solicitations.

(a) A corporation and/or its separate segregated fund may make a total of two written solicitations for contributions to its separate segregated fund per calendar year of its employees other than stockholders, executive or administrative personnel, and their families. Employees as used in this section does not include former or retired employees who are not stockholders. Nothing in this paragraph shall limit the number of solicitations a corporation may make of its stockholders and executive or administrative personnel under § 114.5(g).

(b) A labor organization and/or its separate segregated fund may make a total of two written solicitations per calendar year of employees who are

not members of the labor organization, executive or administrative personnel, or stockholders (and their families) of a corporation in which the labor organization represents members working for the corporation. Nothing in this paragraph shall limit the number of solicitations a labor organization may make of its members under § 114.5(g).

(c) *Written solicitation.* A solicitation under this section may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residences. All written solicitations must inform the recipient—

(1) Of the existence of the custodial arrangement described hereinafter;

(2) That the corporation, labor organization, or the separate segregated fund of either cannot be informed of persons who do not make contributions; and

(3) That persons who, in a calendar year make a single contribution of \$50 or less, or multiple contributions aggregating \$200 or less may maintain their anonymity by returning their contributions to the custodian.

(d) *The custodial arrangement.* In order to maintain the anonymity of persons who do not wish to contribute and of persons who wish to respond with a single contribution of \$50 or less, or multiple contributions aggregating \$200 or less in a calendar year, and to satisfy the recordkeeping provisions, the corporation, labor organization, or separate segregated fund of either shall establish a custodial arrangement for collecting the contributions under this section.

(1) The custodian for a separate segregated fund established by a corporation shall not be a stockholder, officer, executive or administrative personnel, or employee of the corporation, or an officer, or employee of its separate segregated fund. The custodian for a separate segregated fund established by a labor organization shall not be a member, officer or employee of the labor organization or its separate segregated fund.

(2) The custodian shall keep the records of contributions received in accordance with the requirements of part 102 and shall also—

(i) Establish a separate account and deposit contributions in accordance with the provisions of part 103;

(ii) Provide the fund with the identification of any person who makes a single contribution of more than \$50 and the identification of any person who makes multiple contributions aggregating more than \$200. The custodian must provide this information within a reasonable time prior to the reporting date of the fund under part 104;

(iii) Periodically forward all funds in the separate account, by check drawn on that account, to the separate segregated fund; and

(iv) Treat all funds which appear to be illegal in accordance with the provisions of § 103.3(b).

(3) The custodian shall not—

(i) Make the records of persons making a single contribution of \$50 or less, or multiple contributions aggregating \$200 or less, in a calendar year, available to any person other than representatives of the Federal Election Commission, the Clerk of the House or the Secretary of the Senate, as appropriate, and law enforcement officials or judicial bodies.

(ii) Provide the corporation or labor organization or the separate segregated fund of either with any information pertaining to persons who, in a calendar year, make a single contribution of \$50 or less or multiple contributions aggregating \$200 or less except that the custodian may forward to the corporation, labor organization or separate segregated fund of either the total number of contributions received; or

(iii) Provide the corporation, labor organization, or the separate segregated fund of either with any information pertaining to persons who have not contributed.

(4) The corporation, labor organization, or the separate segregated fund of either shall provide the custodian with a list of all contributions, indicating the contributor's identification and amount contributed, which have been made directly to the separate segregated fund by any person within the group of persons solicited under this section.

(5) Notwithstanding the prohibitions of paragraph (d)(1) of this section, the custodian may be employed by the separate segregated fund as its treasurer and may handle all of its contributions, provided that the custodian preserves the anonymity of the contributors as required by this section. The custodian shall file the required reports with the Federal Election Commission, the Clerk of the House, or the Secretary of the Senate, as appropriate. A custodian who serves as treasurer is subject to all of the duties, responsibilities, and liabilities of a treasurer under the Act, and may not participate in the decision making process whereby the separate segregated fund makes contributions and expenditures.

(e) *Availability of methods.* (1) A corporation or labor organization or the separate segregated fund of either may not use a payroll deduction plan, a check-off system, or other plan which deducts contributions from an employee's paycheck as a method of facilitating the making of contributions under this section.

(2) The twice yearly solicitation may only be used by a corporation or labor organization to solicit contributions to its separate segregated fund and may not be used for any other purpose.

(3) A corporation is required to make available to a labor organization representing any members working for the corporation or its subsidiaries, branches, divisions, or affiliates the method which the corporation uses to solicit employees under this section during any calendar year.

(i) If the corporation uses a method to solicit any employees under this section, the corporation is required to make that method available to the labor organization to solicit the employees of the corporation who are not represented by that labor organization, and the executive or administrative personnel and the stockholders of the corporation and their families.

(ii) If the corporation does not wish to disclose the names and addresses of stockholders or employees, the corporation shall make the names and addresses of stockholders and employees available to an independent mailing service which shall be retained to

make the mailing for *both* the corporation and the labor organization for any mailings under this section.

(iii) If the corporation makes no solicitation of employees under this section during the calendar year, the corporation is not required to make any method or any names and addresses available to any labor organization.

(4) The corporation shall notify the labor organization of its intention to make a solicitation under this section during a calendar year and of the method it will use, within a reasonable time prior to the solicitation, in order to allow the labor organization opportunity to make a similar solicitation.

(5) If there are several labor organizations representing members employed at a single corporation, its subsidiaries, branches, divisions, or affiliates, the labor organizations, either singularly or jointly, may not make a combined total of more than two written solicitations per calendar year. A written solicitation may contain a request for contributions to each separate fund established by the various labor organizations making the combined mailing.

(2 U.S.C. 431(8)(B)(iii), 432(c)(3), 438(8)(a))

[41 FR 35955, Aug. 25, 1976, as amended at 45 FR 15125, Mar. 7, 1980]

§ 114.7 Membership organizations, cooperatives, or corporations without capital stock.

(a) Membership organizations, cooperatives, or corporations without capital stock, or separate segregated funds established by such persons may solicit contributions to the fund from members and executive or administrative personnel, and their families, of the organization, cooperative, or corporation without capital stock.

(b) Nothing in this section waives the prohibition on contributions to the separate segregated fund by corporations, national banks, or labor organizations which are members of a membership organization, cooperative, or corporation without capital stock.

(c) A trade association whose membership is made up in whole or in part of corporations is subject to the provisions of § 114.8 when soliciting any stockholders or executive or administrative personnel of member corpora-

tions. A trade association which is a membership organization may solicit its noncorporate members under the provisions of this section.

(d) The question of whether a professional organization is a corporation is determined by the law of the State in which the professional organization exists.

(e) There is no limitation upon the number of times an organization under this section may solicit its members and executive or administrative personnel, and their families.

(f) There is no limitation under this section on the method of solicitation or the method of facilitating the making of voluntary contributions which may be used.

(g) A membership organization, cooperative, or corporation without capital stock and the separate segregated funds of the organizations are subject to the provisions in § 114.5(a).

(h) A membership organization, cooperative, or corporation without capital stock may communicate with its members and executive or administrative personnel, and their families, under the provisions of § 114.3.

(i) A mutual life insurance company may solicit its policyholders if the policyholders are members within the organizational structure.

(j) A membership organization, including a trade association, cooperative, or corporation without capital stock or a separate segregated fund established by such organization may not solicit contributions from the separate segregated funds established by its members. The separate segregated fund established by a membership organization, including a trade association, cooperative, or corporation without capital stock may, however, accept unsolicited contributions from the separate segregated funds established by its members.

(2 U.S.C. 441b, 437d(a)(8))

[41 FR 35955, Aug. 25, 1976, as amended at 48 FR 50508, Nov. 2, 1983]

§ 114.8 Trade associations.

(a) *Definition.* A trade association is generally a membership organization of persons engaging in a similar or related line of commerce, organized to

promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit, and no part of the net earnings of which inures to the benefit of any member.

(b) *Prohibition.* Nothing in this section waives the prohibition on contributions by corporations which are members of a trade association.

(c) *Limitations.* A trade association or a separate segregated fund established by a trade association may solicit contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders and personnel if—

(1) The member corporation involved has separately and specifically approved the solicitations; and

(2) The member corporation has not approved a solicitation by any other trade association for the same calendar year.

(d) *Separate and specific approval.*

(1) The member corporation must knowingly and specifically approve any solicitation for a trade association, whether the solicitation is done by the trade association, its separate segregated fund, or the corporation or any of its personnel, for contributions to the trade association's separate segregated fund.

(2) A copy of each approved request received by a trade association or its separate segregated fund shall be maintained by the trade association or its fund for three years from the year for which the approval is given.

(3) The request for approval may contain a copy of solicitation materials which will be used if approval is granted. Such a mailing must specifically indicate the requirement of approval and the limitation of paragraph (c)(2) of this section, and approval must be granted to the trade association or its separate segregated fund prior to the time any solicitation is made of the stockholders or executive or administrative personnel by the trade association, its separate segregated fund, or by the corporation for contributions to the separate segregated fund of the trade association. (The request for ap-

proval may be sent to the representatives of the corporation with whom the trade association normally conducts the association's activities.)

(4) A separate authorization specifically allowing a trade association to solicit its corporate member's stockholders, and executive or administrative personnel applies through the calendar year for which it is designated. A separate authorization by the corporate member must be designated for each year during which the solicitation is to occur. This authorization may be requested and may also be received prior to the calendar year in which the solicitation is to occur.

(5) In its request to a member corporation, a trade association may indicate that it intends to solicit, for example, a limited class of the executive or administrative personnel of the member corporation, or only the executive or administrative personnel but not the stockholders of the member corporation. Moreover, in its approval, a member corporation may similarly limit any solicitation by the trade association or its separate segregated fund. In any event, a member corporation, once it has approved any solicitation—even to a limited extent—of its personnel or stockholders by a trade association or its separate segregated fund, is precluded from approving any such solicitation by another trade association or its separate segregated fund and the corporation and its personnel are precluded from soliciting the corporation's executive or administrative personnel or stockholders on behalf of another trade association or its separate segregated fund.

(e) *Solicitation.* (1) After a trade association has obtained the approval required in paragraph (c) of this section, there is no limit on the number of times the trade association or its separate segregated fund may solicit the persons approved by the member corporation during the calendar year to which the approval applies. The member corporation may, however, in its approval limit the number of times solicitations may be made.

(2) A member corporation which grants permission to a trade association to solicit is in no way restricted in its rights under § 114.5(g) to solicit its

stockholders or executive or administrative personnel and their families for contributions to the corporation's own separate segregated fund.

(3) There is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use. The member corporation may not use a payroll deduction or checkoff system for executive or administrative personnel contributing to the separate segregated fund of the trade association.

(4) A trade association and/or its separate segregated fund is subject to the provisions of § 114.5(a).

(f) *Solicitation of a subsidiary corporation.* If a parent corporation is a member of the trade association but its subsidiary is not, the trade association or its separate segregated fund may only solicit the parent's executive or administrative personnel and their families and the parent's stockholders and their families; it may not solicit the subsidiary's executive or administrative personnel or stockholders or their families. If a subsidiary is a member of the trade association but the parent corporation is not, the trade association or its separate segregated fund may only solicit the subsidiary's executive or administrative personnel and their families and the subsidiary's stockholders and their families; it may not solicit the parent's executive or administrative personnel or stockholders or their families. If both parent and subsidiary are members of the trade association, the executive or administrative personnel and their families and the stockholders and their families of each may be solicited.

(g) *Federations of trade associations.* (1) A federation of trade associations is an organization representing trade associations involved in the same or allied line of commerce. Such a federation may, subject to the following limitations, solicit the members of the federation's regional, State or local affiliates or members, provided that all of the political committees established, financed, maintained or controlled by the federation and its regional, State, or local affiliates or members are considered one political committee for the

purposes of the limitations in §§ 110.1 and 110.2. The factors set forth at § 100.5(g)(4) shall be used to determine whether an entity is a regional, State or local affiliate of a federation of trade associations.

(i) The federation and its member associations may engage in a joint solicitation; or

(ii) The member association may delegate its solicitation rights to the federation.

(2) A federation is subject to the provisions of this section when soliciting the stockholders and executive or administrative personnel of the corporate members of its member associations.

(h) *Communications other than solicitations.* A trade association may make communications, other than solicitations, to its members and their families under the provisions of § 114.3. When making communications to a member which is a corporation, the trade association may communicate with the representatives of the corporation with whom the trade association normally conducts the association's activities.

(i) *Trade association employees.* (1) A trade association may communicate with its executive or administrative personnel and their families under the provisions of § 114.3; a trade association may communicate with its other employees under the provisions of § 114.4.

(2) A trade association may solicit its executive or administrative personnel and their families under the provisions of § 114.5(g); a trade association may solicit its other employees under the provisions of § 114.6.

(2 U.S.C. 441b, 437d(a)(8))

[41 FR 35955, Aug. 25, 1976, as amended at 48 FR 48650, Oct. 20, 1983; 48 FR 50508, Nov. 2, 1983; 54 FR 10622, Mar. 15, 1989; 54 FR 27154, June 28, 1989, 54 FR 34114; Aug. 17, 1989; 54 FR 48580, Nov. 24, 1989; 55 FR 2281, Jan. 23, 1990]

§ 114.9 Use of corporate or labor organization facilities and means of transportation.

(a) *Use of corporate facilities for individual volunteer activity by stockholders and employees.* (1) Stockhold-

ers and employees of the corporation may, subject to the rules and practices of the corporation, make occasional, isolated, or incidental use of the facilities of a corporation for individual volunteer activity in connection with a Federal election and will be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased. As used in this paragraph, *occasional, isolated, or incidental use* generally means—

(i) When used by employees during working hours, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or

(ii) When used by stockholders other than employees during the working period, such use does not interfere with the corporation in carrying out its normal activities; but

(iii) Any such activity which does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, shall be considered as occasional, isolated, or incidental use of the corporate facilities.

(2) A stockholder or employee who makes more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activities in connection with a Federal election is required to reimburse the corporation within a commercially reasonable time for the normal and usual rental charge, as defined in 11 CFR 100.7(a)(1)(iii)(B), for the use of such facilities.

(b) *Use of labor organization facilities for individual volunteer activity by officials, members and employees.*

(1) The officials, members, and employees of a labor organization may, subject to the rules and practices of the labor organization, make occasional, isolated, or incidental use of the facilities of a labor organization for individual volunteer activity in connection with a Federal election and will be required to reimburse the labor organization only to the extent that the overhead or operating costs of the labor organization are increased. As

used in this paragraph, *occasional, isolated, or incidental use* generally means—

(i) When used by employees during working hours, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or

(ii) When used by members other than employees during the working period, such use does not interfere with the labor organization in carrying out its normal activities; but

(iii) Any such activity which does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, shall be considered as occasional, isolated, or incidental use of the labor organization facilities.

(2) The officials, members, and employees who make more than occasional, isolated, or incidental use of a labor organization's facilities for individual volunteer activities in connection with a Federal election are required to reimburse the labor organization within a commercially reasonable time for the normal and usual rental charge, as defined in 11 CFR 100.7(a)(1)(iii)(B), for the use of such facilities.

(c) *Use of corporate or labor organization facilities to produce materials.* Any person who uses the facilities of a corporation or labor organization to produce materials in connection with a Federal election is required to reimburse the corporation or labor organization within a commercially reasonable time for the normal and usual charge for producing such materials in the commercial market.

(d) *Use or rental of corporate or labor organization facilities by other persons.* Persons, other than those specifically mentioned in paragraphs (a) and (b) of this section, who make any use of corporate or labor organization facilities, such as by using telephones or typewriters or borrowing office furniture, for activity in connection with a Federal election are required to reimburse the corporation or labor organization within a commercially reasonable time in the amount of the normal and usual rental charge,

as defined in 11 CFR 100.7(a)(1)(iii)(B), for the use of the facilities.

(e) *Use of airplanes and other means of transportation.* (1) A candidate, candidate's agent, or person traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation or labor organization other than a corporation or labor organization licensed to offer commercial services for travel in connection with a Federal election must, in advance, reimburse the corporation or labor organization—

(i) In the case of travel to a city served by regularly scheduled commercial service, the first class air fare;

(ii) In the case of travel to a city not served by a regularly scheduled commercial service, the usual charter rate.

(2) A candidate, candidate's agent, or person traveling on behalf of a candidate who uses other means of transportation owned or leased by a corporation or labor organization must reimburse, within a commercially reasonable time, the corporation or labor organization at the normal and usual rental charge.

[41 FR 35955, Aug. 25, 1976, as amended at 45 FR 21210, Apr. 1, 1980]

§ 114.10 [Reserved]

§ 114.11 Employee participation plans.

(a) A corporation may establish and administer an employee participation plan (i.e. a *trustee plan*) which is a political giving program in which a corporation pays the cost of establishing and administering separate bank accounts for any employee who wishes to participate. The cost of administering and establishing includes the payment of costs for a payroll deduction or check-off plan and the cost of maintaining the separate bank accounts.

(1) The employees must exercise complete control and discretion over the disbursement of the monies in their accounts.

(2) The trustee, bank, or other administrator shall not provide the corporation or its separate segregated fund any report of the source or recipient of any contribution(s) or donation(s) into or out of any account

or of the amount any employee has in an account.

(3) The trustee, bank, or other administrator may provide the corporation or its separate segregated fund with a periodic report limited to information about the total number of employees in the program, the total number of funds in all the accounts combined, and the total amount of contributions made to all candidates and committees combined.

(4) No stockholder, director, or employee of the corporation or its separate segregated fund may exert pressure of any kind to induce participation in the program.

(5) No stockholder, director, or employee of the corporation or its separate segregated fund may exercise any direction or control, either oral or written, over contributions by participants in the program to any candidate, group of candidates, political party, or other person.

(b) An employee participation plan must be made available to all employees including members of a labor organization who are employees of the corporation. Communications about participation in the plan may be conducted by either the corporation or the labor organization or both.

(c) A labor organization may establish and administer an employee participation plan subject to the above provisions, except that the cost shall be borne by the labor organization.

(d) The method used to transmit employee or member contributions to the candidate or political committee may not in any manner identify the corporation or labor organization which established the employee participation plan.

§ 114.12 Miscellaneous provisions.

(a) An organization may incorporate and not be subject to the provisions of this part if the organization incorporates for liability purposes only, and if the organization is a political committee as defined in 11 CFR 100.5. Notwithstanding the corporate status of the political committee, the treasurer of an incorporated political committee remains personally responsible for car-

rying out their respective duties under the Act.

(b) Notwithstanding any other provision of part 114, a corporation or a labor organization which customarily makes its meeting rooms available to clubs, civic or community organizations, or other groups may make such facilities available to a political committee or candidate if the meeting rooms are made available on a nonpartisan basis and on the same terms given to other groups using the meeting rooms.

(c)(1) A corporation of labor organization may not pay the employer's share of the cost of fringe benefits, such as health and life insurance and retirement, for employees or members on leave-without-pay to participate in political campaigns of Federal candidates. The separate segregated fund of a corporation or a labor organization may pay the employer's share of fringe benefits, and such payment would be a contribution in-kind to the candidate. An employee or member may, out of unreimbursed personal funds, assure the continuity of his or her fringe benefits during absence from work for political campaigning, and such payment would not be a contribution in-kind.

(2) Service credit for periods of leave-without-pay is not considered compensation for purposes of this section if the employer normally gives identical treatment to employees placed on leave-without-pay for nonpolitical purposes.

(d) A corporation which, prior to May 11, 1976, had solicited employees other than stockholders or executive or administrative personnel for voluntary contributions to its separate segregated fund and had offered such employees the opportunity to enroll in a payroll deduction plan may, until December 31, 1976, unless the employee withdraws before that date, continue to deduct contributions from the checks of employees who signed up prior to May 11, 1976. Any solicitation of such employees after May 11, 1976, is subject to the provisions of 2 U.S.C. 441b(b)(4)(B) and § 114.6 when prescribed.

[41 FR 35955, Aug. 25, 1976, as amended at 45 FR 21210, Apr. 1, 1980]

PART 115—FEDERAL CONTRACTORS

Sec.

115.1 Definitions.

115.2 Prohibition.

115.3 Corporations, labor organizations, membership organizations, cooperatives, and corporations without capital stock.

115.4 Partnerships.

115.5 Individuals and sole proprietors.

115.6 Employee contributions or expenditures.

AUTHORITY: Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat. 1279, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat. 481 (2) U.S.C. 437d(a)(8)), and sec. 315(a)(10), Pub. L. 92-225, 86 Stat. 16, amended by secs. 208(a) and (c)(10), and 209(a)(1) and (b)(1), Pub. L. 93-443, 88 Stat. 1279, 1287, and sec. 105, Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 438(a)(10)).

SOURCE: 41 FR 35963, Aug. 25, 1976, unless otherwise noted.

§ 115.1 Definitions.

(a) A *Federal contractor* means a person, as defined in 11 CFR 100.10 who—

(1) Enters into any contract with the United States or any department or agency thereof either for—

(i) The rendition of personal services; or

(ii) Furnishing any material, supplies, or equipment; or

(iii) Selling any land or buildings;

(2) If the payment for the performance of the contract or payment for the material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress.

(b) The period during which a person is prohibited from making a contribution or expenditure is the time between the earlier of the commencement of negotiations or when the requests for proposals are sent out, and the later of—

(1) The completion of performance under; or

(2) The termination of negotiations for, the contract or furnishing of material, supplies, equipment, land, or buildings, or the rendition of personal services.

(c) For purposes of this part, a contract includes

(1) A sole source, negotiated, or advertised procurement conducted by the United States or any of its agencies;

(2) A written (except as otherwise authorized) contract, between any person and the United States or any of its departments or agencies, for the furnishing of personal property, real property, or personal services; and

(3) Any modification of a contract.

(4) The basic contractual relationship must be with the United States or any department or agency thereof. A person who contracts with a State or local jurisdiction or entity other than the United States or any department or agency thereof is not subject to this part, even if the State or local jurisdiction or entity is funded in whole or in part from funds appropriated by the Congress. The third party beneficiary of a Federal contract is not subject to the prohibitions of this part.

(e) The term labor organization has the meaning given it by § 114.1(a).

[41 FR 35963, Aug. 25, 1976, as amended at 45 FR 21210, Apr. 1, 1980]

§ 115.2 Prohibition.

(a) It shall be unlawful for a Federal contractor, as defined in § 115.1(a), to make, either directly or indirectly, any contribution or expenditure of money or other thing of value, or to promise expressly or impliedly to make any such contribution or expenditure to any political party, committee, or candidate for Federal office or to any person for any political purpose or use. This prohibition does not apply to contributions or expenditures in connection with State or local elections.

(b) This prohibition runs for the time period set forth in § 115.1(b).

(c) It shall be unlawful for any person knowingly to solicit any such contribution from a Federal contractor.

§ 115.3 Corporations, labor organizations, membership organizations, cooperatives, and corporations without capital stock.

(a) Corporations, labor organizations, membership organizations, cooperatives, and corporations without capital stock to which this part applies may expend treasury monies to estab-

lish, administer, and solicit contributions to any separate segregated fund subject to the provisions of part 114. Each specific prohibition, allowance, and duty applicable to a corporation, labor organization, or separate segregated fund under part 114 applies to a corporation, labor organization, or separate segregated fund to which this part applies.

(b) The question of whether a professional organization is a corporation is determined by the law of the State in which the professional organization exists.

§ 115.4 Partnerships.

(a) The assets of a partnership which is a Federal contractor may not be used to make contributions or expenditures in connection with Federal elections.

(b) Individual partners may make contributions or expenditures in their own names from their personal assets.

(c) Nothing in this part prohibits an employee of a partnership which is a Federal contractor from making contributions or expenditures from his or her personal assets.

§ 115.5 Individuals and sole proprietors.

Individuals or sole proprietors who are Federal contractors are prohibited from making contributions or expenditures from their business, personal, or other funds under their dominion or control. The spouse of an individual or sole proprietor who is a Federal contractor is not prohibited from making a personal contribution or expenditure in his or her name.

§ 115.6 Employee contributions or expenditures.

Nothing in this part shall prohibit the stockholders, officers, or employees of a corporation, the employees, officers, or members of an unincorporated association, cooperative, membership organization, labor organization, or other group or organization which is a Federal contractor from making contributions or expenditures from their personal assets.

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.

SOURCE: 55 FR 26386, June 27, 1990, unless otherwise noted.

§ 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 those 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.

[55 FR 26386, June 27, 1990; 55 FR 34007, Aug. 20, 1990]

§ 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 II—

(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 candi-

date 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 circum-

stances. 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 indi-

vidual, 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 ren-

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dered 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 commit-

tee 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 at-

tempted 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).

See new Form 8

SUBCHAPTERS B-D—[RESERVED]

SUBCHAPTER E—PRESIDENTIAL ELECTION CAMPAIGN FUND:
GENERAL ELECTION FINANCING

PART 9001—SCOPE

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

§ 9001.1 Scope.

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

[52 FR 20876, June 3, 1987]

PART 9002—DEFINITIONS

- Sec.
- 9002.1 Authorized committee.
- 9002.2 Candidate.
- 9002.3 Commission.
- 9002.4 Eligible candidates.
- 9002.5 Fund.
- 9002.6 Major party.
- 9002.7 Minor party.
- 9002.8 New party.
- 9002.9 Political committee.
- 9002.10 Presidential election.
- 9002.11 Qualified campaign expense.
- 9002.12 Expenditure report period.
- 9002.13 Contribution.
- 9002.14 Secretary.
- 9002.15 Political party.

AUTHORITY: 26 U.S.C. 9002 and 9009(b).

SOURCE: 52 FR 20876, June 3, 1987, unless otherwise noted.

§ 9002.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, *authorized committee* means with respect to a candidate (as defined at 11 CFR 9002.2) of a political party for President and Vice President, any political committee that is

authorized by a candidate to incur expenses on behalf of such candidate. The term *authorized committee* includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate pursuant to 11 CFR 100.3(a)(3). If a party has nominated a Presidential and a Vice Presidential candidate, all political committees authorized by that party's Presidential candidate shall also be authorized committees of the Vice Presidential candidate and all political committees authorized by the Vice Presidential candidate shall also be authorized committees of the Presidential candidate.

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

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

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

§ 9002.2 Candidate.

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

(1) Has been nominated by a major party for election to the Office of President of the United States or the Office of Vice-President of the United States; or

(2) Has qualified or consented to have his or her name appear on the general election ballot (or to have the

names of electors pledged to him or her on such ballot) as the candidate of a political party for election to either such office in 10 or more States. For the purposes of this section, *political party* shall be defined in accordance with 11 CFR 9002.15.

(b) An individual who is no longer actively conducting campaigns in more than one State pursuant to 11 CFR 9004.8 shall cease to be a candidate for the purpose of this subchapter.

§ 9002.3 Commission.

Commission means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

§ 9002.4 Eligible candidates.

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

§ 9002.5 Fund.

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

§ 9002.6 Major party.

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

§ 9002.7 Minor party.

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

ceived popular votes for the office of President in such election.

§ 9002.8 New party.

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

§ 9002.9 Political committee.

For purposes of this subchapter, *political committee* means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the election of any candidate to the office of President or Vice President of the United States; except that for the purpose of 11 CFR 9012.6, the term *political committee* shall be defined in accordance with 11 CFR 100.5.

§ 9002.10 Presidential election.

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

§ 9002.11 Qualified campaign expense.

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

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

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

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

for purposes of this subchapter. An expenditure which constitutes such a violation shall nevertheless count against the candidate's expenditure limitation if the expenditure meets the conditions set forth at 11 CFR 9002.11(a)(1) and (2).

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

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

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

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

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

(3) Expenditures that further the election of other candidates for any public office shall be allocated in accordance with 11 CFR 106.1(a) and will be considered qualified campaign expenses only to the extent that they specifically further the election of the candidate for President or Vice President. A candidate may make expenditures under this section in conjunction with other candidates for any public office, but each candidate shall pay his or her proportionate share of the cost in accordance with 11 CFR 106.1(a).

(4) Expenditures by a candidate's authorized committee(s) pursuant to 11 CFR 9004.6 for the travel and related

ground service costs of media shall be qualified campaign expenses. Any reimbursement for travel and related services costs received by a candidate's authorized committee shall be subject to the provisions of 11 CFR 9004.6.

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

(c) Expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a). Expenditures described under 11 CFR 9004.4(b) will not be considered qualified campaign expenses.

§ 9002.12 Expenditure report period.

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

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

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

§ 9002.13 Contribution.

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

§ 9002.14 Secretary.

Secretary means the Secretary of the Treasury.

§ 9002.15 Political party.

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

PART 9003—ELIGIBILITY FOR PAYMENTS

Sec.

- 9003.1 Candidate and committee agreements.
- 9003.2 Candidate certifications.
- 9003.3 Allowable contributions.
- 9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.
- 9003.5 Documentation of disbursements.
- 9003.6 Production of computer information.

AUTHORITY: 26 U.S.C. 9003 and 9009(b).

SOURCE: 52 FR 20877, June 3, 1987, unless otherwise noted.

§ 9003.1 Candidate and committee agreements.

(a) *General.* (1) To become eligible to receive payments under 11 CFR part 9005, the Presidential and Vice

Presidential candidates of a political party shall agree in a letter signed by the candidates to the Commission that they and their authorized committee(s) shall comply with the conditions set forth in 11 CFR 9003.1(b).

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

(b) *Conditions.* The candidates shall:

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

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

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

(4) Agree that they and their authorized committee(s) shall keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter including those required to be maintained under 11 CFR 9003.5, and other information the Commission may request. The records provided at the time of the audit shall also include production of magnetic computer tapes containing all information required by law to be main-

tained regarding the committee's receipts and disbursements, if the committee maintains its records on computer. Upon request, documentation explaining the computer system's software capabilities shall also be provided.

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

(6) Submit the name and mailing address of the person who is entitled to receive payments from the Fund on behalf of the candidates; the name and address of the depository designated by the candidates as required by 11 CFR part 103 and 11 CFR 9005.2; and the name under which each account is held at the depository at which the payments from the Fund are to be deposited.

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

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

§ 9003.2 Candidate certifications.

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

(1) That the candidate and his or her authorized committee(s) have not

incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under 11 CFR part 9004.

(2) That no contributions have been or will be accepted by the candidate or his or her authorized committee(s); except as contributions specifically solicited for, and deposited to, the candidate's legal and accounting compliance fund established under 11 CFR 9003.3(a); or except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

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

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

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

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

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

(2) Expenditures from personal funds made under this paragraph

shall not apply against the expenditure limitations.

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

(i) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

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

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

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

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

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

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

(7) The provisions of this section shall not operate to limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR part 9007. If the candidate or his or her committee knowingly incurs expenditures in excess of the limitations of 11 CFR 110.8(a), the Commission may seek civil penalties under 11 CFR part 111 in addition to any repayment determinations made on the basis of such excessive expenditures.

(8) Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. 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.

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

§ 9003.3 Allowable contributions.

(a) *Legal and accounting compliance fund—major party candidates—*

(1) *Sources.* (i) A major party candidate may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A legal and accounting compliance fund may be established by such

candidate prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States.

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

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

(i) Funds remaining in the primary election account of a candidate, which funds are in excess of any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2, may be transferred to the legal and accounting compliance fund without regard to the contribution limitations of 11 CFR part 110 and used for any purpose permitted under this section.

(ii) Contributions that are made after the beginning of the expenditure report period but which are designated for the primary election, and contributions that exceed the contributor's limit for the primary election, may be deposited in the legal and accounting compliance fund if the candidate obtains the contributor's resignation, or a reattribution to a joint contributor, in accordance with 11 CFR 110.1. The contributions so received and deposited shall be subject to the contribution limitations applicable for the general election, pursuant to 11 CFR 110.1(b)(2)(i).

(2) *Uses.* (i) Contributions to the legal and accounting compliance fund shall be used only for the following purposes:

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

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

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

(D) To make repayments under 11 CFR 9007.2;

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

(F) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software; and

(G) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of federal funds, provided that the amounts so loaned are restored to the legal and accounting compliance fund.

(ii)(A) Expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with title 2 and chapter 95 of title 26, shall be initially paid from the candidate's federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. For purposes of 11 CFR 9003.3(a)(2)(i)(B), a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 10% of the payroll and overhead expenditures of his or her national campaign headquarters and state offices. Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts. In addition, a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 70% of the costs (other than payroll) associated with computer services. Such costs include but are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies. If the candidate wishes to claim a larger compliance exemption for payroll or overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered necessary to ensure compliance with title 2 or chapter 95 of title

26. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity. If the candidate wishes to claim a larger compliance exemption for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by persons other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function. The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs.

(B) Reimbursement from the compliance fund may be made to the separate account maintained for federal funds under 11 CFR 9005.2 for legal and accounting compliance services disbursements that are initially paid from the separate federal funds account. Such reimbursement must be made prior to any final repayment determination by the Commission pursuant to 11 CFR 9007.2. Any amounts so reimbursed to the federal fund account may not subsequently be transferred back to the legal and accounting compliance fund.

(iii) Amounts paid from this account for the purposes permitted by 11 CFR 9003.3(a)(2)(i) (A) through (F) shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15).) When the proceeds of loans made in accordance with 11 CFR 9003.3(a)(2)(i)(G) are expended on

qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

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

(3) *Deposit and disclosure.* (i) Amounts received pursuant to 11 CFR 9003.3(a)(1) shall be deposited and maintained in an account separate from that described in 11 CFR 9005.2 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.2.

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

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

(2) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only to defray qualified campaign expenses and to defray the cost of soliciting contributions to such account. All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR 9006.1.

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

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

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR part 104 and 11 CFR 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. Such costs include the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

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

records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

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

(9) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

(c) *Contributions to defray qualified campaign expenses minor and new party candidates.* (1) A minor or new party candidate may solicit contributions to defray qualified campaign expenses which exceed the amount received by such candidate from the Fund, subject to the limits of 11 CFR 9003.2(b).

(2) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114 and 115.

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

(i) To defray qualified campaign expenses;

(ii) To make repayments under 11 CFR 9007.2;

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

(iv) To defray the costs of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(v) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software.

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

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR part 104 and § 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

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

(i). For purposes of 11 CFR 9003.3(c)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special

use such as voter registration and get out the vote efforts.

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

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

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

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

(10) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods

for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

[52 FR 20877, June 3, 1987, as amended at 55 FR 26395, June 27, 1990]

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

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

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

(b) *Sources.* (1) A candidate may obtain a loan which meets the requirements of 11 CFR 100.7(b)(11) for loans in the ordinary course of business to defray permissible expenditures described in 11 CFR 9003.4(a). A candidate receiving payments equal to the expenditure limitation in 11 CFR 110.8 shall make full repayment of principal and interest on such loans from payments received by the candidate under 11 CFR part 9005 within 15 days of receiving such payments.

(2) A major party candidate may borrow from his or her legal and accounting compliance fund for the purposes of defraying permissible expenditures described in 11 CFR 9003.4(a). All amounts borrowed from the legal and accounting compliance fund must be restored to such fund after the beginning of the expenditure report period either from federal funds received under 11 CFR part 9005 or private contributions received under 11 CFR 9003.3(b). For candidates receiving federal funds, restoration shall be

made within 15 days after receipt of such funds.

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

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

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

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

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

§ 9003.5 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified

campaign expenses as defined in 11 CFR 9002.11. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission at its request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9003.5(b).

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

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

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

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

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

(iii) If neither a receipted bill as specified in 11 CFR 9003.5(b)(1)(i) nor the supporting documentation specified in 11 CFR 9003.5(b)(1)(ii) is available, a cancelled check negotiated by the payee that states the purpose of the disbursement.

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

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

(B) Evidence that the disbursement is covered by a pre-established written

campaign committee policy, such as a per diem policy.

(2) For all other disbursements the candidate shall present:

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

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

(3) For purposes of this section:

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

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

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

(d) *List of capital and other assets—*

(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded \$2000 when acquired by the campaign. The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, *capital asset* shall be defined in accordance with 11 CFR 9004.9(d)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fund-

raising or as collateral for campaign loans, if the aggregate value of such assets exceeds \$5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9004.9(d)(2).

§ 9003.6 Production of computer information.

(a) *Categories of computerized information to be provided.* If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9007.1(b)(1):

(1) Information required by law to be maintained regarding the committee's receipts or disbursements;

(2) Receipts by and disbursements from a legal and accounting compliance fund under 11 CFR 9003.3(a), including the allocation of payroll and overhead expenditures;

(3) Receipts and disbursements under 11 CFR 9003.3(b) or (c) to defray the costs of soliciting contributions or to defray the costs of legal and accounting services, including the allocation of payroll and overhead expenditures;

(4) Records relating to the costs of producing broadcast communications and purchasing airtime;

(5) Records used to prepare statements of net outstanding qualified campaign expenses;

(6) Records used to reconcile bank statements;

(7) Disbursements made and reimbursements received for the cost of transportation, ground services and facilities made available to media personnel, including records relating to how costs charged to media personnel were determined;

(8) Records relating to the acquisition, use and disposition of capital assets or other assets; and

(9) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, bank reconciliations or statements of net outstanding qualified campaign expenses.

(b) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

[55 FR 26395, June 27, 1990]

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

Sec.

9004.1 Major parties.

9004.2 Pre-election payments for minor and new party candidates.

9004.3 Post-election payments.

9004.4 Use of payments.

9004.5 Investment of public funds.

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

9004.7 Allocation of travel expenditures.

9004.8 Withdrawal by candidate.

9004.9 Net outstanding qualified campaign expenses.

Sec.

9004.10. Sale of assets acquired for fund-raising purposes.

AUTHORITY: 26 U.S.C. 9004 and 9009(b).

SOURCE: 52 FR 20882, June 3, 1987, unless otherwise noted.

§ 9004.1 Major parties.

The eligible candidates of each major party in a Presidential election shall be entitled to equal payments under 11 CFR part 9005 in an amount which, in the aggregate, shall not exceed \$20,000,000 as adjusted by the Consumer Price Index in the manner described in 11 CFR 110.9(c).

§ 9004.2 Pre-election payments for minor and new party candidates.

(a) *Candidate of a minor party in the preceding election.* An eligible candidate of a minor party is entitled to preelection payments:

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

(2) In an amount which is equal, in the aggregate, to a proportionate share of the amount to which major party candidates are entitled under 11 CFR 9004.1.

The aggregate amount received by a minor party candidate shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor party Presidential candidate in the preceding Presidential election bears to the average number of popular votes received by all major party candidates in that election.

(b) *Candidate of a minor party in the current election.* The eligible candidate of a minor party whose candidate for the office of President in the preceding election received at least 5% but less than 25% of the total popular vote is eligible to receive pre-election payments. The amount which a minor party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the minor party's candidate in the preceding Presidential election; however, the amount to which the minor

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

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

§ 9004.3 Post-election payments.

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

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

(1) The amount of qualified campaign expenses incurred by such eligible candidate and his or her authorized committee(s), reduced by the

amount of contributions which are received to defray qualified campaign expenses by such eligible candidate and such committee(s); or

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

(c) *Amount of entitlement limited by pre-election payment.* If an eligible candidate is entitled to payment under 11 CFR 9004.2, the amount allowable to that candidate under this section shall also be limited to the amount, if any, by which the entitlement under 11 CFR 9004.3(a) exceeds the amount of the entitlement under 11 CFR 9004.2.

§ 9004.4 Use of payments.

(a) *Qualified campaign expenses.* An eligible candidate shall use payments received under 11 CFR part 9005 only for the following purposes:

(1) A candidate may use such payments to defray qualified campaign expenses;

(2) A candidate may use such payments to repay loans that meet the requirements of 11 CFR 100.7(a)(1) or 100.7(b)(11) or to otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3(b) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses;

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

(4) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

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

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

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

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR 9003.2 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to these limitations using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were later settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

(3) *Expenditures incurred after the close of the expenditure report period.* Any expenditures incurred after the close of the expenditure report period, as defined in 11 CFR 9002.12, are not qualified campaign expenses except to the extent permitted under 11 CFR 9004.4(a)(4).

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR part 9005. Penalties may be paid from contributions in the candidate's legal and accounting compliance fund, in accordance with 11 CFR 9003.3(a)(2)(i)(C). Additional amounts may be received and expended to pay such penalties, if necessary. These funds shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR part 104.

(5) *Solicitation expenses.* Any expenses incurred by a major party candidate to solicit contributions to a legal and accounting compliance fund established pursuant to 11 CFR

9003.3(a) are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR part 9005.

(6) *Payments to candidate.* Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.

(c) *Repayments.* Repayments may be made only from the following sources: Personal funds of the candidate (with-out regard to the limitations of 11 CFR 9003.2(c)); contributions and federal funds in the committee's account(s); and any additional funds raised subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended.

§ 9004.5 Investment of public funds.

Investment of public funds or any other use of public funds to generate income is permissible, provided that an amount equal to all net income derived from such investments, less Federal, State and local taxes paid on such income, shall be repaid to the Secretary. Any net loss resulting from the investment of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such net loss shall be repaid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

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

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

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either: The individual's pro rata share of the actual cost of the transportation and services made available; or a

reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

(d)(1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9003.2 (a)(1) and (b)(1) the amount of reimbursements received for the actual cost of transportation and services provided under paragraph (a) of this section. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services to media personnel and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided under paragraph (a) of this section plus the amount of administrative costs permitted by this section shall be repaid to the Treasury. Amounts paid by the committee for transportation, services and administrative costs for which no reimburse-

ment is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a) of this section.

(2) For the purposes of this section, *administrative costs* shall include all costs incurred by the committee for making travel arrangements for media personnel and for seeking reimbursements, whether performed by committee staff or independent contractors.

§ 9004.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR part 106, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9004.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

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

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

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

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

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related

travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

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

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

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

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

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

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

§ 9004.8 Withdrawal by candidate.

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

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

(1) No longer be eligible to receive any payments under 11 CFR 9005.2 except to defray qualified campaign expenses as provided in 11 CFR 9004.4.

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

§ 9004.9 Net outstanding qualified campaign expenses.

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

(1) The total of:

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

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

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

(2) The total of:

(i) Cash on hand as of the close of business on the day of the election, including: All contributions dated on or before that date; currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveller's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value;

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

(iii) Amounts owed to the campaign in the form of credits, refunds of deposits; returns, receivables, or rebates

of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(3) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for nonqualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR part 9007 or any amounts paid to secure a surety bond under 11 CFR 9007.5(c).

(b) *All candidates.* Each candidate, except for individuals who have withdrawn pursuant to 11 CFR 9004.8, shall submit a statement of net outstanding qualified campaign expenses no later than 30 calendar days after the end of the expenditure report period. The statement shall contain the information required by 11 CFR 9004.9(a)(1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the last day of the expenditure report period.

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

(d)(1) *Capital assets.* For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded \$2000 when acquired by the campaign. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as *other assets* under 11 CFR

9004.9(d)(2). A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(1). The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired. If the candidate wishes to claim a higher depreciation percentage for an item, he or she must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(2) *Other assets.* The term *other assets* means any property acquired by the campaign for use in raising funds or as collateral for campaign loans. *Other assets* must be included on the candidate's statement of net outstanding qualified campaign expenses if the aggregate value of such assets exceeds \$5000. The value of *other assets* shall be determined by the fair market value of each item on the last day of the expenditure report period or the day on which the individual ceased to be a candidate, whichever is earlier, unless the item is acquired after these dates, in which case the item shall be valued on the date it is acquired. A list of other assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(2).

(e) *Collectibility of accounts receivable.* If the committee determines that an account receivable of \$500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full writeoff was determined.

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

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

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

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

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

explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

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

(v) *Petitions for rehearing.* The candidate may file a petition for rehearing of a final determination under this section in accordance with 11 CFR 9007.5(a).

§ 9004.10 Sale of assets acquired for fundraising purposes.

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

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

PART 9005—CERTIFICATION BY COMMISSION

AUTHORITY: 26 U.S.C. 9005 and 9009(b).

§ 9005.1 Certification of payments for candidates.

(a) *Certification of payments for major party candidates.* Not later than 10 days after the Commission determines that the Presidential and Vice Presidential candidates of a major party have met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1 and 9003.2, the Commission shall certify to the Secretary that payment in full of the amounts to which such candidates are entitled under 11 CFR part 9004 should be made pursuant to 11 CFR 9005.2.

(b) *Certification of pre-election payments for minor and new party candidates.* (1) Not later than 10 days after a minor or new party candidate has met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1, 9003.2 and 9004.2, the Commission will make an initial determination of the amount, if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each State. In notifying the candidate, the Commission will give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based.

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

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

vestigation on which the determination is based.

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

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

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

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

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

(3) The Commission will notify the candidate of its initial determination of the amount, if any, to which the candidate is entitled, give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based. The Commission will also notify the candidate that it will deduct a percentage of the amount to which the candidate is entitled based on the unofficial vote results when the Commission certifies an amount for payment to the Secretary. This deduction will be based on the average percentage differential between the unofficial and official vote results for all candidates who received public funds in the preceding Presidential general election.

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

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

the Commission's determination and will summarize the results of any investigation on which the determination is based.

(d) All certifications made by the Commission pursuant to this section shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under 11 CFR part 9007 and judicial review under 26 U.S.C. 9011.

[52 FR 20886, June 3, 1987]

§ 9005.2 Payments to eligible candidates from the fund.

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

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

(2) Amounts withheld under 11 CFR 9005.2(b)(1) shall be paid when the Secretary determines that there are sufficient monies in the Fund to pay such amounts, or pro rata portions thereof, to all eligible candidates from whom amounts have been withheld.

(c) Payments received from the Fund by a major party candidate shall be deposited in a separate account maintained by his or her authorized committee, unless there is a deficiency in the Fund as provided under 11 CFR 9005.2(b)(1). In the case of a deficiency, the candidate may establish a separate account for payments from the Fund or may deposit such payments with contributions received pursuant to 11 CFR 9003.3(b). The account(s) shall be maintained at a State bank, federally chartered depository institu-

tion or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(d) No funds other than the payments received from the Treasury, reimbursements, or income generated through use of public funds in accordance with 11 CFR 9004.5, shall be deposited in the account described in 11 CFR 9005.2(c). *Reimbursements* shall include, but are not limited to, refunds of deposits, vendor refunds, reimbursements for travel expenses under 11 CFR 9004.6 and 9004.7 and reimbursements for legal and accounting costs under 11 CFR 9003.3(a)(2)(ii)(B).

[52 FR 20886, June 3, 1987]

PART 9006—REPORTS AND RECORDKEEPING

AUTHORITY: 9006 and 9009(b).

§ 9006.1 Separate reports.

(a) The authorized committee(s) of a candidate shall report all expenditures to further the candidate's general election campaign in reports separate from reports of any other expenditures made by such committee(s) with respect to other elections. Such reports shall be filed pursuant to the requirements of 11 CFR part 104.

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

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

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

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

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

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

(v) Payments received from the Fund.

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

[52 FR 20887, June 3, 1987]

§ 9006.2 Filing dates.

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

[52 FR 20887, June 3, 1987]

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

Sec.

- 9007.1 Audits.
- 9007.2 Repayments.
- 9007.3 Extensions of time.
- 9007.4 Additional audits.
- 9007.5 Petitions for rehearing; stays of repayment determinations.
- 9007.6 State-dated committee checks.

AUTHORITY: 26 U.S.C. 9007 and 9009(b).

SOURCE: 52 FR 20887, June 3, 1987, unless otherwise noted.

§ 9007.1 Audits.

(a) *General.* (1) After each Presidential election, the Commission will conduct a thorough examination and audit of the receipts, disbursements, debts and obligations of each candidate, his or her authorized committee(s), and agents of such candidates or committees. Such examination and audit will include, but will not be limited to, expenditures pursuant to 11 CFR 9003.4 prior to the beginning of the expenditure report period, contributions to and expenditures made from the legal and accounting compliance fund established under 11 CFR 9003.3(a), contributions received to supplement any payments received from the Fund, and qualified campaign expenses.

(2) In addition, the Commission may conduct other examinations and

audits from time to time as it deems necessary to carry out the provisions of this subchapter.

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

(b) *Conduct of fieldwork.* (1) If the candidate or the candidate's authorized committee does not maintain or use any computerized information containing the data listed in 11 CFR 9003.6, the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the data listed in 11 CFR 9003.6, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. Upon receipt of the computerized information requested and compliance with the technical specifications of 11 CFR 9003.6(b), the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided, and which may be used for purposes including, but not limited to, updating a statement of net outstanding qualified campaign expenses. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee that is of assistance in the Commission's audit. The committee shall produce

the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

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

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

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

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

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b) (1) and (2). Factors that may necessitate such

follow-up fieldwork include, but are not limited to, the following:

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

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

(2) will apply to any additional fieldwork conducted.

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

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

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

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

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

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

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

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

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

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

(3) The Commission will provide the candidate and the committee with copies of the agenda document containing those portions of the final audit report to be considered in open session 24 hours prior to releasing the agenda document to the public. The Commission will also provide the candidate and committee with copies of

the final audit report 24 hours before releasing the report to the public.

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

[52 FR 20887, June 3, 1987, as amended at 55 FR 26396, June 27, 1990]

§ 9007.2 Repayments.

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

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

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

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

(1) *Payments in excess of candidate's entitlement.* If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the United States Treasury an amount equal to such portion.

(2) *Use of funds for non-qualified campaign expenses.* (i) If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than those described in paragraphs (b)(2)(i) (A) through (C) of this section, it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

(A) To defray qualified campaign expenses;

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

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

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

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

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

(C) Determinations that any portion of the payments made to a candidate from the Fund was expended in violation of State or Federal law; and

(D) Determinations that any portion of the payments made to a candidate from the Fund was used to defray expenses resulting from a violation of State or Federal law, such as the payment of fines or penalties.

(iii) In the case of a candidate who has received contributions pursuant to 11 CFR 9003.3 (b) or (c), the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for nonqualified campaign expenses as the amount of payments certified to the candidate from the Fund bears to the total amount of deposits of contributions and federal

funds, as of December 31 of the Presidential election year.

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

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

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

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

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

of the notice, such initial determination shall be considered a final determination of the Commission.

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

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

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

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice

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

(2) If the candidate submits written materials under 11 CFR 9007.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 30 calendar days after service of the notice of the Commission's final repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

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

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

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

for capital assets in excess of the value specified in any previously-submitted statement of net outstanding qualified campaign expenses. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9007.2(f).

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

(i) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a final repayment determination in accordance with 11 CFR 9007.5(a). The candidate may request a stay of a final repayment determination in accordance with 11 CFR 9007.5(c) pending the candidate's appeal of that repayment determination.

§ 9007.3 Extensions of time.

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

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

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

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

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

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

§ 9007.4 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission, pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

§ 9007.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final repayment determination or a final determination that a candidate is not entitled to all or a portion of post-election funding under 11 CFR 9004.9(f), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days following service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the earlier determination process.

(2) If a candidate files a timely petition under this section challenging a Commission final repayment determination, the time for repayment will be suspended until the Commission

serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9007.2(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.* (1)(i) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9007.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9011(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's final repayment determination under 11 CFR 9007.2(c)(4).

(2) The Commission's approval of a stay request will be conditioned upon the candidate's presentation of evidence in the stay request that he or she:

(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal and that withdrawals from the account may only be made with the joint signatures of the candidate or his or her agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(iii) Has met the following criteria:

(A) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(B) He or she has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interest; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's final repayment determination under 11 CFR 9007.2(c)(4) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

§ 9007.6 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

- Sec.
- 9008.1 Scope.
- 9008.2 Definitions.
- 9008.3 Entitlement to payments from the fund.
- 9008.4 Adjustment of entitlement.
- 9008.5 Limitation on payments.
- 9008.6 Use of funds.
- 9008.7 Limitation of expenditures.
- 9008.8 Payment and certification procedures.
- 9008.9 Examination and audits.
- 9008.10 Repayments.
- 9008.11 Resolution of disputes concerning repayments.
- 9008.12 Registration and reports.

AUTHORITY: 26 U.S.C. 9008.

SOURCE: 44 FR 63039, Nov. 1, 1979, unless otherwise noted.

§ 9008.1 Scope.

(a) This part interprets 2 U.S.C. 437 and 26 U.S.C. 9008. Under 26 U.S.C. 9008(b), the national committees of both major and minor parties are entitled to public funds to defray expenses incurred with respect to a Presidential Nominating Convention. Under 26 U.S.C. 9008(d), expenditures with regard to such a convention by a national committee receiving public funds are limited to \$4,000,000, as adjusted by the Consumer Price Index. New parties are not entitled to receive any public funds to defray convention expenses.

(b) Under 2 U.S.C. 437, each committee or organization which represents a national party in making arrangements for that party's presidential nominating convention is required to file disclosure reports. This reporting obligation extends to all such committees or organizations, regardless of whether or not public funds were used or available to defray convention expenses. In addition, 2 U.S.C. 437 requires reports from each committee or organization which represents a State, a political subdivision or any other group of persons in dealing with national political party officials with respect to matters involving a presidential nominating convention held in the State or subdivision. Under this provision, the host committee in the con-

vention city is required to report contributions or expenditures with respect to a presidential nominating convention. However, unsuccessful efforts to attract a convention need not be reported by any city, committee or other organization.

[44 FR 63039, Nov. 1, 1979, as amended at 49 FR 30461, July 31, 1984]

§ 9008.2 Definitions.

(a) *Commission* means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

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

(c) *Major party* means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.

(d) *Minor party* means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office.

(e) *National committee* means the organization which, by virtue of the by-laws of the political party, is responsible for the day to day operation of that party at the national level. (2 U.S.C. 431(14)).

(f) *New party* means, with respect to any presidential election, a political party which is neither a major party nor a minor party.

(g) *Nominating convention* means a convention, caucus or other meeting which is held by a political party at the national level and which chooses the presidential nominee of the party through selection by delegates to that convention or through other similar means.

(h) *Secretary* means the Secretary of the Treasury of the United States.

[44 FR 63039, Nov. 1, 1979, as amended at 45 FR 21210, Apr. 1, 1980; 50 FR 50778, Dec. 12, 1985]

§ 9008.3 Entitlement to payments from the fund.

(a) *Major parties*. Subject to the provisions of 11 CFR part 9008, the national committee of a major party shall be entitled to receive payments under 11 CFR 9008.8 with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed \$4 million, as adjusted by the Consumer Price Index under 11 CFR 9008.4(a).

(b) *Minor parties*. Subject to the provisions of 11 CFR part 9008, the national committee of a minor party shall be entitled to payments under 11 CFR 9008.8 with respect to any presidential nominating convention in amounts which, in the aggregate, shall not exceed an amount which bears the same ratio to the amount which the national committee of a major party is entitled to receive under 11 CFR 9008.4 as the number of popular votes received in the preceding presidential election by that minor party's presidential candidate bears to the average number of popular votes received in the preceding presidential election by all of the major party presidential candidates.

[44 FR 63039, Nov. 1, 1979, as amended at 49 FR 30461, July 31, 1984]

§ 9008.4 Adjustment of entitlement.

(a) The entitlements established by 11 CFR 9008.3 shall be adjusted on the basis of the Consumer Price Index pursuant to the provisions of 2 U.S.C. 441a(c).

(b) The entitlements established by 11 CFR 9008.3 shall be decreased by the amount of income generated by the investment of public funds under 11 CFR 9008.6(a)(5), less any tax paid on such income.

(c) The entitlements established by 11 CFR 9008.3 shall be adjusted so as not to exceed the difference between the expenditure limitations of 11 CFR 9008.7(a) and the amount of private contributions received under § 9008.8(a) by the national committee of a political party. In calculating these adjustments, amounts expended by Government agencies and municipal corporations in accordance with 11 CFR 9008.7(b); in kind contributions

by businesses to the national committee or convention committee in accordance with 11 CFR 9008.7(c); expenditures by host committees in accordance with 11 CFR 9008.7(d); expenditures to participate in or attend the convention under 11 CFR 9008.7(e); and legal and accounting services rendered in accordance with 11 CFR 9008.7(f) will not be considered private contributions or expenditures counting against the limitation.

§ 9008.5 Limitation on payments.

Payments to the national committee of a major party or a minor party under 11 CFR 9008.8 from the account designated for such committee shall be limited to the amounts in such account at the time of payment.

§ 9008.6 Use of funds.

(a) *Permissible uses.* Any payment made under 11 CFR 9008.8 shall be used only for the following purposes:

(1) Such payment may be used to defray convention expenses (including the payment of deposits) incurred by or on behalf of the national committee receiving such payments; or

(2) Such payment may be used to repay the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses; or

(3) Such payment may be used to restore funds (including advances from the national committee to the convention committee), other than contributions to the committee for the purpose of defraying convention expenses, where such funds were used to defray convention expenses.

(4) Convention expenses includes all expenses incurred by or on behalf of a political party national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities. Such expenses include, but are not limited to:

(i) Expenses for preparing, maintaining, and dismantling the physical site of the convention, including rental of the hall, platforms and seating, decorations, telephones, security, convention hall utilities, etc.;

(ii) Salaries and expenses of convention committee employees, volunteers

and similar personnel, whose responsibilities involve planning, management or otherwise conducting the convention;

(iii) Salary or portion of the salary of any national committee employee for any period of time during which, as a major responsibility, that employee performs services related to the convention;

(iv) Expenses of national committee employees, volunteers or other similar personnel if those expenses were incurred in the performance of services for the convention in addition to the services normally rendered to the national committee by such personnel;

(v) Expenses for conducting meetings of or related to committees dealing with the conduct and operation of the convention, such as rules, credentials, platform, site, contests, call, arrangements and permanent organization committees, with such expenses including printing materials and rental costs for meeting space.

(vi) Expenses incurred in securing a convention city and facility;

(vii) Expenses incurred in providing a transportation system in the convention city for use by delegates and other persons attending or otherwise connected with the convention;

(viii) Expenses for entertainment activities which are part of official convention activity sponsored by the national committee, such expenses to include (but not limited to) dinners, concerts, and receptions; except that expenses for the following activities are excluded:

(A) Entertainment activities sponsored by or on behalf of candidates for nomination to the office of President or Vice President, or State delegations;

(B) Entertainment activities sponsored by the national committee if the purpose of the activity is solely for national committee business, such as fundraising events, or selection of new national committee officers;

(C) Entertainment activities sponsored by persons other than the national committee; and

(D) Entertainment activities prohibited by law;

(ix) Expenses for printing convention programs, a journal of proceed-

ings; agendas, tickets, badges, passes, and other similar publications;

(x) Administrative and office expenses for conducting the convention, such expenses to include stationery, office supplies, office machines, and telephone charges; but excluded from these expenses are the cost of any services supplied by the national committee at its headquarters or principal office if such services are incidental to the convention and not utilized primarily for the convention; and

(xi) Payment of the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses.

(5) Any investment of public funds or any other use of public funds to generate income is permissible only if the income so generated is used to defray convention expenses. Such income, less any tax paid on it, will be applied against the national committee's payments under 11 CFR 9008.2, or where appropriate, the Commission may determine that a repayment is required on the basis of such income.

(b) *Prohibited uses.* (1) No part of any payment made under 11 CFR 9008.8 shall be used to defray the expenses of any candidate, delegate, or alternate delegate who is participating in any presidential nominating convention except that the expenses of a person participating in the convention as official personnel of the national party may be defrayed with public funds even though that person is simultaneously participating as delegate or candidate to the convention. This part shall not prohibit candidates, delegates or alternate delegates who are participating in a presidential nominating convention from attending official party convention activities including but not limited to dinners, concerts and receptions; where such activities are paid for with public funds.

(2) Public funds shall not be used to defray any expense the incurring or payment of which violates any law of the United States or any law of the State in which such expense is incurred or paid, or any regulation prescribed under federal or State laws.

(3) Public funds shall not be used to pay civil or criminal penalties required

to be paid pursuant to the Act (as defined at 2 U.S.C. 431(19)). Any amounts received or expended by the national committee or convention committee of a political party to pay such penalties shall not be considered contributions or expenditures, except that such amounts shall be reported in accordance with 11 CFR part 104 and shall be subject to the prohibitions of 11 CFR 110.4 and parts 114 and 115.

[44 FR 63039, Nov. 1, 1979, as amended at 45 FR 21210, Apr. 1, 1980]

§ 9008.7 Limitation of expenditures.

(a) *National party limitations*—(1) *Major parties.* Except as provided by 11 CFR 9008.7(a)(3), the national committee of a major party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which such committee is entitled under 11 CFR 9008.3 and 9008.4.

(2) *Minor parties.* Except as provided by 11 CFR 9008.7(a)(3), the national committee of a minor party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which the national committee of a major party is entitled under 11 CFR 9008.3 and 9008.4.

(3) *Authorization to exceed limitation.* The Commission may authorize the national committee of a major party or minor party to make expenditures for convention expenses, which expenditures exceed the limitation established by 11 CFR 9008.7(a)(1) or (2). This authorization shall be based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, the expenditures are necessary to assure the effective operation of the Presidential nominating convention by the committee. Examples of *extraordinary and unforeseen circumstances* include, but are not limited to, a natural disaster or a catastrophic occurrence at the convention site. In no case, however, will such authorization entitle a national committee to receive public funds greater than the entitlement specified under 11 CFR 9008.3 and 9008.4. All

private contributions received to defray expenditures under 11 CFR 9008.7(a)(3) shall be subject to all reporting requirements, limitations (except for limitations imposed by 11 CFR 9008.7(a)(1) and (2)) and prohibitions of the Act (as defined at 2 U.S.C. 431(19)).

(b) *Expenditures by government agencies and municipal corporations.* (1) Federal, State or local government agencies and municipal corporations may make expenditures for facilities or services with respect to a presidential nominating convention. Such expenditures will not be considered contributions to the national committee, expenditures counting against the national committee's limitation, or illegal corporate contributions by the agency or municipal corporation. In providing facilities or services to the national committee, the agency or municipal corporation may not obtain facilities, services or goods from other persons at less than fair market value, except that the agency or municipal corporation may accept reduced or discounted rates, provided that such reductions were made in the ordinary course of business.

(2) Examples of expenditures which government agencies and municipal corporations may make under 11 CFR 9008.7(b) include but are not limited to:

(i) Granting the national committee use of an auditorium or convention center; construction and convention related services therein such as: Construction of podiums; press tables; false floors; camera platforms; additional seating; lighting, electrical, air conditioning and loudspeaker systems; offices; office equipment; and decorations;

(ii) Various local transportation services, including the provision of buses and automobiles;

(iii) Law enforcement services necessary to assure orderly conventions;

(iv) Use of convention bureau personnel to provide central housing and reservation services;

(v) Hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention;

(vi) Accommodations and hospitality for committees of the parties responsible for choosing the sites of the conventions, and

(vii) Other similar convention related facilities and services.

(c) *In-kind contributions by businesses—*(1) *Discounts by retail businesses.* (i) Retail businesses may sell, lease or rent their products, materials, services or space to the national committee with respect to a presidential nominating convention at reduced or discounted rates: *Provided,* That such reductions or discounts are in the ordinary course of business. For purposes of this section, a bank shall not be considered a retail business.

(ii) Discounts or reductions in accordance with 11 CFR 9008.7(c)(i) will not count toward the national party expenditure limitation under 11 CFR 9008.7(a).

(2) *Samples and promotional material.* (i) Local businesses may sell, at nominal cost, or provide at no charge, any of their products or services in the form of samples, discount coupons, promotional items, such as maps, pens, or pencils, with the business' name imprinted on the item, to those attending the convention functions. Such samples, coupons and promotional items shall be: Of nominal value; provided solely for bona fide advertising or promotional purposes; and provided in the ordinary course of business.

(ii) The samples and promotional material may be distributed by or with the help of persons employed by the business, or employed by or volunteering for the national party or a citizen host committee.

(iii) For purposes of 11 CFR 9008.7(c)(2), a local bank shall be considered a local business.

(iv) For purposes of 11 CFR 9008.7(c)(2), any business within the Metropolitan Statistical Area (MSA) of the convention city shall be considered a local business. There shall be a rebuttable presumption that any business located outside the MSA is not a local business. This presumption may be rebutted by a showing that the volume of business in an area outside the MSA would be directly affected by the presence of the convention.

(v) The value of the benefits provided under 11 CFR 9008.7(c)(2) will not count toward the national party's expenditure limitation under 11 CFR 9008.7(a).

(d) *Contributions to and expenditures by host committees*—(1) *Host committee organization.* A host committee includes any local organization, such as a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention bureau: Which is not organized for profit; whose net earnings do not inure to the benefit of any private shareholder or individual; and whose principal objective is the encouragement of commerce in the convention city, as well as the projection of favorable image of the city to convention attendees. A host committee must register in accordance with 11 CFR 9008.12(a)(1)(i).

(2) *Contributions and expenditures to promote convention city and its commerce.* (i) Local businesses, excluding banks, local municipal corporations and government agencies, local labor organizations, and individuals may donate funds or make in kind contributions to a host committee for the purposes set forth at 11 CFR 9008.7(d)(2)(iii).

(ii) The donor may restrict the use of funds by earmarking them for a particular project, by having the donation acknowledged (e.g. courtesy of XYZ Company) or by placing any other similar restriction on the use of the funds.

(iii) A host committee shall use funds donated under 11 CFR 9008.7(d)(2)(i) for only the following purposes:

(A) To defray those expenses incurred for the purpose of promoting the suitability of the city as a convention site;

(B) To defray those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours;

(C) To defray those expenses incurred in facilitating commerce, such as providing the convention and attendees with shopping and entertainment guides and distributing the samples

and promotional material specified in § 9008.7(c)(2);

(D) To defray the administrative expenses incurred by the host committee, such as salaries, rent, travel, and liability insurance;

(iv) For purposes of 11 CFR 9008.7(d)(2), any business, municipal corporation, agency or labor organization within the Metropolitan Statistical Area (MSA) of the convention city shall be considered local. There shall be a rebuttable presumption that any such entity located outside the MSA is not local. This presumption may be rebutted by a showing that the volume of business in an area lying outside the MSA would be directly affected by the presence of the convention.

(3) *Contributions and expenditures to defray convention expenses.* (i) Local retail businesses, excluding banks, as well as local municipal corporations and government agencies may donate funds to a host committee for use by that committee in defraying convention expenses. Examples of expenditures which the host committee may make for convention expenses include but are not limited to those set forth at 11 CFR 9008.7(b)(2). No other corporate funds may be used to pay such expenses.

(ii) The amount of the donation under 11 CFR 9008.7(d)(3)(i) must be proportionate to the commercial return reasonably expected by the business, corporation or agency during the life of the convention.

(iii) The host committee must maintain funds donated under 11 CFR 9008.7(d)(3)(i) in a separate account.

(iv) For purposes of 11 CFR 9008.7(d)(3), any determination as to whether or not a business, labor organization, municipal corporation or agency is local shall be made in accordance with 11 CFR 9008.7(d)(2)(iv).

(v) For purposes of 11 CFR 9008.7(d)(3)(ii), the life of the convention shall begin seven days before the opening of the convention and end three days after the close of the convention.

(4) *Expenditure limitation.* Funds used by the host committee in accordance with § 9008.7(d)(2) and (3) shall not be considered expenditures and shall not count against the expendi-

ture limitation under 11 CFR 9008.7(a).

(e) *Expenditures to participate in or attend convention.* Expenditures made by presidential candidates from campaign accounts, by delegates, or by any other individual from his or her personal funds for the purpose of attending or participating in the convention or convention related activities, or by State or local committees of a political party on behalf of such delegates of individuals shall not be considered expenditures made by or on behalf of the national party, and shall therefore not be subject to the overall expenditure limitations of 11 CFR 9008.7.

(f) *Legal and accounting services.* (1) The payment of compensation to an individual by his or her regular employer for legal and accounting services rendered to or on behalf of the national committee shall not be considered an expenditure and shall not count against the expenditure limitation under 11 CFR 9008.7.

(2) The payment by the national committee of compensation to any individual for legal and accounting services rendered to or on behalf of the national committee shall be considered an expenditure and shall count against the expenditure limitation under 11 CFR 9008.7, whether paid from public funds or from private contributions.

[44 FR 63039, Nov. 1, 1979, as amended at 45 FR 21210, Apr. 1, 1980; 48 FR 33244, July 21, 1983]

§ 9008.8 Payment and certification procedures.

(a) *Optional payments; private contributions.* (1) The national committee of a major or minor party may elect to receive all, part, or none of the amounts to which it is entitled under 11 CFR 9008.3 and 9008.4

(2) The national committee of a major party electing to receive all or part of the amounts to which it is entitled under 11 CFR 9008.3 and 9008.4 may receive and use private contributions, so long as the sum of the contributions which are used to defray convention expenses and the amount of entitlements elected to be received does not exceed the total expenditure limitation under 11 CFR 9008.7.

(3) A minor party electing to receive all or part of the amounts to which it is entitled under 11 CFR 9008.3 and 9008.4 may receive and use private contributions for the nominating convention, so long as the sum of the contributions which are used to defray convention expenses and the amount of entitlements elected to be received does not exceed the total expenditure limitation under 11 CFR 9008.7.

(4) All private contributions received by the national committee to defray convention expenses shall be subject to all reporting requirements, limitations and prohibitions of the Act (as defined at 2 U.S.C. 431(19)).

(b) *Eligibility requirements.* (1) To qualify for entitlement under 11 CFR 9008.3 and 9008.4, the national committee of a major or minor political party shall establish a convention committee pursuant to 11 CFR 9008.8(b)(2) and shall file an application statement pursuant to 11 CFR 9008.8(b)(3). The convention committee, in conjunction with the national committee, shall file an agreement to comply with the conditions set forth at 11 CFR 9008.8(b)(4).

(2) The national committee shall establish a convention committee which shall be responsible for conducting the day to day arrangements and operations of that party's presidential nominating convention. The convention committee shall register with the Commission as a political committee pursuant to 11 CFR part 102. The convention committee shall receive all public funds to which the national committee is entitled under 11 CFR 9008.3 and 9008.4 and all private contributions made for the purpose of defraying convention expenses. All expenditures on behalf of the national committee for convention expenses shall be made by the convention committee.

(3) The national committee shall file with the Commission an application statement including the information set forth below and any changes in such information must be reported to the Commission within 10 days following the change:

(i) The name and address of the national committee;

(ii) The name and address of the convention committee and of the officers of that committee;

(iii) The name of the city where the convention is to be held and the approximate dates;

(iv) The name, address, and position of the convention committee officers designated by the national committee to sign requests for payments; and

(v) The name and address of the commercial bank to be used as the depository of the convention committee;

(4) The convention committee shall, by letter to the Commission, agree to the conditions set forth below and such agreement shall also be binding upon the national committee.

(i) The convention committee shall agree to comply with the applicable expenditure limitation set forth at 11 CFR 9008.7.

(ii) The convention committee shall agree to file convention reports as required under 2 U.S.C. 437 and 11 CFR 9008.12.

(iii) The convention committee shall agree to establish one or more accounts into which all public funds received under 11 CFR 9008.3 and 9008.4 must be deposited and from which all expenditures for convention expenses must be made, provided that such account(s) shall contain only public funds.

(iv) The convention committee shall agree to establish one or more accounts into which all private contributions received to defray convention expenses shall be deposited and from which all expenditures to defray such expense shall be made. *Provided*, That such accounts contain private contributions solely.

(v) The convention committee shall agree to obtain and furnish to the Commission at its request evidence of convention expenses made by the committee. The convention committee has the burden of proving that expenditures by the convention committee were for purposes of defraying convention expenses as set forth at 11 CFR 9008.6(a)(4). The convention committee must include as part of the evidence of convention expenses the following documentation:

(A) For expenditures exceeding \$200, either:

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

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

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

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

(c) Where the documents specified at paragraph (b) are not available, a voucher or contemporaneous memorandum from the committee; or

(3) If neither a receipted bill nor the documentation specified in paragraph (c) is available, a cancelled check stating the particulars of the expenditure.

(4) Where the supporting documentation required above is not available, the committee may present a cancelled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

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

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

(B) For all other expenditures:

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

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

(C) For purposes of 11 CFR 9008.8(b)(4)(v), *payee* means the person who provides the goods or services to the committee in return for the expenditure except for an advance of \$2,000 or less for travel and/or subsistence to an individual who will be the recipient of the goods or services purchased.

(D) For purposes of 11 CFR 9008.8(b)(4)(v), the term *particulars* means the identification of the payee, the date and amount of the expenditure, and a description of the goods or services purchased.

(E) Upon the request of the Commission the convention committee shall supply an explanation of the connection between the expenditure and the convention.

(vi) The convention committee shall agree to furnish to the Commission any books, records, including bank records for all accounts, and a copy of any contract which the national committee enters into with a host committee or convention city, as well as other information that the Commission may request.

(vii) The convention committee shall agree to permit an audit and examination pursuant to 26 U.S.C. 9008(g) and 11 CFR 9008.9 of all convention expenses; to facilitate such audit by making available office space, records, and such personnel as is necessary to the conduct of the audit and examination; and to pay any amounts required to be paid under 26 U.S.C. 9008(h) and 11 CFR 9008.10.

(viii) The convention committee shall pay any civil penalties included in a conciliation agreement with or imposed under 2 U.S.C. 437g.

(5) The application statement and agreement may be filed anytime after June 1 of the calendar year preceding the year in which a Presidential nominating convention of a political party is held, but no later than first day of the convention.

(c) *Increase in certified amount.* If the application statement is filed before it is possible to determine the cost of living increase for the year preceding the convention, that amount determined by the increase shall be paid to the national committee promptly after the increase has been determined.

(d) *Availability of payments.* The national committee of a major or minor party may receive payments under 11 CFR 9008.8 beginning on July 1 of the calendar year immediately preceding the calendar in which a Presidential nominating convention of the political party involved is held.

(e) *Certification of payment.* After a national committee has properly submitted its application statement and agreement as required under 11 CFR 9008.8(b), and upon receipt of a written request, payment of the committee's entitlement shall be certified by the Commission to the Secretary of the Treasury.

[44 FR 63039, Nov. 1, 1979, as amended at 44 FR 77137, Dec. 31, 1979; 45 FR 21209, Apr. 1, 1980; 48 FR 33244, July 21, 1983]

§ 9008.9 Examination and audits.

The Commission shall conduct an examination and audit of the convention committee no later than December 31 of the calendar year of the convention and may at any time conduct other examinations and audits as it deems necessary. The Commission shall also conduct an examination and audit of each host committee registered under 11 CFR 9008.12(a)(1).

§ 9008.10 Repayments.

(a) *Excess payments.* If the Commission determines that any portion of the payments to the national committee or convention committee under 11 CFR 9008.8(b) was in excess of the aggregate payments to which the national committee was entitled under 11 CFR 9008.3 and 9008.4, it shall so notify the national committee, and the national committee shall pay to the Secretary an amount equal to such portion.

(b) *Excessive expenditures.* If the Commission determines that the national committee or convention committee incurred convention expenses in excess of the limitations under 11 CFR 9008.7(a), it shall notify such national committee of the amount of such excessive expenditures, and such national committee shall pay to the Secretary an amount equal to the amount specified.

(c) *Excessive contributions.* If the Commission determines that the national committee accepted contributions to defray convention expenses which, when added to the amount of payments received, exceeds the expenditure limitation of such party, it shall notify such national committee of the amount of the contributions so

accepted, and such national committee shall pay to the Secretary an amount equal to the amount specified.

(d) *Improper usage or documentation.* If the Commission determines that any amount of any payment to the national committee or convention committee under 11 CFR 9008.8(b) was used for any purposes other than the purposes authorized at 11 CFR 9008.6 or was not documented in accordance with 11 CFR 9008.8(b)(4)(v), it shall notify the national committee of the amount improperly used or documented and such national committee shall pay to the Secretary an amount equal to the amount specified.

(e) *Unspent funds.* (1) If any portion of the payment under 11 CFR 9008.3 remains unspent after all convention expenses have been paid, that portion shall be returned to the Secretary of the Treasury.

(2) The national committee or convention committee shall make an interim repayment of unspent funds based on the financial position of the committee as of the end of the sixth month following the last day of the convention, allowing for a reasonable amount as determined by the Commission to be withheld for unanticipated contingencies. If, after written request by the national committee or convention committee, the Commission determines, upon review of evidence presented by either committee, that amounts previously refunded are needed to defray convention expenses, the Commission shall certify such amount for payment.

(3) All unspent funds shall be repaid to the U.S. Treasury no later than 24 months after the last day of the convention, unless the national committee has been granted an extension of time. The Commission may grant any extension of time it deems appropriate upon request of the national committee.

(f) *Repayment limit.* No repayment shall be required from the national committee or the convention committee under 11 CFR 9008.10, which, when added to other repayments required from such national committee under this section, exceeds the amount of payments received by such national committee under §§ 9008.3 and 9008.4.

(g) *Notice.* (1) If the Commission determines that repayment is required, it shall give written notification to committee of the amounts required to be paid and the reasons therefor. No notification shall be made by the Commission under this section more than 3 years after the last day of the Presidential nominating convention.

(2) The national committee shall repay to the Secretary, within 90 days of the notice, the amount of the repayment. Upon application submitted by the national committee or convention committee, the Commission may grant a 90-day extension of the repayment period.

(3) All repayments shall be made payable to the U.S. Treasury, Bureau of Government Finance Operations and shall be deposited in the general fund of the Treasury.

[44 FR 63039, Nov. 1, 1979; as amended at 44 FR 77137, Dec. 31, 1979]

§ 9008.11 Resolution of disputes concerning repayments.

(a) If the convention committee or national committee disputes the Commission's determination under 11 CFR 9008.10 that a repayment is required, it shall submit to the Commission in writing within 30 days of receipt of the Commission's notice legal or factual materials to demonstrate that a repayment is not required.

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

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

(d) The national committee shall repay to the Secretary any amount required to be repaid within ten days of receipt of the Commission's notification of final determination.

(e) Any final repayment determination made by the Commission shall be subject to review by the U.S. Court of Appeals for the District of Columbia upon petition filed in such court by any interested person. Any petition filed pursuant to this section shall be filed within 30 days after the determination by the Commission for which review is sought.

§ 9008.12 Registration and reports.

(a) Registration and reports by committees, including host committees, other organizations or groups which represent a municipality, State, or other local government agency.

(1) *Registration.* (i) Each committee, including a host committee, other organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention shall register with the Commission on the Convention Registration Form within 10 days of the date on which such party chooses the convention city. The following information shall be required of the registrant: the name and address; the name of its officers; and a list of the activities which the registering entity plans to undertake in connection with the convention.

(ii) Any such committee organization or group organization which is unsuccessful in its efforts to attract the convention to a city need not register under 11 CFR 9008.12(a)(1)(i).

(2) *Post-convention and quarterly reports; content and time of filing.* (i) Each committee, organization or group required to register under 11 CFR 9008.12(a)(1)(i) shall file a post convention report with the Commission FEC Form 4. This report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. This report shall disclose all receipts and disbursements, including in-kind contributions, made with respect to a presidential nominating convention. This report shall be complete as of 15 days prior to the date on which it must be filed.

(ii) If such committee, organization or group has receipts or makes disbursements after the completion date of the post convention report, it shall begin to file quarterly reports no later than 10 days after the end of the following calendar quarter. This report shall disclose all transactions completed as of the close of that calendar quarter. Quarterly reports shall be filed thereafter until the committee, organization or group ceases all activity which must be reported under 11 CFR 9008.12(a)(2).

(iii) Such committee, organization or group shall file a final report with the Commission not later than 10 days after it ceases activity which must be reported under 11 CFR 9008.12(a)(2), unless such status is reflected in either the post convention report or a quarterly.

(b) *Registration and reports by political parties—(1) Registration.* (i) Each convention committee established by a national committee under 11 CFR 9008.8(b)(2) shall register with the Commission on FEC Form 1 as a political committee pursuant to 11 CFR part 102 and shall file reports with the Commission as required at § 9008.12(b)(2).

(ii) Each committee or other organization, including a national committee, which represents a national major, minor, or new political party in making arrangements for that party's convention held to nominate a candidate for the office of President or Vice President shall register on FEC Form 1 with the Commission as a political committee pursuant to 11 CFR part 102, except that this registration requirement shall not apply to a convention committee which must register under 11 CFR 9008.12(b)(1)(i).

(iii) A State party committee or a subordinate committee of a State party committee which only assists delegates and alternates to the convention from that State with travel expenses and arrangements, or which sponsors caucuses, receptions, and similar activities at the convention site, need not register or report under 11 CFR 9008.12(b).

(2) *Quarterly and Post convention reports; Content and Time of Filing.* (i) Each committee or other organiza-

tion required to register under 11 CFR 9008.12(b)(1) shall file reports in accordance with 11 CFR 9008.12(b)(2)(ii).

(ii) The first quarterly report shall be filed on FEC Form 4, no later than 10 days after the end of the calendar quarter in which a committee either receives payment under 11 CFR 9008.8 or for parties which do not accept public funds, no later than 10 days after the calendar quarter in which the committee receives contributions or makes expenditures to defray convention expenses. Quarterly reports shall be completed as of the close of the quarter and shall continue to be filed until such committee ceases activity in connection with that party's presidential nominating convention. However, any quarterly report due within 20 days before or after the convention shall be suspended and the committee shall in lieu of such quarterly report file a post convention report. The post convention report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or, 20 days prior to the presidential general election. The post convention report shall be complete as of 15 days prior to the date on which the report must be filed.

(3) A convention committee which has received payments under 11 CFR 9008.8 shall cease activity no later than 24 months after the convention, unless the committee has been granted an extension of time. The Commission may grant any extension of time it deems appropriate upon request of the committee at least 30 days prior to the close of the 24 month period.

PARTS 9009—9011 [RESERVED]

PART 9012—UNAUTHORIZED EXPENDITURES AND CONTRIBUTIONS

Sec.

9012.1 Excessive expenses.

9012.2 Unauthorized acceptance of contributions.

9012.3 Unlawful use of payments received from the fund.

Sec.

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

9012.5 Kickbacks and illegal payments.

AUTHORITY: 26 U.S.C. 9012.

SOURCE: 52 FR 20891, June 3, 1987, unless otherwise noted.

§ 9012.1 Excessive expenses.

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

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to incur expenses with respect to a presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under 11 CFR part 9008, unless the incurring of such expenses is authorized by the Commission under 11 CFR 9008.7(a)(3).

§ 9012.2 Unauthorized acceptance of contributions.

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

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

that eligible candidate or his or her authorized committee(s).

§ 9012.3 Unlawful use of payments received from the fund.

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

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

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

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

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

It shall be unlawful for any person knowingly and willfully—

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

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

§ 9012.5 Kickbacks and illegal payments.

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

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

SUBCHAPTER F—PRESIDENTIAL ELECTION CAMPAIGN FUND: PRESIDENTIAL PRIMARY MATCHING FUND

PART 9031—SCOPE

AUTHORITY: 26 U.S.C. 9031 and 9039(b).

§ 9031.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Primary Matching Payment Account under 26 U.S.C. 9031 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431-455 of title 2 U.S.C., and regulations prescribed thereunder (11 CFR parts 100 through 115). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431-455 of title 2 U.S.C., or regulations prescribed thereunder (11 CFR parts 100 through 115).

152 FR 20892, June 3, 1987

PART 9032—DEFINITIONS

Sec.

- 9032.1 Authorized committee.
- 9032.2 Candidate.
- 9032.3 Commission.
- 9032.4 Contribution.
- 9032.5 Matching payment account.
- 9032.6 Matching payment period.
- 9032.7 Primary election.
- 9032.8 Political committee.
- 9032.9 Qualified campaign expense.
- 9032.10 Secretary.
- 9032.11 State.

AUTHORITY: 26 U.S.C. 9032 and 9039(b).

SOURCE: 52 FR 20892, June 3, 1987, unless otherwise noted.

§ 9032.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, *authorized committee* means with respect to candidates (as defined at 11 CFR 9032.2) seeking the nomination of a political party for the office of President, any political committee that is authorized by a candidate to solicit or receive contributions or to incur expenditures on behalf of the candidate. The term *authorized committee* includes the candidate's principal campaign committee desig-

nated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate in writing pursuant to 11 CFR 100.3(a)(3).

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

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

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

(e) A delegate committee, as defined in 11 CFR 100.5(e)(5), is not an authorized committee of a candidate unless it also meets the requirements of 11 CFR 9032.1(a). Expenditures by delegate committees on behalf of a candidate may count against that candidate's expenditure limitation under the circumstances set forth in 11 CFR 110.14.

§ 9032.2 Candidate.

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

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

(b) Receives contributions or incurs qualified campaign expenses;

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

(d) Receives written notification from the Commission that any other person is receiving contributions or

making expenditures on the individual's behalf and fails to disavow that activity by letter to the Commission within 30 calendar days after receipt of notification.

§ 9032.3 Commission.

Commission means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

§ 9032.4 Contribution.

For purposes of this subchapter, *contribution* has the same meaning given the term under 2 U.S.C. 431(8)(A) and 11 CFR 100.7, except as provided at 11 CFR 9034.4(b)(4).

§ 9032.5 Matching payment account.

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

§ 9032.6 Matching payment period.

Matching payment period means the period beginning January 1 of the calendar year in which a Presidential general election is held and may not exceed one of the following dates:

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

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

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

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

§ 9032.7 Primary election.

(a) *Primary election* means an election held by a State or a political party, including a runoff election, or a nominating convention or a caucus—

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

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

(3) For the purposes stated in both paragraphs (1) and (2) of this section; or

(4) To nominate a Presidential candidate.

(b) If separate primary elections are held in a State by the State and a political party, the primary election for the purposes of this subchapter will be the election held by the political party.

§ 9032.8 Political committee.

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

§ 9032.9 Qualified campaign expense.

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

(1) Incurred by or on behalf of a candidate or his or her authorized committees from the date the individual becomes a candidate through the last day of the candidate's eligibility as determined under 11 CFR 9033.5;

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

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

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

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

(2) Any person authorized or requested by the candidate, an author-

ized committee of the candidate or an agent of the candidate to make the expenditure; or

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

(c) Expenditures incurred either before the date an individual becomes a candidate or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a). Expenditures described under 11 CFR 9034.4(b) will not be considered qualified campaign expenses.

§ 9032.10 Secretary.

For purposes of this subchapter, *Secretary* means the Secretary of the Treasury.

§ 9032.11 State.

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

PART 9033—ELIGIBILITY FOR PAYMENTS

- Sec.
- 9033.1 Candidate and committee agreements.
- 9033.2 Candidate and committee certifications; threshold submission.
- 9033.3 Expenditure limitation certification.
- 9033.4 Matching payment eligibility; threshold requirements.
- 9033.5 Determination of ineligibility date.
- 9033.6 Determination of inactive candidacy.
- 9033.7 Determination of active candidacy.
- 9033.8 Reestablishment of eligibility.
- 9033.9 Failure to comply with disclosure requirements or expenditure limitations.
- 9033.10 Procedures for initial and final determinations.
- 9033.11 Documentation of disbursements.
- 9033.12 Production of computerized information.

AUTHORITY: 26 U.S.C. 9033 and 9039(b).

SOURCE: 52 FR 20893, June 3, 1987, unless otherwise noted.

§ 9033.1 Candidate and committee agreements.

(a) *General.* (1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall agree in a letter signed by the candidate to the Commission that the candidate and the candidate's authorized committee(s) will comply with the conditions set forth in 11 CFR 9033.1(b). The candidate may submit the letter containing the agreements required by this section at any time after January 1 of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted a candidate agreement that meets the requirements of this section.

(b) *Conditions.* The candidate shall agree that:

(1) The candidate has the burden of proving that disbursements by the candidate or any authorized committee(s) or agents thereof are qualified campaign expenses as defined at 11 CFR 9032.9.

(2) The candidate and the candidate's authorized committee(s) will comply with the documentation requirements set forth in 11 CFR 9033.11.

(3) The candidate and the candidate's authorized committee(s) will provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidate or authorized committee(s) of the candidate and the campaign if requested by the Commission.

(4) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation for matching fund submissions, any books, records (including bank records for all accounts) and supporting documentation and other information that the Commission may request.

(5) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records

for all accounts), all documentation required by this section including those required to be maintained under 11 CFR 9033.11, and other information that the Commission may request. The records provided at the time of the Commission's audit shall also include production of magnetic computer tapes containing all information required by law to be maintained regarding the committee's receipts and disbursements, if the committee maintains its records on computer. Upon request, documentation explaining the computer systems software capabilities shall also be provided.

(6) The candidate and the candidate's authorized committee(s) will permit an audit and examination pursuant to 11 CFR part 9038 of all receipts and disbursements including those made by the candidate, all authorized committee(s) and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR parts 9038 and 9039.

(7) The candidate and the candidate's authorized committee(s) will submit the name and mailing address of the person who is entitled to receive matching fund payments on behalf of the candidate and the name and address of the national or State bank designated by the candidate as a campaign depository as required by 11 CFR part 103 and 11 CFR 9037.3. Changes in the information required by this paragraph shall not be effective until submitted to the Commission in a letter signed by the candidate or the Committee treasurer.

(8) The candidate and the candidate's authorized committee(s) will prepare matching fund submissions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(9) The candidate and the candidate's authorized committee(s) will comply with the applicable requirements of 2 U.S.C. 431 *et seq.*; 26 U.S.C.

9031 *et seq.* and the Commission's regulations at 11 CFR parts 100-115, and 9031-9039.

(10) The candidate and the candidate's authorized committee(s) will pay any civil penalties included in a conciliation agreement imposed under 2 U.S.C. 437g against the candidate, any authorized committee of the candidate or any agent thereof.

§ 9033.2 Candidate and committee certifications; threshold submission.

(a) *General.* (1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall make the certifications set forth in 11 CFR 9033.2(b) to the Commission in a written statement signed by the candidate. The candidate may submit the letter containing the required certifications at any time after January 1 of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted candidate certifications that meet the requirements of this section.

(b) *Certifications.* (1) The candidate shall certify that he or she is seeking nomination by a political party to the Office of President in more than one State. For purposes of this section, in order for a candidate to be deemed to be seeking nomination by a political party to the office of President, the party whose nomination the candidate seeks must have a procedure for holding a primary election, as defined in 11 CFR 9032.7, for nomination to that office. For purposes of this section, the term *political party* means an association, committee or organization which nominates an individual for election to the office of President. The fact that an association, committee or organization qualifies as a political party under this section does not affect the party's status as a national political party for purposes of 2 U.S.C. 441a(a)(1)(B) and 441a(a)(2)(B).

(2) The candidate and the candidate's authorized committee(s) shall certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign

for nomination, which expenditures are in excess of the limitations under 11 CFR part 9035.

(3) The candidate and the candidate's authorized committee(s) shall certify:

(i) That they have received matchable contributions totalling more than \$5,000 in each of at least 20 States; and

(ii) That the matchable contributions are from individuals who are residents of the State for which their contributions are submitted.

(iii) A maximum of \$250 of each individual's aggregate contributions will be considered as matchable contributions for the purpose of meeting the thresholds of this section.

(iv) For purposes of this section, contributions of an individual who maintains residences in more than one State may only be counted toward the \$5,000 threshold for the State from which the earliest contribution was made by that contributor.

(c) *Threshold submission.* To become eligible to receive matching payments, the candidate shall submit documentation of the contributions described in 11 CFR 9033.2(b)(3) to the Commission for review. The submission shall follow the format and requirements of 11 CFR 9036.1.

§ 9033.3 Expenditure limitation certification.

(a) If the Commission makes an initial determination that a candidate or the candidate's authorized committee(s) have knowingly and substantially exceeded the expenditure limitations at 11 CFR part 9035 prior to that candidate's application for certification, the Commission may make an initial determination that the candidate is ineligible to receive matching funds.

(b) The Commission will notify the candidate of its initial determination, in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may submit, within 20 calendar days after service of the Commission's notice, written legal or factual materials, in accordance with 11 CFR 9033.10(b), demonstrating that he or she has not knowingly and substan-

tially exceeded the expenditure limitations at 11 CFR part 9035.

(c) A final determination of the candidate's ineligibility will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d) A candidate who receives a final determination of ineligibility under 11 CFR 9033.3(c) shall be ineligible to receive matching fund payments under 11 CFR 9034.1.

§ 9033.4 Matching payment eligibility threshold requirements.

(a) The Commission will examine the submission made under 11 CFR 9033.1 and 9033.2 and either—

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

(2) Make an initial determination that the candidate has failed to satisfy the matching payment threshold requirements. The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may, within 30 calendar days after service of the Commission's notice, satisfy the threshold requirements or submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she has satisfied those requirements. A final determination by the Commission that the candidate has failed to satisfy threshold requirements will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(b) In evaluating the candidate's submission under 11 CFR 9033.1 and 9033.2, the Commission may consider other information in its possession, including but not limited to past actions of the candidate in an earlier publicly-financed campaign, that is relevant to a determination regarding the candidate's eligibility for matching funds.

(c) The Commission will make its examination and determination under this section as soon as practicable. During the Presidential election year, the Commission will generally complete its review and make its determination within 15 business days.

§ 9033.5 Determination of ineligibility date.

The candidate's date of ineligibility shall be whichever date by operation of 11 CFR 9033.5 (a), (b) or (c) occurs first. After the candidate's date of ineligibility, he or she may only receive matching payments to the extent that he or she has met outstanding campaign obligations as defined in 11 CFR 9034.5.

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

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

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

(3) The date which the Commission determines under 11 CFR 9033.6 to be the date that the candidate is not actively seeking election in more than one State.

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

(1) The Commission may refuse to accept the candidate's certification if it determines under 11 CFR 9033.7 that the candidate is an active candidate in the primary involved.

(2) For purposes of this paragraph, if the candidate is running in two primary elections in different States on the same date, the highest percentage of votes the candidate receives in any one State will govern. Separate primary elections held in more than one

State on the same date are not deemed to be consecutive primaries. If two primary elections are held on the same date in the same State (e.g., a primary to select delegates to a national nominating convention and a primary for the expression of preference for the nomination of candidates for election to the office of President), the highest percentage of votes a candidate receives in either election will govern. If two or more primaries are held in the same State on different dates, the earliest primary will govern.

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

(d) *Reestablishment of eligibility.* If the Commission has determined that a candidate is ineligible under 11 CFR 9033.5 (a) or (b), the candidate may reestablish eligibility to receive matching funds under 11 CFR 9033.8.

§ 9033.6 Determination of inactive candidacy.

(a) *General.* The Commission may, on the basis of the factors listed in 11 CFR 9033.6(b) below, make a determination that a candidate is no longer actively seeking nomination for election in more than one State. Upon a final determination by the Commission that a candidate is inactive, that candidate will become ineligible as provided in 11 CFR 9033.5.

(b) *Factors considered.* In making its determination of inactive candidacy, the Commission may consider, but is not limited to considering, the following factors:

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

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

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

(4) The release of committed delegates;

(5) The candidate urges his or her delegates to support another candidate while not actually releasing committed delegates;

(6) The candidate urges supporters to support another candidate.

(c) *Initial determination.* The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b) and will advise the candidate of the date on which active campaigning in more than one State ceased. The candidate may, within 15 business days after service of the Commission's notice, submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is actively campaigning in more than one State.

(d) *Final determination.* A final determination of inactive candidacy will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.7 Determination of active candidacy.

(a) Where a candidate certifies to the Commission under 11 CFR 9033.5(b) that he or she will not be an active candidate in an upcoming primary, the Commission may, nevertheless, on the basis of factors listed in 11 CFR 9033.6(b), make an initial determination that the candidate is an active candidate in the primary involved.

(b) The Commission will notify the candidate of its initial determination within 10 business days of receiving the candidate's certification under 11 CFR 9033.5(b) or, if the timing of the activity does not permit notice during the 10 day period, as soon as practicable following campaign activity by the candidate in the primary state. The Commission's initial determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(b). Within 10 business days after service of the Commission's notice the candidate may submit, in accordance with 11 CFR 9033.10(b), written legal or factual materials to demonstrate that he or she is not an active candidate in the primary involved.

(c) A final determination by the Commission that the candidate is active will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.8 Reestablishment of eligibility.

(a) *Candidates found to be inactive.* A candidate who has become ineligible under 11 CFR 9033.5(a) on the basis that he or she is not actively campaigning in more than one State may reestablish eligibility for matching payments by submitting to the Commission evidence of active campaigning in more than one State. In determining whether the candidate has reestablished eligibility, the Commission will consider, but is not limited to considering, the factors listed in 11 CFR 9033.6(b). The day the Commission determines to be the day the candidate becomes active again will be the date on which eligibility is reestablished.

(b) *Candidates receiving insufficient votes.* A candidate determined to be ineligible under 11 CFR 9033.5(b) by failing to obtain the required percentage of votes in two consecutive primaries may have his or her eligibility reestablished if the candidate receives at least 20 percent of the total number of votes cast for candidates of the same party for the same office in a primary election held subsequent to the date of the election which rendered the candidate ineligible.

(c) The Commission will make its determination under 11 CFR 9033.8 (a) or (b) without requiring the individual to reestablish eligibility under 11 CFR 9033.1 and 2. A candidate whose eligibility is reestablished under this section may submit, for matching payment, contributions received during ineligibility. Any expenses incurred during the period of ineligibility that would have been considered qualified campaign expenses if the candidate had been eligible during that time may be defrayed with matching payments.

§ 9033.9 Failure to comply with disclosure requirements or expenditure limitations.

(a) If the Commission receives information indicating that a candidate or his or her authorized committee(s) has knowingly and substantially failed to comply with the disclosure requirements of 2 U.S.C. 434 and 11 CFR part 104, or that a candidate has knowingly and substantially exceeded the ex-

penditure limitations at 11 CFR part 9035, the Commission may make an initial determination to suspend payments to that candidate.

(b) The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate will be given an opportunity, within 20 calendar days after service of the Commission's notice, to comply with the above cited provisions or to submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is not in violation of those provisions.

(c) Suspension of payments to a candidate will occur upon a final determination by the Commission to suspend payments. Such final determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d)(1) A candidate whose payments have been suspended for failure to comply with reporting requirements may become entitled to receive payments if he or she subsequently files the required reports and pays or agrees to pay any civil or criminal penalties resulting from failure to comply.

(2) A candidate whose payments are suspended for exceeding the expenditure limitations shall not be entitled to receive further matching payments under 11 CFR 9034.1.

§ 9033.10 Procedures for initial and final determinations.

(a) *General.* The Commission will follow the procedures set forth in this section when making an initial or final determination based on any of the following reasons.

(1) The candidate has knowingly and substantially exceeded the expenditure limitations of 11 CFR part 9035 prior to the candidate's application for certification, as provided in 11 CFR 9033.3;

(2) The candidate has failed to satisfy the matching payment threshold requirements, as provided in 11 CFR 9033.4;

(3) The candidate is no longer actively seeking nomination in more than one state, as provided in 11 CFR 9033.6;

(4) The candidate is an active candidate in an upcoming primary despite the candidate's assertion to the contrary, as provided in 11 CFR 9033.7;

(5) The Commission receives information indicating that the candidate has knowingly and substantially failed to comply with the disclosure requirements or exceeded the expenditure limits, as provided in 11 CFR 9033.9; or

(6) The Commission receives information indicating that substantial assets of the candidate's authorized committee have been undervalued or not included in the candidate's statement of net outstanding campaign obligations or that the amount of outstanding campaign obligations has been otherwise overstated in relation to campaign assets, as provided in 11 CFR 9034.5(g).

(b) *Initial determination.* If the Commission makes an initial determination that a candidate may not receive matching funds for one or more of the reasons indicated in 11 CFR 9033.10(a), the Commission will notify the candidate of its initial determination. The notification will give the legal and factual reasons for the determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given an opportunity to comply with the requirements at issue or to submit, within the time provided by the relevant section as referred to in 11 CFR 9033.10(a), written legal or factual materials to demonstrate that the candidate has satisfied those requirements. Such materials may be submitted by counsel if the candidate so desires.

(c) *Final determination.* The Commission will consider any written legal or factual materials timely submitted by the candidate before making its final determination. A final determination that the candidate has failed to satisfy the requirements at issue will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Effect on other determinations.* If the Commission makes an initial determination under this section, but decides to take no further action at that time, the Commission may use the legal and factual bases on which the initial determination was based in any future repayment determination under 11 CFR part 9038 or 9039. A determination by the Commission under this section may be independent of any Commission decision to institute an enforcement proceeding under 2 U.S.C. 437g.

(e) *Petitions for rehearing.* Following a final determination under this section, the candidate may file a petition for rehearing in accordance with 11 CFR 9033.5(a).

§ 9033.11 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or committee(s) are qualified campaign expenses as defined in 11 CFR 9032.9. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9033.11(b).

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

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

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

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

(B) Where the documents specified in 11 CFR 9033.11(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate

or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9033.11(b)(1)(i) nor the supporting documentation specified in 11 CFR 9033.11(b)(1)(ii) is available, a cancelled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR 9033.11(b)(1)(i), (ii) or (iii) is not available, the candidate or committee may present a cancelled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

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

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

(2) For all other disbursements the candidate shall present:

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

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

(3) For purposes of this section,

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

(ii) *Purpose* means the identification of the payee, the date and amount of the disbursement, and a description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records, with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts,

journals, ledgers, fundraising solicitation material, accounting systems documentation, matching fund submissions, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets—*

(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded \$2,000 when acquired by the campaign. The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, *capital asset* shall be defined in accordance with 11 CFR 9034.5(c)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds \$5,000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9034.5(c)(2).

§ 9033.12 Production of computerized information.

(a) *Categories of computerized information to be provided.* If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1):

(1) Information required by law to be maintained regarding the committee's receipts or disbursements;

(2) Records of allocations of expenditures to particular state expenditure limits and to the overall expenditure limit;

(3) Disbursements for exempt fundraising and exempt compliance costs, including the allocation of salaries and overhead expenditures;

(4) Records of allocations of expenditures for the purchase of broadcast media;

(5) Records used to prepare statements of net outstanding campaign obligations;

(6) Records used to reconcile bank statements;

(7) Disbursements made and reimbursements received for the cost of transportation, ground services and facilities made available to media personnel, including records relating to how costs charged to media personnel were determined;

(8) Records relating to the acquisition, use and disposition of capital assets or other assets; and

(9) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, bank reconciliations or statements of net outstanding campaign obligations.

(b) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information pre-

pared or maintained by the committee.

[55 FR 26396, June 27, 1990; 55 FR 34007, Aug. 20, 1990]

PART 9034—ENTITLEMENTS

Sec.

- 9034.1 Candidate entitlements.
- 9034.2 Matchable contributions.
- 9034.3 Non-matchable contributions.
- 9034.4 Use of contributions and matching payments.
- 9034.5 Net outstanding campaign obligations.
- 9034.6 Reimbursements for transportation and services made available to media personnel.
- 9034.7 Allocation of travel expenditures.
- 9034.8 Joint fundraising.
- 9034.9 Sale of assets acquired for fundraising purposes.

AUTHORITY: 26 U.S.C. 9034 and 9039(b).

SOURCE: 52 FR 20897, June 3, 1987, unless otherwise noted.

§ 9034.1 Candidate entitlements.

(a) A candidate who has been notified by the Commission under 11 CFR 9036.1 that he or she has successfully satisfied eligibility and certification requirements is entitled to receive payments in an amount equal to the amount of each matchable campaign contribution received by the candidate, except that a candidate who has become ineligible under 11 CFR 9033.5 may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations as defined in 11 CFR 9034.5.

(b) If on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31 of the Presidential election year provided that on the date of payment there are remaining net outstanding campaign obligations, i.e., the sum of the contributions received on or after the date of ineligibility plus matching funds received on or after the date of ineligibility is less than the candidate's net outstanding campaign obligations.

This entitlement will be equal to the lesser of:

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

(2) The remaining net outstanding campaign obligations.

(c) A candidate whose eligibility has been reestablished under 11 CFR 9033.8 or who after suspension of payments has met the conditions set forth at 11 CFR 9033.9(d) is entitled to receive payments for matchable contributions for which payments were not received during the ineligibility or suspension period.

(d) The total amount of payments to a candidate under this section shall not exceed 50% of the total expenditure limitation applicable under 11 CFR part 9035.

§ 9034.2 Matchable contributions.

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

(1) The contribution shall be a gift of money made: By an individual; by a written instrument and for the purpose of influencing the result of a primary election.

(2) Only a maximum of \$250 of the aggregate amount contributed by an individual may be matched.

(3) Before a contribution may be submitted for matching, it must actually be received by the candidate or any of the candidate's authorized committees and deposited in a designated campaign depository maintained by the candidate's authorized committee.

(4) The written instrument used in making the contribution must be dated, physically received, and deposited by the candidate or authorized committee on or after January 1 of the year immediately preceding the calendar year of the Presidential election, but no later than December 31 following the matching payment period as defined under 11 CFR 9032.6. Donations received by an individual who is testing the waters pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1) may be matched when the individual becomes a candidate if such donations meet the requirements of this section.

(b) For purposes of this section, the term *written instrument* means a check written on a personal, escrow or trust account representing or containing the contributor's personal funds; a money order; or any similar negotiable instrument.

(c) The written instrument shall be: Payable on demand; and to the order of, or specifically endorsed without qualification to, the Presidential candidate, or his or her authorized committee. The written instrument shall contain: The full name and signature of the contributor(s); the amount and date of the contribution; and the mailing address of the contributor(s).

(1) In cases of a check drawn on a joint checking account, the contributor is considered to be the owner whose signature appears on the check.

(i) To be attributed equally to other joint tenants of the account, the check or other accompanying written document shall contain the signature(s) of the joint tenant(s). If a contribution on a joint account is to be attributed other than equally to the joint tenants, the check or other written documentation shall also indicate the amount to be attributed to each joint tenant.

(ii) In the case of a check for a contribution attributed to more than one person, where it is not apparent from the face of the check that each contributor is a joint tenant of the account, a written statement shall accompany the check stating that the contribution was made from each individual's personal funds in the amount so attributed and shall be signed by each contributor.

(2) Contributions in the form of checks drawn on an escrow or trust account are matchable contributions, provided that:

(i) The contributor has equitable ownership of the account; and

(ii) The check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of contribution. This statement shall specify that the contributor has equitable ownership of the account and the account represents the personal funds of the contributor.

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

(i) The check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of contribution. This statement shall specify that the contribution is made with the contributor's personal funds and that the account on which the contribution is drawn is not maintained or controlled by an incorporated entity; and

(ii) The aggregate amount of the contributions drawn on a partnership or unincorporated association or business does not exceed \$1,000 to any one Presidential candidate seeking nomination.

(4) Contributions in the form of money orders, cashier's checks, or other similar negotiable instruments are matchable contributions, provided that:

(i) At the time it is initially submitted for matching, such instrument is signed by each contributor and is accompanied by a statement which specifies that the contribution was made in the form of a money order, cashier's check, traveller's check, or other similar negotiable instrument, with the contributor's personal funds;

(ii) Such statement identifies the date and amount of the contribution made by money order, cashier's check, traveller's check, or other similar negotiable instrument, the check or serial number, and the name of the issuer of the negotiable instrument; and

(iii) Such statement is signed by each contributor.

(5) Contributions in the form of the purchase price paid for the admission to any activity that primarily confers private benefits in the form of entertainment to the contributor (i.e., concerts, motion pictures) are matchable. The promotional material and tickets for the event shall clearly indicate that the ticket purchase price represents a contribution to the Presidential candidate.

(6) Contributions in the form of a purchase price paid for admission to an activity that is essentially political are matchable. An *essentially political* activity is one the principal purpose of which is political speech or discussion, such as the traditional political dinner or reception.

(7) Contributions received from a joint fundraising activity conducted in accordance with 11 CFR 9034.8 are matchable, provided that such contributions are accompanied by a copy of the joint fundraising agreement when they are submitted for matching.

§ 9034.3. Non-matchable contributions.

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

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

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

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

(d) Funds from a corporation, labor organization, government contractor, political committee as defined in 11 CFR 100.5 or any group of persons other than those under 11 CFR 9034.2(c)(3);

(e) Contributions which are made or accepted in violation of 2 U.S.C. 441a, 441b, 441c, 441e, 441f, or 441g;

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

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

(h) Contributions in the form of the purchase price paid for or otherwise induced by a chance to participate in a

raffle, lottery, or a similar drawing for valuable prizes;

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

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

§ 9034.4 Use of contributions and matching payments.

(a) *Qualified campaign expenses—*

(1) *General.* Except as provided in 11 CFR 9034.4(b)(3), all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.

(2) *Testing the waters.* Even though incurred prior to the date an individual becomes a candidate, payments made for the purpose of determining whether an individual should become a candidate, such as those incurred in conducting a poll, shall be considered qualified campaign expenses if the individual subsequently becomes a candidate and shall count against that candidate's limits under 2 U.S.C. 441a(b). See 11 CFR 100.8(b)(1).

(3) *Winding down costs.* (i) Costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies, shall be considered qualified campaign expenses. A candidate may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention.

(ii) If the candidate has become ineligible due to the operation of 11 CFR 9033.5(b), he or she may only receive matching funds to defray costs incurred before the candidate's date of ineligibility, for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, until the candidate is eligible to receive winding down costs under paragraph (a)(3)(i) of this section.

(4) *Taxes.* Federal income taxes paid by the committee on non-exempt function income, such as interest, dividends and sale of property, shall be considered qualified campaign expenses. These expenses shall not, however, count against the state or overall expenditure limits of 11 CFR 9035.1(a).

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

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR part 9035 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to the limitations in accordance with 11 CFR 9035.1(a)(2).

(3) *Post-ineligibility expenditures.* Any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR 9034.4(a)(3). Any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility are not qualified campaign expenses.

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from contributions or matching payments. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this sec-

tion shall be reported in accordance with 11 CFR part 104.

(5) *Payments to candidate.* Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.

(c) *Repayments.* Repayments may be made only from the following sources: Personal funds of the candidate (without regard to the limitations of 11 CFR 9035.2(a)), contributions and matching payments in the committee's account(s), and any additional funds raised subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended.

(d) *Transfers to other campaigns.* If a candidate has elected to receive matching funds and is simultaneously seeking nomination or election to another Federal office, no transfer of funds between his or her principal campaign committees or authorized committees may be made. See 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(c)(5) and 110.8(d). A candidate will be considered to be simultaneously seeking nomination or election to another Federal office if he or she is seeking nomination or election to such Federal office under 11 CFR 110.3(c)(5).

[52 FR 20897, June 3, 1987, as amended at 54 FR 34114, Aug. 17, 1989; 54 FR 48580, Nov. 24, 1989]

§ 9034.5 Net outstanding campaign obligations.

(a) Within 15 calendar days after the candidate's date of ineligibility, as determined under 11 CFR 9033.5, the candidate shall submit a statement of net outstanding campaign obligations. The candidate's net outstanding campaign obligations under this section equal the difference between paragraphs (a) (1) and (2) of this section:

(1) The total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility as determined under 11 CFR 9033.5, plus estimated necessary winding down costs as defined under 11 CFR 9034.4(a)(3), less

(2) The total of:

(i) Cash on hand as of the close of business on the last day of eligibility

(including all contributions dated on or before that date whether or not submitted for matching; currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveller's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value);

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

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

(b) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for nonqualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR part 9038 or any amounts paid to secure a surety bond under 11 CFR 9038.5(c).

(c)(1) *Capital assets.* For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded \$2000 when acquired by the campaign. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as *other assets* under 11 CFR 9034.5(c)(2). A list of all capital assets shall be maintained by the Committee in accordance with 11 CFR 9033.11(d). The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired. If the candidate wishes to claim a higher depreciation percentage for an item, he or she must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(2) *Other assets.* The term *other assets* means any property acquired by the campaign for use in raising funds or as collateral for campaign loans. *Other assets* must be included on the candidate's statement of net outstanding campaign obligations if the aggregate value of such assets exceeds \$5,000. The value of *other assets* shall be determined by the fair market value of each item on the candidate's date of ineligibility or on the date the item is acquired if acquired after the date of ineligibility. A list of other assets shall be maintained by the committee in accordance with 11 CFR 9033.11(d)(2).

(d) *Collectibility of accounts receivable.* If the committee determines that an account receivable of \$500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full writeoff was determined.

(e) Contributions received from joint fundraising activities conducted under 11 CFR 9034.8 may be used to pay a candidate's outstanding campaign obligations.

(1) Such contributions shall be deemed monies available to pay outstanding campaign obligations as of the date these funds are received by the fundraising representative committee and shall be included in the candidate's statement of net outstanding campaign obligations.

(2) The amount of money deemed available to pay a candidate's net outstanding campaign obligations will equal either—

(i) An amount calculated on the basis of the predetermined allocation formula, as adjusted for 2 U.S.C. 441a limitations; or

(ii) If a candidate receives an amount greater than that calculated under 11 CFR 9034.5(e)(2)(i), the amount actually received.

(f) The candidate shall submit a revised statement of net outstanding campaign obligations with each submission for matching funds payments filed after the candidate's date of ineligibility. The revised statement shall reflect the financial status of the campaign as of the close of business on the last business day preceding the date of submission for matching funds. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(g)(1) If the Commission receives information indicating that substantial assets of the candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding campaign obligations has been otherwise overstated in relation to campaign assets, the Commission may decide to temporarily suspend further matching payments pending a final determination whether the candidate is entitled to receive all or a portion of the matching funds requested.

(2) In making a determination under 11 CFR 9034.5(g)(1), the Commission will follow the procedures for initial and final determinations under 11 CFR 9033.10 (b) and (c). The Commission will notify the candidate of its initial determination within 15 business days after receipt of the candidate's statement of net outstanding campaign obligations. Within 15 business days after service of the Commission's notice, the candidate may submit written legal or factual materials to demonstrate that he or she has net outstanding campaign obligations that entitle the campaign to further matching payments.

(3) If the candidate demonstrates that the amount of outstanding campaign obligations still exceeds campaign assets, he or she may continue to receive matching payments.

(4) Following a final determination under this section, the candidate may file a petition for rehearing in accordance with 11 CFR 9038.5(a).

§ 9034.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, and typewriters) made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitations of 11 CFR 9035.1(a).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either: The individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

(d)(1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a) the amount of reimbursements received for the actual cost of transportation and services provided under paragraph (a) of this section. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements received equal to 3% of the actual cost of transportation and

services provided under this section as the administrative cost to the committee of providing such services to media personnel and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a) of this section.

(2) For the purposes of this section, *administrative costs* shall include all costs incurred by the committee for making travel arrangements for media personnel and for seeking reimbursements, whether performed by committee staff or independent contractors.

§ 9034.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR part 106, expenditures for travel relating to the campaign of a candidate seeking nomination for election to the office of President by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9034.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

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

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

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

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

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

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

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

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

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

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of

the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9034.8 Joint fundraising.

(a) *General*—(1) *Permissible participants*. Presidential primary candidates who receive matching funds under this subchapter may engage in joint fundraising with other candidates, political committees or unregistered committees or organizations.

(2) *Use of funds*. Contributions received as a result of a candidate's participation in a joint fundraising activity under this section may be—

(i) Submitted for matching purposes in accordance with the requirements of 11 CFR 9034.2 and the Federal Election Commission's Guideline for Presentation in Good Order;

(ii) Used to pay a candidate's net outstanding campaign obligations as provided in 11 CFR 9034.5;

(iii) Used to defray qualified campaign expenses;

(iv) Used to defray exempt legal and accounting costs; or

(v) If in excess of a candidate's net outstanding campaign obligations or expenditure limit, used in any manner consistent with 11 CFR 113.2, including repayment of funds under 11 CFR part 9038.

(b) *Fundraising representatives*—(1) *Establishment or selection of fundraising representative*. The participants in a joint fundraising effort under this section shall either establish a separate committee or select a participating committee, to act as fundraising representative for all participants. The fundraising representative shall be a reporting political committee and an authorized committee of each candidate.

(2) *Separate fundraising committee as fundraising representative*. A separate fundraising committee established by the participants to act as

fundraising representative for all participants shall—

(i) Be established as a reporting political committee under 11 CFR 100.5;

(ii) Collect contributions;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(3) *Participating committee as fundraising representative*. A participant selected to act as fundraising representative for all participants shall—

(i) Be a political committee as defined in 11 CFR 100.5;

(ii) Collect contributions; however, other participants may also collect contributions and then forward them to the fundraising representative as required by 11 CFR 102.8;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(4) *Independent fundraising agent*. The participants or the fundraising representative may hire a commercial fundraising firm or other agent to assist in conducting the joint fundraising activity. In that case, however, the fundraising representative shall still be responsible for ensuring that the recordkeeping, reporting and documentation requirements set forth in this subchapter are met.

(c) *Joint fundraising procedures*. Any joint fundraising activity under this section shall be conducted in accordance with the following requirements:

(1) *Written agreement*. The participants in a joint fundraising activity shall enter into a written agreement, whether or not all participants are political committees under 11 CFR 100.5. The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The participants shall also use the formula to allocate the expenses incurred for the fundraising activity. The fundraising representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request:

(2) *Funds advanced for fundraising costs.* (i) Except as provided in 11 CFR 9034.8(c)(2)(ii), the amount of funds advanced by each participant for fundraising costs shall be in proportion to the allocation formula agreed upon under 11 CFR 9034.8(c)(1).

(ii) A participant may advance more than its proportionate share of the fundraising costs; however, the amount advanced which is in excess of the participant's proportionate share shall not exceed the amount that participant could legally contribute to the remaining participants. See 11 CFR 102.12(c)(2) and part 110.

(3) *Fundraising notice.* In addition to any notice required under 11 CFR 110.11, a joint fundraising notice shall be included with every solicitation for contributions.

(i) This notice shall include the following information:

(A) The names of all committees participating in the joint fundraising activity whether or not such committees are political committees under 11 CFR 100.5;

(B) The allocation formula to be used for distributing joint fundraising proceeds;

(C) A statement informing contributors that, notwithstanding the stated allocation formula, they may designate their contributions for a particular participant or participants; and

(D) A statement informing contributors that the allocation formula may change if a contributor makes a contribution which would exceed the amount that contributor may give to any participant.

(ii) If one or more participants engage in the joint fundraising activity solely to satisfy outstanding debts, the notice shall also contain a statement informing contributors that the allocation formula may change if a participant receives sufficient funds to pay its outstanding debts.

(4) *Separate depository account.* (i) The participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. All contributions deposited into the separate depository account must be permissible under title 2, United

States Code. Each political committee shall amend its Statement of Organization to reflect the account as an additional depository.

(ii) The fundraising representative shall deposit all joint fundraising proceeds in the separate depository account within ten days of receipt as required by 11 CFR 103.3. The fundraising representative may delay distribution of the fundraising proceeds to the participants until all contributions are received and all expenses are paid.

(iii) For contribution reporting and limitation purposes, the date of receipt of a contribution by a participating political committee is the date that the contribution is received by the fundraising representative. The fundraising representative shall report contributions in the reporting period in which they are received. Participating political committees shall report joint fundraising proceeds in accordance with 11 CFR 9034.8(c)(9) when such funds are received from the fundraising representative.

(5) *Recordkeeping requirements.* (i) The fundraising representative and participating committees shall screen all contributions received to insure that the prohibitions and limitations of 11 CFR parts 110 and 114 are observed. Participating political committees shall make their contributor records available to the fundraising representative to enable the fundraising representative to carry out its duty to screen contributions.

(ii) The fundraising representative shall collect and retain contributor information with regard to gross proceeds as required under 11 CFR 102.8 and shall also forward such information to participating political committees.

(iii) The fundraising representative shall retain the records required under 11 CFR 9033.11 regarding fundraising disbursements for a period of three years. Commercial fundraising firms or agents shall forward such information to the fundraising representative.

(6) *Contribution limitations.* Except to the extent that the contributor has previously contributed to any of the participants, a contributor may make a contribution to the joint fundraising effort which contribution represents

the total amount that the contributor could contribute to all of the participants under the applicable limits of 11 CFR 110.1 and 110.2.

(7) *Allocation of gross proceeds.* (i) The fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement. Each contribution received shall be allocated among the participants in accordance with the allocation formula, unless the circumstances described in paragraphs (c)(7) (ii), (iii) or (iv) of this section apply. Funds may not be distributed or reallocated so as to maximize the matchability of the contributions.

(ii) If distribution according to the allocation formula extinguishes the debts of one or more participants or if distribution under the formula results in a violation of the contribution limits of 11 CFR 110.1(b), the fundraising representative may reallocate the surplus funds. Candidates seeking to extinguish outstanding debts shall not reallocate in reliance on the receipt of matching funds to pay the remainder of their debts; rather, all funds to which a participant is entitled under the allocation formula shall be deemed funds available to pay the candidate's outstanding campaign obligations as provided in 11 CFR 9034.5(c).

(iii) Reallocation shall be based upon the remaining participants' proportionate shares under the allocation formula. If reallocation results in a violation of a contributor's limit under 11 CFR 110.1, the fundraising representative shall return to the contributor the amount of the contribution that exceeds the limit.

(iv) Earmarked contributions which exceed the contributor's limit to the designated participant under 11 CFR part 110 may not be reallocated by the fundraising representative without the written permission of the contributor. A written instrument made payable to one of the participants shall be considered an earmarked contribution unless a written statement by the contributor indicates that it is intended for inclusion in the general proceeds of the fundraising activity.

(8) *Allocation of expenses and distribution of net proceeds.* (i) If participat-

ing committees are not affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity and are not committees of the same political party:

(A) After gross contributions are allocated among the participants under 11 CFR 9034.8(c)(7), the fundraising representative shall calculate each participant's share of expenses based on the percentage of the total receipts each participant had been allocated. To calculate each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds.

(B) A participant may only pay expenses on behalf of another participant subject to the contribution limits of 11 CFR part 110.

(C) The expenses from a series of fundraising events or activities shall be allocated among the participants on a per-event basis regardless of whether the participants change or remain the same throughout the series.

(ii) If participating committees are affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity or if participants are party committees of the same political party, expenses need not be allocated among those participants. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.

(iii) Payment of expenses may be made from gross proceeds by the fundraising representative.

(9) *Reporting of receipts and disbursements—(1) Reporting receipts.* (A) The fundraising representative shall report all funds received in the reporting period in which they are received. Each Schedule A filed by the fundraising representative under this section shall clearly indicate that the contributions reported on that schedule represent joint fundraising proceeds.

(B) After distribution of net proceeds, each participating political committee shall report its share of net proceeds received as a transfer-in from the fundraising representative. Each participating political committee shall

also file a memo Schedule A itemizing its share of gross receipts as contributions from original contributors to the extent required under 11 CFR 104.3(a).

(ii) *Reporting disbursements.* The fundraising representative shall report all disbursements in the reporting period in which they are made. Each participant shall report in a memo schedule B his or her total allocated share of these disbursements in the same reporting period in which net proceeds are distributed and reported and include the amount on page 4 of Form 3-P, under *Expenditures Subject to Limit*.

§ 9034.9 Sale of assets acquired for fundraising purposes.

(a) *General.* A candidate may sell assets donated to the campaign or otherwise acquired for fundraising purposes (See 11 CFR 9034.5(b)(2)), subject to the limitations and prohibitions of title 2, United States Code and 11 CFR parts 110 and 114.

(b) *Sale after end of matching payment period.* A candidate whose outstanding debts exceed his or her cash on hand after the end of the matching payment period as determined under 11 CFR 9032.6 may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public, provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of title 2, United States Code and 11 CFR parts 110 and 114.

PART 9035—EXPENDITURE LIMITATIONS

AUTHORITY: 26 U.S.C. 9035 and 9039(b).

§ 9035.1 Campaign expenditure limitation.

(a)(1) No candidate or his or her authorized committee(s) shall knowingly incur expenditures in connection with the candidate's campaign for nomination, which expenditures, in the aggregate, exceed \$10,000,000 (as adjusted under 2 U.S.C. 441a(c)), except that the aggregate expenditures by a candidate in any one State shall not exceed

the greater of: 16 cents (as adjusted under 2 U.S.C. 441a(c)) multiplied by the voting age population of the State (as certified under 2 U.S.C. 441a(e)); or \$200,000 (as adjusted under 2 U.S.C. 441a(c)).

(2) The Commission will calculate the amount of expenditures attributable to the overall expenditure limit or to a particular state using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

(b) Each candidate receiving or expecting to receive matching funds under this subchapter shall also allocate his or her expenditures in accordance with the provisions of 11 CFR 106.2.

(c) A candidate may exclude from the overall expenditure limitation of 11 CFR 9035.1 an amount equal to 10% of salaries and overhead expenditures of his or her national campaign headquarters and state offices as an exempt legal and accounting compliance cost under 11 CFR 100.8(b)(15). For purposes of this section overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies, and telephone base service charges. An additional amount of 10% of such salaries and overhead expenditures may be excluded from the overall expenditure limitation of 11 CFR 9035.1 as exempt fundraising expenditures but this exemption shall not apply within 28 days of the primary election as specified in 11 CFR 110.8(c)(2). Any amount excluded for fundraising expenditures shall be applied against the fundraising expenditure limitation under 11 CFR 100.8(b)(21). If the candidate wishes to claim a larger compliance or fundraising exemption for any person, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall

indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity. Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates contains some other accepted allocation methods for calculating a compliance or fundraising exemption.

(1) Exempt compliance costs are those legal and accounting compliance costs incurred solely to ensure compliance with 26 U.S.C. 9031 *et seq.*, 2 U.S.C. 431 *et seq.*, and 11 CFR chapter I, including the costs of preparing matching fund submissions, and the costs of producing, delivering and explaining computerized information and materials provided pursuant to 11 CFR 9033.12 and explaining the operation of the computer system's software. The costs of preparing matching fund submissions shall be limited to those functions not required for general contribution processing and shall include the costs associated with: Generating the matching funds submission list and the matching fund computer tape or other form of magnetic media for each submission, edits of the contributor data base that are related to preparing a matching fund submission, making photocopies of contributor checks, and seeking additional documentation from contributors for matching purposes. The costs associated with general contribution processing shall include those normally performed for fundraising purposes, or for compliance with the recordkeeping and reporting requirements of 11 CFR part 100 *et seq.*, such as data entry, batching contributions for deposit, and preparation of FEC reports.

(2) Exempt fundraising expenses are those expenses associated with the solicitation of contributions. They include printing and postage for solicitations, air time for fundraising advertisements and the cost of meals and beverages for fundraising receptions or dinners.

(d) The expenditure limitations of 11 CFR 9035.1 shall not apply to a candidate who does not receive matching funds at any time during the matching payment period.

[52 FR 20903, June 3, 1987, as amended at 55 FR 26396, June 27, 1990; 55 FR 34007, Aug. 20, 1990]

§ 9035.2 Limitation on expenditures from personal or family funds.

(a)(1) No candidate who has accepted matching funds shall knowingly make expenditures from his or her personal funds, or funds of his or her immediate family, in connection with his or her campaign for nomination for election to the office of President which exceed \$50,000, in the aggregate. This section shall not operate to prohibit any member of the candidate's immediate family from contributing his or her personal funds to the candidate, subject to the limitations of 11 CFR part 110. The provisions of this section also shall not limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR part 9038. If the candidate or his or her committee knowingly incurs expenditures in excess of the limitations of 11 CFR 110.8(a), the Commission may seek civil penalties under 11 CFR part 111 in addition to any repayment determinations made on the basis of such excessive expenditures.

(2) Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. 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.

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

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

[52 FR 20903, June 3, 1987]

PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

Sec.

- 9036.1 Threshold submission.
- 9036.2 Additional submissions for matching fund payments.
- 9036.3 Submission errors and insufficient documentation.
- 9036.4 Commission review of submissions.
- 9036.5 Resubmissions.
- 9036.6 Continuation of certification.

AUTHORITY: 26 U.S.C. 9036 and 9039(b).

SOURCE: 52 FR 20903, June 3, 1987, unless otherwise noted.

§ 9036.1 Threshold submission.

(a) *Time for submission of threshold submission.* At any time after January 1 of the year immediately preceding the Presidential election year, the candidate may submit a threshold submission for matching fund payments in accordance with the format for such submissions set forth in 11 CFR 9036.1(b). The candidate may submit the threshold submission simultaneously with or subsequent to his or her submission of the candidate agreement and certifications, required by 11 CFR 9033.1 and 9033.2.

(b) *Format for threshold submission.* (1) For each State in which the candidate certifies that he or she has met the requirements of the certifications in 11 CFR 9033.2(b), the candidate shall submit an alphabetical list of contributors showing:

(i) Each contributor's full name and residential address;

(ii) The occupation and name of employer for individuals whose aggregate contributions exceed \$200 in the calendar year;

(iii) The date of deposit of each contribution into the designated campaign depository;

(iv) The full dollar amount of each contribution submitted for matching purposes;

(v) The matchable portion of each contribution submitted for matching purposes;

(vi) The aggregate amount of all matchable contributions from that contributor submitted for matching purposes;

(vii) A notation indicating which contributions were received as a result of joint fundraising activities.

(2) The candidate shall submit a full-size photocopy of each check or written instrument and of supporting documentation in accordance with 11 CFR 9034.2 for each contribution that the candidate submits to establish eligibility for matching funds. For purposes of the threshold submission, the photocopies shall be segregated alphabetically by contributor within each State, and shall be accompanied by and referenced to copies of the relevant deposit slips.

(3) The candidate shall submit bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statements, which indicate that the contributions submitted were deposited into a designated campaign depository.

(4) For each State in which the candidate certifies that he or she has met the requirements to establish eligibility, the candidate shall submit a listing, alphabetically by contributor, of all checks returned by the bank to date as unpaid (e.g., stop payments, non-sufficient funds) regardless of whether the contribution was submitted for matching. This listing shall be accompanied by a full-size photocopy of each unpaid check, and copies of the associated debit memo and bank statement.

(5) The candidate shall submit all contributions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(6) Contributions that are not submitted in compliance with this section shall not count toward the threshold amount.

(c) *Threshold certification by commission.* (1) After the Commission has determined under 11 CFR 9033.4 that the candidate has satisfied the eligibility and certification requirements of 11 CFR 9033.1 and 9033.2, the Commission will notify the candidate in writing that the candidate is eligible to receive primary matching fund payments as provided in 11 CFR part 9034.

(2) If the Commission makes a determination of a candidate's eligibility

under 11 CFR 9036.1(a) in a Presidential election year, the Commission shall certify to the Secretary, within 10 calendar days after the Commission has made its determination, the amount to which the candidate is entitled.

(3) If the Commission makes a determination of a candidate's eligibility under 11 CFR 9036.1(a) in the year preceding the Presidential election year, the Commission will notify the candidate that he or she is eligible to receive matching fund payments; however, the Commission's determination will not result in a payment of funds to the candidate until after January 1 of the Presidential election year.

§ 9036.2 Additional submissions for matching fund payments.

(a) *Time for submission of additional submissions.* The candidate may submit additional submissions for payments to the Commission on dates to be determined and published by the Commission.

(b) *Format for additional submissions.* The candidate may obtain additional matching fund payments subsequent to the Commission's threshold certification and payment of primary matching funds to the candidate by filing an additional submission for payment. All additional submissions for payments filed by the candidate shall be made in accordance with the Federal Election Commission's Guide-line for Presentation in Good Order.

(1) The first submission for matching funds following the candidate's threshold submission shall contain all the matchable contributions included in the threshold submission and any additional contributions to be submitted for matching in that submission. This submission shall contain all the information required for the threshold submission except that:

(i) The candidate is not required to resubmit the candidate agreement and certifications of 11 CFR 9033.1 and 9033.2;

(ii) The candidate is required to submit an alphabetical list of contributors, but not segregated by State as required in the threshold submission;

(iii) The candidate is required to submit a listing, alphabetical by con-

tributor, of all checks returned unpaid, but not segregated by State as required in the threshold submission;

(iv) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed \$200 in the calendar year, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432 (c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

(v) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list.

(2) Following the first submission under 11 CFR 9036.2(b)(1), candidates may request additional matching funds on dates prescribed by the Commission by making a letter request in lieu of making a full submission as required under 11 CFR 9036.2(b)(1), however, letter requests may not be submitted after the candidate's date of ineligibility. Letter requests shall state an amount of matchable contributions not previously submitted for matching and shall provide bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statement, demonstrating that the committee has received the funds for which matching payments are requested. The amount requested for matching may include contributions received up to the last business day preceding the date of the request. On the next submission date as designated for that committee after a letter request has been made, the committee shall submit the documentation required under 11 CFR 9036.2(b)(1) for all contributions included in the letter request, as well as any contributions submitted for matching in that full submission. A committee may not submit two consecutive letter requests, but the committee may choose to make a full regular submission on a date designated by

the Commission as a letter request date for that committee.

(c) *Certification of additional payments by Commission.* (1)(i) When a candidate who is eligible under 11 CFR 9033.4 submits an additional submission for payment in the Presidential election year, the Commission may certify to the Secretary within 5 business days after the Commission's receipt of information submitted by the candidate under 11 CFR 9036.2(a), an amount based on the holdback procedure described in the Federal Election Commission's Guideline for Presentation in Good Order. If the candidate makes a letter request, the Commission may certify to the Secretary an amount which is less than that requested based upon the ratio of verified matchable contributions to total deposits for that committee in the committee's last regular submission.

(ii) The Commission will certify to the Secretary any additional amount to which the eligible candidate is entitled, if any, within 20 business days after the Commission's receipt of information submitted by the candidate under 11 CFR 9036.2(a), unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 10% of the amount requested. In the latter case, the Commission will certify any additional amount within 25 business days. See 11 CFR 9036.4 for Commission procedures for certification of additional payments.

(2) After a candidate's date of ineligibility, the Commission will certify to the Secretary, within 20 business days after receipt of a submission by the candidate under 11 CFR 9036.2(a), an amount to which the ineligible candidate is entitled in accordance with 11 CFR 9034.1(b), unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 10% of the amount requested. In the latter case, the Commission will certify any amount to which the ineligible candidate is entitled within 25 business days.

(d) *Additional submissions submitted in non-Presidential election year.* The candidate may submit additional contributions for review during the year preceding the Presidential elec-

tion year; however, the amount of each submission made during this period must exceed \$50,000. Additional submissions filed by a candidate in a non-Presidential election year will not result in payment of matching funds to the candidate until after January 1 of the Presidential election year.

§ 9036.3 Submission errors and insufficient documentation.

Contributions which are otherwise matchable may be rejected for matching purposes because of submission errors or insufficient supporting documentation. Contributions, other than those defined in 11 CFR 9034.3 or in the form of money orders, cashier's checks, or similar negotiable instruments, may become matchable if there is a proper resubmission in accordance with 11 CFR 9036.5 and 9036.6. Insufficient documentation or submission errors include but are not limited to:

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

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

(2) Signature discrepancies; and

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

(b) Discrepancies between listed contributions and the written instrument or supporting documentation, such as:

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

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

(3) The submitted written instrument cannot be associated either by account holder identification or signature with the listed contributor; or

(4) A discrepancy between the listed contribution and the supporting bank documentation or the bank documentation is omitted.

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

(1) The address of the contributor is omitted or incomplete, or the contributor's name is alphabetized incorrectly,

or more than one contributor is listed per item;

(2) A discrepancy in aggregation within or between submissions which results in a request that more than \$250 be matched for that contributor, or a listing of a contributor more than once within the same submission; or

(3) A written instrument has been previously submitted and matched in full or is listed twice in the same submission.

(d) The omission of information, supporting statements, or documentation required by 11 CFR 9034.2.

§ 9036.4 Commission review of submissions.

(a) *Non-acceptance of submission for review of matchability.* The Commission will make an initial review of each submission made under 11 CFR part 9036 to determine if it substantially meets the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order. If the Commission determines that a submission does not substantially meet these requirements, it will not review the matchability of the contributions contained therein. In such a case, the Commission will return the submission to the candidate and request that it be corrected in accordance with the format requirements. If the candidate makes a corrected submission within 3 business days after the Commission's return of the original, the Commission will review the corrected submission prior to the next regularly-scheduled submission date. Corrected submissions made after this three day period will be reviewed subsequent to the next regularly-scheduled submission date.

(b) *Acceptance of submission for review of matchability.* If the Commission determines that a submission made under 11 CFR part 9036 satisfies the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order, it will review the matchability of the contributions contained therein. The Commission, in conducting its review, may utilize statistical sampling techniques. Based on the results of its review, the

Commission may calculate a matchable amount for the submission which is less than the amount requested by the candidate. If the Commission certifies for payment to the Secretary an amount that is less than the amount requested by the candidate in a particular submission, or reduces the amount of a subsequent certification to the Secretary by adjusting a previous certification made under 11 CFR 9036.2(c)(1), the Commission will notify the candidate in writing of the following:

(1) The amount of the difference between the amount requested and the amount to be certified by the Commission;

(2) The amount of each contribution and the corresponding contributor's name for each contribution that the Commission has rejected as nonmatchable and the reason that it is not matchable; or if statistical sampling is used, the estimated amount of contributions by type and the reason for rejection;

(3) The amount of contributions that have been determined to be matchable and that the Commission will certify to the Secretary for payment; and

(4) A statement that the candidate may supply the Commission with additional documentation or other information in the resubmission of any rejected contribution under 11 CFR 9036.5 in order to show that a rejected contribution is matchable under 11 CFR 9034.2.

(c) *Adjustment of amount to be certified by Commission.* The candidate shall notify the Commission as soon as possible if the candidate or the candidate's authorized committee(s) has knowledge that a contribution submitted for matching does not qualify under 11 CFR 9034.2 as a matchable contribution, such as a check returned to the committee for insufficient funds or a contribution that has been refunded, so that the Commission may properly adjust the amount to be certified for payment.

(d) *Commission audit of submissions.* The Commission may determine, for the reasons stated in 11 CFR part 9039, that an audit and examination of contributions submitted for

matching payment is warranted. The audit and examination shall be conducted in accordance with the procedures of 11 CFR part 9039.

§ 9036.5 Resubmissions.

(a) *Alternative resubmission methods.* Upon receipt of the Commission's notice of the results of the submission review pursuant to 11 CFR 9036.4(b), a candidate may choose to:

(1) Resubmit the entire submission; or

(2) Make a written request for the identification of the specific contributions that were rejected for matching, and resubmit those specific contributions.

(b) *Time for presentation of resubmissions.* If the candidate chooses to resubmit any contributions under 11 CFR 9036.5(a), the contributions shall be resubmitted on dates to be determined and published by the Commission. The candidate may not make any resubmissions later than the first Tuesday in September of the year following the Presidential election year.

(c) *Format for resubmissions.* All resubmissions filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order. In making a presentation of resubmitted contributions, the candidate shall follow the format requirements as specified in 11 CFR 9036.2(b)(1), except that:

(1) The candidate need not provide photocopies of written instruments, supporting documentation and bank documentation unless it is necessary to supplement the original documentation.

(2) Each resubmitted contribution shall be referenced to the submission in which it was first presented.

(3) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the original submission.

(4) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the resubmission.

(5) Each list of resubmitted contributions shall only contain contribu-

tions previously submitted for matching and no new or additional contributions.

(6) Each resubmission shall be accompanied by a statement that the candidate has corrected his or her contributor records (including the data base for those candidates maintaining their contributor list on computer).

(d) *Certification of resubmitted contributions.* Contributions that the Commission determines to be matchable will be certified to the Secretary within 15 business days. If the candidate chooses to request the specific contributions rejected for matching pursuant to 11 CFR 9036.5(a)(2), the amount certified shall equal only the matchable amount of the particular contribution that meets the standards on resubmission, rather than the amount projected as being nonmatchable based on that contribution due to the sampling techniques used in reviewing the original submission.

(e) *Initial determinations.* If the candidate resubmits a contribution for matching and the Commission determines that the rejected contribution is still nonmatchable, the Commission will notify the candidate in writing of its determination. The Commission will advise the candidate of the legal and factual reasons for its determination and of the evidence on which that determination is based. The candidate may submit written legal or factual materials to demonstrate that the contribution is matchable within 30 calendar days after service of the Commission's notice. Such materials may be submitted by counsel if the candidate so desires.

(f) *Final determinations.* The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination by the Commission that a contribution is not matchable will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

§ 9036.6 Continuation of certification.

Candidates who have received matching funds and who are eligible to continue to receive such funds may continue to submit additional submissions for payment to the Commission on dates specified in the Federal Election Commission's Guideline for Presentation in Good Order. The Commission will notify each candidate of the last date on which contributions may be submitted for the first time for matching in the year following the election. The last date for first-time submissions will be either the last Monday in February or the second Monday in March of the year following the election, depending on the submission schedule the Commission has designated for the candidate. No contribution will be matched if it is submitted after the last submission date designated for that candidate, regardless of the date the contribution was deposited.

PART 9037—PAYMENTS

Sec.

9037.1 Payments of Presidential primary matching funds.

9037.2 Equitable distribution of funds.

9037.3 Deposits of Presidential primary matching funds.

AUTHORITY: 26 U.S.C. 9037 and 9039(b).

SOURCE: 52 FR 20906, June 3, 1987, unless otherwise noted.

§ 9037.1 Payments of Presidential primary matching funds.

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

§ 9037.2 Equitable distribution of funds.

In making such transfers to candidates of the same political party, the Secretary will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary will take into account, in seeking to achieve an equitable distribution of funds available in the matching payment account, the se-

quence in which such certifications are received.

§ 9037.3 Deposits of Presidential primary matching funds.

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

PART 9038—EXAMINATIONS AND AUDITS

Sec.

9038.1 Audit.

9038.2 Repayments.

9038.3 Liquidation of obligations; repayment.

9038.4 Extensions of time.

9038.5 Petitions for rehearing; stays of repayment determinations.

9038.6 Stale-dated committee checks.

AUTHORITY: 26 U.S.C. 9038 and 9039(b).

SOURCE: 52 FR 20907, June 3, 1987, unless otherwise noted.

§ 9038.1 Audit.

(a) *General.* (1) The Commission will conduct an audit of the qualified campaign expenses of every candidate and his or her authorized committee(s) who received Presidential primary matching funds. The audit may be conducted at any time after the date of the candidate's ineligibility.

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

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9038.1(a) (1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9038.2.

(b) *Conduct of fieldwork.* (1) If the candidate or the candidate's authorized committee does not maintain or use any computerized information containing the data listed in 11 CFR 9033.12, the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence field-

work on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the data listed in 11 CFR 9033.12, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. Upon receipt of the computerized information requested and compliance with the technical specifications of 11 CFR 9033.12(b), the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided, and which may be used for purposes including, but not limited to, updating a statement of net outstanding campaign obligations, or updating the amount chargeable to a state expenditure limit. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee and that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

(i) *Office, space and records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9033.1(b)(6).

(ii) *Availability of committee personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee

personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to provide staff, records or office space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9040(c) to enforce the candidate and committee agreement made under 11 CFR 9033.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have 10 calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreement.

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

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

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

audit, and Commission staff will be available to answer committee questions.

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

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9038.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9038.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee responses to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9038.1(b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9038.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9038.1(b) (1) and (2) shall apply to any additional fieldwork conducted.

(c) *Preparation of interim audit report.* (1) After the completion of the fieldwork conducted pursuant to 11 CFR 9038.1(b)(1), the Commission will issue an interim audit report to the

candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

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

(ii) Eligibility of the candidate to receive primary matching payments;

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

(iv) Compliance of the candidate and committee with applicable statutory and regulatory provisions except for those instances where the Commission has instituted an enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR part 111; and

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

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

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9038.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly-released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of publicly-released audit report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9038.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments

based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9038.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public release of audit report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9038.1(d).

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

(3) The Commission will provide the candidate and the committee with copies of the agenda document containing those portions of the final audit report to be considered in open session 24 hours prior to releasing the agenda document to the public. The Commission will also provide the candidate and committee with copies of the final audit report 24 hours before releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based, in part, on follow-up fieldwork conducted under 11 CFR 9038.1(b)(3), and will be placed on the public record.

[52 FR 20907, June 3, 1987, as amended at 55 FR 26397, June 27, 1990]

§ 9038.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the matching payment account shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and

examinations conducted pursuant to 11 CFR 9038.1 and part 9039 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

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

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

(b) *Bases for repayment*—(1) *Payments in excess of candidate's entitlement.* The Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such excessive payments include, but are not limited to, the following:

(i) Payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 CFR 9034.5;

(ii) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the operation of the Commission's expedited payment procedures, as set forth in the Federal Election Commission's Guideline For Presentation In Good Order;

(iii) Payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable;

(iv) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the candidate's failure to include funds received by a fundraising representative committee under 11 CFR 9034.8 on the candidate's statement of net outstanding campaign obligations under 11 CFR 9034.5; and

(v) Payments or portions of payments made to the candidate on the basis of the debts reflected in the candidate's statement of net outstanding campaign obligations, which debts are later settled for an amount less than that stated in the statement of net outstanding campaign obligations.

(2) *Use of funds for non-qualified campaign expenses.* (i) The Commission may determine that amount(s) of any payments made to a candidate from the matching payment account were used for purposes other than those set forth in paragraphs (b)(2)(i)(A)-(C) of this section:

(A) Defrayal of qualified campaign expenses;

(B) Repayment of loans which were used to defray qualified campaign expenses; and

(C) Restoration of funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR 9038.2(b)(2) include, but are not limited to, the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 CFR 9035;

(B) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended in violation of state or federal law; and

(C) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended for expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility. To determine at what point committee accounts no longer contain matching funds for the purpose of seeking repayment for non-qualified campaign expenses, the Commission will review

committee expenditures from the date of the last matching fund payment to the candidate, using the assumption that the last payment has been expended on a last-in, first-out basis.

(3) *Failure to provide adequate documentation.* The Commission may determine that amount(s) spent by the candidate, the candidate's authorized committee(s), or agents were not documented in accordance with 11 CFR 9038.11. The amount of any repayment sought under this section shall be determined by using the formula set forth in 11 CFR 9038.2(b)(2)(iii).

(4) *Surplus.* The Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus.

(c) *Repayment determination procedures.* Commission repayment determinations will be made in accordance with the procedures set forth at 11 CFR 9038.2(c) (1) through (4), of this section.

(1) *Initial determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report, pursuant to 11 CFR 9038.1(d), and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

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

Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral presentation.* A candidate who has submitted written materials under 11 CFR 9038.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9038.2(c)(2). The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR 9038.2(c)(2) and any oral presentation made under 11 CFR 9038.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

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

(2) If the candidate submits written materials under 11 CFR 9038.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 30 calendar days after service of the notice

of the Commission's final repayment determination(s), the candidate shall repay to the Secretary amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 days in which to make repayment.

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

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9038.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding campaign obligations submitted pursuant to 11 CFR 9034.5, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding campaign obligations. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9038.2(f).

(h) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a final repayment determination in accordance with 11 CFR 9038.5(a). The candidate may request a stay of a final repayment determination in accordance with 11 CFR 9038.5(c) pending the candidate's appeal of that repayment determination.

§ 9038.3 Liquidation of obligations; repayment.

(a) The candidate may retain amounts received from the matching payment account for a period not exceeding 6 months after the matching payment period to pay qualified campaign expenses incurred by the candidate.

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

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

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

(3) Notwithstanding the payment of any amounts to the United States Treasury under this section, the Commission may make surplus repayment determination(s) which require repayment in accordance with 11 CFR 9038.2.

§ 9038.4 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR part 9038 shall not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR part 9038 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the ap-

plication for extension that good cause exists for his or her request.

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

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR part 9038 the Commission may, on the candidate's showing of excusable neglect:

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

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR part 9038.

§ 9038.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final determination under 11 CFR 9033.10 or 9034.5(g) or the Commission's final repayment determination under 11 CFR 9038.2(c)(4), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days after service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the earlier determination process.

(2) If a candidate files a timely petition under this section challenging a Commission final repayment determination, the time for repayment of the amount at issue will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9038.2(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9041(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.* (1)(i) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9038.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9041(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a), or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's final repayment determination under 11 CFR 9038.2(c)(4).

(2) The Commission's approval of a stay request will be conditioned upon the candidate's presentation of evidence in the stay request that he or she:

(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the

appeal and that withdrawals from the account may only be made with the joint signatures of the candidate or his or her agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(iii) Has met the following criteria:

(A) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(B) He or she has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interest; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's final repayment determination under 11 CFR 9038.2(c)(4) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

§ 9038.6 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

Sec.

9039.1 Retention of books and records.

9039.2 Continuing review.

9039.3 Examinations and audits; investigations.

AUTHORITY: 26 U.S.C. 9039.

SOURCE: 52 FR 20910, June 3, 1987, unless otherwise noted.

§ 9039.1 Retention of books and records.

The candidate and his or her authorized committee(s) shall keep all books, records and other information required under 11 CFR 9033.11, 9034.2 and part 9036 for a period of three years pursuant to 11 CFR 102.9(c) and shall furnish such books, records and information to the Commission on request.

§ 9039.2 Continuing review.

(a) In reviewing candidate submissions made under 11 CFR part 9036 and in otherwise carrying out its responsibilities under this subchapter, the Commission may routinely consider information from the following sources:

(1) Any and all materials and communications which the candidate and his or her authorized committee(s) submit or provide under 11 CFR part 9036 and in response to inquiries or requests of the Commission and its staff;

(2) Disclosure reports on file with the Commission; and

(3) Other publicly available documents.

(b) In carrying out the Commission's responsibilities under this subchapter, Commission staff may contact representatives of the candidate and his or her authorized committee(s) to discuss questions and to request documentation concerning committee activities and any submission made under 11 CFR part 9036.

§ 9039.3 Examinations and audits; investigations.

(a) *General.* (1) The Commission will consider information obtained in its continuing review under 11 CFR 9039.2 in making any certification, determination or finding under this subchapter. If the Commission decides by

an affirmative vote of four of its members that additional information must be obtained in connection with any such certification, determination or finding, it will conduct a further inquiry. A decision to conduct an inquiry under this section may be based on information that is obtained under 11 CFR 9039.2, received by the Commission from outside sources, or otherwise ascertained by the Commission in carrying out its supervisory responsibilities under the Presidential Primary Matching Payment Account Act and the Federal Election Campaign Act.

(2) An inquiry conducted under this section may be used to obtain information relevant to candidate eligibility, matchability of contributions and repayments to the United States Treasury. Information obtained during such an inquiry may be used as the basis, or partial basis, for Commission certifications, determinations and findings under 11 CFR parts 9033, 9034, 9036 and 9038. Information thus obtained may also be the basis of, or be considered in connection with, an investigation under 2 U.S.C. 437g and 11 CFR part 111.

(3) Before conducting an inquiry under this section, the Commission will attempt to obtain relevant information under the continuing review provisions of 11 CFR 9039.2. Matching payments will not be withheld pending the results of an inquiry under this section unless the Commission finds patent irregularities suggesting the possibility of fraud in materials submitted by, or in the activities of, the candidate or his or her authorized committee(s).

(b) *Procedures.* (1) The Commission will notify the candidate of its decision to conduct an inquiry under this section. The notice will summarize the legal and factual basis for the Commission's decision.

(2) The Commission's inquiry may include, but is not limited to, the following:

(i) A field audit of the candidate's books and records;

(ii) Field interviews of agents and representatives of the candidate and his or her authorized committee(s);

(iii) Verification of reported contributions by contacting reported contributors;

(iv) Verification of disbursement information by contacting reported vendors;

(v) Written questions under order;

(vi) Production of documents under subpoena;

(vii) Depositions.

(3) The provisions of 2 U.S.C. 437g and 11 CFR part 111 will not apply to inquiries conducted under this section except that the provisions of 11 CFR 111.12 through 111.15 shall apply to any orders or subpoenas issued by the Commission.

**SUPPLEMENT A—OTHER REGULATIONS
IMPLEMENTING
SECTION 401 OF THE FEDERAL
ELECTION CAMPAIGN ACT OF 1971**

EDITORIAL NOTE: This edition of title 11 contains all current regulations of the Federal Election Commission. As an aid to the user, other regulations appearing in 14 CFR part 374a, 47 CFR parts 64, 73 and 76, and 49 CFR part 1325, implementing Section 401 of the Federal Election Campaign Act of 1971, are reprinted in this Supplement A.

CIVIL AERONAUTICS BOARD

PART 374a—EXTENSION OF CREDIT
BY AIRLINES TO FEDERAL POLITICAL
CANDIDATES

Sec.

- 374a.1 Purpose.
- 374a.2 Applicability.
- 374a.3 Definitions.
- 374a.4 Conditions governing extension of unsecured credit.
- 374a.5 Exemption authority.
- 374a.6 Reporting requirements.
- 374a.7 Record retention requirements.
- 374a.8 Prospective application of part.

AUTHORITY: Secs. 204, 401, 403, 404, 407, 416, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 758, 760, 766, 771; 49 U.S.C. 1324, 1371, 1373, 1374, 1377, 1386. Sec. 401, Pub. L. 92-225, 86 Stat. 16; 2 U.S.C. 451.

SOURCE: CAB Reg. SPR-53, 37 FR 9388, May 10, 1972, unless otherwise noted.

EDITORIAL NOTE: This part also codified as 14 CFR part 374a.

§ 374a.1 Purpose.

Section 401 of the Federal Election Campaign Act of 1971 (Pub. L. 92-225, 86 Stat. 19, 2 U.S.C. 451, enacted February 7, 1972, and hereafter referred to as the *Election Campaign Act*) directs the Civil Aeronautics Board to promulgate, within 90 days after enactment, regulations with respect to the extension of unsecured credit by any person regulated by the Board to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office. The purpose of this part is to issue rules pursuant to said section 401 of the Election Campaign Act in accordance with the Civil Aeronautics Board's responsibility thereunder.

§ 374a.2 Applicability.

This regulation shall be applicable to all air carriers as defined in this part.

§ 374a.3 Definitions.

Adequate security means (a) a bond, issued by a surety meeting the standards prescribed for sureties in part 380 of this chapter, in an amount not less

than one hundred and fifty percent (150%) of the credit limit established by the air carrier for the candidate, or the person acting on behalf of a candidate, as the case may be, by the terms of which bond the surety undertakes to pay to the air carrier any and all amounts (not exceeding the face amount of the bond) for which the assured candidate or the assured person acting on behalf of a candidate, as the case may be, is or may become legally liable to the air carrier for transportation, as defined in this part; or (b) collateral with a market value equal to one hundred and fifty percent (150%) of the established credit limit for such account, which collateral must be deposited in escrow and must consist of Federal, State, or municipal bonds or other negotiable securities which are publicly traded on a securities exchange.

Air carrier means any air carrier holding a certificate of public convenience and necessity issued under section 401 of the Federal Aviation Act of 1958, as amended.

Candidate means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected. For purposes of this part, an individual shall be deemed to seek nomination for election, or election, if he has (a) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office; or (b) received contributions or made expenditures, or given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office.

Election shall have reference to (a) a general, special, primary, or runoff election; (b) a convention or caucus of a political party held to nominate a candidate; (c) a primary election held for the selection of delegates to a national nominating convention of a political party; or (d) a primary election held for the expression of a preference for the nomination of persons for election to Federal office.

Established credit limit means the dollar limit of credit established by the carrier extending credit.

Federal office means the office of President or Vice President of the United States, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

Person acting on behalf of a candidate means (a) a political committee acting on behalf of, or a person employed by such candidate or by such political committee or by such political committee to act on behalf of, such candidate in connection with such candidate's campaign for nomination for election, or election, to Federal office; (b) a person's acting under a contract with, or as an agent of, such candidate or political committee to engage in activities in connection with such candidate's campaign for nomination for election, or election, to Federal office; or (c) a person for whom such candidate or political committee pays, directly or indirectly, for services purchased by such person. The term includes persons acting on behalf of more than one candidate.

Payment in advance means payment by cash, check, money order, or by credit card (if the issuer of such card is not an air carrier or a subsidiary, parent, or affiliate thereof) prior to performance of such transportation by an air carrier.

Political committee means any committee, association, corporation, or organization which accepts contributions, or makes expenditures, for the purpose of supporting a candidate or candidates for nomination for election, or election, to Federal office.

Transportation means (a) the carriage of persons or property (including services connected therewith) for compensation or hire to or from any place in the United States, or (b) the lease or rental of aircraft, with or without crew.

[CAB Reg. SPR-53, 37 FR 9388, May 10, 1972, as amended by CAB Reg. SPR-173, 45 FR 80099, Dec. 3, 1980]

§ 374a.4 Conditions governing extension of unsecured credit.

(a) Unless adequate security is posted, a full payment in advance is

made, no air carrier shall provide transportation to any person it knows, or has reasons to know, is a candidate or a person acting on behalf of such candidate, in connection with the campaign of such candidate, except in accordance with, and subject to the following conditions:

(1) At least once a month the air carrier shall submit to each such candidate or person, a statement covering all unsecured credit extended to such candidate or person, as the case may be (whether in connection with the campaign of such candidate or otherwise).

(2) Such statements shall be mailed no later than the second business day following the last day of the billing period covered by the statement.

(3) The amount of indebtedness shown on each such statement shall be payable in full no later than 25 days after the last day of the billing period, after which time the indebtedness shall be overdue.

(4)(i) Unsecured credit shall not be extended by an air carrier to a candidate, or to any person acting on his behalf in connection with the campaign of such candidate, so long as any overdue indebtedness of such candidate to such air carrier shall remain unpaid, in whole or in part, or so long as such air carrier shall know that any overdue indebtedness of such candidate to any other air carrier remains unpaid, in whole or in part.

(ii) Unsecured credit shall not be extended by an air carrier to a person acting on behalf of a candidate, for transportation in connection with the campaign of such candidate, so long as any overdue indebtedness of such person to such carrier shall remain unpaid, in whole or in part, or so long as such air carrier shall know that any overdue indebtedness of such person to any other air carrier remains unpaid, in whole or in part.

(5)(i) With respect to transportation in connection with the campaign of any candidate to be performed after June 1, 1972, unsecured credit shall not be extended by an air carrier to any person acting on behalf of a candidate unless the carrier is authorized in writing by such candidate to extend such credit. The foregoing sentence

shall not be construed as requiring the candidate to assume liability to the carrier for credit so extended.

(ii) Within 7 days after indebtedness becomes overdue for any unsecured credit extended by an air carrier to a person acting on behalf of a candidate in accordance with paragraph (a)(5)(i) of this section, the carrier shall notify the candidate in writing of the amount of the overdue indebtedness, and, unless paid in full within 25 days after the date of such notice, the overdue indebtedness shall be deemed to be the overdue indebtedness of the candidate, for the purposes of paragraph (a)(4)(i) of this section.

(b) It shall be presumed that a candidate or person acting on behalf of a candidate intends to use transportation in connection with the campaign of such candidate for nomination for election, or election, to Federal office.

[CAB Reg. SPR-53, 37 FR 9388, May 10, 1972, as amended by CAB Reg. SPR-169, 45 FR 25796, Apr. 16, 1980; CAB Reg. SPR-172, 45 FR 53454, Aug. 12, 1980]

§ 374a.5 Exemption authority.

Air carriers are exempt from the following provisions of title IV of the Federal Aviation Act of 1958, as amended: (a) Section 403, (b) section 404(b), and any and all other provisions of title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to enable air carriers to comply with the provisions of this part.

§ 374a.6 Reporting requirements.

(a) Air carriers shall make monthly reports to the Board with respect to the credit for transportation furnished to candidates, or persons acting on behalf of candidates, during the period from 6 months before nomination, if any, or from 6 months before election, until the date of election. After that 6-month period, air carriers shall file such a report with the Board not later than the 20th day following the end of the calendar month in which the election or nomination takes place, and thereafter when any change occurs in that report, until a negative report is filed showing that no debt for such extension of credit is owed to the carrier.

(b)(1) A separate report shall be filed for each candidate with an aggregate indebtedness balance of over \$5,000 on the last day of the month to which the report pertains. The report shall cover all debts incurred by the candidate, whether or not incurred in connection with his campaign, and all debts incurred by persons acting on his behalf in connection with such campaign. The indebtedness accounts reported shall be those which the air carrier knows, or has reason to know, have been incurred by or on behalf of a candidate; and it shall be presumed that the transportation for which the indebtedness has been incurred is intended to be used in connection with the campaign of such candidate for nomination for election, or election, to Federal office.

(2) The report required by this paragraph (b) shall be filed with the Board's Bureau of Accounts and Statistics not later than the 20th day following the end of the calendar month to which the report pertains. They shall include the following data: (i) Name of account; (ii) the credit limit established for such account; (iii) the balance, if any, of the amount payable for transportation not paid for in advance; (iv) any unpaid balance of the charges for such transportation as of the last day of the month covered by the report, and the length of time that such balance has remained unpaid; and (v) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

(3) The report required by this paragraph (b) shall be in the form attached hereto as Appendix A.¹

(c) A separate report shall be filed for each person acting on behalf of any candidate, if the aggregate indebtedness balance of such person to the reporting air carrier (including all debts incurred by such person, whether or not incurred in connection with the campaign of a candidate, as defined in this part) is over \$5,000 on the last day of the month to which the report pertains. The report shall be filed with the Board's Bureau of Accounts and Statistics not later than

¹Filed as part of the original document.

the 20th day following the end of the calendar month to which the report pertains and shall include (1) the credit limitation established for such person; (2) the balance, if any, of the amount payable for transportation not paid in advance; (3) any unpaid balance of the charges for such transportation as of the last day of the month covered by the report, and the length of time that such balance has remained unpaid; and (4) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

[SPR-53, 37 FR 9388, May 10, 1972, as amended by SPR-190, 47 FR 32414, July 27, 1982]

§ 374a.7 Record retention requirements.

(a) Every air carrier subject to the part shall retain for 2 years after a Federal election true copies of the following documents at its principal or general office in the United States:

(1) All documents which evidence or reflect the furnishing of transportation to a candidate for political office or a person acting on his behalf,

(2) All statements, invoices, bills, and receipts with respect to the furnishing of such transportation referred to in paragraph (a)(1) of this section.

(b) Every air carrier shall make the documents listed in this section available in the United States upon request by an authorized representative of the Board and shall permit such representative to make such notes and copies thereof as he deems appropriate.

§ 374a.8 Prospective application of part.

The provisions of this part shall apply only to the extension of credit by an air carrier to a candidate, or to a person acting on his behalf, which is made subsequent to the effective date of this part, and shall not be applicable to debts incurred prior to such date but which are unpaid as of the effective date of this part. The provisions of this part will be applicable, however, to all credit transactions which occur subsequent to the effective date of the part even though the credit account in which the transaction takes place was opened prior to the effective date of the part.

FEDERAL COMMUNICATIONS COMMISSION

PART 64—MISCELLANEOUS RULES
RELATING TO COMMON CARRIERS

Sec.

64.801 Purpose.

64.802 Applicability.

64.803 Definitions.

64.804 Rules governing the extension of unsecured credit to candidates or persons on behalf of such candidates for Federal office for interstate and foreign common carrier communication services.

AUTHORITY: Secs. 4, 201, 202, 203, 218, 219, 48 Stat. 1066, 1070, 1077; 47 U.S.C. 154, 201, 202, 203, 218, 219; sec. 401, 86 Stat. 19; 2 U.S.C. 451.

SOURCE: FCC 72-390, 37 FR 9393, May 10, 1972, unless otherwise noted.

EDITORIAL NOTE: This part also codified as 47 CFR part 64, subpart H.

§ 64.801 Purpose.

Pursuant to section 401 of the Federal Election Campaign Act of 1971, Pub. L. 92-225, these rules prescribe the general terms and conditions for the extension of unsecured credit by a communication common carrier to a candidate or person on behalf of such candidate for Federal office.

§ 64.802 Applicability.

These rules shall apply to each communication common carrier subject to the whole or part of the Communications Act of 1934, as amended.

§ 64.803 Definitions.

For the purposes of this subpart:

(a) *Candidate* means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and an individual shall be deemed to seek nomination for election, or election, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office.

(b) *Election* means (1) a general, special, primary, or runoff election, (2) a

convention or caucus of a political party held to nominate a candidate, (3) a primary election held for the selection of delegates to a national nominating convention of a political party, and (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President.

(c) *Federal office* means the office of President or Vice President of the United States; or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

(d) *Person* means an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons.

(e) *Unsecured credit* means the furnishing of service without maintaining on a continuing basis advance payment, deposit, or other security, that is designed to assure payment of the estimated amount of service for each future 2 month period, with revised estimates to be made on at least a monthly basis.

§ 64.804 Rules governing the extension of unsecured credit to candidates or persons on behalf of such candidates for Federal office for interstate and foreign common carrier communication services.

(a) There is no obligation upon a carrier to extend unsecured credit for interstate and foreign communication services to a candidate or person on behalf of such candidate for Federal office. However, if the carrier chooses to extend such unsecured credit, it shall comply with the requirements set forth in paragraphs (b) through (g) of this section.

(b) If a carrier decides to extend unsecured credit to any candidate for Federal office or any person on behalf of such candidate, then unsecured credit shall be extended on substantially equal terms and conditions to all candidates and all persons on behalf of all candidates for the same office, with due regard for differences in the

estimated quantity of service to be furnished each such candidate or person.

(c) Before extending unsecured credit, a carrier shall obtain a signed written application for service which shall identify the applicant and the candidate and state whether or not the candidate assumes responsibility for the charges, and which shall also expressly state as follows:

(1) That service is being requested by the applicant or applicants and that the person or persons making the application will be individually, jointly and severally liable for the payment of all charges; and

(2) That the applicant(s) understands that the carrier will (under the provisions of paragraph (d) of this section) discontinue service upon written notice if any amount due is not paid upon demand.

(d) If charges for services rendered are not paid to the carrier within 15 days from rendition of a bill therefor, the carrier shall forthwith at the end of the 15-day period serve written notice on the applicant of intent to discontinue service within 7 days of date of such notice for nonpayment and shall discontinue service at the end of the 7-day period unless all such sums due are paid in full within such 7-day period.

(e) Each carrier shall take appropriate action at law to collect any unpaid balance on an account for interstate and foreign communication services rendered to a candidate or person on behalf of such candidate prior to the expiration of the statute of limitations under section 415(a) of the Communications Act of 1934, as amended.

(f) The records of each account, involving the extension by a carrier of unsecured credit to a candidate or person on behalf of such candidate for common carrier communications services shall be maintained by the carrier so as to show separately, for interstate and foreign communication services all charges, credits, adjustments, and security, if any, and balance receivable.

(g) On or before January 31 and July 31, 1973, and corresponding dates of each year thereafter, each carrier which had operating revenues in the preceding year in excess of \$1 million shall file with the Commission a

report by account of any amount due and unpaid, as of the end of the month prior to the reporting date, for interstate and foreign communication services rendered to a candidate or person on behalf of such candidate when such amount results from the extension of unsecured credit. Each report shall include the following information:

- (1) Name of candidate.
- (2) Name and address of person or persons applying for service.
- (3) Balance due carrier.
- (4) Reason for nonpayment.
- (5) Payment arrangements, if any.
- (6) Date service discontinued.
- (7) Date, nature and status of any action taken at law in compliance with paragraph (e) of this section.

PART 73—RADIO BROADCAST SERVICES

Sec.	
73.1910	Fairness Doctrine.
73.1920	Personal attacks.
73.1930	Political editorials.
73.1940	Broadcasts by candidates for public office.

AUTHORITY: 47 U.S.C. 154, 303.

EDITORIAL NOTE: These provisions are also codified in 47 CFR part 73, subpart H.

§ 73.1910 Fairness Doctrine.

The Fairness Doctrine is contained in section 315(a) of the Communications Act of 1934, as amended, which provides that broadcasters have certain obligations to afford reasonable opportunity for the discussion of conflicting views on issues of public importance. See FCC public notice *Fairness Doctrine and the Public Interest Standards*, 39 FR 26372. Copies may be obtained from the FCC upon request.

[43 FR 45856, Oct. 4, 1978]

§ 73.1920 Personal attacks.

(a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the

attack, transmit to the persons or group attacked:

(1) Notification of the date, time and identification of the broadcast;

(2) A script or tape (or an accurate summary if a script or tape is not available) of the attack; and

(3) An offer of a reasonable opportunity to respond over the licensee's facilities.

(b) The provisions of paragraph (a) of this section shall not apply to broadcast material which falls within one or more of the following categories:

(1) Personal attacks on foreign groups or foreign public figures;

(2) Personal attacks occurring during uses by legally qualified candidates;

(3) Personal attacks made during broadcasts not included in paragraph (b)(2) of this section and made by legally qualified candidates, their authorized spokespersons, or those associated with them in the campaign, on other such candidates, their authorized spokespersons or persons associated with the candidates in the campaign; and

(4) Bona fide newscasts, bona fide news interviews, and on-the-spot coverage of a bona fide news event, including commentary or analysis contained in the foregoing programs.

(c) The provisions of paragraph (a) of this section shall be applicable to editorials of the licensee, except in the case of noncommercial educational stations since they are precluded from editorializing (section 399(a), Communications Act).

[43 FR 45856, Oct. 4, 1978, as amended at 44 FR 45956, Aug. 6, 1979]

§ 73.1930 Political editorials.

(a) Where a licensee, in an editorial,

(1) Endorses or,

(2) Opposes a legally qualified candidate or candidates, the licensee shall, with 24 hours after the editorial, transmit to, respectively,

(i) The other qualified candidate or candidates for the same office or,

(ii) The candidate opposed in the editorial,

(A) Notification of the date and the time of the editorial,

(B) A script or tape of the editorial and

(C) An offer of reasonable opportunity for the candidate or a spokesman of the candidate to respond over the licensee's facilities. Where such editorials are broadcast on the day of the election or within 72 hours prior to the day of the election, the licensee shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.

(b) Inasmuch as noncommercial educational stations may not engage in editorializing nor may support nor oppose any candidate for political office (section 399, Communications Act), the provisions of paragraph (a) of this section, do not apply to such stations.

[43 FR 45856, Oct. 4, 1978, as amended at 47 FR 3791, Jan. 27, 1982; 51 FR 9965, Mar. 24, 1986]

§ 73.1940 Broadcasts by candidates for public office.

(a) *Definitions.* (1) A legally qualified candidate for public office is any person who:

(i) Has publicly announced his or her intention to run for nomination or office;

(ii) Is qualified under the applicable local, State or Federal law to hold the office for which he or she is a candidate; and

(iii) Has met the qualifications set forth in either paragraphs (a) (2), (3), or (4), of this section.

(2) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in paragraph (a)(1) of this section, that person:

(i) Has qualified for a place on the ballot, or

(ii) Has publicly committed himself or herself to seeking election by the

write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

Person seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those States or territories (or the District of Columbia) in which they have met the requirements set forth in paragraph (a) (1) and (2) of this rule: Except, that any such person who has met the requirements set forth in paragraph (a) (1) and (2) in at least 10 States (or 9 and the District of Columbia) shall be considered a legally qualified candidate for election in all States, territories, and the District of Columbia for purposes of this Act.

(3) A person seeking nomination to any public office, except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (a)(1) of this section, that person makes a substantial showing that he or she is a bona fide candidate for such nomination: Except, that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(4) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those States or territories (or the District of Columbia) in which, in addition to meeting the requirements set forth in paragraph (a)(1) of this section.

(i) He or she, or proposed delegates on his or her behalf, have qualified for the primary or Presidential preference

ballot in that State, territory or the District of Columbia, or

(ii) He or she has made a substantial showing of bona fide candidacy for such nomination in that State, territory or the District of Columbia; Except, that any such person meeting the requirements set forth in paragraph (a) (1) and (4), in at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all States, territories and the District of Columbia for purposes of this act.

(5) The term *substantial showing* of bona fide candidacy as used in paragraphs (a) (2), (3), and (4) of this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

(b) *Charges for use of stations.* The charges, if any, made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed

(1) During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period, and

(2) At any other time the charges made for comparable use of such station by other users thereof. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means direct or indirect. A candidate shall be

charged no more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office.

(3) This paragraph shall not apply to any station which is not licensed for commercial operation.

(c) *Discrimination between candidates.* In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

(d) *Records, inspection.* Every licensee shall keep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. When free time is provided for use by or on behalf of such candidates, a record of the free time provided shall be placed in the political file. All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. See §§ 73.3526 and 73.3527.

(e) *Time of request.* A request for equal opportunities must be submitted to the licensee within 1 week of the day on which the first prior use, giving rise to the right of equal opportunities, occurred: *Provided, however,* That where the person was not a can-

didate at the time of such first prior use, he shall submit his request within 1 week of the first subsequent use after he has become a legally qualified candidate for the office in question.

(f) *Burden of proof.* A candidate requesting equal opportunities of the licensee, or complaining of noncompliance to the Commission shall have the burden of proving that he and his opponent are legally qualified candidates for the same public office.

(g) *General requirements.* (1) Except as otherwise indicated in paragraph (g)(2) of this section, no station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such licensee shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any: (i) Bona fide newscast, (ii) bona fide news interview, (iii) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subjects covered by the news documentary), or (iv) on-the-spot coverage of bona fide news events (including, but not limited to political conventions and activities incidental thereto) shall not be deemed to be use of a broadcasting station. (Section 315(a) of the Communications Act.)

(2) Section 312(a)(7) of the Communications Act provides that the Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to, or to permit purchase of, reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

(h) *Political broadcasting primer.* A detailed study of these rules regarding broadcasts by candidates for Federal and non-Federal public office is available in the FCC public notice of July 20, 1978, *The Law of Political Broadcasting and Cablecasting*. Copies may be obtained from the FCC upon request.

[43 FR 32795, July 28, 1978, as amended at 43 FR 45856, Oct. 4, 1978; 43 FR 55769, Nov. 29, 1978; 45 FR 26066, Apr. 17, 1980; 45 FR 28141, Apr. 28, 1980]

PART 76—CABLE TELEVISION SERVICE

AUTHORITY: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

§ 76.209 Fairness doctrine; personal attacks; political editorials.

(a) A cable television system engaging in origination cablecasting shall afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

NOTE: See public notice, *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 29 FR 10415.

(b) When, during such origination cablecasting, an attack is made upon the honesty, character, integrity, or like personal qualities of an identified person or group, the cable television system operator shall, within a reasonable time and in no event later than one (1) week after the attack, transmit to the person or group attacked: (1) Notification of the date, time, and identification of the cablecast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer a reasonable opportunity to respond over the system's facilities.

(c) The provisions of paragraph (b) of this section shall not apply to cablecast material which falls within one or more of the following categories:

(1) Personal attacks on foreign groups or foreign public figures;

(2) Personal attacks occurring during uses by legally qualified candidates;

(3) Personal attacks made during cablecasts not included in paragraph (b)(2) of this section and made by legally qualified candidates, their authorized spokespersons or those associated with them in the campaign, on other such candidates, their authorized spokespersons or persons associated with the candidates in the campaign; and

(4) Bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events (including commentary or analysis contained in the foregoing programs, but, the provisions of paragraph (b) of this section shall be applicable to editorials of the cable television system operator).

(d) Where a cable television system operator, in an editorial, (1) endorses or (2) opposes a legally qualified candidate or candidates, the system operator shall, within 24 hours of the editorial, transmit to respectively (i) the other qualified candidate or candidates for the same office, or (ii) the candidate opposed in the editorial, (a) notification of the date, time, and channel of the editorial; (b) a script or tape of the editorial; and (c) an offer of a reasonable opportunity for a candidate or spokesman of the candidate to respond over the system's facilities: *Provided, however,* That where such editorials are cablecast within 72 hours prior to the day of the election, the system operator shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.

[37 FR 3278 Feb. 12, 1972, as amended at 42 FR 19347, Apr. 13, 1977; 44 FR 45956, Aug. 6, 1979]

EDITORIAL NOTE: This section is also codified in 47 CFR part 76.

INTERSTATE COMMERCE COMMISSION

PART 1325—EXTENSION OF CREDIT TO CANDIDATES FOR FEDERAL OFFICE OR THEIR REPRESENTATIVES

Sec.

1325.1 Extension of unsecured credit prohibited.

1325.2 Credit agreements.

1325.3 Federal office.

AUTHORITY: Pub. L. 92-225, the Federal Election Campaign Act of 1971, enacted Feb. 7, 1972.

SOURCE: ICC Ex Part 283, 37 FR 10446, May 23, 1972, unless otherwise noted.

EDITORIAL NOTE: This part also codified as 49 CFR part 1325.

§ 1325.1 Extension of unsecured credit prohibited.

Persons subject to regulations by the Interstate Commerce Commission shall not knowingly and willfully provide, for candidates for Federal office or their representatives, service or goods related to their campaign without obtaining either prepayment or a binding guarantee of payment through a sufficient deposit, bond, col-

lateral, or other means of security. The extension of credit to such persons shall not exceed the amount of the security posted.

§ 1325.2 Credit agreements.

(a) All agreements to extend credit to candidates for Federal office or their representatives by person subject to regulation by the Interstate Commerce Commission, (1) must be in writing, (2) must contain a detailed description of the deposit, bond, collateral, or other means of security, used to secure payment of the debt, and (3) must be signed by all parties to the agreement. A copy of each such agreement must be filed with this Commission's Bureau of Operations in Washington, DC, within 20 days of the date of its execution.

§ 1325.3 Federal office.

For the purposes of this section, *Federal office* means the office of the President or Vice President of the United States; or of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts, and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Indexes to Regulations:

General, Parts 100-116

General Election Financing, Parts 9001-9007 and 9012

Federal Financing of Presidential Nominating Conventions, Part 9008

Presidential Primary Matching Fund, Parts 9031-9039

Table of CFR Titles and Chapters

Alphabetical List of Agencies Appearing in the CFR

List of CFR Sections Affected

INDEXES TO REGULATIONS

GENERAL, PARTS 100-116

A

ACCEPTANCE OF CONTRIBUTIONS

See: CONTRIBUTIONS

ACCOUNT

Allocation between federal and nonfederal, *See:* ALLOCATION OF EXPENSES

Credit union, disbursements from, § 102.9(b)(2)(iii)

Established by collecting agent, § 102.6(c)(4)

Federal, separate from non-Federal, § 102.5(a)(1)(i) and (b)(1)(i)

Office, *See:* OFFICE ACCOUNT

Transmittal, for joint fundraising, § 102.17(c)(4)

See also: CAMPAIGN DEPOSITORY

ACCOUNTANTS' SERVICES

See: LEGAL AND ACCOUNTING SERVICES

ACT

Definition, § 100.18

ADMINISTRATIVE EXPENSES

Allocation of, § 104.10(b); § 106.1(e)

— by nonconnected committee, § 106.6(b)(2)(i) and (c)

— by party committee, § 106.5(a)(2)(i), (b), (c)(1) and (2), and (d)

— by publicly funded Presidential candidate, § 106.2(b) and (c)

— by separate segregated fund, § 106.6(b)(1)(i) and (c)

— not attributable to specific candidate, § 106.1(c)

— reporting, § 104.10(b)(1)

Corporate/labor expenses for separate segregated fund, § 114.1(b); § 114.5(b)

Delegate selection, § 110.14(c)(1)(ii)

Polling results purchased by unauthorized committee, § 106.4(d)

Rent, salary, other recurring expenses not reported as debts, § 104.11(b)

ADMINISTRATIVE PERSONNEL

Definition, § 100.8(b)(4)(iii); § 114.1(c)

See also: CORPORATION/LABOR ORGANIZATION/NATIONAL BANK

ADVERTISING

See: COMMUNICATIONS/ADVERTISING

ADVISORY OPINIONS

Issuance of, § 112.4

Public availability of, § 4.4(a)(11); § 5.4(a)(2)

Reconsideration of, § 112.6

Reliance on, § 112.5

Requests for, § 112.1

— made public, § 4.4(a)(11); § 5.4(a)(2); § 112.2

— public comments on, § 112.3

Standing to receive, § 112.1(a)

AFFILIATED COMMITTEE

Assignment of debts to, § 116.2(c)(3)

Circumstantial factors determining affiliation, § 100.5(g)(4)(ii); § 110.3(a)(3)(ii)

Committees automatically considered as, § 110.3(a)(2)

AFFILIATED COMMITTEE—Continued

- Conduit, exempted, § 110.6(b)(2)(i)(C)
- Connected organization of
 - definition, § 100.6
 - disclosure of, § 102.2(b)
- Contribution limits for, § 110.3(a)(1)
- Definition, § 100.5(g); § 110.3(a)(1) and (3)(ii)
- Delegate committees
 - with each other, § 110.14(k)
 - with Presidential candidate's authorized committee, § 110.14(j)
- Disclosure of, on Statement of Organization, § 102.2(b)
- Participant in joint fundraising, § 102.17(b)(3)(iii)
- Transfers between, unlimited, § 102.6(a); § 110.3(c)

AGENT

- Candidate as, § 101.2; § 102.7(d)
- Collecting, *See*: COLLECTING AGENT
- Commercial fundraising firm as, § 102.6(b)(3); § 110.6(b)(2)(i)(D)
- Definition, § 109.1(b)(5)
- Not a conduit or intermediary, § 110.6(b)(2)(i)(A) and (E)

ALLOCATION OF EXPENSES

Administrative expenses, *See*: ADMINISTRATIVE EXPENSES

Ballot composition allocation method, § 106.5(d)(1)

Between candidates, § 106.1(a) and (b)

- “benefit reasonably expected to be derived” allocation method, § 106.1(a)
- exceptions, § 106.1(c)
- federal and nonfederal, § 106.1(a)
- personnel and facilities, shared, § 110.8(d)(3)

Between federal and nonfederal accounts

- of nonconnected committee, § 106.6
- of party committee, § 106.5
- of separate segregated fund, § 106.6

Between federal and nonfederal elections, § 106.1(e)

Costs to be allocated, § 104.10(a) and (b); § 106.1(a) and (e); § 106.5(a)(2); § 106.6(b)

Exempt activity expenses, § 106.5(e)

Fixed percentage allocation method, § 106.5(b)(1) and (2)

For Presidential campaigns, by State

- administrative costs, § 106.2(b)(2)(iv)
- dispute, § 106.2(a)(1)
- documentation, § 106.2(a)(1)
- media, § 106.2(b)(2)(i)
- methods for making, § 106.2(b) and (c)(5)
- overhead expenditures, § 106.2(b)(2)(iv) and (c)(5)
- polling, § 106.2(b)(2)(vi)
- reporting, § 106.2(d) and (e)
- salaries, § 106.2(b)(2)(ii)
- telephone service, § 106.2(b)(2)(v)
- testing-the-waters, § 106.2(a)(2)
- travel, intra-State, § 106.2(b)(2)(iii)

For Presidential campaigns, not required

- administrative costs, § 106.2(c)(1)(i)
- advertising, § 106.2(c)(1)(ii)
- compliance, § 106.2(c)(5)
- fundraising, § 106.2(c)(5)
- media production costs, § 106.2(c)(2)
- media, transportation and services provided to, § 106.2(c)(3)
- national campaign, § 106.2(c)(1)
- operating, § 106.2(c)(1)(i)

Index, General

ALLOCATION OF EXPENSES—Continued

For Presidential campaigns, not required—Continued

- polling, § 106.2(c)(1)(iii)
- reporting, § 106.2(d) and (e)
- travel, interstate, § 106.2(c)(4)

For travel between campaign/noncampaign-related activity, § 106.3

Fundraising expenses, § 106.5(f); § 106.6(d)

“Funds expended” allocation method, § 106.5(c); § 106.6(c)

“Funds received” allocation method, § 106.5(f); § 106.6(d)

Generic voter drive costs, allocation method used by

- party committee, § 106.5(b), (c) and (d)
- nonconnected committee, § 106.6(c)
- separate segregated fund, § 106.6(c)

Joint fundraising proceeds, § 102.17(c)(1), (2), (6) and (7)

Minimum percentage allocation method, § 106.5(c)(2)

Payment of allocated expenses

- by allocation account, § 106.5(g)(1)(ii); § 106.6(e)(1)(ii)
- by federal account, § 106.5(g)(1)(i); § 106.6(e)(1)(i)
- timing of transfers between accounts, § 106.5(g)(2); § 106.6(e)(2)

Polling results, § 106.4

Reporting

- allocated disbursements from allocation or federal account, § 104.10(a)(3) and (b)(4)
- allocation of administrative costs, § 104.10(b)(1)
- allocation of exempt activity costs, § 104.10(b)(2)
- allocation of fundraising costs, § 104.10(b)(2)
- allocation of generic voter drive costs, § 104.10(b)(1)
- expenses allocated between activities, § 104.10(b)
- expenses allocated between candidates, § 104.10(a)
- transfers between accounts for payment of allocable expenses, § 104.10(a)(2) and (b)(3)

“Time or space” allocation method, § 106.1(a)(1); § 106.5(e)

Transfers to pay for, § 106.5(g); § 106.6(e)

ANNUAL CONTRIBUTION LIMIT

Applicable only to individuals, § 110.5(a)

Contributions made in calendar year, § 110.5(b)

On contributions made

- in nonelection year, § 110.5(c)
- to candidates, in nonelection year, § 110.5(c)(2)
- to delegates, § 110.5(e)
- to persons making independent expenditures, § 110.5(d)

ANONYMOUS CONTRIBUTION

Of cash, § 110.4(c)(3)

APPEARANCES BY CANDIDATE

See: CANDIDATE

ATTORNEYS' SERVICES

See: LEGAL AND ACCOUNTING SERVICES

AUDITS

By Commission, § 104.16

Preservation of reports and records for, § 102.5(b)(1)(i) and (ii); § 104.10; § 104.14(b)(3)

Public disclosure of, § 1.14; § 4.4(a)(14)

AUTHORIZED COMMITTEE

Affiliated, § 100.5(g)(1); § 110.14(j)

Agent of, definition, § 109.1(b)(5)

Candidate as agent of, § 101.2; § 102.7(d)

Communications paid for/authorized by, § 110.11(a)(1)(i) and (ii)

Contribution limit shared, § 110.3(a)(1)(i)

Contributions to, *See*: CANDIDATE

Debts owed by, § 116.2(c)

See also: DEBTS

Definition, § 100.5(d) and (f)(1)

Designation of, § 101.1(b); § 102.13

Forwarding contributions to, § 102.8(a)

Independent expenditures, precluded from making, § 109.1(e)

Joint fundraising, § 102.17(a)(1)(i)

Name of, restrictions, § 102.14(a)

Registration of, § 102.1(b); § 102.2(b)(1)(i)

Reports filed by, § 101.1(b); § 102.1(b); § 104.3(f)

Support of one candidate only, § 102.13(c)

Terminating, § 116.2(c)

See also: TERMINATION OF COMMITTEE

Transfers by, § 110.3(c)(4) and (5)

See also: POLITICAL COMMITTEE; PRINCIPAL CAMPAIGN COMMITTEE

AWARDS

See: HONORARIA

3

BALLOT ACCESS PAYMENT

By individual, to become delegate, § 110.14(c)(1)(i)

Exemption, § 100.7(b)(18); § 100.8(b)(19)

BANK

Campaign depository, *See*: CAMPAIGN DEPOSITORY

Communications by

— nonpartisan, to employees and restricted class, § 114.4(a)

— nonpartisan, to general public, § 114.4(b)

— partisan, in connection with State/local election, prohibited, § 114.3(a)(1)

— partisan, to restricted class, § 114.3(a)(1)

Loans from, *See*: LOANS

National, contribution/expenditure by, prohibited, § 114.2

Overdraft, § 100.7(b)(11); § 100.8(b)(12)

Separate segregated fund established by, § 114.2(a)

See also: COMMUNICATIONS/ADVERTISING; CORPORATION/LABOR ORGANIZATION/NATIONAL BANK; SEPARATE SEGREGATED FUND

BEST EFFORTS

See: TREASURER OF POLITICAL COMMITTEE

BUILDING FUND, PARTY

Disbursements for, exempt, § 100.8(b)(13); § 114.1(a)(2)(ix)

Donations to, exempt, § 100.7(b)(12); § 114.1(a)(2)(ix)

Reporting of, § 104.8(f); § 104.9(d)

BUNDLING

Direction or control exercised, § 110.6(d)(1)

Reporting by conduit and recipient, § 110.6(d)(2)

See also: CONDUIT/INTERMEDIARY; EARMARKED CONTRIBUTION

Index, General

C

CAMPAIGN DEBTS

See: DEBTS

CAMPAIGN DEPOSITORY

Acceptable institutions, § 103.2

Commingling of funds, § 102.15

Deposits to, § 103.3

Designation of, § 103.1; § 103.2

Disbursements from, § 102.10; § 103.3(a)

Established by collecting agent, § 102.6(c)(4)(ii)(A)

Federal accounts, separate from non-Federal, § 102.5(a)(1)(i) and (b)(1)(i)

Illegal funds, § 103.3(b)(3), (4) and (5)

Investment of deposited funds, § 103.3(a); § 104.3(a)(4)(vi)

Joint fundraising account, § 102.17(c)(3)

Overdraft, § 100.7(b)(11); § 100.8(b)(12)

Vice Presidential candidate, § 103.4

CAMPAIGN FUNDS

Excess, *See:* EXCESS CAMPAIGN FUNDS

Transfer of, *See:* TRANSFER OF FUNDS

CAMPAIGN MATERIALS

Candidate-prepared, dissemination of, § 109.1(d); § 110.14(f)(3); § 114.3(c)(1)

Distributed by volunteer, exemption

— for candidate, § 100.7(b)(16); § 100.8(b)(17)

— for delegate, § 110.14(f)(1)

— for party, § 100.7(b)(15); § 100.8(b)(16)

See also: COMMUNICATIONS/ADVERTISING

CANDIDATE

Advocacy of election/defeat of, *See:* CLEARLY IDENTIFIED CANDIDATE

Agent of authorized committee, § 101.2; § 102.7(d)

Appearances

— corporate/labor, § 114.3(c)(2); § 114.4(a)(2) and (3)

— election year, § 110.8(e)(2)(ii)

— honorarium accepted for, § 110.12(b)

— party-building, § 110.8(e)

Campaign materials prepared by/distributed for, *See:* CAMPAIGN MATERIALS

Candidacy indicated, examples, § 100.8(b)(1)(ii)

Cessation of candidacy, date of, § 110.3(c)(4)(iv)

Clearly identified, *See:* CLEARLY IDENTIFIED CANDIDATE

Committee, *See:* AUTHORIZED COMMITTEE

Contributions to

— accounting for primary/general election contributions, § 102.9(e)

— committees supporting same candidate, § 110.1(h); § 110.2(h)

— criterion for candidate status, § 100.3(a)

— criterion for candidate support, § 102.12(c)(2); § 102.13(c)(2)

— dual candidate, § 110.1(f); § 110.2(f)

— limitations, general, § 110.1(b) and (h); § 110.2(b), (h) and (i)

— prior to becoming candidate, § 100.7(b)(1); § 101.2(b); § 101.3

— Senate candidate, § 110.2(e); § 110.3(b)(4)

— unopposed candidate, § 110.1(j)(2) and (3); § 110.2(d)(2) and (3)

See also: CONTRIBUTIONS

Corporate/labor facilities, used by, § 114.9(e); § 114.12(b)

Debates, *See:* DEBATES

Definition, § 100.3(a)

Delegate/delegate committee communications referring to, § 110.14(f) and (i)

Designation of

— authorized committee, § 101.1(b); § 102.13

— joint fundraising committee, § 102.13(c)(1)

CANDIDATE—Continued**Designation of—Continued**

- principal campaign committee, § 101.1(a); § 102.12

Disavowal of campaign activity, § 100.3(a)(3); § 102.13(a)(2)

Dual, *See*: DUAL CANDIDACY

Expenditures

- allocation among candidates, § 104.10; § 106.1
- allocation among States for Presidential candidate, § 106.2
See also: ALLOCATION OF EXPENDITURES
- criterion for candidate status, § 100.3(a)
- limitations, for publicly funded Presidential candidates, § 110.8
- made on behalf of, § 110.8(g)
- personal funds used for, *See*: PERSONAL FUNDS
- polling expenses, § 106.4
- prior to becoming candidate, § 100.8(b)(1); § 101.2(b); § 101.3

See also: EXPENDITURES

Fraudulent misrepresentation by, § 110.9(b)

Honoraria paid to, *See*: HONORARIA

Living expenses, § 100.8(b)(22)

Loan obtained by, § 101.2; § 102.7(d); § 104.3(d)

Name included in committee's name, § 102.14(a)

Personal funds, *See*: PERSONAL FUNDS

Pre-1975, § 110.1(g); § 110.2(g)

Presidential, *See*: CANDIDATE FOR PRESIDENT

Referred to in party solicitation, § 102.5(a)(3)

Support of, definition, § 102.12(c)(2); § 102.13(c)(2)

Testing-the-waters activity, § 100.7(b)(1); § 100.8(b)(1); § 101.3; § 106.4(a)

Transfers between

- federal/nonfederal campaigns, § 110.3(c)(6)
- previous and current campaigns, § 110.3(c)(4)
- two federal campaigns of same candidate, § 110.3(c)(5)

See also: TRANSFER OF FUNDS

Travel expenses, § 106.2; § 106.3; § 114.9(e)

Unopposed, § 100.2(c)(5); § 110.1(j)(2) and (3); § 110.2(d)(2) and (3)

Vice Presidential candidate, *See*: CANDIDATE FOR PRESIDENT

Voter guide, responses included in, § 114.4(b)(5)

Voting record distributed by others, § 114.4(b)(4)

CANDIDATE FOR PRESIDENT

Appearance by, at corporate/labor general meeting, § 114.4(a)

Contributions to, *See*: CONTRIBUTIONS

Debates, *See*: DEBATES

Delegate communications referring to, § 110.14(f) and (i)

Expenditures

- allocation among States, § 106.2
See also: ALLOCATION OF EXPENDITURES
- limits for publicly funded candidate, § 110.8

Fundraising, expenditure exemption, § 106.2(c)(5)

Index, General

CANDIDATE FOR PRESIDENT—Continued

Legal and accounting services, contribution/expenditure exemption,
§ 100.7(b)(14); § 100.8(b)(15); § 106.2(c)(5)

National party committee

- as Presidential principal campaign committee, § 102.12(c)(1)
- expenditure limits for Presidential nominee, § 110.7(a)

Nominating convention, *See*: CONVENTION, NATIONAL NOMINATING

Reports by Presidential committee

- content, § 104.17
- filing, § 104.5(b); § 105.3; § 108.2

Solicitation exemption for publicly funded candidate, § 100.8(b)(21)

Vice Presidential candidate

- campaign depository, § 103.4
- committee reports, § 104.5(d); § 104.17; § 108.2
- expenditures by and on behalf of, § 110.8(f) and (g)
- principal campaign committee, § 102.12(a)

Voter drive by party committee on behalf of nominee, § 100.7(b)(17);
§ 100.8(b)(18); § 106.1(c)(3)

CASH

Contributions, § 110.4(c)

Disbursements from petty cash, § 102.11; § 103.3(a)

On-hand, reporting, § 104.3(a)(1); § 104.12

CHARITABLE ORGANIZATION

Definition, § 110.12(b)(6)

Excess campaign funds donated to, § 113.2(b)

Honorarium donated to, § 110.12(b)(5)

CHURCH OR COMMUNITY ROOM

Use of, § 100.7(b)(5); § 100.8(b)(6)

CIVIL ACTIONS

See: COMPLIANCE

CLEARLY IDENTIFIED CANDIDATE

Attribution of expenditures to, § 106.1(c)

Communications advocating

- as independent expenditure, § 109.1
- by corporation/labor organization, § 100.8(b)(4); § 104.6; § 105.4;
§ 110.11(a); § 114.3; § 114.5(e)(2)(i)
- by delegate/delegate committee on behalf of Presidential candidate,
§ 110.14(f) and (i)
- notice required, § 109.3; § 110.11(a)

Definition, § 100.17; § 106.1(d); § 109.1(b)(3)

See also: COMMUNICATIONS/ADVERTISING; INDEPENDENT
EXPENDITURES

CLERK OF THE HOUSE

Reports filed with, § 105.1

Transmittal of reports to Commission, § 105.5

COLLECTING AGENT

Definition, § 102.6(b)(1) and (3)

Fundraising for separate segregated fund, § 102.6(b) and (c)

Recordkeeping, § 102.6(c)(5) and (6)

Registration of, for Federal election activity, § 102.6(b)(2)

Reporting of funds received through, § 102.6(c)(7)

Transfers to separate segregated fund, § 110.3(c)(1)

Transmittal of contribution by, § 102.6(c)(3); (4) and (5)

COMMERCIAL VENDOR

Defined, § 116.1(c)

Extension of credit by, *See*: CREDIT; EXTENSION OF

Food, beverage discounts by, § 100.7(b)(7); § 100.8(b)(8)

Individual not acting as, § 116.5(a)

COMMERCIAL VENDOR—Continued

Remedies taken to collect on debts, § 100.7(a)(4); § 116.4(d)(3)
 Settlement/forgiveness of debts owed to, § 100.7(a)(4); § 116.4; § 116.8
See also: CREDITOR; DEBTS

COMMINGLED FUNDS

Segregation of political/personal funds, § 102.15

COMMISSIONERS

Definition, § 2.2(b); Part 2

See also: FEDERAL ELECTION COMMISSION

COMMITTEE

See: POLITICAL COMMITTEE

COMMUNICATIONS/ADVERTISING

Advocating election/defeat of candidate, *See:* CLEARLY IDENTIFIED CANDIDATE

By bank, § 114.3(a); § 114.4(b)

By cooperative, § 114.3(a)(2); § 114.4(a)(1)(ii) and (d)

By corporation established by authority of Congress, § 114.3(a)(1); § 114.4(a) and (b)

By corporation without capital stock, § 114.3(a)(2); § 114.4(a)(1)(ii) and (d)

By corporation/labor organization to employees and restricted class, nonpartisan, § 114.4(a) and (d)

— appearances by candidate or party representative, § 114.4(a)(2) and (3)

— endorsement prohibited, § 114.4(a)(2)(v) and (3)(ii)

— solicitation prohibited, § 114.4(a)(2)(iv) and (3)(i)

By corporation/labor organization to general public, nonpartisan, § 114.4(b)

— debates, § 110.13; § 114.4(e)

— endorsement/support prohibited, § 114.4(b)(2)(i) and (3)(iv)

— facilities or personnel used in, § 114.4(c)(3)

— identity of sponsor, § 114.4(b)(1) and (c)(5)

— nonpartisanship defined, § 114.4(b)(2)(i)

— voter guides, preparation and distribution, § 114.4(b)(5)

— voter registration and get-out-the-vote drives, § 114.4(b) and (c)

— voting record of candidate, prepared and distributed, § 114.4(b)(4)

By corporation/labor organization to restricted class, partisan, § 100.8(b)(4); § 114.3

— appearances by candidate or party representative, § 114.3(c)(2)

— candidate materials, used in, § 114.3(c)(1)

— incidental solicitation of persons outside restricted class, § 114.3(c)(2)

— in connection with State/local elections, to general public, prohibited, § 114.3(a)

— on any subject, § 114.1(a)(2)(i); § 114.3(a)

— phone banks, use in, § 114.3(c)(3)

— reporting of, § 100.8(b)(4); § 104.6; § 114.3(b); § 114.5(e)(2)(i)

— restricted class, definition of, § 114.3(a)(1)

— solicitation permitted, § 114.3(c)(2)

— transportation/other services made available by, § 114.3(c)(4)

— voter registration and get-out-the-vote drives, § 114.1(a)(2)(ii); § 114.3(c)(3) and (4)

By delegate committees, § 110.14(i)

By delegates, § 110.14(f)(2)

By membership organization, § 100.8(b)(4); § 114.3(a)(2); § 114.4(a)(1)(ii) and (d)

By party, *See:* PARTY COMMITTEE

By separate segregated fund, § 110.11(a)(1)(iii) and (iv); § 114.3; § 114.4; § 114.5(i)

By trade association, § 114.3(a)(2); § 114.4(a)(1)(ii) and (d)

Campaign materials, *See:* CAMPAIGN MATERIALS

Candidate debates, *See:* DEBATES

Index, General

COMMUNICATIONS/ADVERTISING—Continued

Disclaimer notice requirements, § 110.11

Media

- allocation of expenditures for, on behalf of Presidential candidate, § 106.2(b)(2)(i) and (c)
- news story/editorial/commentary, § 100.7(b)(2); § 100.8(b)(2)
- production costs, for Presidential candidates, § 106.2(c)(2)
- space, charges for, § 110.11(b)
- staging of candidate debates, § 110.13(a)(2); § 114.4(e)(2)
- use of information from filed reports, § 104.15(c)

Notice required, § 102.16; § 109.3; § 110.11(a)

- authorized by candidate, § 110.11(a)(1)(i) and (ii)
- not authorized by candidate, § 110.11(a)(1)(iii) and (iv)
- under impractical conditions, § 110.11(a)(2)

Slate card/sample ballot, § 100.7(b)(9); § 100.8(b)(10)

Soliciting contributions, § 102.16; § 110.11(a)

See also: CLEARLY IDENTIFIED CANDIDATE; INDEPENDENT EXPENDITURES; VOTER DRIVES

COMPLAINTS

See: COMPLIANCE

COMPLIANCE

Civil actions, § 111.19

Complaints, § 111.4; § 111.5; § 111.6; § 111.7

Computation of time, § 111.2

Conciliation agreements, § 111.18; § 111.19(c)

Confidentiality, § 111.14; § 111.21

Cost exemption, disputed, § 106.2(a)(1)

Costs, exempted from allocation, § 106.2(c)(5)

Ex parte communications, § 111.22

Exempt costs, defined, § 106.2(c)(5)(i)

Failure to file reports, § 111.8(c)

Initiation of, § 111.3

Internal/agency referrals, § 111.3(a); § 111.8

Investigations, § 111.10

No reason to believe, § 111.7(b); § 111.9(b)

Probable cause to believe, § 111.16; § 111.17; § 111.18

Public disclosure, § 4.4(a)(3) and (12); § 5.4(a)(3) and (4); § 111.20

Reason to believe, § 111.7(a); § 111.9; § 111.10

Representation by counsel, § 111.23

Subpoenas/orders/depositions

- issuance of, § 111.11; § 111.12
- motions to quash, § 111.15
- service of, § 111.13
- witness fees/mileage, § 111.14

CONDUIT/INTERMEDIARY

Definition, § 110.6(b)(2)

Persons not considered as, § 110.6(b)(2)(i)

Persons prohibited from acting as, § 110.6(b)(2)(ii)

Reporting by, § 110.6(c)(1)

See also: BUNDLING; EARMARKED CONTRIBUTION

CONGRESS, MEMBERS OF

Excess campaign funds, use of by January 1980 members, § 113.2(d)

Travel expenses, official, § 106.3(d)

See also: OFFICE ACCOUNT

CONNECTED ORGANIZATION

As collecting agent for separate segregated fund, § 102.6(b)(1)(ii)

Definition, § 100.6

Disclosure of, on Statement of Organization, § 102.2(b)

CONNECTED ORGANIZATION—Continued

Name of, included in separate segregated fund's name, § 102.14(c)
 Relationship with another organization, § 100.5(g)(4); § 110.3(a)(3)

CONSUMER PRICE INDEX

Definition, § 110.9(c)(2)
 Expenditure limits adjusted by, § 110.9(c)(1)

CONTRIBUTIONS**Acceptance of**

- anonymous, § 110.4(c)(3)
- by Federal committee/account, § 102.5(a)(2)
- by separate segregated fund, § 114.5(j)
- illegal-appearing, § 103.3(b)
- prohibited, § 110.9(a); § 114.2(c)
- treasurer required, § 102.7(b)

Accounting for, 102.9(a) and (e)

Advances of goods or services paid from individual's funds, § 100.7(a)(1); § 116.5(b)

Allocated in joint fundraising, § 102.17(c)(1), (2), (6) and (7)

Annual limits, § 110.5

See also: ANNUAL CONTRIBUTION LIMIT

Anonymous, § 110.4(c)(3)

By affiliated committees, § 110.3(a)(1)

By checks and other written instruments, § 104.8(c) and (d)

By children, § 110.1(i)(2)

By committees, general, § 110.1; § 110.2

By corporations/labor organizations/national banks, § 103.3(b); § 114.2

By delegate committees, § 110.14(g)

By Federal contractors, § 103.3(b); § 115.2

By foreign nationals, § 103.3(b); § 110.4(a)

By minors, § 110.1(i)(2)

By multicandidate committees, § 110.2

By partnerships, § 110.1(e)

By party committees

- general, § 110.3(b)(1) and (3)
- national House and Senate committees, § 110.3(b)(2)
- to Senate candidates, § 110.2(e)

By payroll deduction plan, § 104.8(b); § 114.5(k)(1); § 114.6(e)(1); § 114.12(d)

By person in name of another, § 110.4(b)

By persons, § 110.1; § 110.5

By separate segregated fund, § 114.5(f)

By spouse, § 100.7(c); § 110.1(i)(1)

Cash, § 110.4(c)

Combined with other payments, § 102.6(c)(3)

Conduit for, *See:* EARMARKED CONTRIBUTION

Contributor identification, § 100.12; § 104.7(b); § 104.8(a) and (b)

Credit, extension of, *See:* CREDIT, EXTENSION OF

Debts, contributions to retire, *See:* DEBTS

Definition, § 100.7(a); § 114.1(a)(1)

Deposit of, § 103.3 (a) and (b)

Designated/not designated for election, § 102.9(e); § 110.1(b)(2), (3)(i) and (4); § 110.1(l)(2) and (5); § 110.2(b)(2), (3)(i) and (4); § 110.5(b)(2)

Earmarked, *See:* EARMARKED CONTRIBUTION

Election, contribution limit for, § 110.1(a)(1) and (j); § 110.2(a)(1) and (d); § 110.5(b)

Excess, *See:* EXCESS CAMPAIGN FUNDS

Excessive, § 103.3(b)(3); § 110.1(k)

Exemptions, § 100.7(b); § 114.1(a)(2)

See also: CONTRIBUTION/EXPENDITURE EXEMPTIONS

Index, General

CONTRIBUTIONS—Continued

For delegate selection, § 110.14(c)(1)

Forwarding, § 102.8

Illegal, § 103.3(b); § 110.1(b)(3)(i); § 110.4; § 110.9(a); § 110.14(c)(2); § 114.2; § 115.2

Illegal-appearing, § 103.3(b)

In-kind, *See*: IN-KIND CONTRIBUTION

In name of another, § 110.4(b)

Investment of, § 103.3(a)

Joint, § 104.8(c) and (d); § 110.1(k)

Limitations, § 102.17(c)(5); § 110.1; § 110.2; § 110.3(a)(1) and (b); § 110.5; § 110.9(a)

Loans, *See*: LOANS

Made, § 110.1(b)(6) and (k)(4); § 110.2(b)(6)

Nonelection year, § 110.5(c)

Polling expenses, § 106.4

Post-primary, § 110.1(a)(2)(i) and (ii)(B)

Pre-primary, § 102.9(e)

Processing, costs of, § 106.2(c)(5)

Prohibited, § 110.4; § 110.9(a); § 110.14(c)(2); § 114.2; § 115.2

Prohibited, accepted in joint fundraising, § 102.17(c)(2)(ii)(B) and (3)(i)

Reattributed, § 100.7(c); § 100.8(c); § 102.9(e); § 103.3(b)(3); § 104.8(c)(3); § 110.1(b)(3)(i), (k)(3) and (l)(3) and (5)

Receipt of, § 102.8

Recordkeeping requirements, *See*: RECORDKEEPING

Redesignated, § 102.9(e); § 103.3(b)(3); § 104.8(d)(2); § 110.1(b)(3)(i) and (5); § 110.1(l)(2) and (5); § 110.2(b)(3)(i) and (5)

Refunds

— of designated contributions, § 110.1(b)(3)(i); § 110.2(b)(3)(i)

— of general election contributions, § 102.9(e); § 110.1(b)(3)(i); § 110.2(b)(3)(i)

— of illegal contributions, § 103.3(b)(1)

— reporting of, § 104.8(d)(4)

Reporting requirements, *See*: REPORTING

Returned, § 103.3(a) and (b); § 110.1(b)(3)(i); § 110.2(b)(3)(i); § 110.4(c)(2)

Segregated from personal funds, § 102.15

Solicitation of

— by collecting agent, § 102.6(c)(2)

— by party committee, § 102.5(a)(3)

— exempted expenditure, § 100.8(b)(21)

— information on reports used for, § 104.15

— notice of disclaimer required, § 102.16; § 109.3; § 110.11(a)

See also: FUNDRAISING; SEPARATE SEGREGATED FUND

Stocks, bonds, art objects, § 104.13(b)

Testing-the-waters activity, for, § 100.7(b)(1); § 100.8(b)(1); § 101.3; § 106.2(a)(2); § 106.4(a)

To authorized committee, § 110.1(a) and (h); § 110.2(a)(1)

To candidate, *See*: CANDIDATE

To committee

— criterion for political committee status, § 100.5(a) and (c)

— general, § 110.1(c); § 110.2(a)(3)

— making independent expenditures, § 110.1(d); § 110.1(d)(2); § 110.2(d)(2)

To committees supporting same candidate, § 110.1(h); § 110.2(h)

To delegate, § 110.1(m)(1); § 110.2(j)(1); § 110.5(e); § 110.14(d)

To delegate committee, § 110.1(m)(2); § 110.2(j)(2); § 110.5(e); § 110.14(g)

To Federal committee/account, § 102.5(a)(2)

To office account, § 113.4

To political party committees, § 110.1(c); § 110.2(c)

CONTRIBUTIONS—Continued

To persons making independent expenditures, § 110.1(d)(2); § 110.2(d)(2); § 110.5(d)

To retire debts, *See*: DEBTS

To single candidate committee, § 110.1(h)(1); § 110.2(b); § 110.5(c)(3)(i)

To unauthorized committees, § 110.1(d) and (h); § 110.2(d)

Transfers, *See*: TRANSFER OF FUNDS

Transmittal of, by collecting agent, § 102.6(c)(4), (5) and (6); § 110.3(c)(1)

Violations, § 110.4; § 110.9(a)

See also: HONORARIA

CONTRIBUTION/EXPENDITURE EXEMPTIONS

Ballot access payments, § 100.7(b)(18); § 100.8(b)(19)

Campaign materials

— paid for by candidate, § 100.7(b)(16); § 100.8(b)(17)

— paid for by delegate, § 110.14(f)(1)

— paid for by delegate committee, § 110.14(i)(1)

— paid for by party committee, § 100.7(b)(15); § 100.8(b)(16)

Candidate's payments from personal funds, § 100.8(b)(22)

Church or community rooms, § 100.7(b)(5); § 100.8(b)(6)

Communications by membership organization/corporation to restricted class, § 100.8(b)(4); § 114.1(a)(2)(i)

See also: COMMUNICATIONS/ADVERTISING

Corporate/labor exemptions, § 100.7(b)(10); § 100.8(b)(4) and (11); § 114.1(a)(2)

Debate expenses, § 100.7(b)(21); § 100.8(b)(23)

Election recount expenses, § 100.7(b)(20); § 100.8(b)(20)

Food, beverage, invitations, § 100.7(b)(6) and (7); § 100.8(b)(7) and (8); § 114.1(a)(2)(v)

Honoraria, § 100.7(b)(19); § 114.1(a)(2)(iv)

Legal/accounting services

— for nonparty committees, § 100.7(b)(14); § 100.8(b)(15); § 114.1(a)(2)(vii)

— for party committees, § 100.7(b)(13); § 100.8(b)(14); § 114.1(a)(2)(vi)

Living expenses, § 100.7(b)(8); § 100.8(b)(9) and (22)

Loans from banks, § 100.7(b)(11); § 100.8(b)(12)

See also: LOANS

News story/editorial/commentary, § 100.7(b)(2); § 100.8(b)(2)

Party office building fund, donations to, § 100.7(b)(12); § 100.8(b)(13); § 114.1(a)(2)(ix)

Real or personal property, § 100.7(b)(4); § 100.8(b)(5)

Residential premises, § 100.7(b)(4); § 100.8(b)(5)

Slate card/sample ballot, § 100.7(b)(9); § 100.8(b)(10)

Solicitation expenses, for publicly funded candidate, § 100.8(b)(21)

Testing-the-waters activity, § 100.7(b)(1); § 100.8(b)(1); § 101.3

Travel expenses, § 100.7(b)(8); § 100.8(b)(9); § 116.5(b)

Unpaid salary, § 116.6(a)

Vendor discount of food/beverage, § 100.7(b)(7); § 100.8(b)(8); § 114.1(a)(2)(v)

Volunteer services, § 100.7(b)(3); § 116.6(a)

Voter drive expenses

— nonpartisan, § 100.8(b)(3); § 114.1(a)(2)(ii)

— paid by party committee for Presidential nominee, § 100.7(b)(17); § 100.8(b)(18); § 106.1(c)(3)

CONVENTION, NATIONAL NOMINATING

Corporate/labor organization activity, exemption, § 114.1(a)(2)(viii)

Delegates to, *See*: DELEGATE

Host committee, registration and reporting for, § 107.1

Registration and reporting, § 107.1; § 107.2

COOPERATIVE

Communications by

— nonpartisan, to employees and restricted class, § 114.4(a)(1)(ii)

Index, General

COOPERATIVE—Continued

Communications by—Continued

- nonpartisan, to general public, § 114.4(d)
- partisan, to restricted class, § 114.3(a)(2); § 114.7(h)

Member, defined, § 100.8(b)(4)(iv)

Separate segregated fund established by, § 114.1(a)(1)(iii); § 114.5(b); § 114.7(a)

See also: COMMUNICATIONS/ADVERTISING; CORPORATION/LABOR ORGANIZATION/NATIONAL BANK; SEPARATE SEGREGATED FUND

COORDINATED PARTY EXPENDITURES

See: PARTY COMMITTEE

CORPORATION ESTABLISHED BY AUTHORITY OF CONGRESS

Acting as conduit, prohibited, § 110.6(b)(2)(ii)

Communications by

- nonpartisan, to employees and restricted class, § 114.4(a)
- nonpartisan, to general public, § 114.4(b)
- partisan, in connection with State/local election, prohibited, § 114.3(a)(1)
- partisan, to restricted class, § 114.3(a)(1)

Contribution/expenditure by, prohibited, § 114.2(a)

Earmarked contribution received by, § 110.6(b)(2)(iii)(B)

Separate segregated fund established by, § 114.2(a)(1)

See also: COMMUNICATIONS/ADVERTISING; CORPORATION/LABOR ORGANIZATION/NATIONAL BANK; SEPARATE SEGREGATED FUND

CORPORATION WITHOUT CAPITAL STOCK

Communications by

- nonpartisan, to employees and restricted class, § 114.4(d)
- nonpartisan, to general public, § 114.4(a)(1)(ii)
- partisan, to restricted class, § 114.3(a)(2); § 114.7(h)

Member, defined, § 100.8(b)(4)(iv)

Separate segregated fund established by, § 114.1(a)(1)(iii); § 114.5(b); § 114.7(a)

See also: COMMUNICATIONS/ADVERTISING; CORPORATION/LABOR ORGANIZATION/NATIONAL BANK; SEPARATE SEGREGATED FUND

CORPORATION/LABOR ORGANIZATION/NATIONAL BANK

Acting as conduit, prohibited, § 110.6(b)(2)(ii)

Aircraft, use of, § 114.9(e)

Candidate/party representative appearances, § 114.3(c)(2); § 114.4(a)(2) and (3)

Candidate use of corporate/labor

- meeting room, § 114.12(b)
- transport, § 114.9(e)

Collecting agent, § 102.6(b) and (c)

Communications by, *See:* COMMUNICATIONS/ADVERTISING

Computer use to solicit contributions, § 114.5(k)(2)

Contributions and expenditures

- definition and exemptions, § 100.7(b)(10); § 100.8(b)(4) and (11); § 114.1(a)
- prohibited, § 114.2

CORPORATION/LABOR ORGANIZATION/NATIONAL BANK—Continued

Convention activity, national nominating, § 114.1(a)(2)(viii)

Corporation, definition, § 100.8(b)(4)(vi)

Credit, extension of, by incorporated vendor, § 116.3(b)

See also: CREDIT, EXTENSION OF

Debts, forgiveness of, by incorporated vendor, § 116.4(b) and (e); § 116.8

See also: DEBTS

Earmarked contribution received by, § 110.6(b)(2)(iii)(B)

Employees/members

— leave-without-pay for political purposes, § 114.12(c)

— participation (trustee) plan, § 114.11

— use of employees/facilities in voter registration, § 114.4(b) and (c)(3)

— volunteer political activity in corporate/labor facilities, § 114.9(a) and (b)

Executive/administrative personnel, definition, § 100.8(b)(4)(iii); § 114.1(c)

Facilities of, used for political purposes, § 114.4(c)(3); § 114.9

Food/beverage sold to candidate/party committee, § 114.1(a)(2)(v)

Honorarium paid by, § 114.1(a)(2)(iv)

Incorporation by political committee, § 114.12(a)

Labor organization and members of, definition, § 100.8(b)(4)(i) and (iv); § 114.1(d) and (e)

Legal and accounting services, § 114.1(a)(2)(vi) and (vii)

Office account donations, § 113.4(b)

Ownership of, factor of affiliation, § 100.5(g)(4)(ii)(A); § 110.3(a)(3)(ii)(A)

Partnership, member of, § 110.1(e)(2)

Party office building fund, donations to, § 114.1(a)(2)(ix)

Professional organization, corporate status of, § 114.7(d)

Restricted class, § 100.8(b)(4)(iii); § 114.3(a)

Separate segregated fund solicitations

— accidental solicitation of persons outside restricted class, § 114.5(h)

— by collecting agent, § 102.6(b) and (c)

— corporate methods available to labor organizations, § 114.5(k) and (l); § 114.6(e)(3)

— member of trade association, § 114.8(c), (d), (e) and (f)

— notice not required, § 110.11(a)(1)(iv)(B)

— payroll deduction/check-off plan, § 104.8(b); § 114.5(k)(l); § 114.6(e)(l); § 114.12(d)

— restrictions on who may be solicited, § 114.5(g)

— twice yearly solicitations, § 114.6

— voluntary contribution only, § 114.1(i); § 114.5(a)

See also: SEPARATE SEGREGATED FUND

Stockholder, definition, § 100.8(b)(4)(ii); § 114.1(h)

Treasury funds, use of, § 114.5(b)

See also: MEMBERSHIP ORGANIZATION; TRADE ASSOCIATION; VOTER DRIVES

CREDIT CARDS

Recordkeeping requirements, § 102.9(b)(2)(ii)

Use of individual's, § 116.5(b)

CREDIT, EXTENSION OF

By

— any person, § 100.7(a)(4)

— commercial vendor, § 116.3

— federally regulated industry, § 116.3(d)

— incorporated vendor, § 116.3(b)

— unincorporated vendor, § 116.3(a)

Defined, § 116.1(e)

In ordinary course of business, § 100.7(a)(4); § 116.3(c)

See also: COMMERCIAL VENDOR; CREDITOR; DEBTS

Index, General

CREDITOR

Commercial vendor, *See*: COMMERCIAL VENDOR

Defined, § 116.1(f)

Extension of credit, *See*: CREDIT, EXTENSION OF

Out-of-business or with no known address, § 116.9

Remedies taken to collect on debts, § 100.7(a)(4); § 116.4(d)(3)

Settlement/forgiveness of debts, § 100.7(a)(4); § 116.4; § 116.8

See also: DEBTS

CURRENCY

See: CASH

D

DEBATES

Funds used for

— donated by corporation/labor organization, § 114.4(e)

— exemption, § 100.7(b)(21); § 100.8(b)(23)

Staging organizations, § 110.13(a); § 114.4(e)(1) and (2)

Structure of, § 110.13(b)

DEBTS

Advances of goods/services from individuals, treatment as, § 116.5(c)

Assignment of, to another authorized committee, § 116.2(c)(3)

Bankruptcy, debts discharged in, § 116.7(g)

Collection of, by vendor, § 100.7(a)(4); § 116.4(d)(3)

Contributions to retire

— calculation of net debts outstanding by campaign, § 110.1(b)(3)(ii) and (iii); § 110.2(b)(3)(ii)

— designated/redesignated for debt retirement, § 110.1(b)(3)(i), (b)(5)(i)(B) and (D), (b)(5)(iii); § 110.2(b)(3)(i), (b)(5)(i)(B) and (D), (b)(5)(iii)

— pre-1975 debts, § 110.1(g); § 110.2(g)

— primary debts, § 110.1(b)(3)(iv)

— raised through joint fundraising, § 102.17(c)(2)(ii)(A)

Creditors, defunct, debts owed to, § 116.9

Debt settlement plans, § 104.11(a); § 116.7; § 116.9(b); § 116.10(b)

Disputed, § 116.10

— defined, § 116.1(d)

— not subject to settlement, § 116.7(c)(2)

— owed by terminating committee, § 116.10(b)

Efforts to satisfy, "reasonable" standard, § 116.4(c)(2) and (d)(2)

Extensions of credit, *See*: CREDIT, EXTENSION OF

Loans, *See*: LOANS

Payment of, criterion for committee termination, § 102.3; § 116.7(a)(1)

Reporting, § 104.3(d)

— continuous reporting of debts, including those undergoing settlement, § 104.11; § 116.4(f); § 116.5(e); § 116.6(c); § 116.7(d)

— debts owed to individuals/employees for goods/services or salaries, § 116.5(e); § 116.6(c)

— disputed debts, § 116.10(a)

— rent, salary, other recurring expenses not reported as debts, § 104.11(b)

— separate reporting of debts assigned from another committee, § 116.2(c)(3)(ii)

— when debts not payable because of defunct creditor, § 116.9(d)

Salary payments owed to employees, treatment as, § 116.6(a)

Settlement/forgiveness, § 116.4; § 116.8

— commercially reasonable, § 116.4(d)

— conditions for, to avoid contribution, § 116.4(a) and (b)

— criterion for committee termination, § 116.7(a)(2) and (3)

— debts owed by authorized committee, § 116.2(c)

— debts owed by ongoing committee, § 116.2(b); § 116.8

DEBTS—Continued**Settlement/forgiveness, § 116.4; § 116.8—Continued**

- debts owed by publicly funded committee, § 116.7(c)(1)
- debts owed by terminating committee, § 116.2(a); § 116.7
- debts owed to commercial vendor, § 116.4; § 116.8
- debts owed to committee employee/other individual, § 116.5(d); § 116.6(b); § 116.7(b)(2) and (3)
- debt settlement plans required, *See: Debt settlement plans, above*
- debts subject/not subject to, § 116.7(b) and (c)
- not required of creditor, § 116.4(e); § 116.5(d); § 116.6(b)
- results in contribution, § 100.7(a)(4)

See also: COMMERCIAL VENDOR; CREDITOR; TERMINATION OF COMMITTEE

DEFINITIONS

Act, § 100.18

Administrative personnel, § 100.8(b)(4)(iii); § 114.1(c)

Affiliated committee, § 100.5(g); § 110.3(a)(3)(ii)

Agent, § 109.1(b)(5)

Anything of value, § 100.7(a)(1)(iii); § 100.8(a)(1)(iv)

Authorized committee, § 100.5(d) and (f)(1)

Candidate, § 100.3(a)

Cash on hand, § 110.1(b)(3)(ii); 110.2(b)(3)(ii)

Caucus, § 100.2(e)

Clearly identified candidate, § 100.17; § 106.1(d); § 109.1(b)(3)

Collecting agent, § 102.6(b)(1)

Commercial vendor, § 116.1(c)

Commission, § 100.9

Conduit, § 110.6(b)(2)

Connected organization, § 100.6

Consumer price index, § 110.9(c)(2)

Contribution, § 100.7(a); § 114.1(a)(1)

Contribution exemptions, § 100.7(b); § 114.1(a)(2)

Contribution made, § 110.1(b)(6); § 110.1(b)(4); § 110.2(b)(6)

Convention, § 100.2(e)

Corporation, § 100.8(b)(4)(vi)

Creditor, § 116.1(f)

Current federal campaign committee, § 110.3(c)(4)(ii)

Delegate, § 110.14(b)(1)

Delegate committee, § 100.5(e)(5); § 110.14(b)(2)

Designated contribution, § 110.1(b)(3) and (4); § 110.1(j); § 110.2(b)(3) and (4)

Disclaimer notice, § 110.11(a)

Disputed debt, § 116.1(d)

Dual candidacy, § 110.3(c)(5)

Earmarked contribution, § 110.6(b)

Election, § 100.2(a); § 100.8(b)(4)(v); § 104.6(a)(1) and (2)

Election cycle, § 100.3(b)

Employee participation plan, § 114.11(a)

Index, General

DEFINITIONS—Continued

- Employer, § 100.21
- Excess campaign funds, § 113.1(e)
- Executive or administrative personnel, § 100.8(b)(4)(iii); § 114.1(c).
- Exempt compliance costs, § 106.2(c)(5)(i)
- Exempt fundraising expenditures, § 106.2(c)(5)(ii)
- Expenditure, § 100.8(a); § 114.1(a)(1)
- Expenditure exemptions, § 100.8(b); § 114.1(a)(2)
- Expressly advocating, § 109.1(b)(2)
- Extension of credit, § 116.1(e)
- Federal contractor, § 115.1(a)
- Federal Election Commission, § 100.9
- Federal office, § 100.4
- Federal officeholder, § 113.1(c)
- File, filed or filing, § 100.19
- Foreign national, § 110.4(a)(3)
- Fundraising representative (joint fundraising), § 102.17(a)(3) and (b)
- Funds donated, § 113.1(a)
- General election, § 100.2(b)
- Honorarium, § 110.12(b)
- Identification, § 100.12
- Independent expenditure, § 100.16; § 109.1(a)
- Intermediary, § 110.6(b)(2)
- Labor organization, § 100.8(b)(4)(i); § 114.1(d)
- Member, § 100.8(b)(4)(iv); § 114.1(e)
- Multicandidate committee, § 100.5(e)(3)
- National party committee, § 100.13
- Net debts outstanding, § 110.1(b)(3)(ii); § 110.2(b)(3)(ii)
- Nonconnected committee, § 106.6(a)
- Notice of disclaimer, § 110.11(a)
- Occupation, § 100.20
- Office account, § 113.1(b)
- Ongoing committee, § 116.1(b)
- Overhead expenditures, § 106.2(b)(2)(iv)
- Party committee, § 100.5(e)(4)
- Person, § 100.10; § 109.1(b)(1); § 110.1(a)
- Personal funds, § 110.10(b)
- Political committee, § 100.5
- Political party, § 100.15
- Previous federal campaign committee, § 110.3(c)(4)(i)
- Price index, § 110.9(c)(2)
- Primary election, § 100.2(c)
- Principal campaign committee, § 100.5(d) and (e)(1)
- Redesignated contribution, § 110.1(b)(5)(ii)
- Restricted class
 - for communications, § 114.3(a)
 - for solicitations, § 114.5(g)
- Runoff election, § 100.2(d)
- Single candidate committee, § 100.5(e)(2)
- Solicitation, § 104.15(b)
- Special election, § 100.2(f)
- State, § 100.11
- State committee, § 100.14(a)
- State officeholder, § 113.1(d)
- Stockholder, § 100.8(b)(4)(ii); § 114.1(h)
- Subordinate committee, § 100.14(b)
- Subsistence, § 106.2(b)(2)(iii)
- Support of candidate, § 102.12(c)(2); § 102.13(c)(2)

DEFINITIONS—Continued

- Telephone services base charges, § 106.2(b)(2)(iv)
- Terminating committee, § 116.1(a)
- Trade association, § 114.8(a)
- Twice yearly solicitations, § 114.6
- Unauthorized committee, § 100.5(f)(2)
- Voluntary contributions, § 114.1(i)
- Voting age population, § 110.9(d)

DELEGATE**Committee**

- advocacy of delegate selection, § 110.14(h)
- affiliation between, § 110.14(k)
- affiliation with authorized committee of Presidential candidate, § 110.14(j)
- contributions, § 110.5(e); § 110.14(g)
- definition, § 100.5(e)(5); § 110.14(b)(2)
- expenditures by, § 110.14(h) and (i)
- name of, restrictions, § 102.14(b)(1)

Communications by, § 110.14(e) and (f)

Contributions to, § 110.5(e); § 110.14(d)

Convention/caucus, definition, § 100.2(e)

Definitions, § 110.14(b)(1)

Election of, to national convention, § 100.2(c)(3)

Expenditures by

- dual purpose, § 110.14(f)(2)
- referring to candidate for public office, § 110.14(f)
- to advocate selection, § 110.14(e)

Funds received and expended, § 110.14(c)

Party committee expenditures, § 110.14(c)(1)(ii)

Payments to qualify as, § 110.14(c)(1)(i)

Scope, § 110.14(a)

DEPOSITORY

See: CAMPAIGN DEPOSITORY

DIRECT MAIL

Definitions, § 100.7(b)(7)(i) and (15)(i); § 100.8(b)(16)(i) and (18)(i); § 110.14(f)(4)

Use of, by delegates/delegate committees to disseminate Presidential campaign materials, § 110.14(f)(4)

Use of, for exempted party activities

- permissible, § 100.7(b)(9); § 100.8(b)(10)
- prohibited, § 100.7(b)(15)(i) and (17)(i); § 100.8(b)(16)(i) and (18)(i)

DISBURSEMENTS

Accounting for, § 102.9(b)

From campaign depository, § 102.10; § 103.3(a)

From petty cash fund, § 102.11; § 103.3(a)

Recordkeeping, *See:* RECORDKEEPING

Reporting, *See:* REPORTING

See also: EXPENDITURES

DISCLAIMER, NOTICE OF

Content of, § 110.11(a)

Required for

- advertisement or public communication, § 110.11(a)
- independent expenditure, § 109.3
- solicitation, § 102.16; § 102.17(c)(2); § 110.11(a)

DISCLOSURE

Access to FEC information

- Freedom of Information Act, Part 4
- Privacy Act, Part 1

Index, General

DISCLOSURE—Continued

Access to FEC information—Continued

See also: **PUBLIC INSPECTION OF DOCUMENTS**

By corporations and labor organizations, for partisan communications,

See: **PARTISAN COMMUNICATIONS/Reporting of**

By independent spenders, *See:* **INDEPENDENT EXPENDITURES/Reporting**
Change in filing frequency, § 104.5(c)

Of fundraising activity

— joint, § 102.17(c)(3)(iii) and (8); § 112.6(c)(7)

— using collecting agents, § 102.6(c)(7)

— using payroll deduction plan, *See:* **PAYROLL DEDUCTION PLAN**

Of nonfederal activity, by national party committee, § 104.8(e) and (f);
§ 104.9(c), (d) and (e)

Preemption of state laws governing, by Federal Election Campaign Act,
§ 108.7(b)(2)

Reporting deadlines, *See:* **FILING**

Reporting forms, *See:* **FORMS**

Reporting liability, *See:* **TREASURER OF POLITICAL COMMITTEE**

Reporting requirements/procedures, *See:* **PAYROLL DEDUCTION PLAN;**
REPORTING

DISTRICT OF COLUMBIA

Filing exemption, § 108.8

DOCUMENT FILING

See: **FILING**

DRAFT COMMITTEE

Name of, restrictions, § 102.14(b)(2)

DUAL CANDIDACY

Contributions to, § 110.1(f); 110.2(f)

Separate campaign organizations required, § 110.8(d)

Transfers between principal campaign committees, § 110.3(c)(5)

E

EARMARKED CONTRIBUTION

Conduit or intermediary, § 110.6(b)(2)

See also: **CONDUIT/INTERMEDIARY**

Contribution limits affected, § 110.6(a)

Definition, § 110.6(b)(1)

Direction or control exercised, § 110.6(d)

See also: **BUNDLING**

In joint fundraising, § 102.17(c)(2)(i)(C)

Procedures for forwarding, § 102.8(c); § 110.6(b)(2)(iii)

Reporting by recipient, § 110.6(c)(2)

Return required, § 110.6(b)(2)(iii)(B)

ELECTION

Ballot access payments, § 100.7(b)(18); § 100.8(b)(19)

Contributions, per election

— accounting for primary/general election contributions, § 102.9(e)

ELECTION—Continued

Contributions, per election—Continued

- designated/undesignated, § 110.1(b); § 110.2(b); § 110.5(c)
- for unopposed candidate, § 110.1(j)(2) and (3); § 110.2(d)(2) and (3)
- limits, § 110.1(b) and (j); § 110.2(b), (d), (e) and (i); § 110.5(b)
- made during nonelection year, § 110.5(b)
- presidential primary, § 110.1(j)(1); § 110.2(i)
- primary, § 110.1(j)(3) and (4); § 110.2(i)

Definitions, § 100.2(a); § 100.8(b)(4)(v); § 104.6(a)(1) and (2); § 110.1(b)(2)

- caucus or convention, § 100.2(e)
- cycle, § 100.3(b)
- general, § 100.2(b)
- primary, § 100.2(c)
- runoff, § 100.2(d)
- special, § 100.2(f)

Federal, referred to in party solicitation, § 102.5(a)(3)

Recount expenses, § 100.7(b)(20); § 100.8(b)(20)

Reporting, election-year, § 104.5(a)(1), (b)(1) and (c)(1)

ELECTION INFLUENCING

Communications advocating election/defeat of candidate, See: CLEARLY IDENTIFIED CANDIDATE; EXPRESS ADVOCACY; INDEPENDENT EXPENDITURES

Contributions made for, See: CONTRIBUTIONS

Corporate/labor activity, Part 114

Exempt activities for, See: CONTRIBUTION/EXPENDITURE EXEMPTIONS

Expenditures made for, See: EXPENDITURES; INDEPENDENT EXPENDITURES

Solicitation by party considered as, § 102.5(a)(3)

ENFORCEMENT

See: COMPLIANCE

EXCESS CAMPAIGN FUNDS

Definition, § 113.2(e)

Transfer of, § 113.2(c)

Use of, § 113.2

EXECUTIVE PERSONNEL

Definition, § 100.8(b)(4)(iii); § 114.1(c)

See also: CORPORATION/LABOR ORGANIZATION/NATIONAL BANK

EXPENDITURES

Accounting for, § 102.9(b)

Administrative expenses, See: ADMINISTRATIVE EXPENSES

Advances of goods or services paid from individual's funds, § 100.8(a)(1); § 116.5(b)

Allocation of, See: ALLOCATION OF EXPENDITURES

By candidate, See: CANDIDATE

By cash, § 102.11; § 103.3(a)

By check, § 102.10; § 103.3(a)

Index, General

EXPENDITURES—Continued

By corporation/labor organization/national bank, § 114.1; § 114.2

By delegate, § 110.14(e) and (f)

By delegate committee, § 110.14(h) and (i)

By Federal contractor, § 115.2

By party committee, § 102.13(b); § 109.1(d)(2); § 110.7

By spouse, § 100.8(c)

By Vice Presidential candidate, § 110.8(f) and (g)

Contract or agreement to make, § 100.8(a)(2); § 104.11(b)

Coordinated party, § 102.13(b); § 109.1(d)(2); § 110.7

Definition, § 100.8(a); § 114.1(a)(1)

Exemptions, § 100.8(b); § 114.1(a)(2)

See also: CONTRIBUTION/EXPENDITURE EXEMPTIONS

For delegate selection, § 110.14(c)(1)

Illegal, § 110.9(a); § 110.14(c)(2); § 114.2; § 115.2

Independent, *See:* INDEPENDENT EXPENDITURES

In joint fundraising, § 102.17(b)(3)

In-kind contribution, considered expenditure, § 104.13(a)(2); § 106.1(b); § 109.1(c); § 110.14(f)(2)(i)

See also: IN-KIND CONTRIBUTION

Limitations

— based on voting age population, § 110.7(a)(2) and (b)(2)(i); § 110.8(a)(1); § 110.9(d)

— increases, based on price index, § 110.9(c)

— party committees' coordinated expenditures, § 110.7

— Presidential candidates receiving public funding, § 110.8

"Made on behalf of," defined, § 110.8(g)

Overhead, of state offices, § 106.2(b)(2)(iv)

Payee, identification of, § 104.9

Personal funds, § 100.8(b)(22); § 106.3(b)(1); § 110.8(f)(2); § 110.10

Political committee status, criterion for, § 100.5(a), (c) and (f)

Polling, § 106.2(b)(2)(vi) and (c)(1)(iii); § 106.4

Prohibited, § 110.9(a); § 110.14(c)(2); § 115.2

Promise to make, § 100.8(a)(2)

Purpose of, definition, § 104.3(b)(3)(i)(A) and (B); § 104.9(a)

Recordkeeping, *See:* RECORDKEEPING

Reporting, *See:* REPORTING

Testing-the-waters expenses, § 100.7(b)(1); § 100.8(b)(1); § 106.4(a); § 101.3

Travel expenses

— allocation of, § 106.2(c)(2); § 106.3

— reimbursement for corporate/labor transportation, § 114.9(e)

— reimbursement to staff or volunteers, § 116.5(b)

— unreimbursed, § 100.7(b)(8); § 100.8(b)(9)

Treasurer's authorization, § 102.7(c)

Violations, § 110.9(a)

EXPRESS ADVOCACY

Allocation of expenditures for, § 106.1

Definition of, § 109.1(b)(2)

Disclaimer notice required, § 102.16; § 109.3; § 110.11(a)

Newspaper stories/editorials/commentaries, exempted as expenditures for, § 100.7(b)(2); § 100.8(b)(2)

Reporting requirements, *See:* INDEPENDENT EXPENDITURES/Reporting Used by

— corporations and labor organizations, § 100.8(b)(4); § 104.6; § 105.4; § 110.11(a); § 114.3; § 114.5(e)(2)(i)

— delegates, for Federal candidates, § 110.14(f)(2)(ii)

— party committees, § 100.7(b)(15); § 100.8(b)(16); § 110.11(a)

Used in

EXPRESS ADVOCACY—Continued

Used in—Continued

- campaign materials, *See*: **CAMPAIGN MATERIALS**
 - independent expenditures, § 100.16; § 109.1(a)-(e)
 - political ads, § 110.11
 - volunteer activity, *See*: **VOLUNTEER ACTIVITY**
 - voter drives, *See*: **VOTER DRIVES/Partisan**
- See also*: **CLEARLY IDENTIFIED CANDIDATE; COMMUNICATIONS/ADVERTISING; PARTISAN COMMUNICATIONS**

F**FEDERAL CONTRACTOR**

- Acting as conduit, prohibited, § 110.6(b)(2)(ii)
 - Contributions/expenditures by, prohibited, § 115.2
 - Definition, § 115.1(a)
 - Earmarked contribution received by, § 110.6(b)(2)(iii)(B)
 - Employee contributions/expenditures, § 115.6
 - Individuals and sole proprietors, § 115.5
 - Partnership, § 115.4
 - Separate segregated fund established by, § 115.3
- See also*: **SEPARATE SEGREGATED FUND**

FEDERAL ELECTION COMMISSION

- Advisory opinions, *See*: **ADVISORY OPINIONS**
- Audits and investigations by, *See*: **AUDITS**
- Commissioners, § 2.2(a); Part 2
- Disclosure of information by, *See*: **PUBLIC INSPECTION OF DOCUMENTS**
- Enforcement by, *See*: **COMPLIANCE**
- Fees, § 4.9; § 5.6
- Handicapped persons' access to FEC programs, Part 6
- Meetings, § 2.2(d); Part 2
- Review of
 - administrative complaints, § 111.5
 - advisory opinion requests, § 112.1(d)
 - creditor's letter of intent to forgive debt, § 116.8(c)
 - debt settlement plans, § 116.7(f)
 - employee conflict-of-interest complaints, § 7.23(b)
 - FOIA requests, § 4.1(i)
- Standards of conduct for staff, Part 7

FEDERAL OFFICE

- Definition, § 100.4

FEDERAL OFFICEHOLDER

- Definition, § 113.1(c)
- Excess campaign funds used by, § 113.2
- See also*: **EXCESS CAMPAIGN FUNDS**
- Honorarium accepted by, § 110.12
- See also*: **HONORARIA**

Index, General

FILING

- Acknowledgement of report's receipt, § 104.14(c)
- Candidate designations, § 101.1
- Communications reports, § 104.6; § 105.4; § 114.5(e)(2)(i)
- Computer-produced reports, § 104.2(d)
- Contribution, 48 hour notification of, § 104.5(f)
- Convention reports, national nominating
 - by committee, § 107.1
 - by party, § 107.2
- Copies of, located, § 105.5; § 108.1
- Dates
 - election year reports, § 104.5(a)(1), (b)(1) and (c)(1)
 - nonelection year reports, § 104.5(a)(2), (b)(2) and (c)(2)
 - Vice Presidential committee reports, § 104.5(d)
- Debt settlement plans, § 116.7(a)
- Definition of file, filed or filing, § 100.19
- Failure to file, § 111.8(c)
- Federal filing, place of
 - by House candidate committees, § 105.1
 - by other committees, § 105.4
 - by Presidential committees, § 105.3
 - by Senate candidate committees, § 105.2
- Frequency of
 - by Presidential committees, § 104.5(b)(1)(iii)
 - by unauthorized committees, § 104.5(c)
- Independent expenditure reports, § 104.4(c); § 104.5(g); § 105.4; § 109.2
- Monthly reports
 - by Presidential committees, § 104.5(b)(1)(i), (iii) and (2)(i)
 - by unauthorized committees, § 104.5(c)(3)
 - waivers, § 104.5(b)(1)(i)(C) and (c)(3)(iii)
- Post-election reports
 - by Congressional committees, § 104.5(a)(1)(ii)
 - by Presidential committees, § 104.5(b)(1)(i)(C) and (ii)
 - by unauthorized committees, § 104.5(c)(1)(iii)
- Postmark as date of filing, § 104.5(e)
- Pre-election reports
 - by Congressional committees, § 104.5(a)(1)(i)
 - by Presidential committees, § 104.5(b)(1)(i)(C) and (ii)
 - by unauthorized committees, § 104.5(c)(1)(ii)
- Quarterly reports
 - by Congressional committees, § 104.5(a)(1)(iii)
 - by Presidential committees, § 104.5(b)(1)(ii) and (2)(ii)
 - by unauthorized committees, § 104.5(c)(1)(i)
 - waivers, § 104.5(a)(1)(iii)(C) and (c)(1)(i)(C)
- Semiannual reports
 - by Congressional committees, § 104.5(a)(2)
 - by unauthorized committees, § 104.5(c)(2)(i)
- Special election reports, § 104.5(h)
- State filing, § 108.1
 - by other committees, § 108.3
 - by Presidential committees, § 108.2
 - by unauthorized committees supporting Presidential candidate, § 108.4
 - District of Columbia exemption, § 108.8
 - duties of State officer, § 108.6
 - effect on State law, § 108.7
 - legible copies, § 108.5
 - time and manner of filing, § 108.5
- Statement of Candidacy, § 101.1
- Statement of Organization, § 102.1; § 102.2(a)

FILING—Continued

Termination report, § 102.3(a)

Timely filing, § 104.14(d)

Year-end reports

- by Congressional committees, § 104.5(a)(1)(iii)(A) and (2)(i)(B)
- by Presidential committees, § 104.5(b)(1)(i)(C)
- by unauthorized committees, § 104.5(c)(1)(i)(A) and (2)(i)(B)

See also: **FORMS; REPORTING****FOOD/BEVERAGE****Exemption**

- for vendor discount, § 100.7(b)(7); § 100.8(b)(8)
- for volunteer, § 100.7(b)(6); § 100.8(b)(7)

FOREIGN NATIONAL

Acting as conduit, prohibited, § 110.6(b)(2)(ii)

Contributions by, prohibited, § 110.4(a)(1) and (2)

Definition, § 110.4(a)(3)

Earmarked contribution received by, § 110.6(b)(2)(iii)(B)

Solicitation of, § 110.4(a)(2)

FORMS

Communications reports, § 104.6(a); § 105.4

Computer-produced, § 104.2(d)

Consolidated reports, § 104.3(f)

Debts and obligations, § 104.3(d)

Independent expenditure reports, § 104.4(a); § 109.2(a)

Legal and accounting services, § 104.3(h)

Obtainable from the Commission, § 102.2(a); § 104.2(b)

Party office building fund donations, § 104.3(g)

Receipts/disbursements, reports of

- by Congressional committees, § 104.2(e)(2)
- by Presidential committees, § 104.2(e)(1); § 106.2(d) and (e)
- by unauthorized committees, § 104.2(e)(3)

Reproducing FEC forms, § 104.2(c)

Statement of Candidacy, § 101.1

Statement of Organization, § 102.1(a); § 102.2(a)(1)

Termination reports, § 102.3(a)

See also: **FILING; REPORTING****FREEDOM OF INFORMATION ACT****Part 4****FUNDRAISING**Allocation of expenses for, *See:* **ALLOCATION OF EXPENSES**

By collecting agent, § 102.6(b) and (c)

By commercial firm, § 102.6(b)(3); § 110.6(b)(2)(i)(D)

By corporation/labor organization, § 114.5(b)

By Presidential candidates receiving public funds

- before state primary, § 110.8(c)(2)
- exemption, § 100.8(b)(21); § 106.2(c)(5)

Combined dues/contributions, § 102.6(c)(3)

Joint, *See:* **JOINT FUNDRAISING**

Limitation, § 100.8(b)(21)

Notice of disclaimer required, § 110.11(a)

Payment to attend event, § 100.7(a)(2)

Representative, § 102.17(b)(1) and (2)

Sale of fundraising items, § 100.7(a)(2)

Solicitation by party referring to federal elections, § 102.5(a)(3)

See also: **COMMUNICATIONS/ADVERTISING; CONTRIBUTIONS**

Index, General

G

GENERAL ELECTION

Contributions for, separated from primary contributions, § 102.9(e)

Definition, § 100.2(b)

See also: ELECTION; PRIMARY ELECTION

GET-OUT-THE-VOTE DRIVE

See: VOTER DRIVES

GIFT

Gratuitous, § 110.12(c)(2)

Made to influence election, § 100.7(a)(1); § 100.8(a)(1)

GOVERNMENT CONTRACTOR

See: FEDERAL CONTRACTOR

GOVERNMENT CONVEYANCE

See: TRAVEL

H

HANDICAPPED PERSONS

Access to FEC programs and facility, Part 6

HONORARIA

Award/gift/stipend, excluded, § 110.12(c)

Definition, § 110.12(b)

Exempted contribution, § 100.7(b)(19); § 114.1(a)(2)(iv)

Limitations on accepting, § 110.12(a)

HOST COMMITTEE (CONVENTION)

Registration and reporting, § 107.1

HOUSE CAMPAIGN COMMITTEE

Allocation of expenses between federal/nonfederal accounts, § 106.5(c)

See also: ALLOCATION OF EXPENSES

Contributions by, § 110.2(b)(1); § 110.3(b)(1) and (2)(i)

Contributions to, § 110.1(c)(2); § 110.2(c)(2); § 110.3(b)(1) and (2)(i)

IDENTIFICATION

Definition, § 100.12

INCORPORATION

Of political committee, § 114.12(a)

INCUMBENT

Federal officeholder defined, § 113.1(c)

Government transportation used by, for Presidential campaign, *See:* Index for GENERAL ELECTION FINANCING/Travel; Index for PRIMARY ELECTION FINANCING/Qualified Campaign Expenses

Honoraria accepted by, § 110.12

See also: HONORARIA

Office account of, *See:* OFFICE ACCOUNT

Personal use of excess campaign funds by, § 113.2(d)

See also: CANDIDATE

INDEPENDENT EXPENDITURES

Attribution of, among candidates, § 106.1(a)

Authorized committee, prohibited from making, § 109.1(e)

— campaign materials produced by candidate, precluded, § 109.1(d)(1)

— coordination with, precluded, § 109.1(a), (b)(4) and (d)(1)

Certification of independence, § 109.2(a)(1)(v)

Contribution in-kind, if consultation, § 109.1(c)

Contribution limit, applies, § 110.1(d)(2); § 110.5(d)

Defined as expenditure, § 100.8(a)(3)

Definition, § 100.16; § 109.1(a) and (b)

Delegate/delegate committee expenditures for Federal candidate,

INDEPENDENT EXPENDITURES—Continued

Delegate/delegate committee expenditures for Federal candidate,
 § 110.14(f)(2) and (i)(2)—Continued
 § 110.14(f)(2) and (i)(2)

Notice of nonauthorization required, § 109.3; § 110.11(a)(1)(iii) and (iv)

Party committee precluded from making, § 110.7(a)(5) and (b)(4)
 Reporting, § 104.4(a)

- by persons other than political committees, § 105.4; § 109.2
- by political committees, § 104.3(b)(3)(vii)
- 24 hour reports, § 104.4(b); § 104.5(g); § 109.2(b)

INDIVIDUALS

Advances of goods/services paid with personal funds, § 100.7(a)(1);
 § 100.8(a)(1); § 116.5(b)

Campaign travel paid by, § 100.7(b)(8); § 116.5(b)

Coercive solicitations of, prohibited, § 114.5(a)

Commercial vendor

- individual acting as, *See: COMMERCIAL VENDOR*
- individual not acting as, § 116.5(a)

Contributions by, § 110.1

Contributor information on, prohibited for solicitations or commercial uses,
 § 104.15(a)

Corporate and labor organization facilities used by, § 114.9(a)-(c)

Credit cards, use of, § 116.5(b)

Delegates to national convention

- contributions to, § 110.14(d)
- definition, § 110.14(b)
- expenditures by, § 110.14(e) and (f)
- party expenses on behalf of, § 110.14(c)(1)(ii)
- payments for ballot access, § 110.14(c)(1)(i)

Earmarked contributions by, *See: EARMARKED CONTRIBUTIONS*

Foreign national, *See: FOREIGN NATIONAL*

Independent expenditures by, *See: INDEPENDENT EXPENDITURES*

Legal and accounting services provided by, to campaigns, *See: LEGAL AND
 ACCOUNTING SERVICES*

Liability of, for campaign activity, *See: LIABILITY*

Limits on contributions by

- annual limit, § 110.5
- minors, § 110.1(i)(2)
- partners, § 110.1(e)
- spouses in single income family, § 110.1(i)

Loans and loan endorsements by, § 100.7(a)(1) and (1)(i); § 100.8(a)(1) and
 (1)(i)

Partisan communications by, *See: EXPRESS ADVOCACY; INDEPENDENT
 EXPENDITURES*

Party activity conducted by, *See: PARTY COMMITTEE/Contribution/
 expenditure exemptions*

Person defined, § 110.10

Index, General

INDIVIDUALS—Continued

Salary owed to, § 116.6

Solicitations of, by corporations/labor organizations, *See*: RESTRICTED CLASS

Testing-the-waters activities of, *See*: TESTING-THE-WATERS EXPENSES

Travel expenses of, § 100.7(b)(8); § 100.8(b)(9)

Volunteer activities conducted by, § 100.7(a)(3)(i)–(iii) and (b)(3)

See also: VOLUNTEER ACTIVITY

IN-KIND CONTRIBUTION

Advances for goods/services, § 100.7(a)(1); § 116.5(b)

“Anything of value,” defined, § 100.7(a)(1)(iii); § 100.8(a)(1)(iv)

Polling expenses, considered as, § 106.4(b)

Reported as expenditures, § 104.13(a)(2); § 106.1(b)

Stocks/bonds/art objects, liquidation of, § 104.13(b)

Valuation, § 100.7(a)(1)(iii)(B); § 100.8(a)(1)(iv)(B); § 104.13(a)(1)

When not an independent expenditure, § 109.1(c); § 110.14(f)(2)(i) and (i)(2)(i)

INTERMEDIARY/CONDUIT

See: EARMARKED CONTRIBUTION

J

JOINT FUNDRAISING

Agreement required, § 102.17(c)(1)

Allocation formula, § 102.17(c)(1) and (2)

Allocation of proceeds and expenses, § 102.17(c)(6) and (7)

Authorized committee designated for, § 102.13(c)(1)

Commercial firm as participant in, § 102.17(a)(1)(ii)

Contribution limitation, per participant, § 102.17(c)(5)

Costs of, advanced, § 102.17(b)(3)

Depository for, § 102.17(c)(3)

Notice required, § 102.17(c)(2)

Participants in, § 102.17(a)(2) and (b)

Procedures for conducting, § 102.17

Reporting of, § 102.17(c)(3)(iii) and (8)

Representative for joint fundraising effort

— appointment of, § 102.17(a)(1) and (3)

— definition, § 102.17(a)(3) and (b)

— not a conduit, § 110.6(b)(2)(i)(B)

— receipt of earmarked contribution by, § 110.6(b)(2)(iii)(A)

— recordkeeping duties of, § 102.17(c)(4)

— reporting, § 102.6(a)(2); § 102.17(a)(1)(ii) and (c)(8)

Separate segregated fund as participant in, § 102.6(b) and (c)

Transfer of funds, limited, § 102.6(a)(1)(iii) and (iv); § 110.3(c)(2)

L

LABOR ORGANIZATION

See: CORPORATION/LABOR ORGANIZATION/NATIONAL BANK

LEGAL AND ACCOUNTING SERVICES

Contribution/expenditure exemption

— for nonparty political committees, § 100.7(b)(14); § 100.8(b)(15); § 114.1(a)(2)(vii)

— for party committees, § 100.7(b)(13); § 100.8(b)(14); § 114.1(a)(2)(vi)

— for presidential campaigns receiving public funds, § 106.2(c)(5)

Paid by corporations and labor organizations, § 114.1(a)(2)(vi) and (vii)

Reporting, § 104.3(h); § 114.5(e)(2)(ii)

LIABILITY

For disputed debt, disclosure not admission of, § 116.10(a)

For filing complaints with FEC, § 111.4(c)

For forwarding contributions to political committee treasurers, § 102.6(c)(1);

LIABILITY—Continued

For forwarding contributions to political committee treasurers, § 102.6(c)(1);
 § 102.8—Continued
 § 102.8

For making independent expenditures, § 109.2(a)(1)(v)

Of political committee treasurers, *See*: **TREASURER OF POLITICAL COMMITTEE/Duties**

Of separate segregated funds, for collecting agent activity, § 102.6(c)(1)

Of Presidential candidates accepting public funds, *See*: **Index for GENERAL ELECTION FINANCING/Certifications; Index for PRIMARY ELECTION FINANCING/Certifications**

LOANS

Contribution, § 100.7(a)(1); § 114.1(a)(1)

— endorser or guarantor of loan, § 100.7(a)(1)(i)(C) and (D)

Contribution exemptions for

— lending institutions, § 100.7(b)(11)

— office facilities, § 100.7(b)(12)

— recount costs, § 100.7(b)(20)

Endorsements, § 100.7(a)(1)(i)

Expenditure, § 100.8(a)(1); § 114.1(a)(1)

Expenditure exemptions for

— lending institutions, § 100.8(b)(12)

— office facilities, § 100.8(b)(13)

— recount costs, § 100.8(b)(20)

Guarantees, § 100.7(a)(1)(i)

Obtained by candidate, § 100.7(a)(1)(i)(D); § 101.2; § 102.7(d)

Overdrafts, § 100.7(b)(11); § 100.8(b)(12)

Repayment of, § 100.7(a)(1)(i)(E)

Reporting, § 104.3(d); § 104.11

See also: **DEBTS**

LOCAL PARTY COMMITTEE

See: **PARTY COMMITTEE**

M**MAILING LIST**

Defined as in-kind contribution, § 100.7(a)(1)(iii)(A)

Information from FEC reports used for, prohibited, § 104.15(a)

Requirements for buying/selling/trading by political committees,
 § 100.7(a)(1)(iii)

See also: **DIRECT MAIL**

MEDIA

See: **COMMUNICATIONS/ADVERTISING**

MEMBER OF CONGRESS

See: **CONGRESS, MEMBERS OF**

MEMBERSHIP ORGANIZATION, INCORPORATED

Communications by, § 100.8(b)(4); § 114.7(h)

— nonpartisan, to employees and restricted class, § 114.4(a)(1)(ii)

Index, General

MEMBERSHIP ORGANIZATION, INCORPORATED—Continued

Communications by, § 100.8(b)(4); § 114.7(h)—Continued

- nonpartisan, to general public, § 114.4(d)
- partisan, to restricted class, § 114.3(a)(2)
- reporting, § 100.8(b)(4); § 104.6; § 114.5(e)(2)(i)

Fundraising by

- combined dues/contribution payments, § 102.6(c)(3)
- using affiliates as collecting agents, § 102.6(b) and (c)

See also: COLLECTING AGENT; STATE ASSOCIATION

Member, defined, § 100.8(b)(4)(iv); § 114.1(e); § 114.7(i)

Separate segregated fund established by, § 114.1(a)(2)(iii) and (b); § 114.7(a) and (e)

See also: COMMUNICATIONS/ADVERTISING; SEPARATE SEGREGATED FUND

MINORS

Contributions by, § 110.1(i)(2)

MULTICANDIDATE COMMITTEE

Contributions by, limitations, § 110.2

Definition, § 100.5(e)(3)

N

NATIONAL BANK

See: CORPORATION/LABOR ORGANIZATION/NATIONAL BANK

NATIONAL NOMINATING CONVENTION

See: CONVENTION, NATIONAL NOMINATING

NATIONAL PARTY COMMITTEE

See: PARTY COMMITTEE

NEWS

See: COMMUNICATIONS/ADVERTISING

NONAUTHORIZED COMMITTEE

See: UNAUTHORIZED COMMITTEE

NONCONNECTED COMMITTEE

See: POLITICAL COMMITTEE

NONELECTION YEAR

Candidate appearances, § 110.8(e)(2)(i)

Contributions, § 110.5(b)

Fixed percentage allocation method, use in, § 106.5(b)(2)

See also: ALLOCATION OF EXPENSES

Reporting, § 104.5(a)(2), (b)(2) and (c)(2)

NONFILERS

Enforcement procedures, § 111.8(a) and (b)

Publication of names, § 111.8(c)

NONPARTISAN COMMUNICATIONS

By

- cooperatives, § 114.4(a)(1)(ii) and (d)
- corporations, § 114.4(a), (b) and (d)
- corporations established by authority of Congress, § 114.4(a) and (b)

NONPARTISAN COMMUNICATIONS—Continued**By—Continued**

- corporations without capital stock, § 114.4(a)(1)(ii) and (d)
- labor organizations, § 114.4(a), (b) and (d)
- membership organizations, incorporated, § 114.4(a)(1)(ii) and (d)
- national banks, § 114.4(a), (b) and (d)
- nonprofit corporations, § 114.4(b)(5), (c) and (e)
- trade associations, § 114.4(a)(1)(ii) and (d); § 114.8(i)

Endorsements/support prohibited, § 114.4(a)(2)(v) and (3)(ii); § 114.4(b)(2)(i) and (3)(iv)

Facilities or personnel used for, § 114.4(a)(2); § 114.4(c)(3)

Identity of sponsor, § 114.4(b)(1) and (c)(5)

Nonpartisanship defined, § 114.4(b)(2)(i)

Solicitations prohibited, § 114.4(a)(2)(iv)

To employees and restricted class, appearances by candidates and party representatives, § 114.4(a)(2) and (3)

To general public

- debates, § 110.13; § 114.4(e)
- registration and voting information, preparation and distribution, § 114.4(b)(2) and (3); § 114.4(c)(1)(ii)
- voter drives, § 114.4(c)
- voter guides, preparation and distribution, § 114.4(b)(5)
- voting records and incumbents, § 114.4(b)(4)

NONPROFIT ORGANIZATION

Definition, § 110.13(a)(1)

Distribution of voting information and guides, § 114.4(b)(5)

Sponsorship of candidate debates, § 114.4(e)

Sponsorship of voter drives, § 114.4(c)

NOTICE OF DISCLAIMER

See: COMMUNICATIONS/ADVERTISING; DISCLAIMER, NOTICE OF; INDEPENDENT EXPENDITURES

**OFFICE ACCOUNT**

Contribution/expenditure limitations may apply, § 113.4(a)

Corporate/labor donations to, § 113.4(b)

Definition, § 113.1(b)

Federal officeholder, definition, § 113.1(c)

Funds donated to

- definition, § 113.1(a)
- deposit of, § 113.3
- use of, § 113.2

State officeholder, definition, § 113.1(d)

ONGOING COMMITTEE

Debts owed by, § 116.2(b)

- creditor's forgiveness of, § 116.8
- disputed debts, § 116.9(c)

Index, General

ONGOING COMMITTEE—Continued

Defined, § 116.1(b)

See also: DEBTS

OPINION POLLS

See: POLLING

P

PAC

See: SEPARATE SEGREGATED FUND

PARTISAN COMMUNICATIONS

By

- cooperatives, § 114.3(a)(2); § 114.7(h)
- corporations, § 100.8(b)(4); § 114.3
- corporations established by authority of Congress, § 114.3(a)(1)
- corporations without capital stock, § 114.3(a)(2); § 114.7(h)
- labor organizations, § 100.8(b)(4); § 114.3
- membership organizations, incorporated, § 114.3(a)(2)
- national banks, § 100.8(b)(4); § 114.3
- trade associations, § 114.3(a)(2); § 114.8(h) and (i)

Definition of, § 100.8(b)(4)

Prohibitions on

- in connection with federal elections, to general public, § 114.3(a)
- in connection with state and local elections, to general public, § 114.3(a)

Reporting of

- filing dates, § 104.6(b)
- forms, § 104.6(a)
- information disclosed, § 104.6(c)
- special elections costs, § 104.6

Solicitations in connection with

- incidental, of persons outside restricted class, § 114.3(c)(2)

Transportation made available in connection with, § 114.3(c)(4)

Types of

- appearances by candidates or party representatives, § 114.3(c)(2)
- on any subject, § 114.1(a)(2)(i); § 114.3(a)
- phone banks, using, § 114.3(c)(3)
- publications, § 114.3(c)(1)
- voter registration and get-out-the-vote drives, § 114.1(a)(2)(ii); § 114.3(c)(3) and (4)

PARTNERSHIP

As Federal contractor, § 115.4

Contributions by, attributed to partners, § 110.1(e)

Corporate member of, § 110.1(e)(2)

PARTY COMMITTEE

Administrative expenses, See: ADMINISTRATIVE EXPENSES

Affiliated, § 110.3(b)

Allocation of federal/nonfederal expenses, See: ALLOCATION OF EXPENSES

Appearances by party representative, § 114.3(c)(2); § 114.4(a)(2) and (3)

Candidate appearances for party, § 110.8(e)

Communications by, § 100.7(b)(15); § 100.8(b)(16); § 110.11(a)

Contribution/expenditure exemptions

- ballot access payments, § 100.7(b)(18); § 100.8(b)(19); § 110.14(c)(1)(i)
- building fund, See: BUILDING FUND
- campaign materials for volunteer activities, § 100.7(b)(15); § 100.8(b)(16)
- candidate appearances, payments for, § 110.8(e)(1)
- delegate payments, § 110.14(c)(1)(i)
- election recount costs, § 100.7(b)(20); § 100.8(b)(20)

PARTY COMMITTEE—Continued**Contribution/expenditure exemptions—Continued**

- food, beverage and invitations, § 100.7(b)(6) and (7); § 100.8(b)(7) and (8); § 114.1(a)(2)(v)
- legal and accounting services, § 100.7(b)(13); § 100.8(b)(14); § 114.1(a)(2)(vi)
- personal property, § 100.7(b)(4); § 100.8(b)(5)
- residential premises, church or community room, § 100.7(b)(4) and (5); § 100.8(b)(5) and (6)
- travel expenses, § 100.7(b)(8); § 100.8(b)(9)
- volunteer activity, *See*: VOLUNTEER ACTIVITY
- voter drive for Presidential nominee, § 100.7(b)(17); § 100.8(b)(18); § 106.1(c)(3)

Contribution limitations

- independent subordinate committee, § 110.3(b)(3)
- national/House committees, § 110.1(c); § 110.2(c); § 110.3(b)(2)(i)
- national/Senate committees, § 110.1(c); § 110.2(c); § 110.3(b)(2)(ii)
- State committees, § 110.3(b)
- subordinate committees, § 110.3(b)(3)

Contributions to national, House and Senate committees, § 110.1(c); § 110.2(c); § 110.3(b)(1)

Convention (national nominating) registration and reporting, § 107.2

Definition, § 100.5(e)(4)

Expenditures

- coordinated party, § 102.13(b); § 109.1(d)(2); § 110.7
- independent, prohibited, § 110.7(a)(5) and (b)(4)

Federal/nonfederal election financing, § 102.5; § 104.10; § 106.1(e); § 106.5

Independent expenditures, prohibited, § 110.7(a)(5) and (b)(4)

Local committee, status as political committee, § 100.5(c)

National committee

- as principal campaign committee of Presidential candidate, § 102.12(c)(1)
- committees established and maintained by, § 110.1(b)(2); § 110.2(a)(2)
- contribution limitations for, § 110.3(b)(1) and (2)
- coordinated party expenditure limits, § 110.7(a) and (b)
- definition, § 100.13
- reporting of nonfederal activity, § 104.8(e) and (f); § 104.9(c), (d) and (e)

Political party, definition, § 100.15

Registration requirements, § 102.1(d)

Reporting requirements, *See*: REPORTING

Solicitations by

- notices required, § 110.11(a)(1)(ii) and (iv)(A)
- referring to federal candidate or election, § 102.5(a)(3)

State committee, *See*: STATE PARTY COMMITTEE

Subordinate committee

- affiliated/independent status, § 110.3(b)(3)
- coordinated party expenditure limit, § 110.7(b)
- definition, § 100.14(b)

Index, General

PARTY COMMITTEE—Continued

Subordinate committee—Continued

- designated as agent of national committee, § 109.1(d)(2); § 110.7(a)(4)

Transfers

- between committees of same party, unlimited, § 102.6(a); § 110.3(c)(1)
- from federal account to nonfederal account, § 102.5(a)(1)(i); § 106.5(g)
- of excess campaign/office account funds, § 113.2(c)

See also: **POLITICAL COMMITTEE**

PAYROLL DEDUCTION PLAN

Combined dues/contributions payments, § 102.6(c)(3)

Of corporation, made available to labor organizations, § 114.5(k)(1)

Reporting requirements, § 104.8(b)

Reverse checkoff plans, prohibited, § 114.5(a)(1)

Use of, to solicit beyond restricted class

- permissible, for plans operative prior to May 11, 1976, § 114.12(d)
- prohibited, for twice-yearly solicitations by corporations/labor organizations, § 114.6(e)(1)

See also: **COLLECTING AGENT**

PERSON

Contribution limitations, § 110.1; § 110.5

Definition, § 100.10; § 109.1(b)(1); § 110.1(a)

Independent expenditures by, § 105.4; Part 109

Prohibition against solicitation of people named in reports, § 104.15

PERSONAL FUNDS

Of candidate

- definition, § 110.10(b)
- unlimited expenditures, § 110.10(a)
- used for living expenses, § 100.8(b)(22)
- used for securing loans, § 100.7(a)(1)(i)
- used for travel expenses, § 106.3(b)(1)

Of individual, used to advance goods/services, § 116.5(b)

Of delegate, expenditures from, § 110.14(e)

Of Vice Presidential candidate, expenditures from, § 110.8(f)(2)

Of volunteer, used for living expenses, § 100.7(b)(8); § 100.8(b)(9)

Segregated from political funds, § 102.15

PERSONAL SERVICES

Compensated, considered contribution, § 100.7(a)(3)

Volunteered, contribution exemption, § 100.7(b)(3)

See also: **LEGAL AND ACCOUNTING SERVICES; VOLUNTEER ACTIVITY**

PETTY CASH FUND

Disbursements from, § 102.11; § 103.3(a)

Recordkeeping required, § 102.11

POLITICAL ACTION COMMITTEE

See: **SEPARATE SEGREGATED FUND**

POLITICAL ADS

See: **PUBLIC POLITICAL ADVERTISING**

POLITICAL COMMITTEE

Affiliated, *See*: **AFFILIATED COMMITTEE**

Allocation between federal/nonfederal accounts, *See*: **ALLOCATION OF EXPENSES**

Audits of, § 104.16

See also: **AUDITS**

Authorized, *See*: **AUTHORIZED COMMITTEE**

Campaign depository, *See*: **CAMPAIGN DEPOSITORY**

Collecting agent for, § 102.6(b) and (c)

Communications/advertising by, § 110.11(a)

See also: **COMMUNICATIONS/ADVERTISING**

Contributions to, § 110.1(d)

Definition, § 100.5

Debts owed by, *See*: **DEBTS**

Delegate committee, *See*: **DELEGATE/Committee**

Federal/nonfederal, § 102.5; § 106.1(e); § 106.5; § 106.6

Forwarding contributions to, § 102.8

Fundraising by, § 110.11(a)

See also: **FUNDRAISING**

Funds, separate from personal, § 102.15

Host committee (convention), registration and reporting, § 107.1

Identification number, § 102.2(c)

Incorporation of, § 114.12(a)

Joint fundraising, committee established for, § 102.17(b)(1) and (2)

Multicandidate, *See*: **MULTICANDIDATE COMMITTEE**

Name of, restrictions, § 102.14

Nonfederal campaign committee as, § 110.3(c)(6)(iii)

Ongoing, *See*: **ONGOING COMMITTEE**

Organization of, § 102.7

Party, *See*: **PARTY COMMITTEE**

Petty cash fund, § 102.11; § 103.3(a)

Principal campaign, *See*: **PRINCIPAL CAMPAIGN COMMITTEE**

Recordkeeping requirements, *See*: **RECORDKEEPING**

Registration, § 102.1; § 102.2; § 102.6(a)(2); § 102.17(a)(1)

Reporting requirements, *See*: **REPORTING**

Separate segregated fund, *See*: **SEPARATE SEGREGATED FUND**

Single candidate, *See*: **SINGLE CANDIDATE COMMITTEE**

Statement of Organization, § 102.1; § 102.2

Termination of, *See*: **TERMINATION OF COMMITTEE**

Transfers among, *See*: **TRANSFER OF FUNDS**

Treasurer, *See*: **TREASURER OF POLITICAL COMMITTEE**

Unauthorized, *See*: **UNAUTHORIZED COMMITTEE**

POLITICAL PARTY

See: **PARTY COMMITTEE**

POLLING

Acceptance of results, § 106.4(b) and (c)

Allocation of expenditure

— by candidate, § 106.4(e)

— by candidate, Presidential, § 106.2(b)(2)(vi) and (c)(1)(iii)

— by unauthorized committee, § 106.4(d)

— methods for, § 106.4(e)

— reporting of, § 106.4(f), (g) and (h)

Contribution in-kind, § 106.4

Testing-the-waters exemption, § 100.7(b)(1); § 100.8(b)(1); § 106.4(a) and (b)

POSTMARK

As date of filing, § 104.5(e)

As date of when contribution is made, § 110.1(b)(6) and (1)(4); § 110.2(b)(6)

PREEMPTION

Of Federal Election Campaign Act by state election laws, § 108.7(c)

Index, General

PREEMPTION—Continued

Of state election laws by Federal Election Campaign Act, § 108.7(a) and (b)

PRIMARY ELECTION

Contributions

- post-primary, § 110.1(a)(2)(i) and (ii)(B)
- segregated from general election contributions, § 102.9(e)
- to unopposed candidate, § 110.1(j)(3); § 110.2(d)(3)

Definition, § 100.2(c)

Transfer of unused funds to general election campaign, § 110.3(c)(3)

See also: ELECTION

PRINCIPAL CAMPAIGN COMMITTEE

Consolidated report filed by, § 104.3(f)

Contributions to, *See:* CANDIDATE

Definition, § 100.5(d) and (e)(1)

Designation of, § 101.1(a); § 102.12

Registration of, § 102.1(a); § 102.2(b)(1)(i)

Support of one candidate only, § 102.12(b) and (c)

Transfers between, § 110.3(c)(4) and (5)

See also: AUTHORIZED COMMITTEE; POLITICAL COMMITTEE

PRIVACY ACT

Part 1

PROPERTY, REAL OR PERSONAL

Use of, exempted, § 100.7(b)(4); § 100.8(b)(5)

PSEUDONYMS

Definition, § 104.3(e)(2)

Purpose, § 104.3(e)(1)

Reporting procedures, § 104.3(e)(3)-(5)

PUBLIC FINANCING

See: Indexes for GENERAL ELECTION FINANCING; FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS; PRESIDENTIAL PRIMARY MATCHING FUND

PUBLIC INSPECTION OF DOCUMENTS

Access to documents, Parts 4 and 5

Advisory opinions and requests for, § 4.4(a)(11); § 5.4(a)(2); § 112.2

Audits, § 1.14; § 4.4(a)(14)

Compliance proceedings

- confidentiality, § 1.14; § 111.21
- public disclosure, § 4.4(a)(3) and (12); § 5.4(a)(3) and (4); § 111.20

Freedom of Information Act, Part 4

Public records, Parts 4 and 5

Reports

- availability of, § 4.4(a)(10); § 5.4(a)(1)
- filed with State officials, § 108.6(c)
- sale/use restriction, § 104.15

PUBLIC POLITICAL ADVERTISING

Allocation of expenditures for

- among several candidates, § 100.7(a)(1)(iii); § 106.1(b)
- on behalf of Presidential candidate, § 106.2(b)(2)(i) and (c)

Campaign materials republished or disseminated to media by

- delegates/delegate committees on behalf of Federal candidates, § 110.14(f)(3) and (i)(3)
- persons other than campaign personnel, § 109.1(d)

Defined, § 110.11(a)(1)

- express advocacy of candidate, § 110.11(a)(1)
- contribution solicitations, § 102.16; § 110.11(a)(1)

Independent expenditures made for, *See:* INDEPENDENT EXPENDITURES

Media used for, § 110.11(a)(1)

News story/editorial/commentary, exempted as contribution or expenditure

PUBLIC POLITICAL ADVERTISING—Continued

News story/editorial/commentary, exempted as contribution or expenditure for, § 100.7(b)(2); § 100.8(b)(2)—Continued
for, § 100.7(b)(2); § 100.8(b)(2)

Notice required for, § 102.16; § 109.3; § 110.11(a).

- authorized by candidate, § 110.11(a)(1)(i) and (ii)
- not authorized by candidate, § 110.11(a)(1)(iii) and (iv)
- under impractical conditions, § 110.11(a)(2)

Rates charged for space, § 110.11(b)

Use restrictions

- campaign materials mentioning other candidates, § 100.7(b)(16); § 100.8(b)(17)
- exempted party activities, § 100.7(b)(9), (15)(i) and (17)(i); § 100.8(b)(10), (16)(i) and (18)(i)
- testing-the-waters activities, § 100.7(b)(1); § 100.8(b)(1)

R**RECEIPTS**

Deposit of, § 103.3(a)

Reporting, *See*: REPORTING

See also: CONTRIBUTIONS

RECORDKEEPING

Allocation, documentation of, § 104.10(a)(4) and (b)(5); § 106.2(e)

Collecting agent, duties of, § 102.6(c)(5) and (6)

Contributions

- aggregate of individual's, § 104.8(b)
- by check, § 104.8(c) and (d)
- by payroll deduction, § 104.8(b)
- contributor identification, § 100.12; § 104.7(b); § 104.8(a) and (b)
- earmarked, § 102.8(c); § 110.6(b)(2)(iii)
- forwarding, § 102.8
- fundraising/mass collection proceeds, § 102.17(c)
- illegal-appearing, § 103.3(b)
- primary/general election designations/redesignations, § 102.9(e); § 110.1(1)(1), (2) and (5)
- reattributed, § 102.9(e); § 110.1(1)(3)
- records required, § 102.9(a); § 110.1(1)

Disbursements

- advance for travel/subsistence, § 102.9(b)(2)(i)(B)
- aggregate of, to one recipient, § 104.9(b)
- allocation of, § 104.10(a)(4) and (b)(5)
- credit card, disbursements by, § 102.9(b)(2)(ii)
- credit union account, disbursements from, § 102.9(b)(2)(iii)
- documentation required, § 102.9(b)(2)
- "payee," identification and definition of, § 102.9(b)(1)(i) and (2)(i)(A)
- petty cash fund records, § 102.11
- "purpose" of, § 104.3(b)(3)(i)(A) and (B); § 104.9(a)

Index, General

RECORDKEEPING—Continued

Disbursements—Continued

— records required, § 102.9(b)(1)

Expenditures allocated among states, § 106.2(d) and (e)

Expenditures exempted from allocation, § 106.2(c)

Federal activity of unregistered organization, § 102.5(b)

Joint fundraising, § 102.17(c)(4)

Petty cash fund, § 102.11

Records

— best efforts of treasurer, § 102.9(d); § 104.7

— maintenance of, § 102.9(d); § 104.14(b)(1)

— preservation of, § 102.9(c); § 104.14(b)(2) and (3)

Separate segregated fund custodian, duties of, § 114.6(d)

State officers' duties, § 108.6

Testing-the-waters activity, § 101.3

Transfers from nonfederal campaign committee, § 110.3(c)(6)(i)

See also: REPORTING

RECOUNT EXPENSES

See: ELECTION

REFUNDS,

See: CONTRIBUTIONS

REGISTRATION

See: POLITICAL COMMITTEE; VOTER DRIVES

REGULATIONS

See: RULES AND REGULATIONS

REIMBURSEMENT

Of committee staff, for advances made, § 116.5(b)

Of federal account by nonfederal account, for allocable expenses, § 106.5(g); § 106.6(e)

Of fundraising expenses

— by collecting agents, to separate segregated fund, § 114.5(b)(3)

— by separate segregated fund, to parent organization, § 114.5(b)(2)

Of travel expenses, by candidate, to corporate/labor organization, § 114.9(e)(1) and (2)

Of use of corporate/labor facilities, by nonemployees and nonmembers, § 114.9(d)

Prohibited, by parent organization to separate segregated fund, § 114.5(b)

REPORTING

Acknowledgement of report's receipt, § 104.14(c)

Allocable expenses, *See:* ALLOCATION OF EXPENSES

Audit of reports, § 104.16

See also: AUDITS

Best efforts of treasurer, § 104.7

Building fund account activity of national party, § 104.8(f); § 104.9(c)

Cash-on-hand, § 104.3(a)(1); § 104.12

Collecting agent, of funds received through, § 102.6(c)(7)

Communications report, § 100.8(b)(4); § 104.6; § 105.4; § 114.5(e)(2)(i)

Compulsory, § 104.1(a)

REPORTING—Continued

Computerized, § 104.2(d)

Consolidated, § 104.3(f)

Content of reports, § 104.3; § 104.17

Contributions

- aggregate of, § 104.8(b)
- by check, § 104.8(c) and (d)
- earmarked, § 104.3(j); § 110.6(c)
- exceeding \$200, § 104.8(a)
- illegal-appearing, § 103.3(b)
- in-kind, § 104.13; § 106.1(b)
- joint, § 104.8(d)(1)
- of \$1,000 or more, 48 hour notification, § 104.5(f)
- reattributed, § 104.8(d)(3)
- redesignated, § 104.8(d)(2)
- refunded, § 104.8(d)(4)
- summary of, § 104.3(c)
- to delegates, § 110.14(d)(3)
- uniformity in reporting, § 104.8

Contributors

- change of name, § 104.8(a)
- identification, § 100.12; § 104.7(b); § 104.8(a) and (b)
- multiple contributors, § 104.8(c) and (d)
- pseudonyms, use of, § 104.3(e)

Convention, national nominating, Part 107

Corporation/labor organization, for internal communications, § 104.6

Cumulative, § 104.3(i)

Debts and obligations, § 104.3(d); § 104.11

See also: DEBTS**Disbursements**

- categories of, § 104.3(b)(1) and (2)
- from nonfederal accounts of national party, § 104.9(c) and (d)
- itemization of, § 104.3(b)(3) and (4)
- uniform reporting of, § 104.9

Donations to national party, § 104.8(e) and (f)

Earmarked contributions, *See:* EARMARKED CONTRIBUTION

Election year, § 104.5(a)(1), (b)(1) and (c)(1)

Expenditures

- aggregate of, to one recipient, § 104.9(b)
- by delegates, § 110.14(e)(2) and (f)(1)(iii)
- candidate-allocated, § 104.10
- coordinated party, § 110.7(c)
- exceeding \$200, § 104.9(a)
- operating, summarized, § 104.3(c)
- State-allocated, for Presidential candidates, § 106.2(d)
- uniformity in reporting, § 104.9

Failure to report, § 111.8(c)

Filing reports, *See:* FILINGForms, *See:* FORMS

Forty-eight hour notification of contribution, § 104.5(f)

Identification number, § 102.2(c)

Independent expenditures, *See:* INDEPENDENT EXPENDITURES

Interest income, § 103.3(a); § 104.3(a)(4)(vi)

Joint fundraising activity, § 102.17(c)(3)(iii) and (8)

Legal and accounting services, § 104.3(h); § 114.5(e)(2)(ii)

Monthly report

- by Presidential committee, § 104.5(b)(1)(i) and (iii) and (2)(i)
- by unauthorized committee, § 104.5(c)(3)

Index, General

REPORTING—Continued

Monthly report—Continued

- waivers, § 104.5(b)(1)(i)(C) and (c)(3)(ii)

Non-election year, § 104.5(a)(2), (b)(2) and (c)(2)

Nonfederal campaign committee, § 110.3(c)(6)(iii)

Nonfilers, *See: NONFILERS*

Party coordinated expenditures, § 110.7(c)

Party office building fund, donations to, § 104.3(g)

Payroll deductions, § 104.8(b)

Post-election report

- by Congressional committee, § 104.5(a)(1)(ii)
- by Presidential committee, § 104.5(b)(1)(i)(C) and (ii)
- by unauthorized committee, § 104.5(c)(1)(iii)

Pre-election report

- by Congressional committee, § 104.5(a)(1)(i)
- by Presidential committee, § 104.5(b)(1)(i)(C) and (ii)
- by unauthorized committee, § 104.5(c)(1)(ii)

Preservation of reports, § 102.9(c); § 104.14(b)(2) and (3)

Presidential committee reports, § 104.17

Pseudonyms, § 104.3(e)

Public inspection of reports, *See: PUBLIC INSPECTION OF DOCUMENTS*

Quarterly report

- by Congressional committee, § 104.5(a)(1)(iii)
- by Presidential committee, § 104.5(b)(1)(ii) and (2)(ii)
- by unauthorized committee, § 104.5(c)(1)(i)
- waivers, § 104.5(a)(1)(iii)(C) and (c)(1)(i)(C)

Receipts, § 104.3(a)

- cash-on-hand, § 104.3(a)(1); § 104.12
- categories of, § 104.3(a)(2) and (3)
- itemization of, § 104.3(a)(4)
- nonfederal donations to national party, § 104.8(e) and (f)
- uniform reporting of, § 104.8

Requirements, formal, § 104.14

Sale/use restriction on filed reports, § 104.15

Semiannual report

- by Congressional committee, § 104.5(a)(2)
- by unauthorized committee, § 104.5(c)(2)(i)

Separate segregated fund reports, § 114.5(e)

Special election reports, § 104.5(h)

State filing, *See: FILING*

State officers' duties, § 108.6

Stocks, bonds, art objects, § 104.13(b)

Termination report, § 102.3(a)

Testing-the-waters activity, § 101.3

Transfers

- assigned debts, § 116.2(c)(3)(ii)
- between federal and nonfederal accounts, § 104.10(a)(2) and (b)(3)

REPORTING—Continued**Transfers—Continued**

- from nonfederal campaign committee, § 110.3(c)(6)(iii)
- from political committee, § 104.3(b)(3)(ii) and (4)(ii)
- to committee, § 104.3(a)(4)(iii)

Transmittal of reports to Commission, § 105.5**Treasurer of committee, duties of, § 104.1(a); § 104.14****Twenty-four hour notification of independent expenditure, § 104.5(g)****Vice Presidential committee reports, § 104.5(d); § 104.17****Voluntary, § 104.1(b)****Waivers**

- for special election, § 104.5(h)(2)
- monthly, § 104.5(b)(1)(i)(C) and (c)(3)(ii)
- quarterly, § 104.5(a)(1)(iii)(C) and (c)(1)(i)(C)

Year-end report

- by Congressional committee, § 104.5(a)(1)(iii)(A) and (2)(i)(B)
- by Presidential committee, § 104.5(b)(1)(i)(C)
- by unauthorized committee, § 104.5(c)(1)(i)(A) and (2)(i)(B)

See also: **FILING; FORMS; RECORDKEEPING**

RESTRICTED CLASS**Communications directed to, by corporations and labor organizations**

- nonpartisan, § 114.4(a)
- partisan, § 114.3(a)

Defined

- for corporations, § 114.1(c); § 114.3(a); § 114.5(g)(1)
- for labor organizations, § 114.1(e); § 114.3(a); § 114.5(g)(2)
- for membership organizations, incorporated, § 114.1(e); § 114.3(a)(2); § 114.5(g)(1); § 114.7(a) and (h)
- for national banks, § 114.1(c); § 114.3(a); § 114.5(g)(1)
- for trade associations, § 114.1(e); § 114.3(a)(2); § 114.8(c), (f), (h) and (i)

Solicitation of, by corporations, labor organizations or their separate segregated funds, § 114.5(g)

See also: **FUNDRAISING; SEPARATE SEGREGATED FUND**

RETIRING DEBTS

See: **DEBTS**

RULES AND REGULATIONS**Advisory opinions based on, § 112.1(a)****Effect on State law, § 108.7****Scope, § 1.1; § 2.1; § 4.3; § 5.3; § 100.1; § 110.14(a)****RUNOFF ELECTION****Definition, § 100.2(d)****Reporting dates, § 104.5(h)****S****SALE/USE RESTRICTION****Permissible use of contributor information**

- in newspapers/magazines/books, § 104.15(c)

Index, General

- SALE/USE RESTRICTION—Continued**
 - Permissible use of contributor information—Continued
 - political committee information, § 104.15(a)
 - Prohibited use of individual contributor information, § 104.15(a)
 - Soliciting contributions, defined, § 104.15(b)
- SECRETARY OF THE SENATE**
 - Reports filed with, § 105.2
 - Transmittal of reports to Commission, § 105.5
- SENATORIAL CAMPAIGN COMMITTEE**
 - Allocation of federal/nonfederal expenses, § 106.5(c)
 - See also:* ALLOCATION OF EXPENSES
 - Contributions by, § 110.2(e); § 110.3(b)(1) and (2)(ii)
 - Contributions to, § 110.1(c); § 110.2(c); § 110.3(b)(1) and (2)(ii)
- SEPARATE SEGREGATED FUND**
 - Affiliated**
 - contribution limit shared, § 110.3(a)(1)
 - definition, § 100.5(g)(2)
 - factors indicating, § 100.5(g)(3)(ii); § 110.3(a)(3)(ii)
 - Allocation of federal/nonfederal expenses, *See:* ALLOCATION OF EXPENSES
 - Collecting agent for, § 102.6(b) and (c)
 - Communications to public, § 114.5(i)
 - See also:* COMMUNICATIONS/ADVERTISING
 - Conduit for earmarked contributions, § 110.6(b)(2)
 - Connected organization of
 - control of fund, § 114.5(d)
 - definition, § 100.6
 - disclosure of, on Statement of Organization, § 102.2(b)(ii)
 - name requirement, § 102.14(c)
 - treasury money used for fund, § 114.5(b)
 - Contributions to fund
 - contributors permitted by law, § 114.5(j)
 - limitations on, § 110.1(d); § 110.2(d); § 110.3(a)(1)(ii), § 114.5(f)
 - via employee participation plan, § 114.11
 - voluntary only, § 114.1(i); § 114.5(a)
 - Control of, § 114.5(d)
 - Establishment/administration/solicitation costs
 - connected organization's payment of, § 114.5(b)
 - contribution/expenditure exemption, § 114.1(a)(2)(iii)
 - definition, § 114.1(b)
 - Facilities used in volunteer activity, § 114.9
 - Federal contractor, established by, § 115.3
 - Fundraising event, reimbursement to connected organization for, § 114.5(b)(2)
 - Membership in, § 114.5(c)
 - Name of, restrictions, § 102.14(c)
 - Political committee status, § 100.5(b)
 - Registration of, § 102.1(c)

SEPARATE SEGREGATED FUND—Continued

Reporting by, § 114.5(e)

See also: REPORTING

Solicitation of contributions to

- by collecting agent, § 102.6(c)(1)
- coercive methods prohibited, § 114.5(a)(1)
- disclaimer notice not required, § 110.11(a)(iv)(B)
- employees/members, requirements, § 114.5(a)
- guidelines for solicitation card, § 114.5(a)(2)
- methods for, § 114.1(f) and (g)
- to restricted class only, § 114.1(c) and (e)
- twice yearly solicitations, § 114.6

Statement of Organization requirements, § 102.2

Transmittal of funds received by collecting agent for, § 102.6(c)

Twice yearly solicitations, § 114.6

Use of treasury funds, § 114.5(b)

See also: CORPORATION/LABOR ORGANIZATION/NATIONAL BANK; MEMBERSHIP ORGANIZATION; POLITICAL COMMITTEE; TRADE ASSOCIATION**SINGLE CANDIDATE COMMITTEE**

Contributions to, § 110.1(h)(1); § 110.5(c)(3)(i)

Definition, § 100.5(e)(2)

SLATE CARD/SAMPLE BALLOT

Contribution/expenditure exemption, § 100.7(b)(9); § 100.8(b)(10)

SOLE PROPRIETOR

As Federal contractor, § 115.5

SOLICITABLE PERSONNEL*See:* RESTRICTED CLASS**SOLICITATION***See:* CONTRIBUTIONS; FUNDRAISING; SEPARATE SEGREGATED FUND**SPECIAL ELECTION**

Definition, § 100.2(f)

Report, § 104.5(h)

See also: ELECTION**SPOUSE**

Assets owned by candidate jointly with, § 110.10(b)(3)

Contributions by, § 100.7(c); § 110.1(i)(1)

Expenditures by, § 100.8(c)

Loans, cosigning, § 100.7(a)(1)(i)(D) and (b)(11); § 100.8(b)(12)

STATE

Allocation of expenditures, § 106.2

See also: ALLOCATION OF EXPENDITURES

Definition, § 100.11

Filing with, *See:* FILING

Law, effect of Act and regulations on, § 108.7

Officeholder, definition, § 113.1(d)

Officer

- duties of, § 108.6
- filing documents with, Part 108

STATE ASSOCIATION

As collecting agent for national association's separate segregated fund, § 102.6(a)(2)(iii)

- procedures, § 102.6(c)
- registration and reporting, § 102.6(b)(2)

See also: COLLECTING AGENT**STATE PARTY COMMITTEE**Allocation of federal/nonfederal expenses, *See:* ALLOCATION OF

Index, General

STATE PARTY COMMITTEE—Continued

EXPENSES

- Committees established and maintained by, § 110.3(b)(3)
- Coordinated party expenditure limits, § 110.7(b) and (c)
- Definition, § 100.14(a)
- Designated as agent of national committee, § 109.1(d)(2); § 110.7(a)(4)
- See also:* PARTY COMMITTEE

STOCKHOLDER

- Communications with, by corporation
 - nonpartisan, § 114.4
 - partisan, § 114.3(a)
- Corporate facilities, use of by, § 114.9(a)
- Definition, § 114.1(h)
- Solicitations of, § 114.5(g) and (k); § 114.6(d); § 114.6(b); § 114.8(f) and (g)

SUBORDINATE PARTY COMMITTEE

See: PARTY COMMITTEE

SUNSHINE ACT

Part 2

T

TERMINATION OF COMMITTEE

- By Commission, § 102.4
- By committee, § 102.3
- Prohibited if committee has unpaid/unsettled debts, § 102.3; § 116.7(a)
- Terminating committee
 - authorized committee, § 116.2(c)
 - bankrupt under Chapter 7, § 116.7(g)
 - debt settlement plan filed by, § 116.7
 - debts owed by, § 116.2(a); § 116.10(b)
 - defined, § 116.1(a)
 - efforts to satisfy debts, "reasonable," § 116.4(c) and (d)(2)
 - request to find debt unpayable, § 116.9(b)

See also: DEBTS

TESTING-THE-WATERS EXPENSES

- Contribution/expenditure exemption, pre-candidacy, § 100.7(b)(1); § 100.8(b)(1); § 101.3
- Polling expenses, § 106.2(a)(2); § 106.4(a)

TRADE ASSOCIATION

- Communications by
 - nonpartisan, to employees and restricted class, § 114.4(a)(1)(ii); § 114.8(i)
 - nonpartisan, to general public, § 114.4(d)
 - partisan, to restricted class, § 114.3(a)(2); § 114.8(h) and (i)
 - reporting, § 100.8(b)(4)(iv); § 104.6
- Definition, § 114.8(a)
- Employees, § 114.8(i)

TRADE ASSOCIATION—Continued

Federation of, solicitations by, § 114.8(g)

Separate segregated fund solicitations

- contribution prohibition applies, § 114.8(b)
- notice not required, § 110.11(a)(1)(iv)(B)
- of corporate members, § 114.7(c); § 114.8(c), (d), (e) (f) and (i)(2)
- of employees, § 114.8(e)(4) and (i)(2)
- of member's separate segregated fund, prohibited, § 114.7(j)
- of noncorporate members, § 114.7(c)

Solicitation approvals

- limited to one trade association per year, § 114.8(c)(2)
- may limit number/scope of solicitations, § 114.8(d)(5) and (e)
- of subsidiary of corporate member, § 114.8(f)
- retention of, § 114.8(d)(2)
- separate designation required for each year, § 114.8(d)(4)
- written, § 114.8(d)(2)

See also: COMMUNICATIONS/ADVERTISING; SEPARATE SEGREGATED FUND

TRANSFER OF FUNDS

Affiliation criterion, § 100.5(g)(4)(i); § 110.3(a)(3)(i)

Between

- affiliated committees, § 102.6(a)(1); § 110.3(c)(1)
- candidate's federal/nonfederal campaign committees, § 110.3(c)(6)
- candidate's previous/current campaign committees, § 110.3(c)(4)
- collecting agent and separate segregated fund, § 102.6(b) and (c); § 110.3(c)(1)
- dual candidate's campaign committees, § 110.3(c)(5)
- participants of joint fundraiser, § 102.6(b)(1)(iii); § 102.17(c); § 110.3(c)(2)
- party committees of same party, § 102.6(a)(1)(ii); § 110.3(c)(1)

Excess campaign funds, § 110.3(c)(3) and (4); § 113.2(c)

For investment purposes, § 103.3(a)

For payment of allocable expenses, § 106.5(g); § 106.6(e)

See also: ALLOCATION OF EXPENSES

Joint fundraising proceeds, § 102.6(a)(1)(iii); § 102.17(c)(7); § 110.3(c)(2)

Office account funds, § 113.4

Primary funds to general election campaign, § 110.3(c)(3)

Prohibited if transferor has net debts outstanding, § 116.2(c)(2)

Registration requirements may be triggered by, § 102.6(a)(2); § 102.17(c)(7)(ii)

Reporting requirements for, § 102.6(c)(7); § 102.17(c)(8); § 104.3(a)(4)(iii), (b)(1)(ii), (b)(2)(ii), (b)(3)(ii), and (b)(4)(ii); § 104.10(a)(2) and (b)(3); § 110.3(c)(6)(iii)

To allocation account, See: ALLOCATION OF EXPENSES

TRAVEL

Advance of money for, § 102.9(b)(2)(i)(B); § 116.5(b)

Allocation of expenses

- among States, by Presidential candidates, § 106.2(c)(4)
- campaign/noncampaign, § 106.3
- intra-State, by Presidential candidates, § 106.2(b)(2)(iii)

Corporate/labor transport for candidate, § 114.9(e)

Government conveyance used for, § 106.3(e)

Reimbursed, § 116.5(b)

Unreimbursed payments for, exempted, § 100.7(b)(8); § 100.8(b)(9)

TREASURER OF POLITICAL COMMITTEE

Assistant treasurer, designation of, § 102.7(a)

Best efforts in

- determining contribution's legality, § 103.3(b)(1)
- obtaining required information, § 102.9(d); § 104.7

Custodian of separate segregated fund, § 114.6(d)(5)

Index, General

TREASURER OF POLITICAL COMMITTEE—Continued

Duties

- accepting contributions/making expenditures, § 102.7(b)
- authorizing expenditures, § 102.7(c)
- calculating net debts, § 110.1(b)(3)(ii); § 110.2(b)(3)(ii)
- depositing receipts, § 103.3(a)
- filing documents, § 104.14(d)
- handling excessive contributions, § 110.1(k)(3)
- handling illegal-appearing contributions, § 103.3(b)
- recordkeeping, § 102.9; § 104.14(b)
- reporting, § 104.1(a)
- retaining records, § 102.9(c); § 104.14(b)(2) and (3)
- signing documents, § 104.14(a)

Forwarding contributions to, § 102.8

Required for political committees, § 102.7(a)

Vacancy in office, § 102.7(a) and (b)

TRUSTEE PLAN

Employee participation plan, § 114.11

TRUSTS

Established for minors, § 110.1(i)(2)

Personal funds of candidate, § 110.10(b)

U

UNAUTHORIZED COMMITTEE

Communications on behalf of candidate

- independent expenditure, § 109.1
- notice required, § 109.3; § 110.11(a)(1)(iii) and (iv)(A)

Contributions to, § 102.8(b); § 110.1(h)

Definition, § 100.5(f)(2)

Name of, restrictions, § 102.14(a)

Polling results, purchased by, § 106.4(d)

See also: POLITICAL COMMITTEE

UNUSED CAMPAIGN FUNDS

See: EXCESS CAMPAIGN FUNDS

V

VENDOR

Commercial, See: COMMERCIAL VENDOR

Of food/beverage, discount given by, § 100.7(b)(7); § 100.8(b)(8)

See also: CREDITOR; DEBTS

VENDOR DISCOUNTS

Food and beverage, exempted contribution/expenditure, § 100.7(b)(7); § 100.8(b)(8); § 114.1(a)(2)(v)

VICE PRESIDENTIAL CANDIDATE

See: CANDIDATE FOR PRESIDENT

VIOLATION

Of contribution/expenditure prohibitions and limitations, § 110.9(a)

Prohibited contributions, § 110.4

See also: COMPLIANCE

VOLUNTEER ACTIVITY

Campaign materials, See: CAMPAIGN MATERIALS

Church or community room, § 100.7(b)(5); § 100.8(b)(6)

Corporate/labor facilities used for, § 114.9(a) and (b)

Expenditures made by delegate/delegate committee, § 110.14(f)(1) and (i)(1)

Food, beverage and invitations, § 100.7(b)(6); § 100.8(b)(7)

Legal and accounting services, See: LEGAL AND ACCOUNTING SERVICES

Living expenses, § 100.7(b)(8); § 100.8(b)(9)

Personal services, § 100.7(b)(3)

VOLUNTEER ACTIVITY—Continued

Residential premises, § 100.7(b)(4); § 100.8(b)(5)

Salary owed to committee staff converted to, § 116.6

Travel, § 100.7(b)(8); § 100.8(b)(9)

Vendor discount of food/beverage, § 100.7(b)(7); § 100.8(b)(8); § 114.1(a)(2)(v)

VOTER DRIVESCandidate records and voter guides, *See: VOTER GUIDES AND VOTING RECORDS*

Cosponsorship of

— when not required, § 114.4(c)(4)

— with nonprofit organization, § 114.4(b)(5)(ii) and (c)

— with State and local election agencies, § 114.4(c)(3)

Defrayal of expenses by corporation/labor organization, § 114.4(b)(3) and (c)(2)

Distribution of voting information at place of employment, § 114.4(c)(1)(i)(C) and (ii)

Generic, allocation of federal/nonfederal expenses for, *See: ALLOCATION OF EXPENSES***Nonpartisan**

— by corporation/labor organization, § 114.1(a)(2)(ii); § 114.4(b) and (c)

— by trade association/membership organization, § 114.4(a)(1)(ii)

— expenditure exemption for, § 100.8(b)(3)

Not attributable to specific candidate, § 106.1(c)(2)

Partisan

— by corporation/labor organization, § 100.8(b)(4); § 114.1(a)(2)(i); § 114.3(b) and (c)(3) and (4)

— by party committee, § 100.7(b)(9) and (17); § 100.8(b)(10) and (18); § 106.1(c)(3)

— by trade association/membership organization, § 114.3(a)(2)

— reporting, § 100.8(b)(4); § 114.3(b)

Party committee-sponsored

— campaign material, preparation and distribution of, § 100.7(b)(15) and (16); § 100.8(b)(16) and (17)

— Presidential nominee, on behalf of, § 100.7(b)(17); § 100.8(b)(18); § 106.1(c)(3)

— sample ballots/slate cards, used in, § 100.7(b)(9); § 100.8(b)(10)

VOTER GUIDES AND VOTING RECORDS

Defrayal of production/distribution costs, § 114.4(b)(3)

Distribution of, at place of employment, § 114.4(c)(1)(ii)

Distribution/preparation of, by corporation/labor organization, § 114.4(b)(4) and (5)

*See also: CAMPAIGN MATERIALS***VOTING AGE POPULATION**

Basis of expenditure limitations for

— coordinated party, § 110.7(a)(2) and (b)(2)(i)(A)

— for Presidential candidate, § 110.8(a)(1)

Definition, § 110.9(d)

W**WAIVERS, REPORTING***See: REPORTING*

GENERAL ELECTION FINANCING, PARTS 9001-9007 AND 9012*

A

ACCOUNTS

See: CAMPAIGN DEPOSITORY

ADJUSTMENT OF ENTITLEMENT

See: ENTITLEMENT; PAYMENTS

AGREEMENT

Candidate agrees to

- accept burden of proof, § 9003.1(b)(1)
- comply with Act and regulations, § 9003.1(b)(7)
- comply with documentation requirements, § 9003.1(b)(2) and (4)
- furnish computerized records, if kept, § 9003.1(b)(4)
- identify depositories, § 9003.1(b)(6)
- identify treasurer, § 9003.1(b)(6)
- keep books and records, § 9003.1(b)(4)
- make repayments, § 9003.1(b)(5)
- pay civil penalty, if required, § 9003.1(b)(8)
- permit/facilitate audit and examination, § 9003.1(b)(5)
- provide explanation/additional information, § 9003.1(b)(3) and (4); § 9012.4

Eligibility for payments requires, § 9003.1(a)(1)

Submission dates for, § 9003.1(a)(2)

See also: ELIGIBILITY

ALLOCATION

Alternative methods of determining compliance-related costs,
§ 9003.3(a)(2)(ii)(A) and (b)(9)

Recordkeeping, § 9003.3(a)(2)(ii)(A) and (c)(9)

Reporting, § 9003.3(c)(9)

AUDIT AND EXAMINATION

Additional, § 9007.1(a)(2); § 9007.4

Agreement to permit, § 9003.1(b)(5)

Committee response to, § 9007.1(c)(2) and (3)

- extension of time for, § 9007.3

Computerized records provided for, § 9003.6; § 9007.1(b)(1)

Fieldwork, § 9007.1(b)

- conduct of, § 9007.1(b)(1)
- information provided to committee, § 9007.1(b)(2), (3) and (4)
- records, office and staff provided for, § 9007.1(b)(1)
- settlement of dispute arising during, § 9007.1(b)(1)(iv)

Interim report, § 9007.1(c)

Public release of audit report, § 9007.1(e)

- copy to committee, § 9007.1(e)(3)
- copy to public, § 9007.1(e)(1) and (2)
- preparation of, § 9007.1(d)

See also: REPAYMENTS

AUTHORIZED COMMITTEE

Candidate's responsibilities, references to include, § 9002.1(d)

Definition, § 9002.1

Expenses incurred by, are qualified campaign expenses, § 9002.11(b)

*This index makes occasional reference to Parts 102-116 of 11 CFR, governing Federal election activity.

AUTHORIZED COMMITTEE—Continued

Expenses incurred by, in excess of entitlement, § 9012.1
 National committee may be designated as, § 9002.1(c)
 Recordkeeping by, *See*: RECORDKEEPING
 Reporting by, § 9003.3(a)(3)(ii); § 9006.1
 Stale-dated committee checks, § 9007.6
 State allocation of expenditures by, § 106.2
 Support of other candidates by, § 9002.11(b)(3)
 Withdrawal of authorization, § 9002.1(b)
See also: CANDIDATE; POLITICAL COMMITTEE

C**CAMPAIGN DEPOSITORY**

Candidate agreement, § 9003.1(b)(6)
 Compliance fund, major party candidate, § 9003.3(a)
 Individuals' contributions, depository for, § 9003.2(c)(6); § 9003.3(a)(3) and (b)(2); § 9003.4(c); § 9005.2(c)
 Loans for expenses incurred prior to receipt of funds, § 9003.4(c)
 Minor or new party candidates, § 9003.3(c)
 Public funds, depository for, § 9005.2(c)
 Segregation of compliance and public funds, § 9003.3(a)(3)(i)

CANDIDATE

Agreement, § 9003.1
See also: AGREEMENT
 Authorized committee of, § 9002.1
 — qualified campaign expenses incurred by, § 9002.11(b)
 — withdrawal of authorization, § 9002.1(b)
 Certification by, § 9003.2
See also: CERTIFICATION
 Compliance, § 9003.1(b)(7)
 Credit card used by, § 9003.2(c)(8)
 Definition, § 9002.2
 Eligible, defined, § 9002.4
See also: ELIGIBILITY
 Entitlement of, *See*: ENTITLEMENT
 Family of, § 9003.2(c)(1)
 Independent, § 9002.7
 Major party candidate
 — certification of, § 9003.2(a)
 — definition of, § 9002.2(a)(1)
 — entitlement of, § 9004.1
 Minor party candidate
 — certification of, § 9003.2(b)
 — definition of, § 9002.7
 — entitlement of, § 9004.2; § 9004.3
 New party candidate
 — certification of, § 9003.2(b)
 — definition of, § 9002.8
 — entitlement of, § 9004.2
 — post-election payments to, § 9004.3
 Payments to, § 9004.4(b)(6)
 Personal funds of, § 9003.2(c)
 Reporting by, § 9003.3(b)(2); § 9003.4(c); § 9006.1
 Support of other candidates by, § 9002.11(b)(3)
 Vice Presidential
 — authorized committee of, § 9002.1(a)
 — certification of, § 9003.2(a) and (b)
 — definition, § 9002.2(a)(1)

Index, General Election Financing

CANDIDATE—Continued

- Vice Presidential—Continued
 - eligibility, § 9002.4
 - expenditures for, § 9002.11(b)(1)
 - personal funds of, § 9003.2(c)(4)
- Withdrawal by, § 9004.8
 - eligibility ceases, § 9004.8(b)
 - repayment required, § 9004.9(c)

CERTIFICATION

- By FEC to Secretary of Treasury
 - finality of, § 9005.1(d)
 - for major party candidates, § 9005.1(a)
 - for minor/new party candidates, post-election, § 9005.1(c)
 - for minor/new party candidates, pre-election, § 9005.1(b)
 - payments by Secretary based on receipt of, § 9005.2
 - By major party candidate to FEC, § 9003.2(a) and (c)
 - contribution limitations, § 9003.2(a)(2)
 - deadline for submission, § 9003.2(d)
 - expenditure limitations, § 9003.2(a)(1)
 - personal and family expenditures, limitations on, § 9003.2(c)
 - By minor/new party candidate to FEC, § 9003.2(b) and (c)
 - contribution limitations, § 9003.2(b)(2)
 - deadline for submission, § 9003.2(d)
 - expenditure limitations, § 9003.2(b)(1)
 - personal and family expenditures, limitations on, § 9003.2(c)
- See also:* ENTITLEMENT; PAYMENTS

COMMISSION

- Definition, § 9002.3

COMPLIANCE FUND

- See:* LEGAL AND ACCOUNTING COMPLIANCE FUND

CONTRIBUTIONS

- Allowable, § 9003.3
- Corporate/labor, prohibited, § 9003.3(a)(1)(i)(B)
- Definition, § 9002.13
- From family members or personal funds, § 9003.2(c)
- Fundraising expenses, methods for allocating, § 9003.3(b)(9) and (c)(10)
- Legal and accounting compliance costs, § 9003.3(a)(1) and (c)(3)(iv)
- Limitations and prohibitions
 - corporate/labor, § 9003.3(a)(1)(i)(B)
- Reattribution of, § 9003.3(a)(1)(iii)
- Redesignation of, § 9003.3(a)(1)(iii)
- Reporting of, § 9006.1(b)(1) (i) and (ii)
- Solicitation of
 - by major party candidate, § 9003.3(a) and (b)
 - by minor/new party candidate, § 9003.3(c)
- Source of repayment, § 9004.4(c)
- Used for qualified campaign expenses, *See:* QUALIFIED CAMPAIGN

CONTRIBUTIONS—Continued

Used for qualified campaign expenses, *See*: **QUALIFIED CAMPAIGN EXPENSES—Continued EXPENSES**

See also: **LEGAL AND ACCOUNTING COMPLIANCE FUND; QUALIFIED CAMPAIGN EXPENSES**

CONVENTION FUNDING

See: **PART 9008**

D

DEBTS AND SETTLEMENTS

Assignment of, to affiliated committee, § 116.2(c)(3)

Determination of uncollectibility, § 9004.9(e)

For nonqualified expenses, § 9004.9(a)(3)

Settlement, repayment obligations not subject to, § 116.7(c)(1)

Used to reduce expenditures counting against limit, § 9004.4(b)(2)

DEFICIENCY IN FUND

Minor/new party candidate entitlement, adjusted due to, § 9004.3(b)(2)

Payment withheld due to, § 9005.2(b)

Sale of assets acquired for fundraising permitted if, § 9004.10

Solicitation of contributions, major party candidate

— campaign depository for, § 9003.2(a)(2); § 9003.3(b)(2)

— cost of solicitation, § 9003.3(b)(5), (6), (7) and (8)

— limitations and prohibitions applicable, § 9003.3(b)(4)

— reporting of, § 9006.1(b)(1)(i)

— to defray qualified campaign expenses only, § 9003.3(b)(1)

— transfer from legal and accounting compliance fund, § 9003.3(b)(3)

DEFINITIONS

Authorized committee, § 9002.1(a)

Candidate, § 9002.2

Capital assets, § 9004.9(d)(1)

Cash on hand, § 9004.9(a)(2)(i)

Closing date, § 9003.2(c)(8)

Commission, § 9002.3

Contribution, § 9002.13

Eligible candidates, § 9002.4

Expenditure report period, § 9002.12

Fund, § 9002.5

Immediate family, § 9003.2(c)(1)

Major party, § 9002.6

Minor party, § 9002.7

New party, § 9002.8

Payee, § 9003.5(b)(3)(i)

Personal funds, § 9003.2(c)(3)

Political committee, § 9002.9

Presidential election, § 9002.10

Purpose of campaign expense, § 9003.5(b)(3)(ii)

Index, General Election Financing

DEFINITIONS—Continued

Qualified campaign expense, § 9002.11
Secretary, § 9002.14

DISBURSEMENTS

Documentation required for, § 9003.5
From legal/accounting compliance fund, § 9003.3(a)(3)(ii)
Reporting of, § 9006.1

See also: EXPENDITURES

DOCUMENTATION

Candidate agreement, § 9003.1(b)
Of disbursements, § 9003.5

See also: CERTIFICATION; RECORDKEEPING

E

ELECTION

Expenditure report period for, § 9002.12
Party status defined by results of

- major, § 9002.6
- minor, § 9002.7
- new, § 9002.8

Post-election payments based on result of
— minor/new party candidate, § 9004.3

Pre-election payments based on result of previous
— minor party candidate, § 9004.2(a) and (b)
— new party candidate, § 9004.2(c)

Presidential, defined, § 9002.10

ELIGIBILITY

Agreement required to establish, § 9003.1(a)(1)

Certification required to establish, § 9003.2

Eligible candidates, defined, § 9002.4

FEC certification of, to Secretary, § 9005.1

Withdrawal terminates, § 9004.8(a)

See also: AGREEMENT; CERTIFICATION

ENTITLEMENT

Adjustment of, due to deficiency in fund, § 9003.3(b); § 9004.3(b); § 9005.2(b)

Expenditures exceed, § 9012.1

Investment of funds, § 9004.5

Major party candidate, maximum amount of, § 9004.1; § 9004.3(b)(2)

Minor/new party candidate

- election results determine, § 9004.3(a)
- maximum amount of, § 9004.3(b) and (c)
- net outstanding qualified campaign expenses, § 9004.9
- pre-election, § 9004.2

Payment to candidates, *See:* PAYMENTS

Withdrawal of candidate affects, § 9004.8

EXPENDITURES

Disposition of stale-dated committee checks, § 9007.6

Documentation of, § 9003.1(b); § 9003.5

Expenditure report period, § 9002.12

Legal and accounting compliance expenses, *See:* LEGAL AND ACCOUNTING

COMPLIANCE FUND

Limitations

- major party candidate, § 9003.2(a)(1)
- minor/new party candidate, § 9003.2(b)(1)
- party committee, § 110.7(a)
- personal and family funds, § 9003.2(c)
- Vice Presidential candidate, § 9003.2(c)(4)

Limitations exceptions, *See:* QUALIFIED CAMPAIGN EXPENSES

EXPENDITURES—Continued**Nonqualified campaign expenses**

- civil or criminal penalties, § 9004.4(b)(4)
- incurred after expenditure report period, § 9004.4(b)(3)
- incurred in excess of limitations, § 9004.4(b)(2); § 9012.1
- incurred to support other candidate, § 9002.11(b)(3)
- net loss resulting from investment of funds, § 9004.5
- payments to candidate, § 9004.4(b)(6)
- solicitation costs, major party candidate, § 9004.4(b)(5)

Reporting, § 9006.1**Travel**

- for campaign staff, § 9004.7
- for media personnel, § 9004.6

*See also: TRAVEL***Unauthorized, § 9012.6****Use of credit card for, § 9003.2(c)(8)****Use of public funds for, *See: QUALIFIED CAMPAIGN EXPENSES*****F****FILING DATES***See: REPORTS***FUNDRAISING***See: CONTRIBUTIONS; LEGAL AND ACCOUNTING COMPLIANCE FUND***FUNDS***See: ENTITLEMENT; PAYMENTS; USE OF FUNDS***G****GENERAL ELECTION***See: ELECTION***GOVERNMENT CONTRACTOR****Contributions from, prohibited, § 9003.3(a)(1)(i)(B)****I****INVESTMENT OF PUBLIC FUNDS****Permissible, § 9004.5****Repayment of income/loss resulting from, § 9004.5; § 9007.2(b)(4)****L****LABOR ORGANIZATION****Contributions from, prohibited, § 9003.3(a)(1)(i)(B)****LEGAL AND ACCOUNTING COMPLIANCE FUND****Administrative expenses, § 9003.3(a)(2)(ii)(A), (b)(6) and (c)(6)****Campaign depository for**

- major party candidate, separate account required, § 9003.3(a)(3)
- minor/new party candidate, § 9003.3(c)(3)

Candidate may borrow from, § 9003.4(b)(2)**Computer-related costs payable from, § 9003.3(a)(2)(i)(F)****Contributions may be accepted for, § 9003.3(a)****Contributions to, subject to limitations and prohibitions, § 9003.3(a)(1)(i)(B)****Establishment of, prior to candidate nomination, § 9003.3(a)(1)(i)****Exempt from definition of qualified campaign expense and expenditure limitations, § 9003.3(a)(2)(ii) and (iii)****Expenditure limitations do not apply, § 9003.3(a)(2)(iii) and (b)(6)****Methods of determining exempt costs, § 9003.3(b)(9) and (c)(10)****Recordkeeping and reporting, § 9003.3(a)(3)(ii)****Reimbursement of services initially paid from public funds, § 9003.3(a)(2)(i)(F) and (ii)(B); § 9004.4(a)(3)**

Index, General Election Financing

LEGAL AND ACCOUNTING COMPLIANCE FUND—Continued

- Solicitation of contributions for, § 9003.3(a)(1)(i)(A) and (2)(i)(E)
- Transfer from, to retire primary debts, § 9003.3(a)(2)(iv)
- Transfer from, to separate account for contributions to supplement public funds, § 9003.3(b)
- Transfer to, from primary, § 9003.3(a)(1)(ii) and (iii)
- Uses of, § 9003.3(a)(2)

LOANS

- Incurred for qualified campaign expenses, § 9003.4(b)
- Public funds used to repay, § 9004.4(a)(2)
- Repayment of, § 9003.4(b)
- Source of
 - banks, § 9003.4(b)(1)
 - excess primary campaign funds, § 9003.4(b)(4)(i)
 - legal and accounting compliance fund, § 9003.3(a)(2)(i)(G)
 - personal funds, § 9003.4(a)(5)

M

MAJOR PARTY

- Candidate adherence to limitations on
 - contributions, § 9003.2(a)(2)
 - expenditures, § 9003.2(a)(1)
- Definition, § 9002.6
- Entitlement, § 9004.1
- Reports, § 9006.1

MINOR PARTY

- Candidate adherence to limitations on
 - contributions, § 9003.2(b)(2)
 - expenditures, § 9003.2(b)(1)
- Definition, § 9002.7
- Entitlement for
 - post-election payments, § 9004.3(a)
 - pre-election payments, § 9004.2
- Reports, § 9006.1

N

NATIONAL PARTY COMMITTEE

- Convention expenses in excess of entitlement, § 9012.1(b)
- Designated as candidate's principal campaign committee, § 9002.1(c)
- Expenditure limitations, § 110.7(a)
- Kickbacks given or accepted by, § 9012.5

NET OUTSTANDING QUALIFIED CAMPAIGN EXPENSES

- Assets included in computation of, § 9004.9(d); § 9007.2(g)
 - Collectibility of accounts receivable, § 9004.9(e)
 - Commission review of statement, § 9004.9(f)
 - Computation of, § 9004.9(a) and (d)
 - Date for filing statement of
 - all candidates, § 9004.9(b)
 - candidates who withdraw prior to election, § 9004.8(b)(2); § 9004.9(c)
 - Determines post-election funding, § 9004.9(f)(2); § 9005.1(c)
 - Exemptions from outstanding obligations, § 9004.9(a)(3)
- See also: PAYMENTS; REPAYMENTS*

NEW PARTY

- Candidate adherence to limitations on
 - contributions, § 9003.2(b)(2)
 - expenditures, § 9003.2(b)(1)
- Definition, § 9002.8
- Entitlement, § 9004.2; § 9004.3

NEW PARTY—Continued

Reports, § 9006.1

NONQUALIFIED CAMPAIGN EXPENSES*See:* EXPENDITURES**NOTIFICATIONS**

By candidate to FEC concerning

- disputed initial determination, § 9005.1(b)(2) and (c)(4)
- disputed repayment, § 9007.2(c)
- extension of time, request for, § 9007.3
- newly discovered assets, § 9007.2(g)
- post-election entitlement, § 9004.9(f)(2)
- stale-dated committee checks, § 9007.6
- withdrawal of candidacy, § 9004.8(b)(2)

By FEC to candidate concerning

- additional repayment, § 9007.2(f)
- final audit report, § 9007.1(e)(3)
- repayment, § 9007.2(a)(2) and (b)

See also: REPORTS

P

PARTY*See:* MAJOR PARTY; MINOR PARTY; NATIONAL PARTY COMMITTEE;
NEW PARTY**PAYMENTS**

Audit may affect, § 9007.1

Campaign depository for

- major party candidate, must be separate, § 9005.2(c)
- minor party candidate, § 9003.3(c)(3)

Deficiency in, *See:* DEFICIENCY IN FUND

Eligibility for, certification by FEC of, § 9003.1(a)(1)

- major party candidate, § 9003.2(a)
- minor/new party candidate, § 9003.2(b)

Entitlement to funds

- major party candidate, § 9004.1
- minor/new party candidate, § 9004.2; § 9004.3

See also: ENTITLEMENT

FEC certification to Secretary of Treasury, § 9005.2(a)

Investment of, § 9004.5; § 9007.2(b)(4)

Secretary of Treasury makes, § 9005.2(a) and (b)

Unlawful use of, § 9012.3

Use of, for qualified campaign expenses only, § 9004.4(a)

Withheld, if deficiency in fund, § 9005.2(b)

See also: QUALIFIED CAMPAIGN EXPENSES; REPAYMENTS**PERSONAL FUNDS**

Definition, § 9003.2(c)(3)

Expended prior to expenditure report period, § 9003.4(b)(5)

Expenditures from, by Vice Presidential candidate, § 9003.2(c)(4)

Liability for repayments, § 9003.2(c)(7)

Limitations on, § 9003.2(c)

Reporting of, § 9006.1(b)(1)(iv)

Source of repayment, § 9004.4(c)

POLITICAL COMMITTEE

Definition, § 9002.9

See also: AUTHORIZED COMMITTEE**POST-ELECTION PAYMENTS***See:* ENTITLEMENT; PAYMENTS**PRESIDENTIAL ELECTION CAMPAIGN FUND***See:* PAYMENTS; SECRETARY OF THE TREASURY

Index, General Election Financing

PRINCIPAL CAMPAIGN COMMITTEE

See: AUTHORIZED COMMITTEE

PUBLIC FUNDS

See: ENTITLEMENT; PAYMENTS; REPAYMENTS; USE OF FUNDS

Q

QUALIFIED CAMPAIGN EXPENSES

Authorized committees incur, § 9002.1; § 9002.11(b)

Burden of proof on candidate, § 9003.5(c)

Certification not to exceed limitations on

— major party candidate, § 9003.2(a)

— minor party candidate, § 9003.2(b)

Contributions solicited to defray, by minor/new party candidate

— administrative costs, § 9003.3(c)(6), (7) and (8)

— campaign depository for, § 9003.3(c)(3)

— legal and accounting compliance costs, § 9003.3(c)(6), (7) and (8)

— limitations and prohibitions, § 9012.2

— reporting of, § 9003.3(c)(4) and (9); § 9006.1(b)(1)(ii)

— solicitation costs, § 9003.3(c)(5)

— to supplement public funds, § 9003.3(c)(1)

Definition, § 9002.11(a)

Defrayal of, if candidate withdraws, § 9004.8(b)(1)

Documentation required for, § 9003.1(b)

Expenditures in excess of limitations, § 9007.2(a)(2); § 9012.1

Furthering election of other candidates, § 9002.11(b)(3)

Incurred before or after expenditure report period, § 9002.11(c); § 9003.4(a)

Incurred on behalf of Vice Presidential candidate, § 9002.11(b)(1)

Legal and accounting compliance costs, *See:* LEGAL AND ACCOUNTING COMPLIANCE FUND

Loans incurred for, § 9003.4(b)

Media personnel, transportation and services provided to, § 9004.6

Net outstanding, statement of, § 9004.9

Nonqualified, *See:* EXPENDITURES

Polling costs, § 9003.4(a)(1)

Recordkeeping, § 9003.1(b)(1); § 9003.5

Reporting, § 9006.1

Solicitation of contributions by major party candidate, *See:* DEFICIENCY IN FUND

Travel, § 9004.7

See also: TRAVEL

Unauthorized expenditures, limitations for, § 9012.6

Use of personal funds for, § 9003.4(c)

Use of public funds for, § 9004.4(a)

Use of public funds for other than, § 9007.2(b)(2)

Winding down costs, § 9004.4(a)(4)

R

RECORDKEEPING

Candidate agreement, § 9003.1(b)(4)

Capital and other assets, § 9003.5(d)

Computerized records, production of, § 9003.1(b)(4); § 9003.6

Documentation requirements

— candidate and committee agreements, § 9003.1(b)

— collectibility of accounts receivable, § 9004.9(e)

— computer tapes, § 9003.1(b)(4)

— disbursements, § 9003.5

Falsification in, § 9012.4

Legal/accounting compliance fund, § 9003.3(a)(3) and (c)(9)

RECORDKEEPING—Continued

- Petty cash fund, § 9003.5(a)(2)(i)
- Production of computer tapes and software, § 9003.1(b)(4)
- Qualified campaign expenses, § 9003.1(b)(1) and (4); § 9003.3(b)(2); § 9003.5; § 9006.1
- Retention of records, § 9003.5(c)

REIMBURSEMENTS

- For travel by media personnel, § 9004.6
- From compliance fund to account containing public funds, § 9003.3(a)(2)(ii)(B)
- In computing qualified campaign expenses, § 9002.11(b)(4)
- May be deposited with public funds, § 9005.3(d)

REPAYMENTS

- Additional, § 9007.2(f) and (g)

Bases for

- assets newly discovered, § 9007.2(g)
- funds remain after qualified campaign expenses paid, § 9007.2(b)(3)
- funds used for nonqualified campaign expenses, § 9007.2(b)(2)
- investment of funds results in income or loss, § 9004.5; § 9007.2(b)(4)
- payments exceed entitlement, § 9007.2(b)(1)
- unlawful contributions accepted, major party candidate, § 9007.2(b)(5)

Candidate agreement to make, if required, § 9003.1(b)(5)

Committee response to FEC determination, § 9007.2(c)

Effect of failure to raise issues, § 9007.5(b)

Liability of candidate, § 9003.2(c)(7)

Limitation of total amount, § 9007.2(h)

Notification of need for making, § 9007.2(a)

Petition for rehearing, § 9007.2(i); § 9007.5(a) and (b)

Priority over other debts, § 9007.2(a)(3)

Procedures used to determine, § 9007.2(c)

Settlement for less than amount owed, prohibited, § 116.7(c)(1)

Sources of, § 9004.4(c)

Stale-dated committee checks, § 9007.6

Stay of determination, § 9007.2(i); § 9007.5(c)

- criteria for approval, § 9007.5(c)(2) and (3)

- payment of interest, § 9007.5(c)(4)

- request for, § 9007.5(c)(1)

Time limitation

- for Commission to determine need for, § 9007.2(a)(2) and (f)

- for committee to make, § 9007.2(d) and (e)

REPORTS

Audit, prepared by FEC, § 9007.1(c), (d) and (e)

By all candidates, § 9006.1

Contributions to defray nonqualified campaign expenses, § 9003.3

Expenditure report period, § 9002.12

Expenditures incurred after expenditure report period, § 9002.11(c)(1)

Falsification of, § 9012.4

Filing dates, § 9006.2

Legal and accounting services, § 9002.11(b)(5); § 9003.3(a)(3)

Loans, § 9003.4(c)

Net outstanding qualified campaign expenses, § 9004.9

Private contributions, § 9003.3(a)(3)

Separate for general elections, § 9006.1

Qualified campaign expenses, § 9006.1

Travel expenses, § 9004.6(c); § 9004.7(a) and (b)

§

SECRETARY OF THE TREASURY

Definition, § 9002.14

Index, General Election Financing

SECRETARY OF THE TREASURY—Continued

FEC certification to, § 9005.1

Payment to candidate, § 9005.2(a)

Repayment to Treasury, *See*: REPAYMENTS

SETTLEMENTS

See: DEBTS AND SETTLEMENTS

SOLICITATION OF CONTRIBUTIONS

See: CONTRIBUTIONS

STATE

Qualification for State ballots defines candidates, § 9002.2(a)(2)

Support of candidates for State office, § 9002.11(b)(3)

STATE PARTY

Expenditure limitations, § 110.7(a)

T

TRAVEL

Allocation of expenditures for, § 9004.7

Commercial transportation used for, § 9004.7(b)(7)

Computing campaign- and noncampaign-related costs, § 9004.7(b)(1) and (2)

Government conveyance/accommodations used, § 9004.7(b)(4) and (5)

Itinerary required, § 9004.7(b)(3)

Media personnel, transportation and services provided to, § 9004.6

Other than government or charter used, § 9004.7(b)(7)

Passenger list required, § 9004.7(b)(4)

Qualified campaign expense for campaign-related, § 9004.7(a)

Reporting of, § 9004.6(c); § 9004.7

Spouse or family, costs for, § 9004.7(b)(6)

Staff's costs, § 9004.7(a)

U

UNAUTHORIZED COMMITTEE

Contributions and expenditures by, § 9012.6

USE OF FUNDS

Contributions from individuals, uses for

— make up deficiency in payments, § 9003.3(b)(1)

— may not pay primary debt, § 9003.3(a)(2)(iv)

— must be segregated from public funds, § 9003.3(a)(3)

— legal and accounting compliance costs, § 9003.3(a)

Legal and accounting compliance funds, § 9003.3(a)(2)

Public funds used by candidate

— control over, § 9005.3(a)

— defray qualified campaign expenses, § 9004.4(a)(1)

— investment, § 9004.5; § 9007.2(a)(6)

— loan repayment, § 9004.4(a)(2)

— support other candidates, § 9002.11(b)(3)

See also: QUALIFIED CAMPAIGN EXPENSES

V

VICE PRESIDENTIAL CANDIDATE

See: CANDIDATE

**FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS, PART
9008**

A

ACCOUNTS

Maintained by convention committee

- bank depository required, § 9008.8(b)(3)(v)
- bank records for all accounts furnished when requested by FEC, § 9008.8(b)(4)(vi)
- for deposit of private contributions, § 9008.8(b)(4)(iv)
- for deposit of public funds, § 9008.8(b)(4)(iii)
- limitation on payments from account, § 9008.5

Maintained by host committee for contributions from local retail businesses, municipal corporations and government agencies, § 9008.7(d)(3)(iii)

ADMINISTRATIVE EXPENSES

Host committee's, contributions may defray, § 9008.7(d)(2)(iii)(D)

National or convention committee's, public funds may defray, § 9008.6(a)(4)(x)

ADVERTISING

As acknowledgement of donation to host committee, § 9008.7(d)(2)(ii)

By host committee for promotion, § 9008.7(d)(2)(iii)(A)

By local businesses on samples and promotional material, § 9008.7(c)(2)

AGREEMENTS

By convention committee, letter of agreement, § 9008.8(b)(1) and (4)

By national committee, application statement, § 9008.8(b)(1) and (3)

Date for filing, § 9008.8(b)(5)

AUDITS

See: **EXAMINATIONS AND AUDITS**

B

BANKS

May not donate to host committee, § 9008.7(d)(2)(i) and (3)(i)

May not provide discounts to national committee, § 9008.7(c)(1)(i)

May provide samples and promotional material to national committee, § 9008.7(c)(2)(iii)

See also: **ACCOUNTS**

C

CANDIDATE

Expenditure by, from campaign account to attend convention, excepted from expenditure limitation, § 9008.7(e)

Expenses of, may not be defrayed by convention funds, § 9008.6(b)(1)

CERTIFICATION

By FEC to Secretary of Treasury for entitlement, § 9008.8(e)

COMMISSION

See: **FEDERAL ELECTION COMMISSION**

CONTRIBUTIONS

Excessive, § 9008.10(c)

Private contributions

- account for, must be segregated, § 9008.8(b)(4)(iv)
- entitlement adjusted if committee opts to receive, § 9008.8(a)(2) and (3)
- limitations and prohibitions of Act apply, § 9008.8(a)(4)

CONTRIBUTIONS—Continued**Private contributions—Continued**

- must be reported, § 9008.8(a)(4)
- received by convention committee, § 9008.8(b)(2)

To host committee, to defray convention expenses, § 9008.7(d)(3)

- acceptable contributors, § 9008.7(d)(3)(i) and (iv)
- amount proportionate to expected commercial return, § 9008.7(d)(3)(ii)

To host committee, to promote convention city and commerce, § 9008.7(d)(2)

- acceptable contributors, § 9008.7(d)(2)(i) and (iv)
- donor may restrict use of funds, § 9008.7(d)(2)(ii)
- use of funds, § 9008.7(d)(2)(iii)

To national committee, exceptions

- contributions used to pay civil or criminal penalties, § 9008.6(b)(3)
- facilities and services provided by government agencies and municipal corporations, § 9008.4(c); § 9008.7(b)
- in-kind contributions by businesses, § 9008.4(c); § 9008.7(c)
- legal and accounting services, if paid for by regular employer, § 9008.7(f)(1)

*See also: USE OF FUNDS***CONVENTION COMMITTEE****Audit of, by FEC, § 9008.9****Cessation of activity, § 9008.12(b)(3)****Duties of, § 9008.8(b)(2)****Letter of agreement**

- binding also for national committee, § 9008.8(b)(4)
- comply with expenditure limitations, § 9008.8(b)(4)(i)
- date of filing, § 9008.8(b)(5)
- document convention expenses, § 9008.8(b)(4)(v)
- establish accounts, § 9008.8(b)(4)(iii) and (iv)
- file convention reports, § 9008.8(b)(4)(ii)
- furnish books, records and other information, § 9008.8(b)(4)(vi)
- make repayments, § 9008.8(b)(4)(vii)
- pay civil penalties, § 9008.8(b)(4)(viii)
- permit audits and examinations, § 9008.8(b)(4)(vii)

Makes all expenditures for convention expenses, § 9008.8(b)(2)**National committee establishes, § 9008.8(b)****Officers of, designated by national committee, § 9008.8(b)(3)(iv)****Receives all private contributions to defray convention expenses, § 9008.8(b)(2)****Receives all public funds, § 9008.8(b)(2)****Registers as a political committee, § 9008.8(b)(2); § 9008.12(b)(1)(i)****Reporting obligations, § 9008.12(b)(2)****CORPORATION****Contributions to host committee**

- to defray convention expenses, § 9008.7(d)(3)
- to promote convention city and commerce, § 9008.7(d)(2)

Local, definition, § 9008.7(c)(2)(iv) and (d)(2)(iv)**Municipal corporations**

Index, Convention Funding

CORPORATION—Continued

Municipal corporations—Continued

- expenditures by, not counted against national party limitation, § 9008.4(c); § 9008.7(b)
 - facilities and services provided by, § 9008.7(b)
- #### Private business concerns
- discounts to national committee by, § 9008.7(c)(1)
 - samples and promotional material provided by, § 9008.7(c)(2)

See also: BANKS

D

DEFINITIONS

- Commission, § 9008.2(a)
- Convention, § 9008.2(g)
- Convention committee, § 9008.8(b)(2)
- Convention expenses, § 9008.6(a)(4)
- Fund, § 9008.2(b)
- Host committee, § 9008.7(d)(1)
- Life of the convention, § 9008.7(d)(3)(v)
- Local business, § 9008.7(c)(2)(iv) and (d)(2)(iv)
- Major party, § 9008.2(c)
- Metropolitan Statistical Area, § 9008.7(c)(2)(iv)
- Minor party, § 9008.2(d)
- National committee, § 9008.2(e)
- New party, § 9008.2(f)
- Nominating convention, § 9008.2(g)
- Presidential Election Campaign Fund, § 9008.2(b)
- Secretary, § 9008.2(h)

DELEGATES

- Personal funds used to attend convention, excepted from expenditure limitation, § 9008.7(e)
 - Public convention funds prohibited from defraying expenses of, § 9008.6(b)(1)
- See also:* 11 CFR § 110.14

E

ELIGIBILITY

- Major party, § 9008.1(a)
 - Minor party, § 9008.1(a)
 - New party, ineligible, § 9008.1(a)
 - Requirements, § 9008.8(b)
- See also:* ENTITLEMENT

ENTITLEMENT

- Acceptance of, § 9008.8(a)(1)
- Adjustment of
 - by amount of private contribution received, § 9008.4(c); § 9008.8(a)
 - by Consumer Price Index, § 9008.1(a); § 9008.3(a); § 9008.4(a)
 - by income from investment of public funds, § 9008.4(b)

ENTITLEMENT—Continued**Adjustment of—Continued**

- not affected by increased expenditure limitations, § 9008.7(a)(3)

Eligibility requirements, § 9008.8(b)

Major party committee entitlement, § 9008.1(a); § 9008.3(a)

Minor party committee entitlement, § 9008.1(a); § 9008.3(b)

New party, not entitled, § 9008.1(a)

Private contributions, effect on, § 9008.4(c); § 9008.8(a)

See also: USE OF FUNDS

EXAMINATIONS AND AUDITS

Conducted by FEC, § 9008.9

Committees agree to permit, § 9008.8(b)(4)(vii)

Repayments based on findings of, § 9008.8(b)(4)(vii)

EXPENDITURES

By convention committee, § 9008.8(b)(2)

By host committee, § 9008.7(d)

Documentation required

- by convention committee, § 9008.8(b)(4)(v)

- improper, § 9008.10(d)

See also: REPORTS

Limitation, § 9008.7(a)

- adherence to, § 9008.8(b)(4)(i)

- authorization by FEC to exceed, § 9008.7(a)(3)

- exceeded, repayment required, § 9008.10(b)

- major party, § 9008.7(a)(1)

- minor party, § 9008.7(a)(2)

Limitation exceptions, § 9008.4(c)

- discounts by retail business, § 9008.7(c)(1)

- government agencies and municipal corporations, facilities and services provided by, § 9008.7(b)

- host committees, § 9008.7(d)(4)

- in-kind contributions by business, § 9008.7(c)

- legal and accounting services, § 9008.7(f)(1)

- participation/attendance costs, § 9008.7(e)

- payments for civil or criminal penalties, § 9008.6(b)(3)

- samples and promotional material from local business, § 9008.7(c)(2)

F

FEDERAL ELECTION COMMISSION

Authorization by, to exceed expenditure limitation, § 9008.7(a)(3)

Certification to Secretary of Treasury for public funds, § 9008.8(e)

Definition, § 9008.2(a)

Examinations and audits conducted by, § 9008.9

Repayments

- notification by, to national committee, § 9008.10(g)

- resolution of dispute concerning, § 9008.11

Index, Convention Funding

FUNDS

See: ENTITLEMENT; PAYMENTS; USE OF FUNDS

G

GOVERNMENT AGENCY

- Committee established to represent, registration of, § 9008.12(a)
- Expenditures by, excepted from limitations, § 9008.4(c)
 - to defray convention expenses, § 9008.7(d)(3)
 - to promote convention city, § 9008.7(d)(2)
- Facilities and services provided by, § 9008.7(b)

H

HOST COMMITTEE

- Audit of, required, § 9008.9
 - Contributions
 - to defray convention expenses, § 9008.7(d)(3)
 - to promote convention city and commerce, § 9008.7(d)(2)
 - Definition, § 9008.7(d)(1)
 - Expenditures by, excepted from limitations, § 9008.4(c); § 9008.7(d)(4)
 - Registration of, § 9008.7(d)(1); § 9008.12(a)(1)(i)
 - Reporting by, § 9008.1(b); § 9008.12(a)(2)
 - Use of funds, § 9008.7(d)(2)(iii)
- See also: CONTRIBUTIONS; USE OF FUNDS

I

INELIGIBILITY

See: ELIGIBILITY

INVESTMENT OF PUBLIC FUNDS

- Entitlement adjusted for income generated by, § 9008.4(b)
- Permitted if income defrays convention expenses, § 9008.6(a)(5)

L

LEGAL AND ACCOUNTING SERVICES

- Expenditure, if compensated, § 9008.7(f)(2)
- Expenditure limitation exception, § 9008.4(c); § 9008.7(f)(1)

LOANS

- Public funds may be used to repay, § 9008.6(a)(2) and (4)(xi)

M

MAJOR PARTY

- Definition, § 9008.2(c)
- Entitlement, § 9008.1(a); § 9008.3(a)
 - acceptance of, § 9008.8(a)(1)
 - eligibility requirements, § 9008.8(b)
- Establishment of convention committee, § 9008.8(b)(1)
- Expenditure limitations, § 9008.7(a)(1)
 - authorization to exceed, § 9008.7(a)(3)
- Private contributions to, § 9008.8(a)(2) and (4)
- Reporting by, § 9008.12(b)

MINOR PARTY

- Definition, § 9008.2(d)
- Entitlement, § 9008.1(a); § 9008.3(b)
 - acceptance of, § 9008.8(a)(1)
 - eligibility requirements, § 9008.8(b)
- Establishment of convention committee, § 9008.8(b)(1)
- Expenditure limitations, § 9008.7(a)(2)
 - authorization to exceed, § 9008.7(a)(3)

MINOR PARTY—Continued

Private contributions to, § 9008.8(a)(3) and (4)
Reporting by, § 9008.12(b)

MONEY

See: CONTRIBUTIONS; EXPENDITURES; PAYMENTS

MUNICIPAL CORPORATION

See: GOVERNMENT AGENCY

N**NOTIFICATION**

By FEC to national committee concerning repayments, § 9008.10(g)

By national committee to FEC concerning disputed repayments, § 9008.11(a)

NATIONAL PARTY COMMITTEE

Convention committee, established by, § 9008.8(b)(1)

See also: CONVENTION COMMITTEE

Definition, § 9008.2(e)

Entitlement, § 9008.1(a); § 9008.3

See also: ENTITLEMENT

Expenditures by, *See:* EXPENDITURES

Payments to

- certification of, § 9008.8(e)
- date for receiving, § 9008.8(d)
- increase in certified amount, § 9008.8(c)
- limitation on, from account, § 9008.5

Registration, § 9008.12(b)(1)(ii)

Repayments by, *See:* REPAYMENTS

Reporting requirements, § 9008.12(b)(2)

Use of public funds

- definition of convention expenses, § 9008.6(a)(4)
- permissible uses, § 9008.6(a)
- prohibited uses, § 9008.6(b)

See also: USE OF FUNDS

NEW PARTY

Definition, § 9008.2(f)

Not entitled to public funds, § 9008.1(a)

NOMINATING CONVENTION

Committee established for, § 9008.8(b)(1)

Contributions for, *See:* CONTRIBUTIONS

Definition, § 9008.2(g)

Expenditure limitations, *See:* EXPENDITURES

"Life of the convention," definition, § 9008.7(d)(3)(v)

Public funds for use at

- adjustment to entitlement, § 9008.4
- entitlement, § 9008.3
- limitation on payment from account, § 9008.5
- permissible uses, § 9008.6(a)
- prohibited uses, § 9008.6(b)

See also: CONVENTION COMMITTEE; HOST COMMITTEE; NATIONAL PARTY COMMITTEE; USE OF FUNDS

P**PARTY**

See: MAJOR PARTY; MINOR PARTY; NATIONAL PARTY COMMITTEE;
NEW PARTY

PAYMENTS

Acceptance of, optional, § 9008.8(a)(1)

Application for, § 9008.8(b)(1)

Bank depository for, § 9008.8(b)(4)(iii)

Index, Convention Funding

PAYMENTS—Continued

Certification by Commission to Secretary of Treasury, § 9008.8(e)

Convention committee receives, § 9008.8(b)(2)

Date for receiving, § 9008.8(d)

Eligibility for, § 9008.1(a); § 9008.8(b)

Entitlement, § 9008.1(a); § 9008.3

See also: ENTITLEMENT

Excess payments, repayment of, § 9008.10(a)

Increase in certified amount, § 9008.8(c)

Investment of, § 9008.4(a); § 9008.6(a)(5)

Limitation on, § 9008.5

Private contributions affect, § 9008.8(a)

Repayments, *See:* REPAYMENTS

Requests for, statement required, § 9008.8(b)(3)

See also: USE OF FUNDS

PRIVATE BUSINESS CONCERNS

See: CORPORATION

PUBLIC FUNDS

See: ELIGIBILITY; ENTITLEMENT; PAYMENTS; REPAYMENTS; USE OF FUNDS

R

REGISTRATION

Committees, including host and groups representing government agencies, § 9008.12(a)

Convention committee, § 9008.8(b)(2)

Political party committees, § 9008.8(b)(2); § 9008.12(b)

REPAYMENTS

Committees agree to make, § 9008.8(b)(4)(vii)

Date for making, § 9008.10(g)(2)

Disputed, § 9008.11

Extension of period for making, § 9008.10(g)(2)

Limit on, § 9008.10(f)

Notification by FEC, § 9008.10(g)(1)

Payable to U.S. Treasury, § 9008.10(g)(3)

Required if

- contributions and funds combined exceed expenditure limitations, § 9008.10(c)
- expenses exceed expenditure limitations, § 9008.10(b)
- funds improperly documented, § 9008.10(d)
- funds remain unspent after convention expenses paid, § 9008.10(e)
- funds used for unauthorized expenses, § 9008.10(d)
- payments exceed entitlement, § 9008.10(a)

Unspent funds, § 9008.10(e)

- date for repayment, § 9008.10(e)(3)
- interim repayment, § 9008.10(e)(2)
- refunded, but later needed to defray expenses, § 9008.10(e)(2)

REPORTS

By convention committees, national committees, and committees and organizations representing a national party, § 9008.1(b); § 9008.8(b)(4)(ii); § 9008.12(b)

- post-convention, § 9008.12(b)(2)(i) and (ii)
- quarterly, § 9008.12(b)(2)(i) and (ii)
- registration, § 9008.12(b)(1)(i) and (ii)

By host committees and other committees or organizations representing municipal, state or other local government agencies, § 9008.1(b); § 9008.12(a)

- final, § 9008.12(a)(2)(iii)

REPORTS—Continued

By host committees and other committees or organizations representing municipal, state or other local government agencies, § 9008.1(b); § 9008.12(a)—Continued

- post-convention, § 9008.12(a)(2)(i)
- quarterly, § 9008.12(a)(2)(ii)
- registration, § 9008.12(a)(1)(i)

Exceptions

- State or subordinate State party committees, § 9008.12(b)(1)(iii)
- unsuccessful efforts to attract convention, § 9008.1(b); § 9008.12(a)(1)(ii)

See also: 11 CFR Part 107

§

SECRETARY OF TREASURY

Definition, § 9008.2(h)

FEC certifications to, for payment of entitlement, § 9008.8(e)

Repayments made to, § 9008.10(g)(3)

U

USE OF FUNDS

Funds donated to host committee, § 9008.7(d)(2)(iii)

- defray administrative expenses, § 9008.7(d)(2)(iii)(D)
- facilitate commerce, § 9008.7(d)(2)(iii)(C)
- promote suitability of city as convention site, § 9008.7(d)(2)(iii)(A)
- welcome convention attendees, § 9008.7(d)(2)(iii)(B)

Permissible, § 9008.6(a); § 9008.7(d)(2)(iii)

- defray convention expenses, § 9008.6(a)(1) and (4)
- investment of funds, § 9008.6(a)(5)
- repay principal and interest on loans, § 9008.6(a)(2) and (4)(xi)
- restore funds used for convention expenses, § 9008.6(a)(3)

Private contributions used by national committee, § 9008.8(a)(2), (3) and (4)

Prohibited, § 9008.6(b)

- defray candidate/delegate expenses, § 9008.6(b)(1)
- defray payment that violated Federal/State laws, § 9008.6(b)(2)
- improper use of funds, repayment required, § 9008.10(d)
- payment of civil or criminal penalties, § 9008.6(b)(3)

PRESIDENTIAL PRIMARY MATCHING FUND, PARTS 9031-9039*

A

ACCOUNTS

Matching payment account maintained by U.S. Treasury

- definition of, § 9032.5
- equal distribution of funds from, § 9037.2
- repayment of funds from, § 9038.2
- transfer of funds from, § 9037.1

Special account maintained by principal campaign committee

- deposit of matching funds into, § 9037.3
- designation of, § 9033.1(b)(7)
- matching funds no longer contained, § 9038.2(b)(2)(iii)
- source of repayment, § 9034.4(c)

AGREEMENTS

Candidate must agree to

- adhere to campaign expenditure limitation, § 9035.1(a)
- adhere to personal funds limitation, § 9035.2
- comply with agreements, § 9033.1(a)
- comply with documentation requirements, § 9033.1(b) and (c)
- comply with Title 2 and Regulations governing, § 9033.1(b)(9)
- gather books and records in centralized location, § 9033.1(b)(6)
- keep and furnish books, computer tapes and records, § 9033.1(b)(5); § 9033.11(c)
- make repayments, § 9033.1(b)(6)
- obtain and furnish evidence of qualified expenses, § 9033.1(b)(1)
- pay civil penalties, § 9033.1(b)(10)
- permit audits and examinations, § 9033.1(b)(6)
- prepare submissions in good order, § 9033.1(b)(8)

Date for submitting, § 9033.2(a)(1)

Eligibility contingent upon, § 9033.1(b)

Failure to comply with disclosure requirements, § 9033.9

Joint fundraising, § 9034.8(c)(1)

ALLOCATION

Expenditures among States, § 106.2; § 110.8(c)

- categories of, § 106.2(b)
- exempt from allocation, § 106.2(c); § 110.8(c)(2)
- general rule, § 106.2(a)(1); § 110.8(c)(1)
- methods of allocation, § 106.2(b)(2)
- reporting and recordkeeping, § 106.2(c), (d) and (e)
- testing-the-waters disbursements, § 106.2(a)(2)

Joint fundraising proceeds and expenses, § 9034.8(c)(7) and (8)

Travel expenses, § 106.2(b)(2)(iii) and (c)(4); § 9034.7

APPEALS BY CANDIDATE COMMITTEE

Active candidacy, § 9033.7(c)

During audit, § 9038.1(b)(1)(iv) and (c)(2)

Effect of failure to raise issues, § 9038.5(b)

Expenditure limitation exceeded, § 9033.3(b); § 9033.9

Failure to comply with disclosure requirements, § 9033.9

Failure to meet threshold requirements, § 9033.4(c)

*This index makes occasional reference to Parts 102-116 of 11 CFR, governing Federal election activity.

APPEALS BY CANDIDATE COMMITTEE—Continued

- Inactive candidacy, § 9033.6(c)
- Ineligibility for matching funds determination, § 9033.3(b) and (c)
- Petition for rehearing, § 9033.10(e); § 9034.5(g)(4); § 9038.2(h); § 9038.5(a)
- See also: REPAYMENTS
- Stay of determination, § 9038.2(h)
- See also: REPAYMENTS
- Repayments, § 9038.2(c)
- Resubmissions, § 9036.5(e)
- Suspension of payments, § 9033.9(b) and (d)(1)

ASSETS

- Accurate valuation of, § 9034.5(g); § 9033.10(a)(6)
- Documentation of, § 9033.11(d)
- Fair market value, § 9034.5(c)
- In determining net outstanding campaign obligation, § 9034.5(c)
- Newly discovered, § 9038.2(g)
- Sale of, for fundraising purposes, § 9034.9
- Sale of, for liquidation of debts, § 9034.9(b)

AUDITS

- Agreement to permit, § 9033.1(b)(6)
- Computerized records provided for, § 9033.12; § 9038.1(b)(1)
- Copies of reports, provided to committee, § 9038.1(e)(3)
- Discretionary, § 9038.1(a)(2); § 9039.3
- Eligibility for funds determined by § 9033.1; § 9033.11
- Entrance conference, § 9038.1(b)(2)(i)
- Exit conference, § 9038.1(b)(2)(iii)
- Fieldwork required for, § 9038.1(b)
 - conduct of, § 9038.1(b)
 - office space and records supplied, § 9038.1(b)(1)(i)
 - personnel made available, § 9038.1(b)(1)(ii)
- Interim report, § 9038.1(c)
- Public release of report, § 9038.1(d) and (e)
- Repayments determined by, § 9038.1(a)(3); § 9038.2(a)(1)
- Required, of candidate and authorized committee(s), § 9033.2(d); § 9038.1(a)
- Retention of records for, § 9039.1
- Settlement of disputes arising during, § 9038.1(b)(2)(iv)
- Time period for candidate response, § 9038.1

AUTHORIZED COMMITTEE

- Assets, § 9033.11(d)
- Credit card, liability for, § 9035.2(a)(2)
- Definition, § 9032.1
- Expenses incurred in excess of limitations, § 9033.2(b)(2) and (3); § 9033.3(a); § 9035.1
- Included in
 - audit and examination requirements, § 9033.1(b)(6); § 9038.1
 - candidate agreements, § 9033.1(a)(1)
 - expenditure limitations, § 9033.2(b)(2); § 9033.3(a); § 9035.1
 - threshold certification requirements, § 9033.2(b)(2)
- Payments to candidate, § 9034.4(b)(5)
- Qualified campaign expenses incurred by, § 9032.9(a)(1) and (b)
- Stale-dated checks, § 9038.6
- Withdrawal of authorization, § 9032.1(b)

C**CAMPAIGN DEPOSITORY**

- Agreement to furnish records of, § 9033.1(b)(4), (5) and (7)
- Change in, § 9033.1(b)(7)
- Deposit of contribution required before matching, § 9034.2(a)(3)

Index, Primary Election Financing

CAMPAIGN DEPOSITORY—Continued

Documentation of, for threshold submission, § 9036.1(b)(1) and (3)

Funds deposited into, § 9037.3

Joint fundraising, separate account for, § 9034.8(c)(4)

Vice Presidential candidate's, § 103.4

See also: ACCOUNTS; RECORDS; 11 CFR PART 103

CANDIDATES

Active candidacy, § 9033.7

Agreements by, § 9033.1

See also: AGREEMENTS

Appeals, *See:* APPEALS BY CANDIDATE COMMITTEE

Authorization

— of person who makes qualified campaign expenditures, § 9032.9(b)

— of political committee, § 9032.1

Certifications, § 9033.2

See also: CERTIFICATIONS

Continuation of certifications, § 9036.6

Contributions to, *See:* CONTRIBUTIONS

Definition of § 9032.2

Deposit of funds by, § 9037.3

Eligibility for matching funds

— initial, § 9033.4

— reestablishment of, § 9033.8

See also: ELIGIBILITY

Entitlement, § 9034.1

See also: ENTITLEMENT

Expenditure limitations, *See:* EXPENDITURES

Immediate family of § 9035.2(b)

Inactive candidacy, § 9033.6

Ineligibility for matching funds, § 9033.3; § 9033.5; § 9033.6

See also: ELIGIBILITY

Net outstanding campaign obligation of, § 9033.10(a)(6); § 9034.5

Past actions, FEC consideration of, § 9033.4(b)

Personal funds of, § 9035.2(a)

Reporting of, § 9033.1(a)(8); Part 9039

Repayments, *See:* REPAYMENTS

Response to audit, § 9038.1(c)(2)

Use of credit card, § 9035.2(a)(2)

Use of funds, *See:* USE OF FUNDS

CAPITAL ASSETS

See: ASSETS

CERTIFICATIONS

By candidates to FEC

— date for submitting, § 9033.2(e)

— for threshold amount, § 9033.2; § 9036.1

— of active candidacy, § 9033.7(a)

— of inactive candidacy, § 9033.5(a); § 9033.6

— of satisfying requiring for each State, § 9033.2(b)(3)

— to comply with expenditure limitations, § 9033.2

By FEC concerning expenditure limitations, § 9033.3

By FEC to Secretary of Treasury

— additional, § 9036.2

— based on "holdback" procedure, § 9036.2(c)(1)(i)

— continued, § 9036.6

— initial, § 9036.1

— may be suspended for noncompliance, § 9033.9

— payments of less than requested amount, § 9036.4(b)

— required for payments to candidate, § 9037.1

CERTIFICATIONS—Continued**By FEC to Secretary of Treasury—Continued**

- requirements for, § 9036.1; § 9036.2
- resubmissions, § 9036.5(d)
- withheld for insufficient documentation § 9036.3
- withheld if expenditure limit exceeded, § 9033.3(a)

See also: PAYMENTS; SUBMISSIONS

COMPLIANCE COSTS

See: EXPENDITURES

CONTRIBUTIONS

Allocation of, in joint fundraising, § 9034.8(c)(7)

By money order, § 9034.2(c)(4)

By written instrument, § 9034.2(a)(4)

Certification of threshold amount of, § 9036.1

Costs of soliciting, § 9035.1(c)(2)

Deposit on receipt of, § 9034.2(a)(3)

Documentation of excess over purchase price, § 9034.2(c)(5)

Earmarked, § 9034.8(c)(7)(iv)

From escrow/trust account, § 9034.2(c)(2)

From immediate family, § 9035.2

From joint account, § 9034.2(c)(1)

From partnership, unincorporated business, § 9034.2(c)(3)

Fundraising, *See:* FUNDRAISING; JOINT FUNDRAISING

Insufficiently documented, § 9033.2(c)(3); § 9036.3

Matchable, *See:* MATCHABLE CAMPAIGN CONTRIBUTIONS

Name of issuer, identified, § 9034.2(c)(4)(ii)

Nonmatchable

- check drawn on account of committee, corporation, labor organization, government contractor, § 9034.3(f)
- contract, promise, § 9034.3(c)
- credit card, § 9034.3(c)
- currency, § 9034.3(j)
- definition of, § 9034.3
- from corporation, labor organization, government contractor, political committee, § 9034.3(d)
- illegally made or accepted, § 9034.3(e)
- in-kind, § 9034.3(a)
- made without donative intent, § 9034.3(i)
- non-qualified campaign expenses, § 9034.4(b)
- not included in first additional submission, § 9036.2(b)(1)
- pledge card, § 9034.3(c)
- purchase price of drawing/raffle ticket, § 9034.3(h)
- purchase price of item of value, § 9034.3(g)
- submitted for matching, § 9036.4(c)
- subscription, loan, advance, etc., § 9034.3(b)
- transfer of joint fundraising receipts, § 9034.8(c)(7)
- transfer to other campaigns, § 9034.4(d)

Index, Primary Election Financing

CONTRIBUTIONS—Continued

- Not qualified after submission for matching, § 9036.3(c)(3)
- Prohibited, § 9034.3 and § 9034.4
- Rejected for matching, § 9036.5(a)
- Residency requirement for those making, § 9033.2(b)(2)
- Resubmission of, § 9036.5
- Solicitation of, in determining active candidacy, § 9033.6(b)(2)
- Submission of, for matching
 - after date of ineligibility, § 9034.1(b); § 9034.4(b)(3)
 - alphabetical listing required, § 9036.1(b)(4)
 - compliance with Guideline for Presentation in Good Order, § 9033.1(b)(8); § 9036.1(b); § 9036.2(b)
 - deadline for, § 9036.6
 - documentation, supporting, § 9036.1(b)(3) and (4)
 - FEC review of, § 9033.4; § 9036.4
 - for additional payments, § 9036.2
 - for threshold purposes, § 9033.2; § 9036.1
 - photocopy required, § 9033.2(c)(2)

See also: SUBMISSIONS

Use of contributions and matching payments

- defray qualified campaign expenses, § 9034.4(a)
- “testing-the-waters”, § 9034.4(a)(2)
- transfer between principal and authorized committees, § 9034.4(d)
- winding down costs, § 9034.4(a)(3)

See also: USE OF FUNDS

CORPORATION

- Contributions from corporate account, nonmatchable, § 9034.3(d) and (f)
- Contributions from corporate account, prohibited, § 114.2(a)

D

DEBTS AND SETTLEMENTS

- Amount charged against expenditure limits, § 9035.1(a)(2)
- Assignment of, to affiliated committee, § 116.2(c)(3)
- Collectibility of accounts receivable, § 9034.5(d)
- Excessive expenditures, § 9034.4(b)(2)
- Extinguishing through reallocation, § 9034.8(c)(7)(ii)
- Not a basis for entitlement, § 9034.5(b)
- Settlement of bona fide dispute, § 9035.1(a)(2)
- Settlement, repayment obligations not subject to, § 116.7(c)(1)

DEFINITIONS

- Administrative costs, § 9034.6(d)(2)
- Authorized committee § 9032.1
- Candidacy, § 9032.2; § 9033.6; § 9033.7
- Candidate, § 9032.2
- Capital assets, § 9034.5(c)(1)
- Cash on hand, § 9034.5(a)(2)(i)
- Certifications, § 9033.2
- Closing date, § 9035.2(a)(2)
- Commission, § 9032.3
- Contribution, § 9032.4
- Eligibility requirements, Part 9033
- “Essentially political,” § 9034.2(c)(6)
- Exempt compliance costs, § 9035.1(c)(1)
- Exempt fundraising costs, § 9035.1(c)(2)
- Immediate family, § 9035.2(b)
- Ineligibility dates, § 9033.5
- Insufficient documentation, § 9036.3
- Matchable contributions, § 9034.2

DEFINITIONS—Continued

- Matching payment account, § 9032.5
- Matching payment period, § 9032.6
- Net outstanding campaign obligations, § 9034.5(a)
- Nonmatchable contributions, § 9034.3
- Nonqualified campaign expenses, § 9034.4(b)
- Payee, § 9033.1(b)(3)(i)
- Personal funds, § 9035.2(c)
- Political committee, § 9032.8
- Political party, § 9033.2(b)(1)
- Presidential Primary Matching Payment Account, § 9032.5
- Primary election, § 9032.7
- Purpose, § 9033.11(b)(3)(ii)
- Qualified campaign expenses, § 9032.9; § 9034.4(a)
- Secretary, § 9032.10
- Seeking nomination, § 9033.2(b)(1)
- State, § 9032.11
- “Testing-the-waters” expenses, § 9034.4(a)(2)
- Total deposits, § 9038.3(c)
- Voting age population, § 110.9(d)
- Winding down costs, § 9034.4(a)(3)
- Written instrument, § 9034.2(b)

DISBURSEMENTS

See: EXPENDITURES; QUALIFIED CAMPAIGN EXPENSES

DISCLOSURE

See: REPORTING

DOCUMENTATION

- Agreements by candidate and committee, § 9033.1(b)
 - Assets, § 9033.11(d); § 9034.5(c)
 - Commercial reasonableness, § 9034.5(d)
 - Disbursements, § 9033.1(b)(5); § 9033.11
 - Failure to provide, § 9038.2(b)(3)
 - Letter requests for submissions, § 9036.2(b)(2)
 - Qualified campaign expense, § 9033.11(b)(1)
 - Retention of records, § 9033.11(c)
- See also:* AGREEMENTS; SUBMISSIONS

E**ELECTION**

- Contributions, *See:* CONTRIBUTIONS
- Definition, § 9032.7
- Participation/performance in, as factor for determining eligibility, § 9033.5(b); § 9033.8(b)

ELIGIBILITY

- Candidate agreements, § 9033.1
- See also:* AGREEMENTS
- Candidate certifications, § 9033.2
- See also:* CERTIFICATIONS
- FEC determination of
 - inactive candidacy, § 9033.6
 - ineligibility, § 9033.3; § 9033.5; § 9033.6
 - petitions for rehearing, § 9033.10(e)
 - threshold requirement, § 9033.4
- Past actions of candidate considered, § 9033.4(b)
- Reestablishment of, § 9033.8
- Residence requirements of contributors, § 9033.2(b)(3)
- Terminated for
 - exceeding expenditure limits, § 9033.9(a); § 9033.10

Index, Primary Election Financing

ELIGIBILITY—Continued

Terminated for—Continued

- failure to comply with disclosure requirements, § 9033.9(a)
- inactive candidacy, § 9033.5(a); § 9033.6

See also: INELIGIBILITY

ENTITLEMENT

Adjustment due to

- inactive status, § 9033.6
- unqualified contribution, § 9036.4(b)

Candidate entitlement, § 9034.1

Certification to Secretary of Treasury, § 9036.1(c)

Matchable contributions, § 9034.2; § 9034.3

Maximum entitlement, § 9034.1(d)

Payments after determination of ineligibility, § 9034.1(b) and (c); § 9034.4(b)(3)

Payments after suspension, § 9033.9(d); § 9034.1(c)

Threshold requirement, § 9033.4

Use of contributions and matching payments, § 9034.4

See also: CERTIFICATIONS, PAYMENTS

EXAMINATIONS AND AUDITS

See: AUDITS

EXPENDITURES

Allocation among States, See: ALLOCATION

As factor for determining active candidacy, § 9033.6(b)(2)

From petty cash fund, § 9033.11(b)(2)(i)

Independent expenditures, § 9032.1(d)

Limitation exemptions

- administrative costs, § 9034.6(d)
- fundraising costs, § 106.2(c)(5); § 9035.1(c)
- legal and accounting compliance costs, § 106.2(c)(5); § 9035.1(c)
- party-building activity, § 110.8(e)
- reimbursement for travel/services, § 9034.6(d)(1)
- taxes on non-exempt function income, § 9034.4(a)(4)
- travel/services made available to media personnel, § 9034.6

Limitations, § 110.8

- applicable only if receiving matching funds, § 9035.1(d)
- candidate will not exceed, § 9033.2(b)(2); § 9035.1
- exceeded by candidate committee, appeal of determination, § 9033.3(b)
- exceeded by candidate committee, determination by FEC, § 9033.3(a)
- for qualified campaign expenses, § 9034.4(a); § 9035.1
- from funds of immediate family, § 9035.2(b)
- from personal funds, § 110.8(f)(2); § 9035.2(a)
- full debt charged against, § 9035.1(a)(2)
- made using a credit card, § 9035.2(a)(2)
- voting age population used to determine, § 110.8(a)(1)

Made by ineligible candidate, § 9033.8(c)

Made by party, § 110.8(e)

Made on behalf of a candidate, § 9032.1, § 9032.9(b)

EXPENDITURES—Continued

Made on behalf of Vice Presidential candidate, § 110.8(f)(1) and (g)
 Media, transportation and services, expenses for, § 9034.6

See also: MEDIA

Nonqualified expenses

- civil or criminal penalty, § 9034.4(b)(4)
- excess of limitations, § 9034.4(b)(2)
- expenses incurred after date of ineligibility, § 9034.4(b)(3)
- expenses incurred for goods and services received after ineligibility, § 9034.4(b)(3)
- payments to candidate, § 9034.4(b)(5)
- seeking of repayment for, § 9038.2(b)(2)(iii)

Polling, allocation of, § 106.4

Qualified campaign expenses, *See:* QUALIFIED CAMPAIGN EXPENSES

Starting date of review of expenditures, § 9038.2(b)(2)(iii)

F**FUNDRAISING**

Allocation of expenditures made for, § 110.8(c)

“Donative intent” required for matching contributions, § 9034.3(i)

Entertainment, purchase price of, § 9034.2(c)(5)

“Essentially political” activity, admission price for, § 9034.2(c)(6)

Expenditures exempted from State allocation, § 106.2(c)(5); § 9035.1(c)

Joint, *See:* JOINT FUNDRAISING

Sale of assets for, § 9034.9

Sale of lottery/raffle tickets, § 9034.3(h)

G**GOVERNMENT CONTRACTORS**

Contributions from, nonmatchable, § 9034.3(d) and (f)

Contributions from, prohibited, § 115.2(a)

H**HEARINGS**

See: APPEALS

I**INACTIVE CANDIDACY**

Candidate shall notify FEC, § 9033.5(a)

Criteria determination, § 9033.6(a) and (b)

See also: CANDIDATE

INELIGIBILITY

Appeal of FEC determination, § 9033.3(b)

Date of, § 9033.5

Expenses

- incurred during, § 9033.8(c)
- post-ineligibility, § 9034.4(b)(3)

For exceeding expenditure limitations, § 9033.3

Inactive candidacy, § 9033.6

Net outstanding campaign obligation after, § 9034.1(a) and (b); § 9034.5(c)

Submission of letter request before, § 9036.2(b)(2)

See also: ELIGIBILITY

INVESTIGATIONS

See: AUDITS

Index, Primary Election Financing

J

JOINT FUNDRAISING

- Aggregate contribution to, § 9034.8(c)(6) and (7)
- Agreement required, § 9034.8(c)(1)
- Allocation of contributions, § 9034.8(c)(7)
- Committee/representative/agent for, § 9034.8(b)
- Contribution limitations, § 9034.8(c)(6) and (7)
- Depository for receipts from, separate, § 9034.8(c)(4)
- Disbursements, reporting of, § 9034.8(c)(9)(ii)
- Exemptions from allocation, § 9034.8(c)(7)
- Expenditure exemption for, § 9035.1(c)
- Expenses, allocation of, § 9034.8(c)(8)
- Expenses from series, allocation of, § 9034.8(c)(8)(i)(C)
- Funds advanced for start-up costs, § 9034.8(c)(2)
- Notice required for solicitations, § 9034.8(c)(3)
- Procedures for, § 9034.8(c)
- Proceeds, allocation of, § 9034.8(c)(7)
- Receipts from, submitted for matching payments, § 9034.2(c)(7); § 9034.8(a)(2)(i) and (c)(7)
- Recordkeeping requirements, § 9034.8(c)(5) and (9)
- Representative's duties, § 9034.8(c)(5)
- Sale of assets acquired for, § 9034.9
- Use of contributions received from, § 9034.8(a)(2)

L

LABOR ORGANIZATION

- Contributions from union account, nonmatchable, § 9034.3(d) and (f)
- Contributions from union account, prohibited, § 114.2(a)

LOANS

- Not matchable, § 9034.3(b)
- Public funds may be used to repay, § 9034.4(a)

M

MATCHABLE CAMPAIGN CONTRIBUTIONS

- Additional submissions for, § 9036.2
- Candidate satisfies requirements for, § 9036.1
- Definition of, § 9034.2; § 9034.3
- Documentation required for matching payments, § 9033.11
- Eligibility for, *See*: ELIGIBILITY
- Examples of, § 9034.2(c)
 - attributed to more than one person, § 9034.2(c)(1)(ii)
 - check drawn on escrow or trust account, § 9034.2(c)(2)
 - check drawn on joint checking account, § 9034.2(c)(1)
 - from joint fundraising activity, § 9034.2(c)(7)
 - negotiable instruments, § 9034.2(c)(4)
 - ticket purchases, § 9034.2(c)(5) and (6)
 - written on accounts of unincorporated associations, § 9034.2(c)(3)
- First submission after threshold, contents of, § 9036.2(b)
- For "essentially political event," § 9034.2(c)(6)
- Ineligibility for, *See*: INELIGIBILITY
- Insufficient documentation of, § 9036.3
- Joint fundraising receipts, § 9034.8(a)(2) and (c)(6)
- Must comply with Guideline for Presentation in Good Order, § 9036.1(b); § 9036.2(b)
- Received after reestablishment of active candidacy, § 9034.1(c)
- Repayment of amounts in excess of entitlement, § 9038.2(a)(1)
- Requirements, § 9034.2(a)

MATCHABLE CAMPAIGN CONTRIBUTIONS—Continued

Threshold submissions, § 9036.1

See also: CONTRIBUTIONS; SUBMISSIONS**MATCHING PAYMENT ACCOUNT**

Definition, § 9032.5

Matching funds no longer contained, § 9038.2(b)(2)(iii)

Source of repayments, § 9034.4(c)

See also: ACCOUNTS; PAYMENTS**MATCHING PAYMENT PERIOD**

Audits after close of, § 9038.1

Definition of, § 9032.6

End of, § 9033.5(c)

Payment of matching funds begins with, § 9036.1(c); § 9037.1

See also: PAYMENTS**MEDIA**

Costs allocated among States, § 106.2(b)(2)(i)

Personnel, transportation and services provided to, § 9034.6

Production costs, not allocated, § 106.2(c)(2)

N**NET OUTSTANDING CAMPAIGN OBLIGATIONS (NOCO)**

Considered in FEC determination, § 9033.10(a)(6)

Explanation of revisions, § 9034.5(f)

Items not included on statement, § 9034.5(b)

Matching funds to defray, § 9034.1(b)

Payments made on basis of debts, § 9038.2(b)(1)(v)

Statement contents, § 9034.5(a), (b) and (c)

Submission of statement(s), § 9034.5(a) and (c)

Valuation of assets, § 9034.5(g)

NONMATCHABLE CONTRIBUTIONS*See:* CONTRIBUTIONS**NOTIFICATIONS**

By candidate to FEC concerning

- authorization of committee, § 9032.2(d)
- candidate agreements, § 9033.1
- depository, § 9033.1(a)(6)
- disputed ineligibility determination, § 9033.3(b)
- disputed repayment, § 9038.2(b)
- disputed resubmission, § 9036.5(b) and (e)
- explanation of expenditures, § 9033.1(b)(3)
- extension of repayment period, § 9038.2(d)
- identification of person entitled to receive matching funds, § 9033.1(a)(7)
- inactive candidacy, § 9033.5(a)(2); § 9033.7(a)
- liquidation of all obligations, § 9038.3(b)
- net outstanding campaign obligations, § 9034.5(a)
- newly discovered assets, § 9038.2(g)
- nonmatchable contribution submitted, § 9036.4(c)
- refunded contribution, § 9036.4(c)
- request for resubmission, § 9036.5
- stale-dated committee checks, § 9038.6
- threshold requirements, § 9033.4(c)

By FEC to candidate concerning

- audits to determine eligibility, § 9033.2(c)
- certification of less than requested amount, § 9036.4(b)
- continuing review, § 9039.2(b)
- determination of active candidacy, § 9033.7(b)
- determination of inactive candidacy, § 9033.6(c)
- determination of ineligibility, § 9033.3(b)

Index, Primary Election Financing

NOTIFICATIONS—Continued

By FEC to candidate concerning—Continued

- determination to suspend payments, § 9033.9(b)
- disputed unmatchable contributions, § 9036.5(e)
- eligibility and certification requirements, § 9034.1(a)
- failure to meet threshold requirements, § 9033.4(a)(2)
- final audit report, § 9038.1(e)(3)
- initial certification, § 9036.1(c)
- last date for submission of contributions, § 9036.6
- noncompliance with Title 2, § 9033.9(b)
- possible candidate status, § 9032.2(d)
- repayments, § 9038.2(a) and (c)
- resubmission of documentation, § 9036.4(b)
- threshold requirements, § 9033.4(b)

P

PAYMENTS

Bank depository for, § 9037.3

By committee to candidate, § 9034.4(b)(5)

Candidate documentation of matchable contributions

- additional submissions, § 9036.2(a) and (d)
- resubmissions, § 9036.5
- threshold submissions, § 9033.2

Candidate eligibility for

- FEC determination of, § 9036.1
- reestablishment of, § 9033.8
- requirements, § 9033.1; § 9033.2; § 9035.1

See also: ELIGIBILITY

Candidate ineligible for, § 9033.3(a) and (d); § 9034.1(a)

See also: INELIGIBILITY

Certification of funds by FEC to Secretary of Treasury

- additional amounts, § 9036.2(c); § 9036.6
- disputed submissions, § 9036.5(c)
- for less than amount requested, § 9036.4(a)
- for threshold submission, § 9036.1(c)

Changes in recipient information, § 9033.1(b)(7)

Continuation of payments after ineligibility, § 9034.1(b)

Entitlement to funds, § 9034.1

Equal distribution of funds by Secretary of Treasury, § 9037.2

Excessive, examples of, § 9038.2(b)(1)

Limitation of, § 9034.1(d)

Matchable campaign contributions, § 9034.2

Matching payment account, § 9032.5

Matching payment period, § 9032.6

Net outstanding campaign obligations, based on, § 9033.10(a); § 9034.1

Nonmatchable campaign contributions, § 9034.3

Payment schedule, § 9036.1(c); § 9036.2(c)

PAYMENTS—Continued

- Post-election payments, § 9036.6
- Reimbursement to candidate for campaign expenses, § 9034.4(b)(5)
- Repayments, *See*: REPAYMENTS
- Secretary of the Treasury disbursements, § 9037.1
- Suspension of, for noncompliance, § 9033.3(b); § 9033.9
- Suspension of, right to appeal, § 9033.3(b); § 9033.10
- Termination of payments, § 9033.6; § 9034.1
- Use of payments, *See*: USE OF FUNDS

PERSONAL FUNDS

- Definition, § 9035.2
- Limitations on, § 9035.2
- Of Vice Presidential candidate, § 110.8(f)(2)
- Repayments, source of, § 9034.4(c)

PETITIONS FOR HEARING

See: REPAYMENTS

POLITICAL COMMITTEE

- Authorized by candidate, § 9032.1
- Contributions not matchable, § 9034.3(d)
- Definition, § 9032.8

POLLING

See: EXPENDITURES

PRIMARY

See: ELECTION

PRIMARY MATCHING FUNDS

See: ENTITLEMENT, PAYMENTS

PUBLIC FUNDS

See: ENTITLEMENT; PAYMENTS; REPAYMENTS; USE OF FUNDS

**QUALIFIED CAMPAIGN EXPENSES**

- Agreement, § 9033.1(b)(1)
- Authorization to make, § 9032.9(b)
- Burden of proof, § 9033.1(a)
- Certification not to exceed limitations, § 9033.2(b)(2)
- Definition, § 9032.9; § 9034.4(a)
- Documentation required to prove, § 9033.11(a) and (b)
- Limitation on, § 9035.1
- Liquidation of, § 9038.3
- Matchability contingent upon, § 9034.4(a)
- Media
 - allocation of costs, by State, § 106.2(b)(1) and (2)(i)
 - nationwide advertising, § 106.2(c)(1)(ii) and (3)
 - personnel, transportation and services provided to, § 9034.6(a)
 - production costs incurred for, § 106.2(c)(2)
 - reporting of reimbursement, § 9034.6(c)
- Nonqualified campaign expenses, § 9034.4(b)
- Reports on, § 9033.1(b)(9)
- Taxes, § 9034.4(a)(4)
- Termination of political activity, § 9034.4(a)(3)
- “Testing-the-waters,” § 9034.4(a)(2)
- Travel, allocation of
 - candidate’s spouse/family accompanying, § 9034.7(b)(6)
 - charters, § 9034.7(b)(7)(i)
 - commercial airlines, § 9034.7(b)(2) and (7)(ii)
 - government conveyance, § 9034.7(b)(4), (5) and (7)
 - incidental contacts, § 9034.7(b)(2)
 - itinerary required, § 9034.7(b)(3)

Index, Primary Election Financing

QUALIFIED CAMPAIGN EXPENSES—Continued

Travel, allocation of—Continued

— noncampaign-related stops, § 9034.7(b)(2)

Use of public funds for, § 9034.4(a)

Use of public funds for other than, § 9038.2(b)(2)

Winding down costs, § 9034.4(a)(3)

See also: EXPENDITURES

R

RECEIPTS

See: CONTRIBUTIONS; MATCHABLE CAMPAIGN CONTRIBUTIONS

RECORDS

Agreement to keep, § 9033.1(a) and (b)(2), (5) and (6)

Allocation of exempted expenditures, § 9035.1(c)

Audit review of, § 9033.1(b)(6); § 9038.1

Capital and other assets, requirements for, § 9033.11(d); § 9034.5(c)

Computerized, production of, § 9033.1(b)(5); § 9033.12

Documentation of letter requests, § 9036.2(b)(2)

Guideline for Presentation in Good Order, § 9036.4(e)

Joint fundraising, requirements for, § 9034.8(c)(5) and (9)

Recordkeeping requirements, § 9033.11(b)

Retention of, § 9033.11(c); § 9039.1

See also: REPORTS; SUBMISSIONS; 11 CFR PART 102

REPAYMENTS

Additional determinations, § 9038.2(b), (f) and (g)

Agreement to comply with determination, § 9033.1(b)(6)

Appeal procedures, § 9038.2(c)(2) and (3)

Bases for, § 9038.2(b)

— debts settled for less than owed, § 9038.2(b)(1)(v)

— failure to provide adequate documentation, § 9038.2(b)(3)

— funds used for nonqualified campaign expenses, § 9038.2(b)(2)

— payments exceed entitlement, § 9038.2(b)(1)

— surplus in net outstanding campaign obligations, § 9038.2(b)(4); § 9038.3(c)

Exempted from limitations on personal funds, § 9035.2(a)(1)

FEC determination of need for making, § 9038.2(a)(1)

— notification of, § 9038.2(a)(2)

— procedures for, § 9038.2(c)

— time limit on, § 9038.2(a)(2)

Liquidation of obligations, § 9038.3

Newly discovered assets, § 9038.2(g)

Petitions for rehearing

— effect of failure to raise issues, § 9038.5(b)

— requirements to file, § 9038.5(a)(1)

— suspension of time for repayment, § 9038.5(a)(2)

— time of filing, § 9038.5(a)(1)(i)

Primary obligation, over other debts, § 9038.2(a)(3)

Settlement for less than amount owed, prohibited, § 116.7(c)(1)

REPAYMENTS—Continued

Sources of, § 9034.4(c)

Stay of determination

- amount of interest due, § 9038.5(c)(4)
- amount placed in separate account, § 9038.5(c)(2)(i)
- amount requested to be stayed, § 9038.5(c)(1)(i)
- basis for Commission approval, § 9038.5(c)(2) and (3)
- criteria for candidate to meet, § 9038.5(c)(2)(iii)
- payment of interest required, § 9038.5(c)(4)
- surety bond, posted on amount, § 9038.5(c)(2)(ii)
- time of making request, § 9038.5(c)(1)(ii)

Stale-dated checks, § 9038.6

Time period for making, § 9038.2(d) and (e); § 9038.4

REPORTING

Administrative/overhead cost, § 9035.1(c)

Allocation of expenditures by State, § 106.2(a)

Appeal of FEC determination of failure to file, § 9033.9

Audit report, interim, § 9038.1(c)

Compliance with requirements by candidate/committee, § 9033.1(a)

Computer-generated, § 104.2(d); § 9033.1(b)(5)

Documentation of determination of commercial reasonableness, § 9034.5(d)

Documentation of disbursements, § 9033.11

Fundraising representative's duties, § 9034.8(b)

Guideline for Presentation in Good Order, § 9033.1(b)(8)

Joint fundraising, receipts and disbursements, § 9034.8(c)(9)

Location for filing, Part 105

Media, reimbursement for travel/services provided to, § 9034.6(c)

Net outstanding campaign obligations, § 9034.5(a)

Public release of audit findings, § 9038.1(e)

Requirements, § 9033.1(b)(9)

Review

- by FEC, § 9039.2; § 9039.3
- by public, § 9038.2(b)

Schedule for filing, § 104.5

Travel expenses, § 9034.7(a)

See also: **QUALIFIED CAMPAIGN EXPENSES; SUBMISSIONS; 11 CFR PARTS 104, 105 and 108****RESUBMISSIONS**See: **SUBMISSIONS****REVIEW**See: **AUDITS; SUBMISSIONS****S****SECRETARY OF TREASURY**

Definition, § 9032.10

Equitable distribution of funds by, § 9037.2

Establishment of primary working payment account, § 9032.5

FEC certifications to Secretary for

- additional requests, § 9036.2(c)
- disputed submissions, § 9036.5(d)
- less than requested amount, § 9036.4(b)
- threshold amount, § 9036.1(c)(2)
- undisputed submissions, § 9036.4(b)(3)

Repayment by committee to, § 9038.2(d); § 9038.6

STATE

Action under State law to qualify as candidate, § 9032.2(a)

Activity in more than one State

- defines eligibility of candidate, § 9033.2(b)

Index, Primary Election Financing

STATE—Continued

Activity in more than one State—Continued

- defines ineligibility date, § 9033.5(a) and (b)
- determines inactive candidacy, § 9033.6(a) and (c)
- reestablishes eligibility, § 9033.8(a) and (b)

Contributions submitted for matching, segregated by

- for additional submissions, § 9036.2(b)(1)(ii)
- for threshold submissions, § 9036.1(b)

Definition of State, § 9032.11

Filing with Secretary of, Part 108

Preemption of State law, § 9032.9(a)(3)

Violation of State law, § 9032.9(a)(3)

SUBMISSIONS

Additional

- alphabetical segregation, § 9036.2(b)(1)
- amount to be certified, § 9036.2(c)
- certification by FEC, § 9036.2(c)
- contributions returned to contributor, § 9036.2(b)(1)(iii)
- contributor information required, § 9036.2(b)(1)(iv)
- dates for presenting, § 9036.2(a); § 9036.6
- documentation supporting, § 9036.2(b)
- first submission, § 9036.2(b)(1)
- format for, § 9036.2(b)
- in non-Presidential election year, § 9036.2(d)
- last date for submitting contributions, § 9036.6
- letter request, in lieu of formal submission, § 9036.2(b)(2)
- notification of last date by FEC, § 9036.6
- photocopy required, § 9036.2(b)(1)(v)

Adjustments to, § 9036.4(c)

Audit of, § 9036.4(d)

Costs of preparing, § 9035.1(c)(1)

Errors

- discrepancy between contribution list and written instrument, § 9036.3(b)
- discrepancy in written instrument, § 9036.3(a)
- inconsistency within/between contributor lists, § 9036.3(c)
- insufficient documentation as basis for rejection, § 9036.3
- omission of information/supporting documentation, § 9036.3(d)

Insufficient documentation as basis for ineligibility, § 9036.3

Letter requests, documentation of, § 9036.2(b)(2)

Nonmatchable contribution, § 9036.4(c)

Resubmissions

- alternative methods of, § 9036.5(a)
- certification of, § 9036.5(d)
- cutoff date, § 9036.5(b)
- dates for presenting, § 9036.5(b)
- documentation required, § 9036.5(c)
- final determination of, § 9036.5(e) and (f)

SUBMISSIONS—Continued**Resubmissions—Continued**

- format for, § 9036.5(c)

Review by FEC

- accepted for matching, § 9036.4(b)
- adjustment of amount to be matched, § 9036.4(c)
- certification of less than amount requested, § 9036.4(b) and (c)
- continuing, § 9039.2
- error rate leading to expanded review, § 9036.2(c)(2)
- past actions considered, § 9033.4(b)
- rejected for noncompliance with *Guideline*, § 9036.4(a)
- statistical sampling techniques used, § 9036.4(b)

Schedule, as designated by FEC, § 9036.6**Threshold submissions**

- bank depository documentation required, § 9036.1(b)(3)
- certification by FEC, § 9036.1(c)(2)
- content of, § 9036.1(b)
- contributor information required, § 9036.1(b)(1)
- date for making, § 9036.1(a)
- documentation required, § 9036.1(b)(2)
- *Guideline for Presentation in Good Order*, § 9036.1(b)
- notification of eligibility, § 9036.1(c)
- photocopy of written instrument, § 9036.1(b)(2)
- segregation of contributions by State, § 9036.1(b)(2) and (4)

See also: CERTIFICATIONS; NOTIFICATIONS; RECORDS

T

TERMINATION OF PAYMENTS

See: ELIGIBILITY; INELIGIBILITY; PAYMENTS

THRESHOLD

See: CERTIFICATIONS; ELIGIBILITY; SUBMISSIONS

TRANSFERS**Between**

- affiliated committees, § 110.3(c)(1)
- candidate's nonfederal and federal campaigns, § 110.3(c)(6)
- candidate's previous and current committees, § 110.3(c)(4)
- candidate's primary and general election campaigns, § 110.3(c)(3)
- committees of one party, § 102.6(a); § 110.3(c)
- dual candidate's campaign committees, § 110.3(c)(5) and (7); § 110.8(d)(2); § 9034.4(d)

Of joint fundraising proceeds, § 110.3(c)(2)

Recordkeeping required, § 102.9(b)(1); § 110.3(c)(6)(i)

Reporting

- by transferring nonfederal campaign committee, § 110.3(c)(6)(i)
- from committee, § 104.3(b)(4)(ii)
- to committee, § 104.3(a)(4)(iii)(A)

Unlimited, § 102.6(a); § 110.3(c)(1); § 113.2(c)

Index, Primary Election Financing

TRANSFERS—Continued

When actively seeking election to more than one office, § 110.3(c)(5)(i);
§ 110.8(d)(2); § 9034.4(d)

TRANSPORTATION

Interstate, not allocable, § 106.2(c)(4)
Intra-State, allocable, § 106.2(a)(2)
Of media personnel, § 9034.6(a)

TRAVEL

See: QUALIFIED CAMPAIGN EXPENSES

TREASURY

See: SECRETARY OF TREASURY

U

USE OF FUNDS

Costs incurred before date of ineligibility, § 9034.4(a)(3)(ii)
Depository for matching funds, § 9037.3
Determining whether to become candidate, § 9034.4(a)(2)
Expenses incurred during period of ineligibility, § 9034.1(c)
Net outstanding campaign obligations, § 9034.1(b)
Qualified campaign expenses, § 9034.4
Terminating political activity, § 9034.4(a)(3)(i)
Transfers to other campaigns, § 110.3(c)(5); § 110.8(d); § 9034.4(d)
Winding down costs, § 9034.4(a)(3)

V

VOTING AGE POPULATION

Definition, § 110.9(d)
Used in determining expenditure limitations, § 110.8(a)(1)

W

WINDING DOWN COSTS

See: QUALIFIED CAMPAIGN EXPENSES

Table of CFR Titles and Chapters

(Revised as of January 1, 1991)

Title 1—General Provisions

- I Administrative Committee of the Federal Register (Parts 1—49)
- II Office of the Federal Register (Parts 50—299)
- III Administrative Conference of the United States (Parts 300—399)
- IV Miscellaneous Agencies (Parts 400—500)

Title 2—[Reserved]

Title 3—The President

- I Executive Office of the President (Parts 100—199)

Title 4—Accounts

- I General Accounting Office (Parts 1—99)
- II Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100—299)
- III General Accounting Office (CASB) (Parts 300—499)

Title 5—Administrative Personnel

- I Office of Personnel Management (Parts 1—1199)
- II Merit Systems Protection Board (Parts 1200—1299)
- III Office of Management and Budget (Parts 1300—1399)
- IV Advisory Committee on Federal Pay (Parts 1400—1499)
- V The International Organizations Employees Loyalty Board (Parts 1500—1599)
- VI Federal Retirement Thrift Investment Board (Parts 1600—1699)
- VII Advisory Commission on Intergovernmental Relations (Parts 1700—1799)
- VIII Office of Special Council (Parts 1800—1899)
- IX Appalachian Regional Commission (Parts 1900—1999)
- XI United States Soldiers' and Airmen's Home (Parts 2100—2199)
- XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

Title 5—Administrative Personnel—Continued

Chap.

- XV Office of Administration, Executive Office of the President (Parts 2500—2599)**
- XVI Office of Government Ethics (Parts 2600—2699)**

Title 6—[Reserved]

Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0—26)

SUBTITLE B—Regulations of the Department of Agriculture

- I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)**
- II Food and Nutrition Service, Department of Agriculture (Parts 210—299)**
- III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)**
- IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)**
- V Agricultural Research Service, Department of Agriculture (Parts 500—599)**
- VI Soil Conservation Service, Department of Agriculture (Parts 600—699)**
- VII Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700—799)**
- VIII Federal Grain Inspection Service, Department of Agriculture (Parts 800—899)**
- IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)**
- X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)**
- XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)**
- XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)**
- XV Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)**
- XVI Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)**
- XVII Rural Electrification Administration, Department of Agriculture (Parts 1700—1799)**
- XVIII Farmers Home Administration, Department of Agriculture (Parts 1800—2099)**
- XXI Foreign Economic Development Service, Department of Agriculture (Parts 2100—2199)**
- XXII Office of International Cooperation and Development, Department of Agriculture (Parts 2200—2299)**

Title 7—Agriculture—Continued

- | Chap. | |
|---------|---|
| XXIV | Board of Contract Appeals, Department of Agriculture (Parts 2400—2499) |
| XXV | Office of the General Sales Manager, Department of Agriculture (Parts 2500—2599) |
| XXVI | Office of Inspector General, Department of Agriculture (Parts 2600—2699) |
| XXVII | Office of Information Resources Management, Department of Agriculture (Parts 2700—2799) |
| XXVIII | Office of Operations, Department of Agriculture (Parts 2800—2899) |
| XXIX | Office of Energy, Department of Agriculture (Parts 2900—2999) |
| XXX | Office of Finance and Management, Department of Agriculture (Parts 3000—3099) |
| XXXI | Office of Environmental Quality, Department of Agriculture (Parts 3100—3199) |
| XXXII | Office of Grants and Program Systems, Department of Agriculture (Parts 3200—3299) |
| XXXIII | Office of Transportation, Department of Agriculture (Parts 3300—3399) |
| XXXIV | Cooperative State Research Service, Department of Agriculture (Parts 3400—3499) |
| XXXVI | National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699) |
| XXXVII | Economic Research Service, Department of Agriculture (Parts 3700—3799) |
| XXXVIII | World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899) |
| XXXIX | Economic Analysis Staff, Department of Agriculture (Parts 3900—3999) |
| XL | Economics Management Staff, Department of Agriculture (Parts 4000—4099) |
| XLI | National Agricultural Library, Department of Agriculture (Part 4100) |

Title 8—Aliens and Nationality

- | | |
|---|---|
| I | Immigration and Naturalization Service, Department of Justice (Parts 1—499) |
|---|---|

Title 9—Animals and Animal Products

- | | |
|-----|--|
| I | Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199) |
| II | Packers and Stockyards Administration, Department of Agriculture (Parts 200—299) |
| III | Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—399) |

Title 10—Energy

Chap.

- I Nuclear Regulatory Commission (Parts 0—199)**
- II Department of Energy (Parts 200—699)**
- III Department of Energy (Parts 700—999)**
- X Department of Energy (General Provisions) (Parts 1000—1099)**
- XV Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500—1599)**

Title 11—Federal Elections

- I Federal Election Commission (Parts 1—9099)**

Title 12—Banks and Banking

- I Comptroller of the Currency, Department of the Treasury (Parts 1—199)**
- II Federal Reserve System (Parts 200—299)**
- III Federal Deposit Insurance Corporation (Parts 300—399)**
- IV Export-Import Bank of the United States (Parts 400—499)**
- V Office of Thrift Supervision, Department of The Treasury (Parts 500—599)**
- VI Farm Credit Administration (Parts 600—699)**
- VII National Credit Union Administration (Parts 700—799)**
- VIII Federal Financing Bank (Parts 800—899)**
- IX Federal Housing Finance Board (Parts 900—999)**
- XI Federal Financial Institutions Examination Council (Parts 1100—1199)**
- XIII Farm Credit System Assistance Board (Parts 1300—1399)**
- XIV Farm Credit System Insurance Corporation**
- XV Oversight Board (Parts 1500—1599)**
- XVI Resolution Trust Corporation (Parts 1600—1699)**

Title 13—Business Credit and Assistance

- I Small Business Administration (Parts 1—199)**
- III Economic Development Administration, Department of Commerce (Parts 300—399)**

Title 14—Aeronautics and Space

- I Federal Aviation Administration, Department of Transportation (Parts 1—199)**
- II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)**
- III Office of Commercial Space Transportation, Department of Transportation (Parts 400—499)**
- V National Aeronautics and Space Administration (Parts 1200—1299)**

Title 15—Commerce and Foreign Trade

- Chap.
- SUBTITLE A—Office of the Secretary of Commerce (Parts 0—29)
 - SUBTITLE B—Regulations Relating to Commerce and Foreign Trade
 - I Bureau of the Census, Department of Commerce (Parts 30—199)
 - II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)
 - III International Trade Administration, Department of Commerce (Parts 300—399)
 - IV Foreign-Trade Zones Board (Parts 400—499)
 - VII Bureau of Export Administration, Department of Commerce (Parts 700—799)
 - VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)
 - IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)
 - XI Technology Administration, Department of Commerce (Parts 1100—1199)
 - XII United States Travel and Tourism Administration, Department of Commerce (Parts 1200—1299)
 - XIII East-West Foreign Trade Board (Parts 1300—1399)
 - XIV Minority Business Development Agency (Parts 1400—1499)
 - SUBTITLE C—Regulations Relating to Foreign Trade Agreements
 - XX Office of the United States Trade Representative (Parts 2000—2099)
 - SUBTITLE D—Regulations Relating to Telecommunications and Information
 - XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

- I Federal Trade Commission (Parts 0—999)
- II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

- I Commodity Futures Trading Commission (Parts 1—199)
- II Securities and Exchange Commission (Parts 200—399)
- IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

- I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)
- III Delaware River Basin Commission (Parts 400—499)
- VI Water Resources Council (Parts 700—799)

Title 18—Conservation of Power and Water Resources—Continued
Chap.

- VIII Susquehanna River Basin Commission (Parts 800—899)**
- XIII Tennessee Valley Authority (Parts 1300—1399)**

Title 19—Customs Duties

- I United States Customs Service, Department of the Treasury (Parts 1—199)**
- II United States International Trade Commission (Parts 200—299)**
- III International Trade Administration, Department of Commerce (Parts 300—399)**

Title 20—Employees' Benefits

- I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)**
- II Railroad Retirement Board (Parts 200—399)**
- III Social Security Administration, Department of Health and Human Services (Parts 400—499)**
- IV Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)**
- V Employment and Training Administration, Department of Labor (Parts 600—699)**
- VI Employment Standards Administration, Department of Labor (Parts 700—799)**
- VII Benefits Review Board, Department of Labor (Parts 800—899)**
- VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)**
- IX Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)**

Title 21—Food and Drugs

- I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)**
- II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)**

Title 22—Foreign Relations

- I Department of State (Parts 1—199)**
- II Agency for International Development, International Development Cooperation Agency (Parts 200—299)**
- III Peace Corps (Parts 300—399)**
- IV International Joint Commission, United States and Canada (Parts 400—499)**
- V United States Information Agency (Parts 500—599)**
- VI United States Arms Control and Disarmament Agency (Parts 600—699)**
- VII Overseas Private Investment Corporation, International Development Cooperation Agency (Parts 700—799)**

Title 22—Foreign Relations—Continued

- Chap.
- IX Foreign Service Grievance Board Regulations (Parts 900—999)
 - X Inter-American Foundation (Parts 1000—1099)
 - XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)
 - XII United States International Development Cooperation Agency (Parts 1200—1299)
 - XIII Board for International Broadcasting (Parts 1300—1399)
 - XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)
 - XV African Development Foundation (Parts 1500—1599)
 - XVI Japan-United States Friendship Commission (Parts 1600—1699)

Title 23—Highways

- I Federal Highway Administration, Department of Transportation (Parts 1—999)
- II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)
- III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

SUBTITLE B—Regulations Relating to Housing and Urban Development

- I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)
- II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)
- III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)
- V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)
- VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699)
- VII Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)
- VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

Title 24—Housing and Urban Development—Continued

Chap.

- IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)**
- X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)**
- XI Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800—1899)**
- XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)**
- XV Mortgage Insurance and Loan Programs under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700—2799)**
- XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3699)**
- XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)**

Title 25—Indians

- I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)**
- II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)**
- IV Navajo and Hopi Indian Relocation Commission (Parts 700—799)**

Title 26—Internal Revenue

- I Internal Revenue Service, Department of the Treasury (Parts 1—699)**

Title 27—Alcohol, Tobacco Products and Firearms

- I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)**

Title 28—Judicial Administration

- I Department of Justice (Parts 0—199)**
- III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)**
- V Bureau of Prisons, Department of Justice (Parts 500—599)**
- VI Offices of Independent Counsel, Department of Justice (Parts 600—699)**
- VII Office of Independent Counsel (Parts 700—799)**

Title 29—Labor

Chap.

- SUBTITLE A—Office of the Secretary of Labor (Parts 0—99)
- SUBTITLE B—Regulations Relating to Labor
- I National Labor Relations Board (Parts 100—199)
- II Bureau of Labor-Management Relations and Cooperative Programs, Department of Labor (Parts 200—299)
- III National Railroad Adjustment Board (Parts 300—399)
- IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)
- V Wage and Hour Division, Department of Labor (Parts 500—899)
- IX Construction Industry Collective Bargaining Commission (Parts 900—999)
- X National Mediation Board (Parts 1200—1299)
- XII Federal Mediation and Conciliation Service (Parts 1400—1499)
- XIV Equal Employment Opportunity Commission (Parts 1600—1699)
- XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)
- XX Occupational Safety and Health Review Commission (Parts 2200—2499)
- XXV Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)
- XXVI Pension Benefit Guaranty Corporation (Parts 2600—2699)
- XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)

Title 30—Mineral Resources

- I Mine Safety and Health Administration, Department of Labor (Parts 1—199)
- II Minerals Management Service, Department of the Interior (Parts 200—299)
- III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300—399)
- IV Geological Survey, Department of the Interior (Parts 400—499)
- VI Bureau of Mines, Department of the Interior (Parts 600—699)
- VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

Title 31—Money and Finance: Treasury

- SUBTITLE A—Office of the Secretary of the Treasury (Parts 0—50)
- SUBTITLE B—Regulations Relating to Money and Finance
- I Monetary Offices, Department of the Treasury (Parts 51—199)
- II Fiscal Service, Department of the Treasury (Parts 200—399)
- IV Secret Service, Department of the Treasury (Parts 400—499)
- V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

Title 31—Money and Finance: Treasury—Continued

Chap.

- VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)**
- VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)**

Title 32—National Defense

SUBTITLE A—Department of Defense

- I Office of the Secretary of Defense (Parts 1—399)**
- V Department of the Army (Parts 400—699)**
- VI Department of the Navy (Parts 700—799)**
- VII Department of the Air Force (Parts 800—1099)**

SUBTITLE B—Other Regulations Relating to National Defense

- XII Defense Logistics Agency (Parts 1200—1299)**
- XVI Selective Service System (Parts 1600—1699)**
- XIX Central Intelligence Agency (Parts 1900—1999)**
- XX Information Security Oversight Office (Parts 2000—2099)**
- XXI National Security Council (Parts 2100—2199)**
- XXIV Office of Science and Technology Policy (Parts 2400—2499)**
- XXVII Office for Micronesia Status Negotiations (Parts 2700—2799)**
- XXVIII Office of the Vice President of the United States (Parts 2800—2899)**

Title 33—Navigation and Navigable Waters

- I Coast Guard, Department of Transportation (Parts 1—199)**
- II Corps of Engineers, Department of the Army (Parts 200—399)**
- IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)**

Title 34—Education

SUBTITLE A—Office of the Secretary, Department of Education (Parts 1—99)

SUBTITLE B—Regulations of the Offices of the Department of Education

- I Office for Civil Rights, Department of Education (Parts 100—199)**
- II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)**
- III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)**
- IV Office of Vocational and Adult Education, Department of Education (Parts 400—499)**
- V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)**
- VI Office of Postsecondary Education, Department of Education (Parts 600—699)**

Title 34—Education—Continued

Chap.

- VII Office of Educational Research and Improvement, Department of Education (Parts 700—799)

Title 35—Panama Canal

- I Panama Canal Regulations (Parts 1—299)

Title 36—Parks, Forests, and Public Property

- I National Park Service, Department of the Interior (Parts 1—199)
- II Forest Service, Department of Agriculture (Parts 200—299)
- III Corps of Engineers, Department of the Army (Parts 300—399)
- IV American Battle Monuments Commission (Parts 400—499)
- V Smithsonian Institution (Parts 500—599)
- VII Library of Congress (Parts 700—799)
- VIII Advisory Council on Historic Preservation (Parts 800—899)
- IX Pennsylvania Avenue Development Corporation (Parts 900—999)
- XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)
- XII National Archives and Records Administration (Parts 1200—1299)

Title 37—Patents, Trademarks, and Copyrights

- I Patent and Trademark Office, Department of Commerce (Parts 1—199)
- II Copyright Office, Library of Congress (Parts 200—299)
- III Copyright Royalty Tribunal (Parts 300—399)
- IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—499)
- V Under Secretary for Technology, Department of Commerce (Parts 500—599)

Title 38—Pensions, Bonuses, and Veterans' Relief

- I Department of Veterans Affairs (Parts 0—99)

Title 39—Postal Service

- I United States Postal Service (Parts 1—999)
- III Postal Rate Commission (Parts 3000—3099)

Title 40—Protection of Environment

- I Environmental Protection Agency (Parts 1—799)
- V Council on Environmental Quality (Parts 1500—1599)

Title 41—Public Contracts and Property Management

Chap.

SUBTITLE B—Other Provisions Relating to Public Contracts

- 50 Public Contracts, Department of Labor (Parts 50-1—50-999)
- 51 Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99)
- 60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)
- 61 Office of the Assistant Secretary for Veterans Employment and Training, Department of Labor (Parts 61-1—61-999)

SUBTITLE C—Federal Property Management Regulations System

- 101 Federal Property Management Regulations (Parts 101-1—101-99)
- 105 General Services Administration (Parts 105-1—105-999)
- 109 Department of Energy Property Management Regulations (Parts 109-1—109-99)
- 114 Department of the Interior (Parts 114-1—114-99)
- 115 Environmental Protection Agency (Parts 115-1—115-99)
- 128 Department of Justice (Parts 128-1—128-99)

SUBTITLE D—Other Provisions Relating to Property Management (Reserved)

SUBTITLE E—Federal Information Resources Management Regulations System

- 201 Federal Information Resources Management Regulation (Parts 201-1—201-99)

SUBTITLE F—Federal Travel Regulation System

- 301 Travel Allowances (Parts 301-1—301-14)
- 302 Relocation Allowances (Parts 302-1—302-12)
- 303 Payment of Expenses Connected with the Death of Certain Employees (Parts 302-1—302-2)
- 304 Reductions in Meeting and Training Allowance Payments (Parts 304-1—304-2)

Title 42—Public Health

- I Public Health Service, Department of Health and Human Services (Parts 1—199)
- IV Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)
- V Office of Inspector General—Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

SUBTITLE A—Office of the Secretary of the Interior (Parts 1—199)

SUBTITLE B—Regulations Relating to Public Lands

- I Bureau of Reclamation, Department of the Interior (Parts 200—499)

Title 43—Public Lands: Interior—Continued

Chap.

- II Bureau of Land Management, Department of the Interior
(Parts 1000—9999)

Title 44—Emergency Management and Assistance

- I Federal Emergency Management Agency (Parts 0—399)
- IV Department of Commerce and Department of Transportation
(Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1—199)

SUBTITLE B—Regulations Relating to Public Welfare

- II Office of Family Assistance (Assistance Programs), Family Support Administration, Department of Health and Human Services (Parts 200—299)
- III Office of Child Support Enforcement (Child Support Enforcement Program), Family Support Administration, Department of Health and Human Services (Parts 300—399)
- IV Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services (Parts 400—499)
- V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)
- VI National Science Foundation (Parts 600—699)
- VII Commission on Civil Rights (Parts 700—799)
- VIII Office of Personnel Management (Parts 800—899)
- X Office of Community Services, Family Support Administration, Department of Health and Human Services (Parts 1000—1099)
- XI National Foundation on the Arts and the Humanities (Parts 1100—1199)
- XII ACTION (Parts 1200—1299)
- XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)
- XVI Legal Services Corporation (Parts 1600—1699)
- XVII National Commission on Libraries and Information Science (Parts 1700—1799)
- XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)
- XX Commission on the Bicentennial of the United States Constitution (Parts 2000—2099)
- XXI Commission on Fine Arts (Parts 2100—2199)
- XXII Christopher Columbus Quincentenary Jubilee Commission (2200—2299)

Title 46—Shipping

Chap.

- I Coast Guard, Department of Transportation (Parts 1—199)**
- II Maritime Administration, Department of Transportation (Parts 200—399)**
- III Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400—499)**
- IV Federal Maritime Commission (Parts 500—599)**

Title 47—Telecommunication

- I Federal Communications Commission (Parts 0—199)**
- II Office of Science and Technology Policy and National Security Council (Parts 200—299)**
- III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)**

Title 48—Federal Acquisition Regulations System

- 1 Federal Acquisition Regulation (Parts 1—99)**
- 2 Department of Defense (Parts 200—299)**
- 3 Department of Health and Human Services (Parts 300—399)**
- 4 Department of Agriculture (Parts 400—499)**
- 5 General Services Administration (Parts 500—599)**
- 6 Department of State (Parts 600—699)**
- 7 Agency for International Development (Parts 700—799)**
- 8 Department of Veterans Affairs (Parts 800—899)**
- 9 Department of Energy (Parts 900—999)**
- 10 Department of the Treasury (Parts 1000—1099)**
- 12 Department of Transportation (Parts 1200—1299)**
- 13 Department of Commerce (Parts 1300—1399)**
- 14 Department of the Interior (Parts 1400—1499)**
- 15 Environmental Protection Agency (Parts 1500—1599)**
- 16 Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)**
- 17 Office of Personnel Management (Parts 1700—1799)**
- 18 National Aeronautics and Space Administration (Parts 1800—1899)**
- 19 United States Information Agency (Parts 1900—1999)**
- 22 Small Business Administration (Parts 2200—2299)**
- 24 Department of Housing and Urban Development (Parts 2400—2499)**
- 25 National Science Foundation (Parts 2500—2599)**
- 28 Department of Justice (Parts 2800—2899)**
- 29 Department of Labor (Parts 2900—2999)**
- 34 Department of Education Acquisition Regulation (Parts 3400—3499)**
- 35 Panama Canal Commission (Parts 3500—3599)**

Title 48—Federal Acquisition Regulations System—Continued

Chap.

- 44 Federal Emergency Management Agency (Parts 4400—4499)
- 51 Department of the Army Acquisition Regulations (Parts 5100—5199)
- 52 Department of the Navy Acquisition Regulations (Parts 5200—5299)
- 53 Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)
- 57 African Development Foundation (Parts 5700—5799)
- 61 General Services Administration Board of Contract Appeals (Parts 6100—6199)
- 63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)
- 99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

SUBTITLE A—Office of the Secretary of Transportation (Parts 1—99)

SUBTITLE B—Other Regulations Relating to Transportation

- I Research and Special Programs Administration, Department of Transportation (Parts 100—199)
- II Federal Railroad Administration, Department of Transportation (Parts 200—299)
- III Federal Highway Administration, Department of Transportation (Parts 300—399)
- IV Coast Guard, Department of Transportation (Parts 400—499)
- V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)
- VI Urban Mass Transportation Administration, Department of Transportation (Parts 600—699)
- VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)
- VIII National Transportation Safety Board (Parts 800—899)
- X Interstate Commerce Commission (Parts 1000—1399)

Title 50—Wildlife and Fisheries

- I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)
- II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)
- III International Regulatory Agencies (Fishing and Whaling) (Parts 300—399)

Title 50—Wildlife and Fisheries—Continued

Chap.

- IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)**
- V Marine Mammal Commission (Parts 500—599)**
- VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)**

CFR Index and Finding Aids

Subject/Agency Index

List of Agency Prepared Indexes

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

List of CFR Titles, Chapters, Subchapters, and Parts

Alphabetical List of Agencies Appearing in the CFR

(Revised as of January 1, 1991)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
African Development Foundation	22, XV; 48, 57
Agency for International Development	22, II; 48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Economic Analysis Staff	7, XXXIX
Economics Management Staff	7, XL
Economic Research Service	7, XXXVII
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Finance and Management, Office of	7, XXX
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Grants and Program Systems, Office of	7, XXXII
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
International Cooperation and Development Office	7, XXII
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
Operations Office	7, XXVIII
Packers and Stockyards Administration	9, II
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Transportation, Office of	7, XXXIII
World Agriculture Outlook Board	7, XXXVIII
Air Force Department	32, VII

Agency	CFR Title, Subtitle or Chapter
Federal Acquisition Regulation Supplement	48, 53
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV 27, I
Alcohol, Tobacco and Firearms, Bureau of AMTRAK	49, VII 36, IV
American Battle Monuments Commission	7, III; 9, I
Animal and Plant Health Inspection Service	5, IX
Appalachian Regional Commission	
Architectural and Transportation Barriers Compliance Board	36, XI 22, VI
Arms Control and Disarmament Agency, U.S.	32, V
Army Department	
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 51
Assistant Secretary for Technology Policy, Department of Commerce	37, IV 20, VII
Benefits Review Board	
Bicentennial of the United States Constitution, Commission on the	45, XX
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51 22, XIII
Board for International Broadcasting	
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Christopher Columbus Quincentenary Jubilee Commission	45, XXII
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	44, IV
Census Bureau	15, I
Assistant Secretary for Technology Policy	37, IV
Economic Affairs, Under Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Export Administration Bureau	15, VII
Federal Acquisition Regulation	48, 13
Fishery Conservation and Management	50, VI
International Trade Administration	15, III; 19, III
National Institute of Standards and Technology	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII; 47, III
Patent and Trademark Office	37, I
Productivity, Technology and Innovation, Assistant Secretary for	37, IV
Secretary of Commerce, Office of	15, Subtitle A
Technology Administration	15, XI
Under Secretary for Technology	37, V
United States Travel and Tourism Administration	15, XII
Commercial Space Transportation, Office of, Department of Transportation	14, III
Commission on the Bicentennial of the United States Constitution	45, XX
Committee for Purchase from the Blind and Other Severely Handicapped	41, 51 7, XIV
Commodity Credit Corporation	17, I
Commodity Futures Trading Commission	

Agency	CFR Title, Subtitle or Chapter
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Cost Accounting Standards Board, Federal Procurement Policy Office	48, 99
Council on Environmental Quality	40, V
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III, 48, 51
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 2
Navy Department	32, VI; 48, 52
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Delaware River Basin Commission	18, III
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Affairs, Under Secretary (Commerce)	37, V
Economic Analysis, Bureau of	15, VIII
Economic Analysis Staff, Department of Agriculture	7, XXXIX
Economic Development Administration	13, III
Economics Management Staff	7, XL
Economic Research Service	7, XXXVII
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Acquisition Regulation	48, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	18, I
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 115; 48, 15
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export Administration Bureau	15, VII
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II

Agency	CFR Title, Subtitle or Chapter
Family Support Administration	45, II, III, IV, X
Farm Credit Administration	12, VI
Farm Credit System Assistance Board	12, XIII
Farm Credit System Insurance Corporation	12, XIV
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, I
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I; 48, 44
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Mortgage Corporation	1, IV
Federal Housing Finance Board	12, IX
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries, Inc.	28, III
Federal Procurement Policy Office	48, 99
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Retirement Thrift Investment Board	5, VI
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	16, I
Federal Travel Regulation System	41, Subtitle F
Finance and Management, Department of Agriculture	7, XXX
Fine Arts Commission	45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	
Contract Appeals Board	48, 61

Agency	CFR Title, Subtitle or Chapter
Federal Acquisition Regulation	48, 5
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Property Management Regulations System	41, 101, 105
Federal Travel Regulation System	41, Subtitle F
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Reduction in Meeting and Training Allowance Payments	41, 304
Relocation Allowances	41, 302
Travel Allowances	41, 301
Geological Survey	30, IV
Government Ethics, Office of	5, XVI
Government National Mortgage Association	24, III
Grants and Program Systems, Office of	7, XXXII
Great Lakes Pilotage	46, III
Harry S. Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Family Support Administration	45, II, III, IV, X
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Health Care Financing Administration	42, IV
Human Development Services Office	45, XIII
Inspector General, Office of	42, V
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
Social Security Administration	20, III; 45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V; VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Inspector General, Office of	24, XII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle B, VII
Solar Energy and Energy Conservation Bank	24, XI
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Information Agency, United States	22, V; 48, 19
Information Resources Management, Office of, Agriculture Department	7, XXVII
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inspector General, Office of, Health and Human Services Department	42, V
Inspector General, Office of, Housing and Urban Development Department	24, XII
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114

Agency	CFR Title, Subtitle or Chapter
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Minerals Management Service	30, II
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Cooperation and Development Office, Department of Agriculture	7, XXII
International Development, Agency for	22, II
International Development Cooperation Agency	22, XII
International Development, Agency for	22, II
Overseas Private Investment Corporation	22, VII
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Japan-United States Friendship Commission	22, XVI
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Acquisition Regulation	48, 28
Federal Claims Collection Standards	4, II
Federal Prison Industries, Inc.	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Offices of Independent Counsel	28, VI
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefits Administration	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI

Agency	CFR Title, Subtitle or Chapter
Library of Congress	36, VII
Copyright Office	37, II
Management and Budget, Office of	5, III; 48, 99
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesia Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Minority Business Development Agency	15, XIX
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 48, 18
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National Archives and Records Administration	36, XII
National Bureau of Standards	15, II
National Capital Planning Commission	1, IV
National Commission for Employment Policy	1, IV
National Commission on Libraries and Information Science	45, XVII
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II; III; 49, V
National Institute of Standards and Technology	15, II
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	45, VI; 48, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII; 47, III
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI; 48, 52
Neighborhood Reinvestment Corporation	24, XXV
Nuclear Regulatory Commission	10, I
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Office of Independent Counsel	28, VII
Offices of Independent Counsel, Department of Justice	28, VI
Operations Office, Department of Agriculture	7, XXVIII
Overseas Private Investment Corporation	22, VII
Oversight Board	12, XV
Packers and Stockyards Administration	9, II
Panama Canal Commission	48, 35
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension and Welfare Benefits Administration, Department of Labor	29, XXV
Pension Benefit Guaranty Corporation	29, XXVI

Agency	CFR Title, Subtitle or Chapter
Personnel Management, Office of	5, I; 45, VIII; 48, 17
Federal Employees Health Benefits Acquisition Regulation	48, 16
Postal Rate Commission	39, III
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Productivity, Technology and Innovation, Assistant Secretary (Commerce)	37, IV
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Reclamation Bureau	43, I
Reduction in Meeting and Training Allowance Payments	41, 304
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Relocation Allowances	41, 302
Research and Special Programs Administration	49, I
Resolution Trust Corporation	12, XVI
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I; 48, 22
Smithsonian Institution	36, V
Social Security Administration	20, III; 45, IV
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development	24, XI
Soldiers' and Airmen's Home, United States	5, XI
Special Counsel, Office of	5, VIII
Special Education and Rehabilitative Services, Office of State Department	34, III
Federal Acquisition Regulation	22, I
Federal Acquisition Regulation	48, 6
Surface Mining and Reclamation Appeals, Board of	30, III
Susquehanna River Basin Commission	18, VIII
Technology Administration	15, XI
Tennessee Valley Authority	18, XIII
Thrift Supervision Office, Department of the Treasury	12, V
Trade Representative, United States, Office of	15, XX
Transportation, Department of	44, IV
Coast Guard	33, I; 46, I, III; 49, IV
Commercial Space Transportation, Office of	14, III
Contract Appeals Board	48, 63
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Railroad Administration	49, II
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 49, V
Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Urban Mass Transportation Administration	49, VI
Transportation, Office of, Department of Agriculture	7, XXXIII
Travel Allowance	41, 301
Travel and Tourism Administration, United States	15, XII
Treasury Department	17, IV

Agency	CFR Title, Subtitle or Chapter
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Law Enforcement Training Center	31, VII
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A-
Thrift Supervision Office	12, V
United States Customs Service	19, I
Truman, Harry S. Scholarship Foundation	45, XVIII
Under Secretary for Technology, Department of Commerce	37, V
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States Information Agency	22, V; 48, 19
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Postal Service	39, I
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel and Tourism Administration	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Affairs Department	38, I; 48, 8
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I
World Agriculture Outlook Board	7, XXXVIII

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1986, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1986, see the "List of CFR Sections Affected, 1949-1963, 1964-1972, and 1973-1985" published in seven separate volumes.

	1986
11 CFR	51 FR Page
Chapter I	
7 Added.....	34446

	1987
11 CFR	52 FR Page
Chapter I	
4 Authority citation revised.....	23637, 39212
4.1 (g) through (n) added; interim.....	23637
(g) through (n) revised.....	39212
4.5 (a) introductory text and (7) revised; (b) through (d) redesignated as (c) through (e); new (b) added; interim.....	23638
(a) introductory text and (7) and (b) revised.....	39212
4.7 (c) revised; interim.....	23638
(c) revised.....	39213
4.9 Revised; interim.....	23638
Revised.....	39213
5.6 (a)(1) amended; interim.....	23640
(a)(1) amended.....	39214
100.5 (e)(5) revised (effective date pending).....	35534
Eff. 11-20-87.....	44594
100.7 (c) revised (effective date pending).....	773
Eff. 4-8-87.....	11187
100.8 (c) revised (effective date pending).....	773
Eff. 4-8-87.....	11187

	52 FR Page
11 CFR—Continued	
Chapter I—Continued	
102.9 Introductory text and (e) revised; (f) added (effective date pending).....	773
Eff. 4-8-87.....	11187
103.3 Revised (effective date pending).....	774
Eff. 4-8-87.....	11187
104 Authority citation revised.....	774
104.8 (d) revised (effective date pending).....	774
Eff. 4-8-87.....	11187
106 Authority citation revised.....	20874
106.2 Revised (effective date pending).....	20874
Eff. 8-18-87.....	30904
110 Authority citation revised.....	769
110.1 Revised (effective date pending).....	769
Eff. 4-8-87.....	11187
(m) added (effective date pending).....	35534
Eff. 11-20-87.....	44594
110.2 Revised (effective date pending).....	772
Eff. 4-8-87.....	11187
(j) added (effective date pending).....	35534
Eff. 11-20-87.....	44594
110.14 Revised (effective date pending).....	35534
Eff. 11-20-87.....	44594
9001 Revised (effective date pending).....	20876
Eff. 8-18-87.....	30904
9002 Revised (effective date pending).....	20876

11 CFR (1-1-91 Edition)

11 CFR—Continued	52 FR
Chapter I—Continued	Page
9003 Revised (effective date pending).....	30904
Eff. 8-18-87.....	20877
9004 Revised (effective date pending).....	30904
Eff. 8-18-87.....	20882
9005 Revised (effective date pending).....	30904
Eff. 8-18-87.....	20886
9006 Revised (effective date pending).....	30904
Eff. 8-18-87.....	20887
9007 Revised (effective date pending).....	30904
Eff. 8-18-87.....	20887
9012 Revised (effective date pending).....	30904
Eff. 8-18-87.....	20891
9031—9039 (Subchapter F) Revised (effective date pending).....	30904
Eff. 8-18-87.....	20892
	30904

1988

(No regulations issued)

1989

11 CFR	54 FR
	Page
Chapter I	
100.5 (g) revised (effective date pending).....	34109
Regulation at 54 FR 34109 eff. 11-24-89.....	48580
102.2 (b)(1) introductory text and (i) revised (effective date pending).....	34109
Regulation at 54 FR 34109 eff. 11-24-89.....	48580
110.1 (f)(3) revised (effective date pending).....	34110
Regulation at 54 FR 34110 eff. 11-24-89.....	48580
110.3 Revised (effective date pending).....	34110
Regulation at 54 FR 34110 eff. 11-24-89.....	48580
110.4 Revised (effective date pending).....	34112
Regulation at 54 FR 34112 eff. 11-24-89.....	48580
(a) revised (effective date pending).....	48582

11 CFR—Continued	54 FR
Chapter I—Continued	Page
110.5 Revised (effective date pending).....	34112
Regulation at 54 FR 34112 eff. 11-24-89.....	48580
110.6 Revised (effective date pending).....	34113
Regulation at 54 FR 34113 eff. 11-24-89.....	48580
110.8 (d)(2) revised (effective date pending).....	34114
Regulation at 54 FR 34114 eff. 11-24-89.....	48580
114 Authority citation revised....	10622
114.5 (g)(1) revised (effective date pending).....	34114
Regulation at 54 FR 34114 eff. 11-24-89.....	48580
114.8 (f) revised (effective date pending).....	10622
Regulation at 54 FR 10622 eff. 6-28-89.....	27154
(g)(1) introductory text revised (effective date pending).....	34114
Regulation at 54 FR 34114 eff. 11-24-89.....	48580
9034.4 (d) revised (effective date pending).....	34114
Regulation at 54 FR 34114 eff. 11-24-89.....	48580

1990

11 CFR	55 FR
	Page
Chapter I	
100.7 (a)(4) revised (effective date pending).....	26385
Regulation at 55 FR 26385 effective 10-3-90.....	40377
102.5 (a)(1)(i) revised; (a)(3) added; effective date pending).....	26067
Regulation at 55 FR 26067 effective date 1-1-91.....	40377
104.3 (d) revised (effective date pending).....	26386
Regulation at 55 FR 26386 effective 10-3-90.....	40377
104.8 Heading and (a) revised; (e) and (f) added (effective date pending).....	26067
Regulation at 55 FR 26067 effective 1-1-91.....	40377

List of CFR Sections Affected

11 CFR—Continued	55 FR Page
Chapter I—Continued	
104.9 Heading and (a) revised; (c), (d), and (e) added (effective date pending).....	26067
Regulation at 55 FR 26067 effective 1-1-91.....	40377
104.10 Revised (effective date pending).....	26068
(b)(1)(i), (ii)(B), and (5) corrected.....	34007
Regulation at 55 FR 26068 effective 1-1-91.....	40377
104.11 (b) revised (effective date pending).....	26386
Regulation at 55 FR 26386 effective 10-3-90.....	40377
106 Authority citation revised.....	26069, 26394
106.1 Heading, (a), and (e) revised (effective date pending).....	26069
Regulation at 55 FR 26069 effective 1-1-91.....	40377
106.2 (c)(5)(i) revised (effective date pending).....	26394
Regulation at 55 FR 26394 effective 10-3-90.....	40378
106.5 Added (effective date pending).....	26069
Regulation at 55 FR 26069 effective 1-1-91.....	40377
106.6 Added (effective date pending).....	26071
Regulation at 55 FR 26071 effective 1-1-91.....	40377
110.1 (f)(3) corrected.....	2281
110.4 (a)(3) Correctly designated.....	1139
Regulation at 54 FR 48580 eff. 4-11-90.....	13507
114.8 (g)(1) introductory text corrected.....	2281

11 CFR—Continued	55 FR Page
Chapter I—Continued	
114.10 Removed (effective date pending).....	26386
Regulation at 55 FR 26386 effective 10-3-90.....	40377
116 Added (effective date pending).....	26386
Regulation at 55 FR 26386 effective 10-3-90.....	40377
116.1 (c) corrected.....	34007
9003.3 (a)(2)(i)(E), (iii), (b)(6), and (c)(3)(iv) revised; (a)(2)(i)(F) redesignated as (a)(2)(i)(G); new (a)(2)(i)(F) and (c)(3)(v) added (effective date pending).....	26395
Regulation at 55 FR 26395 effective 10-3-90.....	40378
9003.6 Added (effective date pending).....	26395
Regulation at 55 FR 26395 effective 10-3-90.....	40378
9007.1 (b)(1) revised (effective date pending).....	26396
Regulation at 55 FR 26396 effective 10-3-90.....	40378
9033 Designation corrected.....	34007
9033.12 Added (effective date pending).....	26396
(a)(3) corrected.....	34007
Regulation at 55 FR 26396 effective 10-3-90.....	40378
9035.1 (c)(1) revised (effective date pending).....	26396
(c)(1) corrected.....	34007
Regulation at 55 FR 26396 effective 10-3-90.....	40378
9038.1 (b)(1) introductory text revised (effective date pending).....	26397
Regulation at 55 FR 26397 effective 10-3-90.....	40378