

Millionaires' Amendment

Federal Election Commission

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Please note that the provisions of the Millionaires' Amendment have been affected by the Supreme Court decision in Davis v. FEC. Please visit the FEC's Litigation page (http://www.fec.gov/law/litigation_CCA_Alpha.shtml) for additional information.

Introduction

Under provisions of the Bipartisan Campaign Reform Act (BCRA) known as the "Millionaires' Amendment," candidates running against a self-financed opponent may be eligible to receive contributions from individuals at increased limits and to have increased coordinated party expenditures made on their behalf.

Threshold Amounts

The provisions of the Millionaires' Amendment may, in certain circumstances, increase the contribution limits for House and Senate candidates facing opponents who spend personal funds in excess of certain threshold amounts. The threshold amounts and the triggers for increased limits for House and Senate candidates differ. For House candidates, the threshold amount is \$350,000. 11 CFR 400.9(b). House candidates whose opponent's personal spending exceeds that threshold may trigger increased limits. For Senate candidates, the threshold amount is the sum of \$150,000 plus an amount equal to the voting age population (VAP) of the State in question multiplied by \$0.04.¹ 11 CFR 400.9(a). Senate candidates may qualify for increased limits only after an opposing candidate's personal spending exceeds twice the threshold amount. For the VAP and personal spending thresholds for Senate candidates, please consult the FEC's website at www.fec.gov/pages/bcra/rulemakings/millionairesenate.shtml.

Opposition Personal Funds Amount

An opposing candidate's campaign-related expenditures from personal funds in excess of the triggering threshold do not automatically result in increased contribution limits. The Millionaires' Amendment also takes into account fundraising by the campaigns. Campaigns must use the "opposition personal funds amount" formula to determine whether an opposing candidate has spent sufficient personal funds in comparison to the amounts raised by the campaigns to trigger increased contribution limits.

A candidate with a significant fundraising advantage over a self-financed opponent might not receive an increased contribution limit. In this way, the regulations avoid giving increased contribution limits to candidates whose campaigns have a significant fundraising advantage over their opponents.

¹ Differently formulated: $\$150,000 + (.04 \times (\text{voting age population})) = \text{Senate threshold}$.

Increased Individual Contribution Limits for 2007-2008

Under federal law, individuals typically may contribute no more than \$2,300 per election to a House or Senate candidate. However, under the conditions discussed below, an individual may make contributions in excess of \$2,300 per election.²

House

When a House candidate's "opposition personal funds amount" exceeds \$350,000:

- The contribution limits for the candidate triple (\$6,900 per election); and
- The national and State party committees may make unlimited coordinated expenditures on behalf of the candidate. 11 CFR 400.41.

Senate

For Senate candidates, the extent to which a candidate's "opposition personal funds amount" exceeds the threshold determines the amount of the increase in contribution limits. If it exceeds:

- Twice the threshold ($\$300,000 + (\$0.08 \times \text{VAP})$), then the individual contribution limits for the candidate are tripled (\$6,900 per election);
- Four times the threshold ($\$600,000 + (\$0.16 \times \text{VAP})$), then the individual contribution limits for the candidate are raised six-fold (\$13,800 per election);
- Ten times the threshold ($\$1,500,000 + (\$0.40 \times \text{VAP})$), then the contribution limits for the candidate are raised six-fold (\$13,800 per election), and the national and State party committees may make unlimited coordinated expenditures on the candidate's behalf.

11 CFR 400.40.

The VAP and the personal spending thresholds for the Senate candidates may be found on the FEC website at www.fec.gov/pages/bcra/rulemakings/millionairesenate.shtml

Avoiding Excessive Contributions and Coordinated Party Expenditures under the Increased Limits

Campaigns that accept contributions and coordinated party expenditures under the increased limits must continually monitor the opposition personal funds amount to ensure their continued eligibility for the increased limits, and that they have not accepted excessive contributions.

When the aggregate amount of contributions at the increased limit and coordinated party expenditures at the increased limit is equal to 100% of the opposition personal funds amount (for House candidates) or 110% of the opposition personal funds amount (for Senate candidates), then:

- Candidates must not accept any more contributions at the increased limit 11 CFR 400.31(d)(1) and 400.31(e)(1); and
- National and State party committees must not make any coordinated expenditures at the increased limit on the candidate's behalf. 11 CFR 400.31(d)(2) and (e)(2).

² It is important to note that contributions made at the increased limit may not be redesignated for a different election. See the FEC brochure, *Contributions*.

Reporting and Notification

In order to facilitate continuous monitoring of fundraising, personal spending by candidates and coordinated party expenditures, new reporting and notification requirements have been added to FEC regulations.

Form 2

Declaration of Intent in Statement of Candidacy

At the outset, candidates must estimate on their Statement of Candidacy (FEC Form 2) the amount by which their personal spending on the campaign will exceed the applicable threshold amount. 11 CFR 101.1(a). This must be faxed to each opposing campaign (Senate candidates must fax the form to the FEC in addition to filing the original with the Secretary of the Senate).

Form 3Z-1

Disclosure of Gross Receipts and Aggregate Expenditures from Personal Funds

To facilitate opposition personal funds calculations, by July 15 of the year before the election and January 31 of the year in which the election takes place, each principal campaign committee must file a report disclosing the campaign's aggregate gross receipts for the primary and general elections, and the candidate's aggregate contributions from personal funds for the primary and general elections (FEC Form 3Z-1). 11 CFR 104.19.

Form 10

Notification of Expenditures from Personal Funds

A candidate's principal campaign committee must notify the Commission³ and each opposing candidate within 24 hours when the candidate makes an expenditure from personal funds that aggregates in excess of the triggering threshold (i.e., \$350,000 for House candidates and \$300,000 + (\$0.08 x VAP) for Senate candidates). 11 CFR 400.21.⁴ From that time on, the committee must also notify all of the above-listed entities within 24 hours whenever the candidate makes an additional expenditure from personal funds in excess of \$10,000. 11 CFR 400.22. This notification must be made by either faxing a copy of FEC Form 10 or e-mailing a copy of FEC Form 10 or equivalent information to all of the entities mentioned above. 11 CFR 400.24.⁵

Schedule F (Party Committees)

National or State political party committees that make coordinated expenditures on behalf of a candidate whose limits have been raised in accordance with the above provisions must notify the Commission and the candidate on whose behalf the expenditure is made within 24 hours. This is done by faxing or e-mailing a copy of

³ Senate candidates must also inform the Secretary of the Senate. 11 CFR 400.21(a).

⁴ House candidates must also notify the national party committee of each opposing candidate. 11 CFR 400.21(b).

⁵ Senate candidates must file the original Form 10 with the Secretary of the Senate. 11 CFR 400.24(a).

Schedule F to the Commission and to the candidate or authorized candidate committee on whose behalf the expenditure was made. 11 CFR 400.30(c)(2).

Form 11

Calculation of Opposition Personal Funds Amount

Each time a candidate committee receives a Form 10 from an opponent, it must recalculate its opposition personal funds amount (use the worksheet provided with the instructions for FEC Form 11). If the committee's opposition personal funds amount exceeds the threshold for increased coordinated party expenditures (i.e., \$350,000 for House candidates and \$1,500,000 + (\$0.40 x VAP) for Senate candidates), then it must file a calculation of its opposition personal funds amount with the FEC and with its national and State party committees on FEC Form 11 within 24 hours.

11 CFR 400.30(b)(2).

Form 12

Notice of Suspension of Increased Limits

Candidates operating under increased limits (or their principal campaign committees) must fax or e-mail FEC Form 12 to their national and State party committees and the FEC within 24 hours after the aggregate amount of contributions accepted and coordinated party expenditures made under the increased limits reaches:

- 100 percent of the opposition personal funds amount for House candidates; or
- 110 percent of the opposition personal funds amount for Senate candidates.

11 CFR 400.31(d) and (e).

Withdrawal of Opponent

If a candidate's self-financed opponent withdraws from the election:

- The candidate may no longer accept any contribution under the increased limits; and
- The national and State party committees must not make any coordinated expenditures on the candidate's behalf at the increased limits

11 CFR 400.32(b) and (c).

An opponent is considered to have withdrawn from the election on the earlier of the following dates:

- The date on which the candidate publicly announces that he or she is no longer a candidate and ceases to conduct campaign activities; or
- The date on which the candidate becomes ineligible for nomination or election by operation of law.

11 CFR 400.32(a)(2)(i) and (ii).

Disposal of Excess Contributions Made at Increased Limit

Special rules apply for disposing of any excess contributions⁶ made at the increased limit:

- The candidate's committee must refund any excess contributions within 50 days of the election for which they were designated. 11 CFR 400.51;
- Contributions made at the increased limit cannot be redesignated for another election. 11 CFR 400.52;
- The candidate's committee must refund the excess contributions to individuals who made them. 11 CFR 400.53(a);
- Any refund checks not cashed within six months of the date on the check must be disgorged to the U.S. Treasury within nine months of the election. 11 CFR 400.53(b); and
- The committee must disclose the source, amount and manner in which any excess contributions were refunded on their next report falling more than 50 days after the election. 11 CFR 400.54.

*This publication provides guidance on certain aspects of federal campaign finance law. This publication is not intended to replace the law or to change its meaning, nor does this publication create or confer any rights for or on any person or bind the Federal Election Commission (Commission) or the public. The reader is encouraged also to consult the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 *et seq.*), Commission regulations (Title 11 of the Code of Federal Regulations), Commission advisory opinions, and applicable court decisions. For further information, please contact:*

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⁶ Excess contributions are contributions that were made at the increased limit but were not spent in connection with the election to which they relate. 11 CFR 400.50.