



FEDERAL ELECTION COMMISSION
Washington, DC 20463

FEDERAL ELECTION
COMMISSION
SECRETARIAT

2008 DEC 17 P 12:09

AGENDA ITEM

For Meeting of: 12-18-08

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
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SUBMITTED LATE

SUBJECT: Draft Final Rules – Repeal of Millionaires’ Amendment Regulations

Attached are the draft Final Rules and Explanation and Justification that would implement the Supreme Court’s decision in *Davis v. Federal Election Commission*. The Final Rules would delete the Commission’s regulations in Part 400, which contains the bulk of the Millionaires’ Amendment regulatory provisions. The Final Rules would also revise several regulations to conform them to the Supreme Court’s decision and retain others that were not affected by that decision.

We request that this draft be placed on the agenda for December 18, 2008.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 100, 101, 102, 104, 110, 113, 400, 9001, 9003, 9031, 9033**

3 **[Notice 2008 - >]**

4 **Repeal of Increased Contribution and Coordinated Party Expenditure Limits for**
5 **Candidates Opposing Self-financed Candidates**

6 **AGENCY:** Federal Election Commission.

7 **ACTION:** Final Rules.

8 **SUMMARY:** The Federal Election Commission (“Commission”) is deleting its
9 rules on increased contribution limits and coordinated party
10 expenditure limits for Senate and House of Representatives
11 candidates facing self-financed opponents. These rules were
12 promulgated to implement sections 304 and 319 of the Bipartisan
13 Campaign Reform Act of 2002, known as the “Millionaires’
14 Amendment.” In Davis v. Federal Election Commission, the
15 Supreme Court held that sections 319(a) and (b), regarding House
16 of Representatives elections, were unconstitutional. The Court’s
17 analysis also applies to the contribution and spending limits in
18 section 304 regarding Senate elections. The Commission,
19 therefore, is removing its rules that implement the Millionaires’
20 Amendment. However, the Commission is retaining certain other
21 rules that were not affected by the Davis decision. Further
22 information is provided in the supplementary information that
23 follows.

1 **DATES:** Effective Date: February 1, 2009.

2 **FOR FURTHER**
3 **INFORMATION**

4 **CONTACT:** Mr. Robert M. Knop, Assistant General Counsel, or Mr. Neven F.
5 Stipanovic, Attorney, 999 E Street, NW., Washington, DC 20463,
6 (202) 694-1650 or (800) 424-9530.

7 **SUPPLEMENTARY**
8 **INFORMATION:**

9 The Commission is revising its regulations to reflect the Supreme Court’s
10 decision in Davis v. Federal Election Commission, 128 S. Ct. 2759 (2008). The
11 Commission is deleting rules that implemented the Millionaires’ Amendment at
12 11 CFR 100.19(g), 104.19, 110.5(b)(2), and Part 400. It is making technical and
13 conforming changes to its rules at 11 CFR 100.33, 101.153, 101.1, 102.2(a)(1)(viii),
14 113.1(g)(6)(ii), 9001.1, 9003.1(b)(8), 9031.1, and 9033.1(b)(10). It is retaining
15 unchanged its rules at 11 CFR 110.1(b)(3)(ii)(C), 116.11, 116.12, and 9035.2(c).

16 The Commission published a Notice of Proposed Rulemaking (“NPRM”) on
17 October 20, 2008, in which it sought public comment on the proposed rule implementing
18 the Davis decision. See Notice of Proposed Rulemaking on Increased Contribution and
19 Expenditure Limits for Candidates Opposing Self-financed Candidates, 73 FR 62224
20 (Oct. 20, 2008). In addition, the Commission sought public comment on its proposal to
21 retain 11 CFR 116.11 and 116.12, which concern the repayment of candidate’s personal
22 loans. Id. at 62226. The comment period ended on November 21, 2008.

23 The Commission received four comments on the proposed rule, including a
24 comment from the Internal Revenue Service (“IRS”) stating that the proposed rules did
25 not conflict with the Internal Revenue Code or IRS regulations.

1 For the reasons explained below, the Commission has decided to delete its rules
2 that implemented the Millionaires' Amendment, and to retain and revise certain other
3 rules that were not invalidated by the Davis decision. The Commission's final rules are
4 identical to the proposed rules in the NPRM.

5 Under the Administrative Procedure Act, 5 U.S.C. 801(a)(1), agencies must
6 submit final rules to the Speaker of the House of Representatives and the President of the
7 Senate and publish them in the Federal Register at least 30 calendar days before they take
8 effect. The final rules that follow were transmitted to Congress on [_____].

9 **Explanation and Justification**

10 The Millionaires' Amendment¹ of the Bipartisan Campaign Reform Act of 2002,
11 Public Law No. 107-155 ("BCRA"), increased certain contribution limits and coordinated
12 party expenditure limits for Senate and House of Representatives candidates facing
13 opponents who spent significant amounts of personal funds. When a self-financed
14 opponent spent personal funds above a certain threshold amount, the Millionaires'
15 Amendment permitted a candidate to accept individual contributions under increased
16 contribution limits. 2 U.S.C. 441a(i) and 441a-1(a). When certain other threshold
17 amounts were reached, the Millionaires' Amendment also allowed national and state
18 political party committees to make unlimited coordinated party expenditures on behalf of
19 the candidate in the general election. Id.

20 On June 26, 2008, the Supreme Court invalidated the Millionaires' Amendment.
21 In Davis, the Supreme Court reviewed a challenge by a self-financed candidate who

¹ Section 304 of BCRA added a new subsection (i) to 2 U.S.C. 441a, which addressed Senate elections. Section 319 of BCRA added a new section 441a-1 to the Act, which addressed elections for the House Representatives. The Senate provisions also added new notification and reporting requirements in 2 U.S.C. 434.

1 triggered the Millionaires' Amendment in the 2004 and 2006 elections for the House of
2 Representatives. 128 S. Ct. 2759. The Supreme Court held that the House of
3 Representatives provision of the Millionaires' Amendment was unconstitutional because
4 it violated the plaintiff's First Amendment rights. *Id.* at 2775. The Supreme Court
5 invalidated the entire BCRA section 319 relating to House elections, including the
6 increased contribution limits in section 319(a) and its companion disclosure requirements
7 in section 319(b). The Court reasoned that the Millionaires' Amendment imposed a
8 substantial burden on the plaintiff's exercise of his First Amendment right to use personal
9 funds for campaign speech, and that the burden was not justified by any governmental
10 interest in eliminating corruption or the perception of corruption. *Id.* at 2772-73.

11 The Commission's interim rules implementing the Millionaires' Amendment
12 were approved on December 19, 2002, and have been in effect during the 2004 and 2006
13 election cycles, and the beginning of the 2008 election cycle. See Interim Final Rules on
14 Increased Contribution and Coordinated Party Expenditure Limits for Candidates
15 Opposing Self-Financed Candidates ("Interim Final Rules"), 68 FR 3970 (Jan. 27, 2003).

16 On July 25, 2008, the Commission issued a Public Statement that, in light of the
17 Davis decision, it would no longer enforce the Millionaires' Amendment. See Press
18 Release, Public Statement on the Supreme Court's Decision in Davis v. FEC, July 25,
19 2008, <http://www.fec.gov/press/press2008/220080725millionaire.shtml>. As of June 26,
20 2008, the increased contribution limits and reporting requirements were no longer in
21 effect, and political party committees were no longer permitted to make increased
22 coordinated party expenditures on behalf of self-financed candidates. *Id.*

23

1 A. Removal of 11 CFR Part 400 – Increased Limits for Candidates Opposing
2 Self-Financed Candidates

3 The Commission is deleting 11 CFR Part 400 in its entirety because the statutory
4 foundation of Part 400 was invalidated by the Supreme Court’s decision in Davis.

5 The Commission’s rules at 11 CFR Part 400 had implemented the Millionaires’
6 Amendment. See Interim Final Rules at 3975. Specifically, the rules at Part 400: (1)
7 provided the notification and reporting requirements for Senate and House of
8 Representatives candidates (subpart B); (2) explained when the increased contribution
9 limits apply (subpart C); (3) explained how to calculate the increased contribution limits
10 (subpart D); and (4) explained how candidates’ authorized committees must dispose of
11 excess contributions (subpart E). In Davis, the Supreme Court decided that increased
12 contribution limits and disclosure requirements for House of Representatives candidates
13 in BCRA sections 319(a) and (b) were unconstitutional. Thus, the Commission’s rules at
14 11 CFR Part 400 that implemented BCRA sections 319(a) and (b) are no longer valid.

15 The Supreme Court in Davis struck down only BCRA sections 319(a) and (b)
16 governing House of Representatives elections. The Commission, however, has
17 concluded that the Supreme Court’s analysis in Davis also precludes enforcement of the
18 Commission’s rules implementing BCRA sections 304(a) and (b), which provide
19 increased contribution limits and disclosure requirements for Senate elections. In Davis,
20 the Court concluded that increased contribution limits for a House of Representatives
21 candidate facing a self-financed candidate impermissibly burdened the First Amendment
22 right of the self-financed candidates to spend their own money for campaign speech. 128
23 S. Ct. at 2771. There is no basis to conclude that the constitutional implications would be

1 different for similarly situated candidates in Senate elections, governed by BCRA
2 sections 304(a) and (b), than in the respective House of Representatives elections.
3 governed by BCRA sections 319(a) and (b).

4 Two commenters agreed with the Commission that Part 400 is unenforceable in
5 both Senate and House of Representatives elections. These commenters explained that
6 the Supreme Court’s rationale for rejecting Section 319(a)’s contribution limits for House
7 of Representatives candidates applied equally to Senate candidates, and they urged the
8 Commission to remove Part 400 entirely from its regulations. Another commenter urged
9 the Commission to retain these rules because the commenter disagreed with the Supreme
10 Court’s holding in Davis.

11 The Commission’s rules at Part 400 implemented the Millionaires’ Amendment
12 provisions for both House and Senate elections. The Commission, therefore, is deleting
13 11 CFR Part 400 in its entirety.

14 B. Amendments To Other Provisions

15 1. Part 100 – Definitions

16 a. 11 CFR 100.19(g) – File, Filed, or Filing

17 The Commission is deleting paragraph (g) from 11 CFR 100.19 because the
18 statutory foundation of this provision has been invalidated by the Supreme Court’s
19 decision in Davis. Section 100.19 defines “file, filed, or filing” and specifies when a
20 document is considered timely filed. Paragraph (g) had stated that a candidate’s
21 notification of expenditures from personal funds under 11 CFR 400.21 and 400.22 is
22 considered timely filed if sent by facsimile or electronic mail to all appropriate parties

1 within 24 hours of the time the thresholds set forth in 11 CFR 400.21 and 400.22 are
2 exceeded, thereby triggering the reporting requirement.

3 As explained above, the Commission is deleting 11 CFR Part 400 in its entirety
4 because the Supreme Court invalidated the Millionaires' Amendment. The Commission
5 is deleting paragraph (g) from section 100.19 because the candidate's notifications under
6 11 CFR 400.21 and 400.22 are no longer required.

7 b. 11 CFR 100.33 – Personal Funds

8 The Commission is revising the definition of “personal funds” in 11 CFR 100.33
9 by deleting the cross-reference to section 400.2, which the Commission is removing
10 through this rulemaking. The Commission is retaining the remainder of section 100.33
11 because the definition of “personal funds” in section 100.33 applies generally to other
12 Title 2 rules that use the term “personal funds.”² See Interim Final Rules, 68 FR at 3972.
13 The Commission also notes that the definition of “personal funds” at
14 11 CFR 9003.2(c)(3), which applies to Title 26 of the United States Code, remains
15 unchanged. See 73 FR at 62227.

16 2. 11 CFR 101.1 – Candidate Designations

17 The Commission is deleting the sentence in paragraph (a) of 11 CFR 101.1 that
18 required Senate and House of Representatives candidates to state, on their Statements of
19 Candidacy on FEC Form 2 (or, if the candidates are not required to file electronically, on
20 their letters containing the same information), the amount by which the candidates
21 intended to exceed the threshold amount as defined in 11 CFR 400.9. The Davis decision
22 invalidated the statutory foundation for this requirement.

² See e.g., 11 CFR 100.83(c), 106.3(b)(1), and 110.10.

1 3. 11 CFR 102.2 – Statement of Organization: Forms and Committee

2 Identification Number

3 The Commission is retaining and revising 11 CFR 102.2(a)(1)(viii), which had
4 required principal campaign committees to provide both their electronic mail addresses
5 and their facsimile numbers on FEC Form 1. Paragraph (viii) was promulgated by the
6 Interim Final Rules to facilitate the notification of expenditures from personal funds
7 under Part 400. See Interim Final Rules, 68 FR at 3972. Although the notifications
8 under Part 400 are no longer required, the electronic mail addresses provided by
9 committees facilitates the exchange of information between committees and the
10 Commission for other purposes under the Federal Election Campaign Act of 1971, as
11 amended (“FECA”). Continuing to require committees’ electronic mail addresses,
12 therefore, will continue to benefit the committees as well as the Commission. Consistent
13 with its delegated authority to require political committees to provide an “address” when
14 filing a statement of organization under 2 U.S.C. 433(b)(1), the Commission is retaining
15 the requirement that committees report their electronic mail addresses on FEC Form 1.
16 The Commission, however, is deleting the requirement that committees provide their
17 facsimile numbers because it does not routinely communicate with committees via
18 facsimile machine.

19 4. 11 CFR 104.19 – Special Reporting Requirements for Principal

20 Campaign Committees of Candidates for Election to the United States

21 Senate or United States House of Representatives

22 The Commission is removing and reserving 11 CFR 104.19 because the statutory
23 foundation of this section was invalidated by the Supreme Court’s decision in Davis.

1 Section 104.19 had required principal campaign committees of Senate and House of
2 Representatives candidates to report information necessary to calculate their “gross
3 receipts advantage,” which is defined at 2 U.S.C. 441a(i)(1)(E) (Senate) and 441a-
4 1(a)(2)(B) (House of Representatives). This reporting requirement was promulgated to
5 ensure that the candidates in the same House or Senate election had sufficient and timely
6 information to calculate the “opposition personal funds amount” under 11 CFR 400.10.
7 See Interim Final Rules, 68 FR at 3972.

8 5. 11 CFR 110.1(b)(3)(ii)(C) – Net Debts Outstanding

9 The Commission is retaining 11 CFR 110.1(b)(3), which restricts the ability of
10 candidates and their authorized committees to accept contributions after the election.
11 Together with sections 116.11 and 116.12, paragraph (b)(3) of section 110.1 implements
12 2 U.S.C. 441a(j), the statutory provision added by BCRA that restricts the repayment of
13 candidate’s personal loans after the election. See Explanation and Justification, below,
14 for 11 CFR 116.11 and 116.12.

15 Candidates and their authorized committees cannot accept contributions for an
16 election after the election is over unless the candidate still has net debts outstanding from
17 that election. 11 CFR 110.1(b)(3)(i). This rule was promulgated long before BCRA
18 added the loan repayment restriction in 2 U.S.C. 441a(j). After the election is over,
19 candidates and their authorized committees may accept contributions up to the amount of
20 their “net debts outstanding,” as defined in 11 CFR 110.1(b)(3)(ii). To conform with the
21 fundraising restrictions in 11 CFR 116.11, the Commission added paragraph (C) to
22 section 110.1(b)(3)(ii), which excludes the amount of personal loans that exceed
23 \$250,000 from the definition of “net debt outstanding.” See Interim Final Rules, 68 FR

1 at 3973. The Commission is retaining the rule at 11 CFR 110.1(b)(3)(ii)(C) for the same
2 reasons it is retaining the current rules at 11 CFR 116.11 and 116.12, as explained below.

3 6. 11 CFR 110.5 – Biennial Contribution Limitations

4 The Commission is deleting paragraph (b)(2) of section 110.5 because the
5 statutory foundation for this provision has been invalidated by the Supreme Court’s
6 decision in Davis. Paragraph (b)(2) stated the circumstances under which the biennial
7 limits on contributions by individuals do not apply to contributions made under
8 11 CFR Part 400. As explained above, the Commission is removing 11 CFR Part 400
9 because the Davis decision invalidated the Millionaires’ Amendment. Accordingly, the
10 exception to the individual contribution limits under section 110.5(b)(2) is no longer
11 valid. The Commission, therefore, is deleting 11 CFR 110.5(b)(2).

12 The Commission is also amending 11 CFR 110.5 paragraphs (b), (d), and (e), by
13 revising the spelling of the word “bi-annual” to “biennial.” This change makes the
14 spelling consistent with the title of section 110.5, which uses the word “biennial.”

15 7. 11 CFR 116.11 and 116.12 – Repayment of Candidate Loans

16 The Commission is retaining sections 116.11 and 116.12 of the regulations that
17 concern the repayment of candidates’ personal loans made to their campaign committees.
18 The Commission sought public comment on retaining these provisions in light of the
19 Supreme Court’s decision in Davis. No comments were received.

20 BCRA added a new provision prohibiting candidates and their authorized
21 committees from using contributions made after the election to repay loans from the
22 candidates to their own authorized committees to the extent the contributions total over
23 \$250,000. See 2 U.S.C. 441a(j). These loans are referred to as “personal loans.” The

1 Commission's current rules at 11 CFR 116.11 and 116.12 implement 2 U.S.C. 441a(j).
2 Section 116.11 prohibits an authorized committee from using contributions made after an
3 election to repay any personal loan by a candidate that exceeds \$250,000. Section 116.12
4 addresses the repayment of candidate's personal loans that, in the aggregate, are equal to
5 or less than \$250,000.

6 The Commission concludes that the Davis decision did not invalidate the personal
7 loan provision in BCRA and, thus, it is retaining the rules that implement that provision.
8 The Commission does not have authority, on its own, to declare a duly enacted law to be
9 unconstitutional.

10 The Court in Davis did not address the validity of the personal loan provision, and
11 the plaintiff did not challenge that provision of BCRA. 128 S. Ct. 2759. Although that
12 provision is in the same statutory subsection of BCRA (section 304(a)) as other
13 provisions that the Supreme Court in Davis held to be unconstitutional, the personal loan
14 provision is placed in a separate subsection within 2 U.S.C. 441a. This statutory
15 provision has a wider application than other provisions of the Millionaires' Amendment.
16 It applies equally to all candidates and regardless of whether the Millionaires'
17 Amendment provisions also apply to those candidates. Most notably, while other
18 provisions of the Millionaires' Amendment apply only to Senate and House of
19 Representatives candidates, the loan repayment provision applies to candidates for all
20 Federal offices, including presidential candidates. Because this statutory provision has
21 wider application than the Millionaires' Amendment, the Commission implemented it by
22 adding new sections 116.11 and 116.12, rather than by including these rules in 11 CFR
23 Part 400 with the Millionaires' Amendment regulations. See Interim Final Rules at 3973.

1 The Commission’s decision to retain sections 116.11 and 116.12 is consistent
2 with its approach in a recent advisory opinion, which was requested after the Supreme
3 Court invalidated the Millionaires’ Amendment in Davis. See Advisory Opinion 2008-09
4 (Lautenberg).³ Senator Lautenberg loaned money to his principal campaign committee in
5 connection with his primary election. The Senator asked the Commission whether the
6 personal loan provision applied to his personal loan in light of the Davis decision. The
7 Commission concluded that it did apply because the Davis decision did not address the
8 constitutionality of the personal loan provision. 128 S. Ct. 2759. The Commission
9 explained that, unlike the BCRA provisions found to be unconstitutional in Davis, the
10 personal loan provision applies equally to all candidates, regardless of whether they or
11 their opponents have triggered the Millionaires’ Amendment.

12 The Commission also concluded in Advisory Opinion 2008-09 that the personal
13 loan provision was severable from the Millionaires’ Amendment. As the Commission
14 explained there, BCRA section 401 provides that the invalidation of one provision of
15 BCRA will not affect the validity of any other provisions of BCRA, nor the application of
16 such provisions to other persons and circumstances. 2 U.S.C. 454. It is a well-settled
17 principle of statutory construction that “[u]nless it is evident that the legislature would
18 not have enacted those provisions which are within its power, independently of that
19 which is not, the invalid part may be dropped if what is left is fully operative as a law.”
20 Buckley v. Valeo, 424 U.S. 1, 108-109 (1976) (quoting Champlin Refining Co. v.
21 Corporation Commission, 286 U.S. 210, 234 (1932)). In Buckley, the Supreme Court
22 struck down certain provisions of FECA’s section 202, but expressly upheld other
23 provisions within the same subsection of the statute.

³ Advisory Opinion 2008-09 (Lautenberg) is available at <http://saos.nictusa.com/saos/searchao>.

1 In Advisory Opinion 2008-09, the Commission found that it was not at all
2 “evident” from the text, function, or legislative history of the Millionaires’ Amendment
3 that Congress intended the personal loan provision to be inextricably tied to the increased
4 contribution limits of section 304(a) of BCRA. Section 304(a) was codified in two
5 separate provisions of 2 U.S.C. 441a, one providing for the increased contribution limits
6 and the other limiting repayment of personal loans. Functionally, the personal loan
7 provision can operate effectively without the provisions invalidated by the Supreme
8 Court in Davis. Because the loan repayment provision’s operation does not depend upon
9 the invalidated increased contribution limits or reporting provisions, its validity is not
10 affected by their invalidation. Moreover, legislative history shows that Congress in
11 several instances addressed the personal loan provision separately from the
12 unconstitutional provisions regarding increased contribution limits. See, e.g., 147 Cong.
13 Rec. S2450-51 (daily ed. Mar. 19, 2001) (statement of Senator Domenici); 147 Cong.
14 Rec. S2461-62 (daily ed. Mar. 19, 2001) (statement of Senator Domenici).

15 The Commission, therefore, is retaining the rules at 11 CFR 116.11 and 116.12
16 that restrict the repayment of personal loans made by candidates to their authorized
17 committees.

18 C. Technical and Conforming Amendments to Other Regulations

19 1. 11 CFR 100.153 – Routine Living Expenses; 11 CFR 113.1(g)(6)(ii) – 20 Personal Use

21 The Commission is amending 11 CFR 100.153 and 113.1(g)(6)(ii) by revising the
22 cross-references to the definition of “personal funds” from 11 CFR 110.10(b) to current
23 11 CFR 100.33. The Commission deleted 11 CFR 110.10(b) in the Interim Final Rules,

1 68 FR at 3973. The change reflects the Commission’s prior removal of the “personal
2 funds” definition from section 110.1(b) to section 100.33.

3 2. 11 CFR 9001.1 – Scope; 11 CFR 9003.1 – Candidate and Committee
4 Agreements; 11 CFR 9031.1 – Scope; 11 CFR 9033.1 – Candidate and
5 Committee Agreements

6 The Commission is making technical amendments to these sections that update
7 references to its other regulations to reflect the elimination of Part 400.

8
9 **Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

10 The Commission certifies that the attached final rule will not have a significant
11 economic impact on a substantial number of small entities. The basis for this
12 certification is that few, if any, small entities will be affected by this rulemaking, which
13 applies only to Federal candidates and their campaign committees, and political
14 committees of political parties. Such committees are not “small entities” under
15 5 U.S.C. 601. Candidate and party committees are not independently owned and
16 operated because they are not financed and controlled by a small identifiable group of
17 individuals; rather, they rely on contributions from a variety of persons to fund the
18 committee’s activities. The Democratic and Republican parties also have a major
19 controlling influence within the political arena and are dominant in their field. However,
20 to the extent that any party committees representing major or minor political parties or
21 any other political committees might be considered “small entities,” the number that
22 would be affected by this rule is not substantial.

1 The final rule also does not add any new substantive provisions to the current
2 regulations, but rather it removes or retains existing regulations. Therefore, the attached
3 final rule will not have a significant impact on a substantial number of small entities.

4
5 **List of Subjects**

6 11 CFR Part 100

7 Elections.

8 11 CFR Part 101

9 Political candidates, Reporting and recordkeeping requirements.

10 11 CFR Part 102

11 Political committees and parties, Reporting and recordkeeping requirements.

12 11 CFR Part 104

13 Campaign funds, Political committees and parties, Reporting and recordkeeping
14 requirements.

15 11 CFR Part 110

16 Campaign funds, Political committees and parties.

17 11 CFR Part 113

18 Campaign funds.

19 11 CFR Part 400

20 Campaign funds, Elections, Political candidates, Political committees and parties,
21 Reporting and recordkeeping requirements.

22 11 CFR Part 9001

23 Campaign funds.

- 1 11 CFR Part 9003
- 2 Campaign funds, Reporting and recordkeeping requirements.
- 3 11 CFR Part 9031
- 4 Campaign funds.
- 5 11 CFR Part 9033
- 6 Campaign funds, Reporting and recordkeeping requirements.
- 7

1 For the reasons set out in the preamble, the Commission is amending Subchapters
2 A, C, E, and F of Chapter I of Title 11 of the Code of Federal Regulations as follows:

3
4 **PART 100 – SCOPE AND DEFINITIONS (2 U.S.C. 431)**

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

6 Authority: 2 U.S.C. 431, 434, 438(a)(8), and 439a(c).

7 **§ 100.19 [Amended]**

8 2. In section 100.19, paragraph (b) is amended by removing the reference to “(g)”
9 and adding in its place “(f)” in paragraph (b) introductory text and (b)(2), and by
10 removing paragraph (g).

11 3. Section 100.33 is revised to read as follows:

12 **§ 100.33 Personal funds.**

13 Personal funds of a candidate means the sum of all of the following:

14 (a) Assets. Amounts derived from any asset that, under applicable State law, at the
15 time the individual became a candidate, the candidate had legal right of access to or
16 control over, and with respect to which the candidate had—

17 (1) Legal and rightful title; or

18 (2) An equitable interest;

19 (b) Income. Income received during the current election cycle, ~~as defined in~~
20 ~~11 CFR 400.2~~, of the candidate, including:

21 (1) A salary and other earned income that the candidate earns from bona fide
22 employment;

- 1 (2) Income from the candidate's stocks or other investments including
- 2 interest, dividends, or proceeds from the sale or liquidation of such stocks
- 3 or investments;
- 4 (3) Bequests to the candidate;
- 5 (4) Income from trusts established before the beginning of the election cycle
- 6 ~~as defined in 11 CFR 400.2;~~
- 7 (5) Income from trusts established by bequest after the beginning of the
- 8 election cycle of which the candidate is the beneficiary;
- 9 (6) Gifts of a personal nature that had been customarily received by the
- 10 candidate prior to the beginning of the election cycle, ~~as defined in~~
- 11 ~~11 CFR 400.2;~~ and
- 12 (7) Proceeds from lotteries and similar legal games of chance; and

13 (c) Jointly owned assets. Amounts derived from a portion of assets that are owned
14 jointly by the candidate and the candidate's spouse as follows:

- 15 (1) The portion of assets that is equal to the candidate's share of the asset
- 16 under the instrument of conveyance or ownership; provided, however,
- 17 (2) If no specific share is indicated by an instrument of conveyance or
- 18 ownership, the value of one-half of the property.

19 **§ 100.153 [Amended]**

20 4. Section 100.153 is amended by removing the reference to "11 CFR 110.10(b)"
21 and adding in its place "11 CFR 100.33".

22
23 **PART 101 - CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))**

1 5. The authority citation for part 101 continues to read as follows:

2 Authority: 2 U.S.C. 432(e), 434(a)(11), 438(a)(8).

3 6. Section 101.1(a) is revised to read as follows:

4 **§ 101.1 Candidate designations (2 U.S.C. 432(e)(1)).**

5 (a) Principal Campaign Committee. Within 15 days after becoming a candidate
6 under 11 CFR 100.3, each candidate, other than a nominee for the office of Vice
7 President, shall designate in writing, a principal campaign committee in accordance with
8 11 CFR 102.12. A candidate shall designate his or her principal campaign committee by
9 filing a Statement of Candidacy on FEC Form 2, or, if the candidate is not required to file
10 electronically under 11 CFR 104.18, by filing a letter containing the same information
11 (that is, the individual's name and address, party affiliation, and office sought, the
12 District and State in which Federal office is sought, and the name and address of his or
13 her principal campaign committee at the place of filing specified at 11 CFR part 105).
14 ~~Candidates for the Senate and the House of Representatives must also state, on their~~
15 ~~Statements of Candidacy on FEC Form 2 (or, if the candidate is not required to file~~
16 ~~electronically under 11 CFR 104.18, on his or her letter containing the same information),~~
17 ~~the amount by which the candidate intends to exceed the threshold amount as defined in~~
18 ~~11 CFR 400.9.~~ Each principal campaign committee shall register, designate a depository,
19 and report in accordance with 11 CFR parts 102, 103, and 104.

20 * * * * *

21

22 **PART 102 – REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY**

23 **POLITICAL COMMITTEES (2 U.S.C. 433)**

1 7. The authority citation for part 102 continues to read as follows:

2 Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

3 8. In section 102.2, paragraph (a)(1)(viii) is revised to read as follows:

4 **§ 102.2 Statement of organization: Forms and committee identification**
5 **number (2 U.S.C. 433 (b), (c)).**

6 (a) * * *

7 (1) * * *

8 (viii) If the committee is a principal campaign committee of a candidate
9 for the Senate or the House of Representatives, the principal
10 campaign committee’s ~~facsimile number, if available, and~~ electronic
11 mail address.

12 * * * * *

13

14 **PART 104 – REPORTS BY POLITICAL COMMITTEES AND OTHER**
15 **PERSONS (2 U.S.C. 434)**

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

17 Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a,
18 441a, and 36 U.S.C. 510.

19 **§ 104.19 [Removed and Reserved]**

20 10. Section 104.19 is removed and reserved.

21

22 **PART 110 – CONTRIBUTION AND EXPENDITURE LIMITATIONS AND**
23 **PROHIBITIONS**

1 11. The authority citation for part 110 continues to read as follows:

2 Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d,
3 441e, 441f, 441g, 441h, and 36 U.S.C. 510.

4 12. In section 110.5, paragraphs (b), (d), and (e) are revised, and paragraph (b)(2) is
5 removed and reserved to read as follows:

6 **§ 110.5 Aggregate biennial contribution limitation for individuals**

7 **(2 U.S.C. 441a(a)(3)).**

8 * * * * *

9 (b) Bi-annual Biennial limitations.

10 (1) In the two-year period beginning on January 1 of an odd-numbered year
11 and ending on December 31 of the next even-numbered year, no
12 individual shall make contributions aggregating more than \$95,000,
13 including no more than:

14 (i) \$37,500 in the case of contributions to candidates and the
15 authorized committees of candidates; and

16 (ii) \$57,500 in the case of any other contributions, of which not more
17 than \$37,500 may be attributable to contributions to political
18 committees that are not political committees of any national
19 political parties.

20 (2) [Removed and Reserved] ~~Contributions to candidates made under the~~
21 ~~increased contribution limitation under 11 CFR part 400, during periods in~~
22 ~~which such candidates may accept such contributions, are not subject to~~
23 ~~the contribution limitation of paragraph (b)(1) of this section.~~

1 * * * * *

2 (d) Independent expenditures. The ~~bi-annual~~ biennial limitation on contributions in
3 this section applies to contributions made to persons, including political committees,
4 making independent expenditures under 11 CFR part 109.

5 (e) Contributions to delegates and delegate committees. The ~~bi-annual~~ biennial
6 limitation on contributions in this section applies to contributions to delegate and delegate
7 committees under 11 CFR 110.14.

8

9 **PART 113 – USE OF CAMPAIGN ACCOUNTS FOR NON-CAMPAIGN**

10 **PURPOSES**

11 13. The authority citation for part 113 continues to read as follows:

12 Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

13 **§ 113.1 [Amended]**

14 14. Section 113.1(g)(6)(ii) is revised by removing the reference to
15 “11 CFR 110.10(b)” and adding in its place “11 CFR 100.33”.

16

17 **PART 400 – [REMOVED]**

18 15. Under the authority of 2 U.S.C. 437d(a)(8), part 400 is removed.

19

20 **PART 9001 – SCOPE**

21 16. The authority citation for part 9001 continues to read as follows:

22 Authority: 26 U.S.C. 9009(b).

23 **§ 9001.1 [Amended]**

1 17. Section 9001.1 is amended by removing the number “400” and adding in its place
2 the number “300” in both instances in which “400” appears.

3

4 **PART 9003 – ELIGIBILITY FOR PAYMENTS**

5 18. The authority citation for part 9003 continues to read as follows:

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

7 **§ 9003.1 [Amended]**

8 19. In section 9003.1, paragraph (b)(8) is amended by removing the number “400”
9 and adding in its place the number “300”.

10

11 **PART 9031 – SCOPE**

12 20. The authority citation for part 9031 continues to read as follows:

13 Authority: 26 U.S.C. 9031 and 9039(b).

14 **§ 9031.1 [Amended]**

15 21. Section 9031.1 is amended by removing the number “400” and adding in its place
16 the number “300” in both instances in which “400” appears.

17

18 **PART 9033 – ELIGIBILITY FOR PAYMENTS**

19 22. The authority citation for part 9033 continues to read as follows:

20 Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

21

1 § 9033.1 [Amended]

2 23. In section 9033.1, paragraph (b)(10) is revised by removing the number “400” and
3 adding in its place the number “300”.

4

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On behalf of the Commission,

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Donald F. McGahn II
Chairman
Federal Election Commission

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DATED: _____

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BILLING CODE: 6715-01-U

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