



FEDERAL ELECTION COMMISSION
Washington, DC 20463

FEDERAL ELECTION
COMMISSION
SECRETARIAT

2008 SEP 30 P 2: 23

AGENDA ITEM

For Meeting of: 10-2-08

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *ACS*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Neven F. Stipanovic *N.S.*
Attorney

SUBJECT: Draft Notice of Proposed Rulemaking – Repeal of Millionaires’
Amendment Regulations

Attached is a draft Notice of Proposed Rulemaking (NPRM) to implement the Supreme Court’s decision in *Davis v. Federal Election Commission*. The draft NPRM proposes deleting the Commission’s regulations in Part 400, which contains the bulk of the Millionaires’ Amendment’s regulatory provisions. It also proposes to revise several regulations to conform them to the Supreme Court’s decision and to retain others that were not affected by that decision.

We request that this draft be placed on the agenda for October 2, 2008.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 100-102, 104, 110, 113, 116, 400, 9001, 9003, 9031, 9033, and 9035**

3 **[Notice 2008 - >]**

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

6 **AGENCY:** Federal Election Commission.

7 **ACTION:** Notice of proposed rulemaking.

8 **SUMMARY:** The Federal Election Commission (“Commission”) requests
9 comments on the proposed deletion of its rules regarding increased
10 contribution limits and coordinated party expenditure limits for
11 Senate and House of Representatives candidates facing self-
12 financed opponents. These rules were promulgated to implement
13 sections 304 and 319 of the Bipartisan Campaign Reform Act of
14 2002, known as the “Millionaires’ Amendment.” In Davis v.
15 Federal Election Commission, the Supreme Court held that
16 sections 319(a) and (b), regarding House of Representatives
17 elections, were unconstitutional. The Court’s holding also applies
18 to the contribution and spending limits in section 304 regarding
19 Senate elections. The Commission, therefore, proposes to remove
20 its current rules that implement the Millionaires’ Amendment. In
21 addition, the Commission proposes to retain certain other rules that
22 generally are applicable throughout the Federal Election Campaign
23 Act of 1971, as amended (the “Act” or “FECA”). The

1 Commission has made no final decision on the issues presented in
2 this rulemaking. Further information is provided in the
3 supplementary information that follows.

4 **DATES:** Comments must be received on or before November 21, 2008.

5 **ADDRESSES:** All comments must be in writing, must be addressed to Mr. Robert
6 M. Knop, Assistant General Counsel, and must be submitted in
7 either e-mail, facsimile, or paper copy form. Commenters are
8 strongly encouraged to submit comments by e-mail to ensure
9 timely receipt and consideration. E-mail comments must be sent to
10 millionairerepeal@fec.gov. If e-mail comments include an
11 attachment, the attachment must be in either Adobe Acrobat (.pdf)
12 or Microsoft Word (.doc) format. Faxed comments must be sent to
13 (202) 219-3923, with paper copy follow-up. Paper comments and
14 paper copy follow-up of faxed comments must be sent to the
15 Federal Election Commission, 999 E Street, NW, Washington, DC
16 20463. All comments must include the full name and postal
17 service address of the commenter or they will not be considered.
18 The Commission will post comments on its Web site after the
19 comment period ends.

20 **FOR FURTHER**
21 **INFORMATION**
22 **CONTACT:**

23 Mr. Robert M. Knop, Assistant General Counsel, or Mr. Neven F.
24 Stipanovic, Attorney, 999 E Street, NW, Washington, DC 20463,
(202) 694-1650 or (800) 424-9530.

1 **SUPPLEMENTARY**
2 **INFORMATION:**

3 The Commission seeks to revise its current regulations to reflect the Supreme
4 Court's decision in Davis v. Federal Election Commission, 554 U.S. ___, 128 S. Ct. 2759
5 (2008) that invalidated the Millionaires' Amendment. The Commission proposes to
6 delete its current rules at 11 CFR 100.19(g), 104.19, 110.5(b)(2), and Part 400. It
7 proposes to retain and revise its current rules at 11 CFR 100.33, 100.153, 101.1,
8 102.2(a)(1)(viii), 113.1(g)(6)(ii), 9001.1, 9003.1(b)(8), 9031.1, and 9033.1(b)(10). It
9 proposes to retain unchanged its current rules at 11 CFR 110.1(b)(3)(ii)(C), 116.11,
10 116.12, and 9035.2(c).

11 **I. Background**

12 The Millionaires' Amendment¹ of the Bipartisan Campaign Reform Act of 2002,
13 Public Law 107-155, (March 27, 2002) ("BCRA"), increased certain contribution limits
14 and coordinated party expenditure limits for Senate and House of Representatives
15 candidates facing opponents who spent significant amounts of personal funds. When a
16 self-financed opponent spent personal funds above a certain threshold amount, the
17 Millionaires' Amendment permitted a candidate to accept individual contributions under
18 increased contribution limits. 2 U.S.C. 441a(i) and 441a-1(a). When certain other
19 threshold amounts were reached, the Millionaires' Amendment also allowed national and
20 state political party committees to make unlimited coordinated party expenditures on
21 behalf of the candidate in the general election. Id.

¹ Section 304 of BCRA added a new paragraph (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 On December 19, 2002, the Commission approved interim final rules to
2 implement the Millionaires' Amendment. See Interim Final Rules on Increased
3 Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-
4 Financed Candidates, 68 FR 3970 (Jan. 27, 2003) ("Interim Final Rules"). The
5 Commission sought public comments on the Interim Final Rules, as well as on specific
6 issues discussed in the Explanation and Justification. No comments were received.
7 These Interim Final Rules were in effect during the 2004 and 2006 election cycles, and
8 the beginning of the 2008 election cycle.

9 On June 26, 2008, the Supreme Court invalidated the Millionaires' Amendment.
10 In Davis, the Supreme Court reviewed a challenge by a self-financed candidate who
11 triggered the Millionaires' Amendment in the 2004 and 2006 elections for the House of
12 Representatives. The Supreme Court held that the House of Representatives provision of
13 the Millionaires' Amendment was unconstitutional because it violated the plaintiff's First
14 Amendment rights. 128 S.Ct. at 2775. The Supreme Court invalidated the entire BCRA
15 section 319 relating to House elections, including the increased contribution limits in
16 319(a) and its companion disclosure requirements in 319(b). The Court reasoned that the
17 Millionaires' Amendment imposed a substantial burden on the plaintiff's exercise of his
18 First Amendment right to use personal funds for campaign speech, and that the burden
19 was not justified by any governmental interest in eliminating corruption or the perception
20 of corruption. 128 S.Ct. at 2772-73.

21 On July 25, 2008, the Commission issued a Public Statement that, in light of the
22 Davis decision, it would no longer enforce the Millionaires' Amendment. See Press
23 Release, Public Statement on the Supreme Court's Decision in Davis v. FEC, July 25,

1 2008, available at <http://www.fec.gov/press/press2008/220080725millionaire.shtml>. As
2 of June 26, 2008, the increased contribution limits and reporting requirements were no
3 longer in effect, and political party committees were no longer permitted to make
4 increased coordinated party expenditures on behalf of self-financed candidates. Id.

5 **II. Proposed Removal of Current 11 CFR Part 400 – Increased Limits for** 6 **Candidates Opposing Self-Financed Candidates**

7 The Commission proposes to delete current 11 CFR Part 400 because the
8 statutory foundation for Part 400 has been invalidated by the Supreme Court’s decision in
9 Davis. The Commission’s rules at 11 CFR Part 400 implement the Millionaires’
10 Amendment. See Interim Final Rules at 3975. The rules at Part 400: (1) provide the
11 notification and reporting requirements for Senate and House of Representatives
12 candidates (subpart B); (2) explain when the increased contribution limits apply (subpart
13 C); (3) explain how to calculate the increased contribution limits (subpart D); and (4)
14 explain how candidates’ authorized committees must dispose of excess contributions. In
15 Davis, the Supreme Court decided that increased contribution limits and disclosure
16 requirements for House of Representatives candidates in BCRA sections 319(a) and (b)
17 were unconstitutional. Thus, the Commission’s rules at 11 CFR Part 400 that implement
18 BCRA sections 319(a) and (b) are no longer valid.

19 The Supreme Court in Davis struck down only BCRA sections 319(a) and (b)
20 governing House of Representatives elections. The Commission, however, believes that
21 the Supreme Court’s analysis in Davis also precludes enforcement of the Commission’s
22 rules implementing BCRA sections 304(a) and (b), which provide increased contribution
23 limits and disclosure requirements for Senate elections. In Davis, the Court concluded

1 that increased contribution limits for a House of Representatives candidate facing a self-
2 financed candidate impermissibly burdened the First Amendment right of the self-
3 financed candidates to spend their own money for campaign speech. 128 S.Ct. at 2771.
4 There is no basis to conclude that the constitutional implications would be different for
5 similarly situated candidates in Senate elections, governed by BCRA sections 304(a) and
6 (b), than in the respective House of Representatives elections, governed by BCRA
7 sections 319(a) and (b).

8 The Commission's rules at Part 400 implement the Millionaires' Amendment
9 provisions for both House and Senate elections. The Commission, therefore, proposes to
10 delete 11 CFR Part 400 in its entirety.

11 **III. Proposed Amendments To Other Provisions**

12 A. Part 100 – Definitions

13 1. Proposed Removal of Current 11 CFR 100.19(g) – File, Filed, or 14 Filing

15 The Commission proposes to delete current 11 CFR 100.19(g) because the
16 statutory foundation for this provision has been invalidated by the Supreme Court's
17 decision in Davis. Section 100.19 defines "file, filed, or filing" and specifies when a
18 document is considered timely filed. Paragraph (g) states that a candidate's notification
19 of expenditures from personal funds under 11 CFR 400.21 and 400.22 are considered
20 timely filed if sent by facsimile or electronic mail to all appropriate parties within 24
21 hours of the time the thresholds set forth in 11 CFR 400.21 and 400.22 are exceeded,
22 thereby triggering the reporting requirement.

1 As explained above, the Commission proposes to delete current 11 CFR Part 400
2 in its entirety because the Supreme Court invalidated the Millionaires' Amendment. The
3 Commission proposes to delete paragraph (g) from section 100.19 because the
4 candidate's notifications under 11 CFR 400.21 and 400.22 would no longer be required.

5 2. Proposed Revision of 11 CFR 100.33 – Definition of “Personal
6 Funds”

7 The Commission proposes to revise the definition of “personal funds” in
8 11 CFR 100.33 by deleting the cross-reference to current section 400.2, which the
9 Commission intends to remove through this rulemaking. The Commission proposes to
10 retain the remainder of section 100.33 because the definition of “personal funds” in
11 section 100.33 applies generally to other Title 2 rules that use the term “personal funds.”
12 See Interim Final Rules, 68 FR at 3972. The Commission also notes that the definition of
13 “personal funds” at 11 CFR 9003.2(c)(3), which applies to Title 26 of the United States
14 Code, would remain unchanged.

15 B. Proposed Revision of 11 CFR 101.1 – Candidate Designations

16 The Commission proposes to delete the sentence in paragraph (a) of current
17 11 CFR 101.1 that requires Senate and House of Representatives candidates to state, on
18 their Statements of Candidacy on FEC Form 2 (or, if the candidate is not required to file
19 electronically, on his or her letter containing the same information), the amount by which
20 the candidate intends to exceed the threshold amount as defined in 11 CFR 400.9. The
21 reporting requirements of that sentence would no longer be necessary because, as
22 explained above, the Commission proposes to delete 11 CFR Part 400 through this
23 rulemaking.

1 C. Proposed 11 CFR 102.2 – Statement of Organization: Forms and
2 Committee Identification Number

3 The Commission proposes to retain and revise current 11 CFR 102.2(a)(1)(viii),
4 which requires principal campaign committees to provide an electronic mail address and
5 a facsimile number on FEC Form 1. Paragraph (viii) was promulgated by the Interim
6 Final Rules to facilitate the notification of expenditures from personal funds under Part
7 400. See Interim Final Rules, 68 FR at 3972. Although the notifications under Part 400
8 would no longer be required, the electronic mail address provided by committees
9 facilitates the exchange of information between committees and the Commission for
10 other purposes under FECA. Continuing to require committees' electronic mail address,
11 therefore, would continue to benefit the committees as well as the Commission. The
12 Commission, however, proposes to delete the requirement that committees provide their
13 facsimile number because it does not routinely communicate with committees via
14 facsimile machine.

15 Consistent with its delegated authority to require political committees to provide
16 an "address" when filing a statement of organization under 2 U.S.C. 433(b)(1), the
17 Commission proposes to retain the requirement that committees report their electronic
18 mail address on FEC Form 1.

19 D. Proposed Removal of Current 11 CFR 104.19 – Special Reporting
20 Requirements for Principal Campaign Committees of Candidates for
21 Election to the United States Senate or United States House of
22 Representatives

1 The Commission proposes the remove and reserve current 11 CFR 104.19
2 because the statutory foundation of this section was invalidated by the Supreme Court’s
3 decision in
4 Davis. Current section 104.19 requires principal campaign committees of Senate and
5 House of Representatives candidates to report information necessary to calculate their
6 “gross receipts advantage,” which is defined at 2 U.S.C. 441a(i)(E) (Senate) and 441a-
7 1(a)(2)(B) (House of Representatives). This reporting requirement was promulgated to
8 ensure the candidates in the same House or Senate election have sufficient and timely
9 information to calculate the “opposition personal funds amount” under 11 CFR Part
10 400.10. See Interim Final Rules, 68 FR at 3972. Because the Commission intends to
11 delete Part 400 in response to the Supreme Court’s decision in Davis, the reporting
12 requirements under section 104.19 would no longer be necessary.

13 E. Proposed Deletion of 110.5(b)(2) – Biennial Contribution Limitations

14 The Commission proposes to delete current paragraph (b)(2) of section 110.5
15 because the statutory foundation for this provision has been invalidated by the Supreme
16 Court’s decision in Davis. Paragraph (b)(2) states the circumstances under which the
17 individual biennial limits on contributions do not apply to contributions made pursuant to
18 11 CFR Part 400. As explained above, the Commission intends to remove 11 CFR Part
19 400 because the Davis decision invalidated the Millionaires’ Amendment. Accordingly,
20 the exception to individual contribution limits under section 110.5(b)(2) is no longer
21 valid. The Commission, therefore, proposes to delete 11 CFR 110.5(b)(2).

22 F. Proposed Retention of 11 CFR 116.11 and 116.12 – Repayment of
23 Candidate Loans

1 The Commission proposes to retain sections 11 CFR 116.11 and 116.12 of the
2 regulations concerning the repayment of candidates’ personal loans. The Commission
3 seeks comment on this proposal in light of the Supreme Court’s decision in Davis.

4 BCRA added a new provision prohibiting candidates and their authorized
5 committees from using contributions made after the election to repay loans from the
6 candidates to their authorized committees to the extent the contributions total over
7 \$250,000. See 2 U.S.C. 441a(j). These loans are referred to as “personal loans.” The
8 Commission’s current rules at 11 CFR 116.11 and 116.12 implement 2 U.S.C. 441a(j).
9 Section 116.11 prohibits an authorized committee from using contributions made after an
10 election to repay any personal loan by a candidate that exceeds \$250,000. Section 116.12
11 addresses the repayment of candidate’s personal loans that, in the aggregate, are equal to
12 or less than \$250,000.

13 The Commission believes that the Davis decision did not invalidate the personal
14 loan provision in BCRA and, thus, it proposes to retain the rules that implement that
15 provision. The Commission does not have authority, on its own, to declare a duly
16 enacted law to be unconstitutional.

17 The Court in Davis did not address the validity of the personal loan provision, and
18 the plaintiff did not challenge that provision. Although that provision is in the same
19 statutory subsection of BCRA section 304(a) as other provisions that the Supreme Court
20 in Davis held to be unconstitutional, the personal loan provision is placed in a separate
21 subsection within 2 U.S.C. 441a. This statutory provision has a wider application than
22 other provisions of the Millionaires’ Amendment. It applies equally to all candidates and
23 regardless of whether the Millionaires’ Amendment provisions also apply. Most notably,

1 while other provisions of the Millionaires' Amendment apply only to Senate and House
2 of Representatives candidates, the loan repayment provision applies to candidates for all
3 Federal offices, including presidential candidates. Because this statutory provision has
4 wider application than the Millionaires' Amendment, the Commission added new
5 sections 11 CFR 116.11 and 116.12 rather than include these rules in 11 CFR Part 400
6 with the Millionaires' Amendment regulations. See Interim Final Rules at 3973.

7 The Commission's proposal to retain sections 116.11 and 116.12 is consistent
8 with the approach it took in a recent advisory opinion, which was requested after Davis
9 invalidated the Millionaires' Amendment. See Advisory Opinion 2008-09 (Lautenberg).
10 Senator Lautenberg loaned money to his principal campaign committee in connection
11 with his primary election. The Senator asked the Commission whether the personal loan
12 provision applied to his personal loan case in light of the Davis decision. The
13 Commission concluded that it did apply because the Davis decision did not address the
14 constitutionality of the personal loan provision. The Commission explained that, unlike
15 the BCRA provisions found to be unconstitutional in Davis, the personal loan provision
16 applies equally to all candidates, regardless of whether they or their opponents have
17 triggered the increased campaign contribution limits.

18 The Commission also concluded in Advisory Opinion 2008-09 that the personal
19 loan provision was severable from the Millionaires' Amendment. As the Commission
20 explained there, BCRA section 401 provides that the invalidation of one provision of
21 BCRA will not affect the validity of any other provisions of BCRA nor the application of
22 such provisions to other persons and circumstances. 2 U.S.C. 454. It is a well-settled
23 principle of statutory construction that "[u]nless it is evident that the legislature would

1 not have enacted those provisions which are within its power, independently of that
2 which is not, the invalid part may be dropped if what is left is fully operative as a law.”
3 Buckley v. Valeo, 424 U.S. 1, 108 (1976) quoting Champlin Refining Co. v. Corporation
4 Commission, 286 U.S. 210, 234 (1932)). In Buckley, the Supreme Court struck down
5 certain provisions of FECA’s section 202, but expressly upheld other provisions within
6 the same subsection of the statute.

7 In Advisory Opinion 2008-09, the Commission found that it was not at all
8 “evident” from the text, function, or legislative history of the Millionaires’ Amendment
9 that Congress intended the personal loan provision to be inextricably tied to the increased
10 contribution limits of BCRA 304(a). Section 304(a) was codified in two separate
11 provisions of 2 U.S.C. 441a, one providing for the increased contribution limits and the
12 other limiting repayment of personal loans. Functionally, the personal loan provision can
13 operate effectively without the provisions invalidated by Davis. Because the loan
14 repayment provision’s operation does not depend upon the invalidated increased
15 contribution limits or reporting provisions, its validity is not affected by their
16 invalidation. Moreover, legislative history shows that Congress in several instances
17 addressed the loan repayment provision separately from the unconstitutional provisions
18 regarding increased contribution limits. See, e.g., 147 Cong. Rec. S2450-51 (daily ed.
19 Mar. 19, 2001) (statement of Sen. Domenici); 147 Cong. Rec. S2461-62 (daily ed. Mar.
20 19, 2001) (statement of Sen. Domenici).

21 The Commission seeks comment on its proposal to retain the current rules at
22 11 CFR 116.11 and 116.12 restricting the repayment of personal loans.

23 G. Proposed Retention of 11 CFR 110.1(b)(3)(ii)(C) – Net Debts Outstanding

1 The Commission proposes to retain current 11 CFR 110.1(b)(3), which restricts
2 the ability of candidates and their authorized committees to accept contributions after the
3 election. Together with sections 116.11 and 116.12, current 11 CFR 110.1(b)(3)
4 implements 2 U.S.C. 441a(j).

5 Candidates and their authorized committees cannot accept contributions after the
6 election is over unless the candidate still has net debts outstanding from that election.
7 11 CFR 110.1(b)(i). This rule was promulgated long before BCRA added the loan
8 repayment restriction in 441a(j). After the election is over, candidates and their
9 authorized committees may accept contributions up to the amount of their “net debts
10 outstanding,” as defined in current 11 CFR 110.1(b)(3)(ii). To conform with the
11 fundraising restrictions in 11 CFR 116.11, the Commission added paragraph (C) to
12 section 110.1(b)(3)(ii), which excludes the amount of personal loans that exceed
13 \$250,000 from the definition of “net debt outstanding.” See Interim Final Rules, 68 FR
14 at 3973. The Commission proposes to retain the current rule at 11 CFR
15 110.1(b)(3)(ii)(C) for the same reasons it intends to retain the current rules 11
16 CFR 116.11 and 116.12, as explained above.

17 H. Proposed Retention of 11 CFR 9035.2(c) – Expenditure limitations

18 The Commission proposes to retain the cross-reference in current
19 11 CFR 9035.2(c) to the definition of “personal funds” in 11 CFR 9003.2. Section
20 9035.2 provides limitations on expenditures from personal or family funds when a
21 candidate has accepted matching funds in a presidential primary election. In
22 promulgating 11 CFR 9035.2(c), the Commission explained that it cross-referenced that
23 section to the definition of “personal funds” in 11 CFR 9003.2 because it was more

1 appropriate in the context of Title 26 regulations than the Commission’s definition of
2 “personal funds” in 11 CFR 100.33, which applies only to FECA. See Interim Final
3 Rules, 68 FR at 3986-87. For the same reason, the Commission continues to believe that
4 the cross-reference in 11 CFR 9035.2(c) to 11 CFR 9003.2 is appropriate and, therefore,
5 it should be retained.

6 **IV. Technical and Conforming Amendments to Other Regulations**

7 A. 11 CFR 100.153 – Routine Living Expenses; 11 CFR 113.1(g)(6)(ii) –
8 definition of personal use

9 The Commission proposes to amend 11 CFR 100.153 and 113.1(g)(6)(ii) by
10 revising the cross-reference to the definition of “personal funds” in 11 CFR 110.10(b) to
11 current 11 CFR 100.33. The Commission deleted 11 CFR 110.10(b) in the Interim Final
12 Rules. The proposed change would reflect the Commission’s prior removal of the
13 “personal funds” definition from section 110.10(b) to section 100.33.

14 B. 11 CFR 110.5(b)(2) – Biennial Contribution Limitations

15 The Commission proposes to amend 11 CFR 110.5 paragraphs (b), (d), and (e),
16 by revising the spelling of the word “bi-annual” to “biennial.” This proposed change
17 would make the spelling consistent with the title of section 110.5, which uses the term
18 biennial.

19 C. 11 CFR 9001.1 – Scope; 11 CFR 9003.1 – Candidate and Committee
20 Agreement; 11 CFR 9031.1 – Scope; 11 CFR 9033.1 – Candidate and
21 Committee Agreement

1 The Commission proposes to make technical amendments to these sections that
2 would update the reference to its other regulations to reflect the proposed elimination of
3 Part 400.

4 **V. Request for Comments**

5 The Commission invites comments from the public concerning any of the
6 proposals outlined above. The Commission also invites comments from the public
7 regarding any additional changes that should be made to 11 CFR 100.33, 101.1,
8 102.2(a)(1)(viii), 110.1(b)(3)(ii)(C), 116.11, 116.12, 9035.2(c), or any other section of the
9 regulations to conform with the holdings and points of law articulated in the Supreme
10 Court’s decision in Davis.

11
12 **Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

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

1 any other political committees might be considered “small entities,” the number that
2 would be affected by this rule is not substantial.

3 The proposed rule also would not add new substantive provisions to the current
4 regulations, but rather it would remove or retain existing regulations. Therefore, the
5 attached proposed rule would not have a significant impact on a substantial number of
6 small entities.

7

8 **List of Subjects**

9 11 CFR Part 100

10 Elections.

11 11 CFR Part 101

12 Political candidates, Reporting and recordkeeping requirements.

13 11 CFR Part 102

14 Political committees and parties, Reporting and recordkeeping requirements.

15 11 CFR Part 104

16 Campaign funds, Political committees and parties, Reporting and recordkeeping
17 requirements.

18 11 CFR Part 110

19 Campaign funds, Political committees and parties.

20 11 CFR Part 113

21 Campaign funds.

22 11 CFR Part 116

- 1 Administrative practice and procedure, Business and industry, Credit, Elections,
2 Political candidates, Political committees and parties.
- 3 11 CFR Part 400
- 4 Campaign funds, Elections, Political candidates, Political committees and parties,
5 Reporting and recordkeeping requirements.
- 6 11 CFR Part 9001
- 7 Campaign funds.
- 8 11 CFR Part 9003
- 9 Campaign funds, Reporting and recordkeeping requirements.
- 10 11 CFR Part 9031
- 11 Campaign funds.
- 12 11 CFR Part 9033
- 13 Campaign funds, Reporting and recordkeeping requirements.
- 14 11 CFR Part 9035
- 15 Campaign funds, Reporting and recordkeeping requirements.

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

4

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

6 1. The authority citation for part 100 would continue to read as follows:

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

8 2. In section 100.19, paragraph (b) would be revised by removing the reference to
9 “(g)” and adding in its place “(f)” in both instances that “(g)” appears.

10 3. In section 100.19, paragraph (g) would be removed to read as follows:

11 **§ 100.19 File, filed or filing (2 U.S.C. 434(a)).**

12 * * * * *

13 ~~(g) —Candidate notifications of expenditures from personal funds. A candidate’s~~
14 ~~notification of expenditures from personal funds under 11 CFR 400.21 or 400.22 is~~
15 ~~timely filed if it is received by facsimile machine or electronic mail by each of~~
16 ~~appropriate parties as set forth in 11 CFR 400.21 and 400.22 within 24 hours of the time~~
17 ~~the threshold amount as defined in 11 CFR 400.9 is exceeded and within 24 hours of the~~
18 ~~time expenditures from personal funds are made under 11 CFR 400.21 and 400.22.~~

19 4. Section 100.33 would be revised to read as follows:

20 **§ 100.33 Personal funds.**

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

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

4 (1) Legal and rightful title; or

5 (2) An equitable interest;

6 (b) Income. Income received during the current election cycle, ~~as defined in~~
7 ~~11 CFR 400.2~~, of the candidate, including:

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

10 (2) Income from the candidate's stocks or other investments including
11 interest, dividends, or proceeds from the sale or liquidation of such stocks
12 or investments;

13 (3) Bequests to the candidate;

14 (4) Income from trusts established before the beginning of the election cycle
15 ~~as defined in 11 CFR 400.2~~;

16 (5) Income from trusts established by bequest after the beginning of the
17 election cycle of which the candidate is the beneficiary;

18 (6) Gifts of a personal nature that had been customarily received by the
19 candidate prior to the beginning of the election cycle, ~~as defined in~~
20 ~~11 CFR 400.2~~; and

21 (7) Proceeds from lotteries and similar legal games of chance; and

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

- 1 (1) The portion of assets that is equal to the candidate’s share of the asset
2 under the instrument of conveyance or ownership; provided, however,
3 (2) If no specific share is indicated by an instrument of conveyance or
4 ownership, the value of one-half of the property.
- 5 5. Section 100.153 would be revised by removing the reference to “11 CFR
6 110.10(b)” and adding in its place “11 CFR 100.33”.

7

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

- 9 6. The authority citation for part 101 would continue to read as follows:
10 Authority: 2 U.S.C. 432(e), 434(a)(11), 438(a)(f).

- 11 7. Section 101.1(a) would be revised to read as follows:

12 **§ 101.1 Candidate designations (2 U.S.C. 432(e)(1)).**

13 (a) Principal Campaign Committee. Within 15 days after becoming a candidate
14 under 11 CFR 100.3, each candidate, other than a nominee for the office of Vice
15 President, shall designate in writing, a principal campaign committee in accordance with
16 11 CFR 102.12. A candidate shall designate his or her principal campaign committee by
17 filing a Statement of Candidacy on FEC Form 2, or, if the candidate is not required to file
18 electronically under 11 CFR 104.18, by filing a letter containing the same information
19 (that is, the individual’s name and address, party affiliation, and office sought, the
20 District and State in which Federal office is sought, and the name and address of his or
21 her principal campaign committee at the place of filing specified at 11 CFR part 105).

22 ~~Candidates for the Senate and the House of Representatives must also state, on their~~
23 ~~Statements of Candidacy on FEC Form 2 (or, if the candidate is not required to file~~

1 electronically under ~~11 CFR 104.18~~, on his or her letter containing the same information),
2 the amount by which the candidate intends to exceed the threshold amount as defined in
3 ~~11 CFR 400.9~~. Each principal campaign committee shall register, designate a depository,
4 and report in accordance with 11 CFR parts 102, 103, and 104.

5 * * * * *

6

7 **PART 102 – REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY**
8 **POLITICAL COMMITTEES (2 U.S.C. 433)**

9 8. The authority citation for part 102 would continue to read as follows:

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

11 9. In section 102.2, paragraph (a)(1)(viii) would be revised to read as follows:

12 **§ 102.2 Statement of organization: Forms and committee identification**
13 **number (2 U.S.C. 433 (b), (c)).**

14 (a) * * *

15 (1) * * *

16 (viii) If the committee is a principal campaign committee of a candidate
17 for the Senate or the House of Representatives, the principal
18 campaign committee’s ~~facsimile number, if available, and electronic~~
19 mail address.

20 * * * * *

21

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

1 10. The authority citation for part 104 would continue to read as follows:

2 Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a,
3 441a, and 36 U.S.C. 510.

4 11. Section 104.19 would be removed and reserved.

5 **§ 104.19 [Removed and Reserved]. ~~Special reporting requirements for principal~~**
6 **~~campaign committees of candidates for election to the United States Senate or~~**
7 **~~United States House of Representatives.~~**

8 (a) ~~— Scope. The principal campaign committees of candidates for elections to the~~
9 ~~office of United States Senator, or Representative in, or Delegate or Resident~~
10 ~~Commissioner to, the Congress must file reports required under this section with the~~
11 ~~Commission.~~

12 (b) ~~— Timing and contents of reports.~~

13 (1) ~~— By July 15 of the year preceding the year in which the general election for~~
14 ~~the office sought is held, each principal campaign committee shall file a~~
15 ~~report that includes the following information:~~

16 (i) ~~— The gross receipts, as defined in 11 CFR 400.8, of all of the~~
17 ~~candidate's authorized committees that may be expended in~~
18 ~~connection with the primary election as determined as of June 30~~
19 ~~of that year including contributions to the candidate or any of the~~
20 ~~candidate's authorized committees received by June 30 of that year~~
21 ~~that have been made or designated for the primary election under~~
22 ~~11 CFR 110.1(b)(2) or redesignated for the primary election under~~
23 ~~11 CFR 110.1(b)(5);~~

1 ~~(ii) — The gross receipts, as defined in 11 CFR 400.8, of all of the~~
2 ~~candidate's authorized committees that may be expended in~~
3 ~~connection with the general election that have been received by~~
4 ~~June 30 of that year including contributions to the candidate or any~~
5 ~~of the candidate's authorized committees received by June 30 of~~
6 ~~that year that have been designated under 11 CFR 110.1(b)(2) for~~
7 ~~the general election or redesignated for the general election under~~
8 ~~11 CFR 110.1(b)(5);~~

9 ~~(iii) — The aggregate amount of contributions from the personal funds of~~
10 ~~the candidate to any of the candidate's authorized committees~~
11 ~~received by June 30 of that year that have been made or designated~~
12 ~~for the primary election under 11 CFR 110.1(b)(2) or redesignated~~
13 ~~for the primary election under 11 CFR 110.1(b)(5);~~

14 ~~(iv) — The aggregate amount of contributions from the personal funds of~~
15 ~~the candidate to any of the candidate's authorized committees~~
16 ~~received by June 30 of that year that have been designated under~~
17 ~~11 CFR 110.1(b)(2) for the general election or redesignated for the~~
18 ~~general election under 11 CFR 110.1(b)(5);~~

19 ~~(v) — The aggregate amount described in paragraph (b)(1)(i) of this~~
20 ~~section minus the aggregate amount described in paragraph~~
21 ~~(b)(1)(iii) of this section; and~~

1 ~~have been designated under 11 CFR 110.1(b)(2) for the general~~
2 ~~election or redesignated for the general election under~~
3 ~~11 CFR 110.1(b)(5);~~

4 ~~(iii) — The aggregate amount of contributions from the personal funds of~~
5 ~~the candidate to any of the candidate's authorized committees~~
6 ~~received by December 31 of the year preceding the year in which~~
7 ~~that general election is held that have been made or designated for~~
8 ~~the primary election under 11 CFR 110.1(b)(2) or redesignated for~~
9 ~~the primary election under 11 CFR 110.1(b)(5);~~

10 ~~(iv) — The aggregate amount of contributions from the personal funds of~~
11 ~~the candidate to any of the candidate's authorized committees~~
12 ~~received by December 31 of the year preceding the year in which~~
13 ~~that general election is held that have been designated under~~
14 ~~11 CFR 110.1(b)(2) for the general election or redesignated for the~~
15 ~~general election under 11 CFR 110.1(b)(5);~~

16 ~~(v) — The aggregate amount described in paragraph (b)(2)(i) of this~~
17 ~~section minus the aggregate amount described in paragraph~~
18 ~~(b)(2)(iii) of this section; and~~

19 ~~(vi) — The aggregate amount described in paragraph (b)(2)(ii) of this~~
20 ~~section minus the aggregate amount described in paragraph~~
21 ~~(b)(2)(iv) of this section.~~

22

1 **PART 110 – CONTRIBUTION AND EXPENDITURE LIMITATIONS AND**
2 **PROHIBITIONS**

3 12. The authority citation for part 110 would continue to read as follows:

4 Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d,
5 441e, 441f, 441g, 441h, and 36 U.S.C. 510.

6 13. In section 110.1, paragraph (b)(3)(ii)(C) would continue to read as follows:

7 **§ 110.1 Contributions by persons other than multicandidate political**
8 **committees (2 U.S.C. 441a(a)(1)).**

9 * * * * *

10 (b) * * *

11 (3) * * *

12 (ii) * * *

13 (C) The amount of personal loans, as defined in
14 11 CFR 116.11(b), that in the aggregate exceed \$250,000
15 per election.

16 * * * * *

17 14. In section 110.5, paragraphs (b), (d), and (e) would be revised, and paragraph
18 (b)(2) would be removed and reserved to read as follows:

19 **§ 110.5 Aggregate biennial contribution limitation for individuals**
20 **(2 U.S.C. 441a(a)(3)).**

21 * * * * *

22 (b) Bi-annual Biennial limitations.

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

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

7 (ii) \$57,500 in the case of any other contributions, of which not more
8 than \$37,500 may be attributable to contributions to political
9 committees that are not political committees of any national
10 political parties.

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

15 * * * * *

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

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

22 15. Section 110.10 would continue to read as follows:

23 **§ 110.10 Expenditures by candidates.**

1 Except as provided in 11 CFR parts 9001, et seq. and 9031, et seq., candidates for
2 Federal office may make unlimited expenditures from personal funds as defined in
3 11 CFR 100.33.

4
5 **PART 113 – USE OF CAMPAIGN ACCOUNTS FOR NON-CAMPAIGN**
6 **PURPOSES**

7 16. The authority citation for part 113 would continue to read as follows:

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

9 17. Section 113.1(g)(6)(ii) would be revised by removing the reference to “11 CFR
10 110.10(b)” and adding in its place “11 CFR 100.33”.

11
12 **PART 116 – DEBTS OWED BY CANDIDATES AND POLITICAL**
13 **COMMITTEES**

14 18. The authority citation for part 116 would continue to read as follows:

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

16 19. Section 116.11 would continue to read as follows:

17 **§ 116.11 Restriction on an authorized committee’s repayment of personal loans**
18 **exceeding \$250,000 made by the candidate to the authorized committee.**

19 (a) For purposes of this part, personal loans mean a loan or loans, including advances,
20 made by a candidate, using personal funds, as defined in 11 CFR 100.33, to his or her
21 authorized committee where the proceeds of the loan were used in connection with the
22 candidate’s campaign for election. Personal loans also include loans made to a

1 candidate's authorized committee that are endorsed or guaranteed by the candidate or that
2 are secured by the candidate's personal funds.

3 (b) For personal loans that, in the aggregate, exceed \$250,000 in connection with an
4 election, the authorized committee:

5 (1) May repay the entire amount of the personal loans using contributions to
6 the candidate or the candidate's authorized committee provided that those
7 contributions were made on the day of the election or before;

8 (2) May repay up to \$250,000 of the personal loans from contributions made
9 to the candidate or the candidate's authorized committee after the date of
10 the election; and

11 (3) Must not repay, directly or indirectly, the aggregate amount of the
12 personal loans that exceeds \$250,000, from contributions to the candidate
13 or the candidate's authorized committee if those contributions were made
14 after the date of the election.

15 (c) If the aggregate outstanding balance of the personal loans exceeds \$250,000 after
16 the election, the authorized political committee must comply with the following
17 conditions:

18 (1) If the authorized committee uses the amount of cash on hand as of the day
19 after the election to repay all or part of the personal loans, it must do so
20 within 20 days of the election.

21 (2) Within 20 days of the election date, the authorized committee must treat
22 the portion of the aggregate outstanding balance of the personal loans that

1 exceeds \$250,000 minus the amount of cash on hand as of the day after
2 the election used to repay the loan as a contribution by the candidate.

3 (3) The candidate's principal campaign committee must report the
4 transactions in paragraph (c)(1) and (c)(2) of this section in the first report
5 scheduled to be filed after the election pursuant to 11 CFR 104.5(a) or (b).

6 (d) This section applies separately to each election.

7 20. Section 116.12 would continue to read as follows:

8 **§ 116.12 Repayment of candidate loans of \$250,000 or less.**

9 (a) A candidate's authorized committee may repay to the candidate a personal loan, as
10 defined in 11 CFR 116.11(a), of up to \$250,000 where the proceeds of the loan were used
11 in connection with the candidate's campaign for election. The repayment may be made
12 from contributions to the candidate or the candidate's authorized committee at any time
13 before, on, or after the date of the election.

14 (b) This section applies separately to each election.

15 (c) Nothing in this section shall supersede 11 CFR 9035.2 regarding the limitations on
16 expenditures from personal funds or family funds of a presidential candidate who accepts
17 matching funds.

18
19 21. In Subchapter C, part 400 would be removed.

20 **PART 400 ~~[Removed]~~—INCREASED LIMITS FOR CANDIDATES OPPOSING**
21 **~~SELF-FINANCED CANDIDATES~~**

22
23 **PART 9001 – SCOPE**

1 22. The authority citation for part 9001 would continue to read as follows:

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

3 23. Section 9001.1 would be revised by removing the number “400” and adding in its
4 place the number “300” in both instances in which “400” appears.

5

6 **PART 9003 – ELIGIBILITY FOR PAYMENTS**

7 24. The authority citation for part 9003 would continue to read as follows:

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

9 25. In section 9003.1, paragraph (b)(8) would be revised by removing the number
10 “400” and adding in its place the number “300”.

11

12 **PART 9031 – SCOPE**

13 26. The authority citation for part 9031 would continue to read as follows:

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

15 27. Section 9031.1 would be revised by removing the number “400” and adding in its
16 place the number “300” in both instances in which “400” appears.

17

18 **PART 9033 – ELIGIBILITY FOR PAYMENTS**

19 28. The authority citation for part 9033 would continue to read as follows:

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

21 29. In section 9033.1, paragraph (b)(10) would be revised by removing the number
22 “400” and adding in its place the number “300”.

23

1 **PART 9035 – EXPENDITURE LIMITATIONS**

2 30. The authority citation for part 9035 would continue to read as follows:

3 Authority: 26 U.S.C. 9035 and 9039(b).

4 31. In section 9035.2, paragraph (c) would continue to read as follows:

5 **§ 9035.2 Limitation on expenditures from personal or family funds.**

6 * * * * *

7

8 (c) For purposes of this section, personal funds has the same meaning as specified in

9 11 CFR 9003.2.

10

11

12

On behalf of the Commission,

13

14

15

16

17

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DATED: _____

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BILLING CODE: 6715-01-U

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Donald F. McGahn II
Chairman
Federal Election Commission