



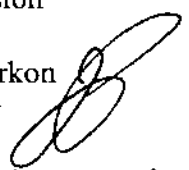
FEDERAL ELECTION COMMISSION  
Washington, DC 20463


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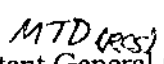
**MEMORANDUM**


**TO:** The Commission


**THROUGH:** James A. Pehrkon   
Staff Director


**FROM:** Lawrence H. Norton   
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**SUBJECT:** Public Financing of Presidential Candidates and Nominating Conventions:  
Draft Final Rules

**AGENDA ITEM**  
For Meeting of: 07-24-03

**SUBMITTED LATE**

Attached is a draft of the Title 26 Final Rules, which addresses the public financing of Presidential candidates and nominating conventions. This draft reflects discussion on these issues during the Regulations Committee meeting on July 3, 2003.

**Recommendations**

The Office of General Counsel recommends that the Commission take the following actions:

1. Approve the attached Final Rules and Explanation & Justification for publication in the *Federal Register*.
2. Direct the Office of General Counsel to transmit these documents to Congress.

Attachment

**Public Financing of Presidential Candidates and Nominating Conventions**

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1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 104, 107, 110, 9001, 9003, 9004, 9008, 9031 -- 9036, and 9038**

3 **[Notice 2003 - \_\_]**

4 **Public Financing of Presidential Candidates and Nominating Conventions**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Final rules and transmittal of regulations to Congress.

7 **SUMMARY:** The Federal Election Commission is revising several portions of its  
8 regulations governing the public financing of Presidential  
9 candidates, in both primary and general election campaigns, and  
10 Presidential nominating conventions. These regulations implement  
11 the provisions of the Presidential Election Campaign Fund Act  
12 (“Fund Act”) and the Presidential Matching Payment Account Act  
13 (“Matching Payment Act”), which establish eligibility  
14 requirements for Presidential candidates and convention  
15 committees seeking public financing and indicate how funds  
16 received under the public financing system may be spent. The  
17 revised rules also implement the Bipartisan Campaign Reform Act  
18 of 2002, as it applies particularly to the Fund Act and the Matching  
19 Payment Act. The revised rules reflect the Commission’s  
20 experience in administering these programs, particularly during the  
21 2000 election cycle, and anticipate some questions that may arise  
22 during the 2004 Presidential election cycle. Further information is  
23 contained in the Supplementary Information that follows.



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**EFFECTIVE  
DATE:**

Further action, including the publication of a document in the Federal Register announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9009(c).

**FOR FURTHER  
INFORMATION  
CONTACT:**

Ms. Rosemary C. Smith, Acting Associate General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, Mr. Robert M. Knop, or Ms. Delanie DeWitt Painter, Attorneys, 999 E Street, N.W., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY  
INFORMATION:**

The Commission is publishing today the final text of revisions to its regulations governing the public financing of Presidential campaigns, 11 CFR parts 9001 through 9039, to more effectively administer the public financing program during the 2004 election cycle. These rules implement 26 U.S.C. 9001-13 and 26 U.S.C. 9031-42. The revised rules apply certain provisions of the Bipartisan Campaign Reform Act of 2002, Pub. Law No. 107-155, 116 Stat. 81 (2002) [“BCRA”], to Presidential nominating convention financing. The revised rules also: (1) limit the use of public funds for winding down costs for both primary and general election Presidential candidates; (2) clarify rules concerning the attribution of expenses to the expenditure limitations for Presidential primary candidates and repayments based on expenditures in excess of those limitations; (3) modify several aspects of General Election Legal and Accounting Compliance Funds; (4) require Presidential committees to notify the Commission prior to

1 changing their non-election year reporting schedules; (5) create a new “shortfall bridge  
2 loan exemption” from a primary candidate’s overall expenditure limitation; (6) define  
3 “municipal funds” to eliminate the former distinction between permissible host  
4 committee activity that was impermissible for municipal funds; (7) subject municipal  
5 funds to the same disclosure rules as host committees; (8) delete the requirements that  
6 only “local” individuals and “local” entities may donate to host committees and  
7 municipal funds; and (9) make technical changes.

8         The Commission published a Notice of Proposed Rulemaking on April 15, 2003,  
9 68 Fed. Reg. 18484. Written comments were due by May 23, 2003. The names of  
10 commenters and their comments are available at <http://www.fec.gov/register.htm> under  
11 “Public Financing of Presidential Candidates and Nominating Conventions.” The  
12 Commission held a public hearing on June 6, 2003 at which it heard testimony from 12  
13 witnesses. Transcripts of the hearing are available at the website identified above. Please  
14 note that, for purposes of this document, the terms “commenter” and “comment” apply to  
15 both written comments and oral testimony at the public hearing.

16         Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional  
17 Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules  
18 to the Speaker of the House of Representatives and the President of the Senate, and  
19 publish them in the Federal Register at least 30 calendar days before they take effect. In  
20 addition, 26 U.S.C. 9009(c) requires that any rules or regulations prescribed by the  
21 Commission to carry out the provisions of the Fund Act be transmitted to the Speaker of  
22 the House of Representatives and the President of the Senate 30 legislative days before

1 they are finally promulgated. The final rules that follow were transmitted to Congress on  
2 July >>, 2003.

3

#### 4 **Explanation and Justification**

5

### 6 **11 CFR Part 104—Reports by Political Committees**

#### 7 11 CFR 104.5(b)(1) – Election Year Reports

8 The regulation at 11 CFR 104.5(b)(1) establishes the filing dates for reports by  
9 principal campaign committees (“PCC”s) of Presidential candidates, during election years  
10 in accordance with 2 U.S.C. 434(a)(3)(A). This rule is being revised to correct several  
11 citations to reflect changes to 11 CFR 104.5(a) promulgated when implementing BCRA’s  
12 new reporting requirements. The new citations refer to the same pre- and post-election  
13 reports so the reporting requirements are not changed. Specifically, the reference in  
14 11 CFR 104.5(b)(1)(i)(C) is being changed from 11 CFR 104.5(a)(1)(i) to “paragraph  
15 (a)(2)(i) of this section” and the reference to 11 CFR 104.5(a)(1)(ii) is being changed to  
16 “paragraph (a)(2)(ii) of this section.” In 11 CFR 104.5(b)(1)(ii), the reference to 11 CFR  
17 104.5(a)(1) is being changed to “paragraphs (a)(1) and (2) of this section.”

18 Section 104.5(b)(1)(ii) operates with two other provisions, section 104.5(b)(1)(i)  
19 and (iii), to specify the circumstances under which a Presidential PCC is not required to  
20 file monthly reports during the Presidential election year. A Presidential PCC must report  
21 monthly during an election year if contribution receipts or expenditures exceed or are  
22 anticipated to exceed \$100,000. 11 CFR 104.5(b)(1)(i) and (iii). In order for the three  
23 provisions to work harmoniously, all four conditions listed in section 104.5(b)(1)(ii) must

1 be satisfied before a PCC is relieved of the monthly filing requirement. Therefore,  
2 section 104.5(b)(1)(ii) is being revised to replace the disjunctions “or” with the  
3 conjunctions “and” in three instances.

4 11 CFR 104.5(b)(2) –Non-election Year Reports: Quarterly and Monthly Reporting  
5 Requirements

6 Section 104.5(b)(2) provides that principal campaign committees of Presidential  
7 candidates may file campaign reports in non-election years on either a monthly or a  
8 quarterly basis. The previous rules did not explain how PCCs may change their reporting  
9 frequency during a non-election year from monthly to quarterly or vice versa.

10 The Commission is revising section 104.5(b)(2) to set forth requirements for  
11 PCCs of Presidential candidates seeking to change reporting frequency. One commenter  
12 stated that this change fills a gap in the regulations and provides a procedure for  
13 switching reporting similar to that for unauthorized committees, which will be beneficial  
14 even though Presidential candidates’ PCCs will seldom switch reporting schedules. The  
15 revised rule at section 104.5(b)(2) allows a PCC to change its filing schedule in a non-  
16 election year only after notifying the Commission in writing of its intention at the time it  
17 files a required report under its current filing frequency. The Presidential candidate’s  
18 PCC is then required to file the next required report under its new filing frequency. In  
19 addition, a PCC may change its filing frequency no more than once in a calendar year.  
20 This rule establishes the same requirements as are found in 11 CFR 104.5(c) for  
21 unauthorized committees. The Commission notes that Presidential candidates’ PCCs are  
22 not permitted to change their filing frequency during election years under 2 U.S.C.  
23 434(a)(3)(A), except that a PCC that files quarterly reports must begin filing monthly

1 reports at the next reporting period after it receives contributions or makes expenditures  
2 in excess of \$100,000.

3 **11 CFR Part 107—Presidential Nominating Convention, Registration and Reports**

4 11 CFR 107.2 – Registration and reports by host committees and municipal funds

5 The NPRM proposed revising the host committee and municipal fund registration  
6 and reporting requirements in 11 CFR 107.2 in two respects to reflect proposed changes  
7 to other Commission regulations. 68 Fed. Reg. at 18512. First, the NPRM proposed  
8 changing the title of section 107.2 as well as a reference in the text of the section to  
9 reflect the new definition of “municipal fund” it had proposed for 11 CFR 9008.50(c).  
10 Second, the NPRM proposed adding a sentence to 11 CFR 107.2 to reflect a revision it  
11 proposed for 11 CFR 9008.51 to require that host committee and municipal fund reports  
12 contain the information specified in 11 CFR part 104.

13 For the reasons explained in greater detail below, the Commission has decided to  
14 modify both 11 CFR 9008.50 and 11 CFR 9008.51 as proposed. See Explanation and  
15 Justification for new 11 CFR 9008.50(c) and 11 CFR 9008.51(b)(1), below. Accordingly,  
16 the Commission has decided to change the title of section 107.2 from “Registration and  
17 reports by host committees and committees, organizations or other groups representing a  
18 state, city or other local government agency” to “Registration and reports by host  
19 committees and municipal funds.” See new 11 CFR 107.2. Similarly, the Commission  
20 has decided to change the phrase used to describe municipal funds in the text of the  
21 section from “each committee or other organization or group of persons which represents  
22 a State, municipality, local government agency or other political subdivision in dealing  
23 with officials of a national political party with respect to matters involving a Presidential

1 nominating convention” to “municipal fund.” In addition, the Commission has decided  
2 to add the proposed sentence to section 107.2 requiring that host committee and  
3 municipal fund reports “shall contain the information specified in 11 CFR part 104.”  
4 None of the commenters addressed these changes.

5 **11 CFR Part 110—Contribution and Expenditure Limitations and Prohibitions**

6 11 CFR 110.2 – Contributions by multicandidate political committees

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

8 For a full discussion of pre-candidacy expenditures by multicandidate political  
9 committees deemed in-kind contributions, see the Explanation and Justification for  
10 11 CFR 9034.10 below. The language in the final rules at 11 CFR 110.2(l) varies from  
11 the language at 11 CFR 9034.10 because the candidate involved would not be publicly  
12 funded and, therefore, the consequence of a reimbursement would be to simply convert  
13 the payment from an in-kind contribution to an expenditure of the candidate. The  
14 qualified campaign expense concept and the attendant spending limit provisions are not  
15 implicated for candidates who are not publicly funded.

16 **11 CFR Part 9001—Scope**

17 11 CFR 9001.1 – Scope

18 The Commission is making two technical amendments to this section to update  
19 the references to its other regulations.

20 **11 CFR Part 9003—Eligibility for Payments**

21 11 CFR 9003.1 – Candidate and committee agreement

22 The Commission is making a technical amendment to the regulations on candidate  
23 agreements in section 9003.1 to update the reference to other regulations. Under revised

1 paragraph (b)(8), candidates and their authorized committees must agree to comply with  
2 the Commission's rules through 11 CFR part 400.

3 11 CFR 9003.3 – Allowable contributions; General election legal and accounting  
4 compliance fund.

5 The Commission is revising its rule governing General Election Legal and  
6 Accounting Compliance Funds (“GELACs”) in several respects.

7 11 CFR 9003.3(a)(1) – Sources

8 1. Solicitation of GELAC Funds

9 The NPRM sought comment on whether to revise the prohibition on the  
10 solicitation and deposit of GELAC contributions prior to June 1 of the calendar year in  
11 which a Presidential general election is held to an earlier date. See former  
12 11 CFR 9003.3(a)(1)(i) and (a)(1)(i)(A). Deposits earlier than June 1 were permitted only  
13 for excessive primary contributions that had been redesignated for the GELAC under the  
14 previous rules. The proposal suggested changing the date to either April 1 or May 1.  
15 One commenter supported the greater flexibility that would be provided with an earlier  
16 date, but nonetheless described the proposed change as a relatively insignificant step.  
17 The only other commenter to address this issue saw no reason to change the June 1 date.

18 The Commission first imposed the prohibition on soliciting and depositing  
19 GELAC contributions prior to June 1 in 1999. See Explanation and Justification to the  
20 Rules Governing Public Financing of Presidential Primary and General Election  
21 Candidates, 64 Fed. Reg. 49355, 49356-57 (Sept. 13, 1999). The 1999 explanation and  
22 justification stated that the June 1 rule was intended to address two difficulties. The first  
23 was that candidates who do not receive their party's nomination must return all GELAC

1 contributions, which can be difficult if some have been used to defray overhead expenses  
2 or to solicit additional GELAC contributions. The second was ensuring that GELAC  
3 funds are not improperly used to make primary election expenditures. 64 Fed. Reg. at  
4 49356. The Commission selected the June 1 date because “barring unforeseen  
5 circumstances, this is the point when a party’s prospective nominee can be reasonably  
6 assured that he or she will need to raise funds for a GELAC” and the date gives  
7 prospective nominees “sufficient time to raise the funds that will be needed.” Id.  
8 Because the effective date of these regulatory amendments was June 1, 2000, the pre-June  
9 1 solicitation prohibition was not operative for the 2000 election cycle.

10 The Commission has decided to change the starting date for GELAC solicitations  
11 and most deposits to April 1. The earlier primary dates for some states in the 2004  
12 Presidential election cycle is likely to lead to an earlier resolution of nomination contests,  
13 even though the later than usual dates for the Presidential nominating conventions in  
14 2004 will mean that the official start of the general election campaigns will be later in the  
15 cycle than usual. Therefore, the June 1 date in the former 11 CFR 9003.3(a)(1)(i) and  
16 (a)(1)(i)(A) is changed to April 1 of the election year as the starting date for GELAC  
17 solicitations and most deposits.

18 2. Redesignation of Excessive Contributions to the GELAC

19 The Commission is revising its rules governing the sources of GELAC funds at 11  
20 CFR 9003.3(a)(1) to reflect its recent changes to its rules concerning the redesignation of  
21 excessive contributions at 11 CFR 110.1(b)(5)(ii)(B). See Explanation and Justification  
22 for the Rules Governing Contribution Limitations and Prohibitions, 67 Fed. Reg. 69928,  
23 69930-32 (Nov. 19, 2002). These changes allow authorized committees to redesignate



1 excessive primary contributions to the general election without obtaining a signed written  
2 document from the contributor under certain circumstances. Section 110.1(b)(5)(ii)(B)  
3 allows the candidate's committee to presume that the contributor of an excessive primary  
4 contribution would not object to a redesignation of any excessive amount to that  
5 candidate's general election, without obtaining written agreement from the contributor for  
6 the redesignation. Id. at 69931. The explanation and justification for this rule elaborated  
7 that "if a presidential candidate's authorized committee accepts public funding in the  
8 general election, the presumption is available to any such committees only to the extent  
9 they are permitted to accept contributions to a general election legal and accounting  
10 compliance fund." Id. at 69930-31.

11 The NPRM proposed revisions to 11 CFR 9003.3(a)(1)(i), (a)(1)(i)(C) and  
12 (a)(1)(v) to permit publicly funded Presidential candidates to presume that those making  
13 excessive contributions for the primary election would consent to the redesignation of  
14 their contributions to the candidate's GELAC. The three commenters who addressed this  
15 issue supported these proposed changes.

16 The Commission has decided to revise its rules to reflect the adoption of the  
17 presumptive redesignations for the GELAC, with several changes from proposed  
18 11 CFR 9003.3(a)(1) to clarify the operation of the rule and presumptive redesignations.  
19 Section 9003.3(a)(1)(i) is being revised to delete the phrase "by the contributor" to permit  
20 the deposit of contributions redesignated by presumption into GELACs.  
21 Section 9003.3(a)(1)(i)(C) is not being revised because the NPRM's revisions for this  
22 provision incorrectly suggested that a contribution redesignated by presumption is  
23 considered a contribution designated in writing.

1           Section 9003.3(a)(1)(ii)(A), which the NPRM would not have revised, applies by  
2 its terms to “contributions made during the matching payment period that do not exceed  
3 the contributor’s limit for the primary election.” Because presumptive redesignations are  
4 limited to excessive contributions, contributions under this provision can only be  
5 redesignated in writing, so the reference to “redesignations” in  
6 section 9003.3(a)(1)(ii)(A)(3) is being revised to “written redesignations.” Similarly, the  
7 citation to 11 CFR 110.1(b)(5) in section 9003.3(a)(1)(ii)(A)(4) is being revised to refer  
8 only to the provisions for written redesignations, which are 11 CFR 110.1(b)(5)(i) and  
9 (ii)(A). The recordkeeping requirements in 11 CFR 110.1(l) continue to be incorporated  
10 by citation into section 9003.3(a)(1)(ii)(A)(4).

11           Section 9003.3(a)(1)(iv) continues to require that contributions that are made after  
12 the beginning of the expenditure report period but that are not designated in writing for  
13 the GELAC must first be used to satisfy any primary committee debts or repayment  
14 obligations before they can be redesignated in writing for the GELAC. This approach  
15 constitutes an exception to the usual approach, which would consider these contributions  
16 as made with the respect to the general election as chronologically the next election under  
17 11 CFR 110.1(b)(2)(i). The Commission believes that the priority for primary committee  
18 obligations should be continued for these contributions. Consequently, the provision is  
19 being revised to explicitly state that these contributions are considered made with respect  
20 to the primary election. Additionally, section 9003.3(a)(1)(iv)(C) is being revised to state  
21 that the redesignation referred to is written, not presumptive. The contributions subject to  
22 redesignation under section 9003.3(a)(1)(iv) are those that do not exceed the contributor’s  
23 limit for the primary election. These revisions were not in the NPRM, but they are

1 consistent with the proposal, which would not have revised the primary preference and  
2 would have limited presumptive redesignation to excessive contributions.

3         Revisions to section 9003.3(a)(1)(v) make clear that excessive primary  
4 contributions can be presumptively redesignated for the GELAC pursuant to  
5 11 CFR 110.1(b)(5)(ii)(B). This applies to contributions made during the matching  
6 payment period or, pursuant to 11 CFR 9003.3(a)(1)(iv), during the expenditure report  
7 period. In order to do so, the phrase “obtains the contributor’s redesignation for the  
8 GELAC” is being replaced with “redesignates the contribution for the GELAC,” and the  
9 citation to 11 CFR 110.1 is being clarified to 11 CFR 110.1(b)(5)(i) and (ii)(A) or (ii)(B).  
10 This provision is also amended to note specifically that the timing requirement in the  
11 presumptive redesignation regulation, 11 CFR 110.1(b)(5)(ii)(B)(1), does not apply in  
12 this instance due to the operation of section 9003.3(a)(1)(iv).

13         Contributions made during the expenditure report period that are considered made  
14 with respect to the primary election may not be submitted for matching. See 11 CFR  
15 9034.3(i). Although one commenter supported the matchability of such contributions, the  
16 Commission continues to consider these contributions to be unmatchable. As  
17 presumptively redesignated contributions, they were made for a purpose other than  
18 influencing the results of a primary election, and section 9034.3(i) prohibits matching  
19 such contributions.

20         Thus, considered as a whole, the revised 11 CFR 9003.3(a)(1) allows a candidate  
21 to treat all or part of an excessive primary contribution as a GELAC contribution, as long  
22 as it meets the following requirements: 1) the contribution was not designated for a  
23 particular election; 2) the contribution would exceed the primary election contribution

1 limitations if it were treated as a primary contribution; 3) the redesignation would not  
2 cause the contributor to exceed the contribution limitations; and 4) the treasurer provides  
3 a written notification to the contributor within 60 days of receipt of the contribution of the  
4 amount that was redesignated to the GELAC and that the contributor may request a  
5 refund. The Commission notes that presumptively redesignated contributions to the  
6 GELAC must be refunded if the contributor requests a refund or, like all other  
7 contributions accepted for the GELAC, within 60 days of a candidate's date of  
8 ineligibility ("DOI") if the candidate does not become the nominee. See 11 CFR  
9 9003.3(a)(1)(i)(A).

10 The NPRM also sought comment on expressly allowing excessive contributions  
11 to a GELAC to be presumptively redesignated to a Presidential candidate's authorized  
12 committee for the primary election, based on the conditions delineated at 11 CFR  
13 110.1(b)(5)(ii)(C). The Commission's rules at 11 CFR 110.1(b)(5)(ii)(C) allow  
14 authorized committees to presumptively redesignate excessive contributions to the  
15 primary election, under certain conditions. One commenter supported the proposal to  
16 apply these rules to the GELAC.

17 The Commission has determined that no further changes to section 9003.3(a)(1) in  
18 this regard are necessary because there are no other GELAC contributions that could be  
19 presumptively redesignated for the primary election. Contributions that are designated in  
20 writing by the contributors for the GELAC would be ineligible for redesignation by  
21 presumption pursuant to 11 CFR 110.1(b)(5)(ii)(C)(2). Contributions that are not  
22 designated in writing for the GELAC will be considered made with respect to the primary  
23 election, except when the conditions for depositing them in the GELAC pursuant to

1 11 CFR 9003.3(a)(1)(iv) are satisfied. If these contributions exceed the contributor's  
2 primary election contribution limit, they may be presumptively redesignated pursuant to  
3 revised section 9003.3(a)(1)(v).

4 11 CFR 9003.3(a)(2) – Uses

5 The rule on the uses of GELAC funds is being revised to update the permissible  
6 uses of GELAC funds consistent with BCRA and to otherwise improve the rule.

7 11 CFR 9003.3(a)(2)(i)(D) – Primary Repayments

8 The NPRM proposed amending the rule on the permissible uses of GELAC funds  
9 to permit Presidential candidates to use GELAC funds to make any repayments owed by  
10 their authorized committee for the primary election. GELACs are permitted to make  
11 general election repayments under 11 CFR 9007.2, and the proposed revisions at  
12 11 CFR 9003.3(a)(2)(i)(D) specified that GELACs may also make primary campaign  
13 repayments required under 11 CFR 9038.2 or 9038.3. One commenter stated the revision  
14 is justified, provided the rule does not require that repayments must be made before other  
15 permissible uses of GELAC funds under paragraphs (a)(2)(i)(A) through (H). The only  
16 other commenter expressed opposition to GELACs in general, and characterized the  
17 proposed revision as an “expansion” that the commenter also opposed.

18 The Commission has decided to revise 11 CFR 9003.3(a)(2)(i)(D) to specify that  
19 the GELAC may make repayments owed by the candidate's primary campaign committee  
20 pursuant to 11 CFR 9038.2 and 9038.3 in addition to general election repayments under  
21 11 CFR 9007.2. This proposed amendment to the GELAC rules is based on the  
22 Commission's interpretation of 2 U.S.C. 439a(a)(1), which permits contributions to be  
23 used “for otherwise authorized expenditures in connection with the campaign for Federal

1 office of the candidate or individual.” This statutory language is sufficiently broad to  
2 encompass primary election repayments. The effect of this revision, combined with the  
3 revisions to 11 CFR 9003.3(a)(2)(iv) described below, is to require Presidential  
4 candidates to use their GELAC funds for their primary committee repayments before any  
5 funds remaining in the GELAC can be dispensed pursuant to 2 U.S.C. 439a. Thus, this  
6 revision imposes an obligation on GELACs as much as it permits such funds to be used  
7 to satisfy debts to the United States Treasury.

8 11 CFR 9003.3(a)(2)(i)(I) – Winding Down Expenses

9 The NPRM proposed revisions to 11 CFR 9003.3(a)(2)(i) to restore a provision  
10 related to the use of GELACs for general election winding down expenses. In 1995, the  
11 Commission adopted 11 CFR 9004.4(a)(4)(iii) stating that 100% of salary, overhead, and  
12 computer expenses incurred by a campaign after the end of the expenditure report period  
13 may be paid from a GELAC, and that such expenditures will be presumed to be solely to  
14 ensure compliance with the FECA and the Fund Act. 60 Fed. Reg. 31875 (June 16,  
15 1995). This paragraph was included in the 1996 through 1999 editions of the Code of  
16 Federal Regulations, but was inadvertently omitted from the 2000 through 2003 editions.  
17 The Commission is reinstating this important provision, with certain revisions discussed  
18 below, and moving it to 11 CFR 9003.3(a)(2)(i)(I). No commenters addressed this rule.

19 In addition, the Commission has decided to add primary election winding down  
20 costs incurred after the end of the expenditure report period to the rule on permissible  
21 uses of GELAC funds at new 11 CFR 9003.3(a)(2)(i)(I). Two commenters addressed this  
22 proposal. One commenter expressed opposition to GELACs and, consequently, any  
23 expansion of permissible uses of GELACs. Another commenter thought it unfair to

1 permit candidates who run in both the primary and the general elections to use GELACs  
2 to pay primary winding down costs, while primary candidates who do not compete in the  
3 general election are required to refund GELAC contributions. This commenter also  
4 faulted the use of any GELAC funds for expenditures subject to the primary expenditure  
5 limit.

6 In reaching its decision, the Commission considered that the primary and general  
7 election campaign committees are simultaneously winding down following the  
8 expenditure report period and often share salary, overhead, and computer expenses. In  
9 addition, the primary and general election committees often share winding down  
10 expenses related to legal and accounting compliance such as attorneys and accountants.

11 The regulation at 11 CFR 9034.4(a)(3)(iii) recognizes that a significant amount of  
12 winding down activity during this period is related to compliance and allows primary  
13 campaigns to treat 100% of salary, overhead, and computer costs during this period as  
14 legal and accounting compliance expenses exempt from the expenditure limitations.

15 Similarly, former 11 CFR 9004.4(a)(4)(iii) presumed these expenses to be compliance  
16 and therefore exempted them from the general election expenditure limitation pursuant to

17 11 CFR 9002.11(b)(5). Permitting the GELAC to pay salary, overhead, and computer  
18 costs after the end of the expenditure report period for both the primary and general

19 election committees will allow candidates who run in both the primary and general  
20 elections to choose to pay these costs from the GELAC without having to allocate them

21 between the primary and general election committees. Because these expenses are  
22 exempt from both the primary and general election expenditure limits, the concerns about

23 one publicly financed campaign funding another are reduced. Any primary winding down

1 costs not entitled to the compliance exemption will be subject to the primary expenditure  
2 limit, even if paid by the GELAC. Primary winding down costs paid by the GELAC must  
3 be included on the Statement of Net Outstanding Campaign Obligations pursuant to 11  
4 CFR 9034.5(a)(1). A receivable from the GELAC must also be listed for any primary  
5 winding down costs paid with GELAC funds. 11 CFR 9034.5(a)(2)(iii).

6 The Commission acknowledges that primary candidates who do not compete in  
7 the general election will not have GELAC funds available for their winding down costs.  
8 This result is unavoidable, however, because FECA's contribution limits are per election.  
9 See 2 U.S.C. 441a. Thus, contributors to candidates who compete only in the primary are  
10 limited to contributing for that election only; while contributors to candidates who  
11 compete in both the primary and general elections may contribute the full amount for both  
12 the primary election and the GELAC. The authorization to use GELAC funds to pay  
13 certain primary winding down expenses that are exempt from the expenditure limits does  
14 not cause the different treatment, and it cannot justify permitting primary candidates to  
15 receiving contributions of twice the per-election limit.

16 11 CFR 9003.3(a)(2)(iv) – Funds Remaining in the GELAC

17 The rule at 11 CFR 9003.3(a)(2)(iv) concerning the use of GELAC funds is being  
18 revised to update the permissible uses of GELAC funds consistent with BCRA. The  
19 previous rule at 11 CFR 9003.3(a)(2)(iv) stated that if there are “excess campaign funds”  
20 after payment of all expenses set forth in section 9003.3(a)(2)(i), such funds may be used  
21 for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment  
22 of primary election debts.



1 BCRA amended 2 U.S.C. 439a to eliminate its reference to “excess campaign  
2 funds,” and the Commission revised 11 CFR part 113 accordingly. See Disclaimers,  
3 Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed.  
4 Reg. 76962, 76978-79 (Dec. 13, 2002). The rule governing the use of GELAC funds is  
5 being revised to replace the reference to “excess campaign funds” in  
6 11 CFR 9003.3(a)(2)(iv) with “funds remaining in the GELAC” to clarify that only funds  
7 that are not needed for GELAC expenses may be used for the purposes permitted under  
8 2 U.S.C. 439a and 11 CFR part 113. All of the commenters who addressed this proposed  
9 change supported it, provided the purposes permitted under 2 U.S.C. 439a and 11 CFR  
10 part 113 continue to be permissible uses of funds remaining in the GELAC, which they  
11 are.

12 The Commission also is revising 11 CFR 9003.3(a)(2)(iv) to state expressly that  
13 GELAC funds must not be used for the purposes permitted under 2 U.S.C. 439a and 11  
14 CFR part 113 that are beyond the uses listed in 11 CFR 9003.3(a)(2) until the completion  
15 of the audit and repayment process, which includes making any repayments owed. No  
16 commenters addressed this provision.

#### 17 11 CFR 9003.5 – Documentation of Disbursements

18 Commission regulations in 11 CFR 102.9(b) describe the requirements for the  
19 documentation of disbursements applicable to all political committees. Additional  
20 documentation requirements for publicly funded general election committees are set forth  
21 in 11 CFR 9003.5. Section 9003.5 is being revised to clarify that publicly funded general  
22 election candidates must comply with both the general rules at section 102.9(b), as well  
23 as the specific rules applicable to publicly funded general election candidates governing

1 the documentation of disbursements in 11 CFR 9003.5(b). No commenters addressed  
2 this revision.

3 **11 CFR Part 9004—Entitlement of Eligible Candidates to Payments; Use of**  
4 **Payments**

5 11 CFR 9004.4 – Use of Payments; Examples of Qualified Campaign Expenses and Non-  
6 qualified Campaign Expenses

7 Section 9004.4, which concerns qualified and non-qualified campaign expenses, is  
8 being revised in several respects. First, the section heading for 11 CFR 9004.4 is being  
9 modified to indicate that it contains examples of qualified campaign expenses and non-  
10 qualified campaign expenses. Previous section 9004.4(a)(4)(ii) is being renumbered as  
11 section 9004.4(a)(5) to clarify that accounts payable costs are a separate type of qualified  
12 campaign expense from winding down costs. There were no comments on these changes.

13 Second, the rules on winding down costs are being moved from paragraph (a)(4)  
14 to new section 9004.11. Revised 11 CFR 9004.4(a)(4) provides that payments from the  
15 Presidential Election Campaign Fund may be used to defray winding down costs pursuant  
16 to 11 CFR 9004.11, which contains new rules on winding down costs and is discussed  
17 below.

18 11 CFR 9004.4(a)(6) – Gifts and Bonuses

19 The NPRM proposed revising the rules governing payment of gifts and bonuses  
20 by general election candidates at newly redesignated 11 CFR 9004.4(a)(6). The rules  
21 allow gifts and bonuses to be treated as qualified campaign expenses for general election  
22 candidates if they meet certain conditions. Under 11 CFR 9004.4(a)(6), gifts for  
23 committee employees, consultants and volunteers in recognition of campaign-related

1 activities or services are limited to \$150 per individual recipient and a total of \$20,000 for  
2 all gifts. Monetary bonuses for employees and consultants in recognition for campaign-  
3 related activities or services must be provided for pursuant to a written contract made  
4 prior to the general election and must be paid no later than 30 days after the end of the  
5 expenditure report period. Id. The NPRM sought comment as to whether to limit the  
6 amounts of gifts and bonuses, whether to retain the requirement of a written contract for  
7 monetary bonuses, and whether to create possible additional or different controls.

8 One commenter argued that absent any problems with the current rules, the  
9 Commission should not change these rules, and that a more specific proposal should be  
10 made before any changes are made. Another commenter did not believe gifts and  
11 bonuses should be qualified campaign expenses.

12 The Commission has decided to make no substantive changes in the final rules  
13 concerning gifts and bonuses for general election candidates because the current rules  
14 have worked reasonably well in practice.

15 11 CFR 9004.4(b)(3) – Non-Qualified Campaign Expenses

16 Section 9004.4(b) lists non-qualified campaign expenses. Paragraph (b)(3)  
17 previously stated that any expenditures incurred after the close of the expenditure report  
18 period were not qualified campaign expenses except to the extent permitted as winding  
19 down costs or accounts payable under 11 CFR 9004.4(a)(4). Section 9004.4(b)(3) is  
20 being clarified to specifically state that accounts payable pursuant to newly redesignated  
21 11 CFR 9004.4(a)(5) and winding down costs pursuant to new section 9004.11, discussed  
22 below, are considered qualified campaign expenses. There were no comments on these  
23 changes.

1 11 CFR 9004.11 – Winding Down Costs

2 During the audit and repayment process, Presidential committees and the  
3 Commission’s auditors estimate costs associated with terminating the campaign and  
4 complying with the post-election requirements of the Fund Act and FECA, and may  
5 sometimes reach substantially disparate winding down estimates. Issues have arisen as to  
6 the appropriate amounts and types of winding down expenses and as to the length of time  
7 committees need to wind down. These disputes have lengthened the audit and repayment  
8 processes for some campaigns. Both actual and estimated future winding down costs are  
9 included in a general election candidate’s Statement of Net Outstanding Qualified  
10 Campaign Expenses [“NOQCE”]. Consequently, if the Commission auditors’ figures are  
11 lower than the committee’s estimates, a dispute may arise in determining the candidate’s  
12 NOQCE and any surplus funds or resulting repayment. Disallowed winding down  
13 expenses can increase the amount of any surplus funds and the resulting repayment  
14 determination, or for primary election candidates, the disallowed expenses can decrease a  
15 candidate’s entitlement to additional matching funds.

16 To avoid these disputes in the future, the Commission has decided to place certain  
17 reasonable restrictions on the amount of public funds used for winding down expenses.  
18 Thus, a new rule in 11 CFR 9004.11 is being added regarding general election candidates’  
19 winding down expenses. A comparable new rule applicable to primary election  
20 candidates is located in new 11 CFR 9034.11, which is discussed below.

21 11 CFR 9004.11(a) – Definition of “Winding Down Costs”

22 New 11 CFR 9004.11(a) contains the definition of winding down costs previously  
23 found in 11 CFR 9004.4(a)(4). The new definition is not significantly changed from the

1 previous one, except that it clarifies that winding down costs include post-election  
2 requirements of both FECA and the Fund Act.

3 11 CFR 9004.11(b) – Winding Down Limitation

4 The NPRM proposed two restrictions for general election winding down costs: a  
5 temporal restriction and a monetary limitation of 2.5% of the general election spending  
6 limit.

7 Several commenters opposed the restrictions proposed in the NPRM. Some  
8 believed publicly funded Presidential campaigns do not have an incentive to inflate their  
9 winding down expenses because primary candidates would prefer to repay the ratio  
10 portion of any surplus funds, in order to have flexibility in spending the remaining  
11 surplus, and because general election candidates would prefer to use limited public funds  
12 over the course of the election.

13 The Commission disagrees. In the Commission's experience, some candidates  
14 might have incentives to prolong and increase their winding down activity, either to  
15 maximize their entitlement or to consume any remaining public funds while minimizing  
16 potential surplus repayments. Although primary candidates have more flexibility in  
17 spending surplus funds after making a pro rata repayment, this benefit is outweighed by  
18 the possibility of significantly reducing a potential repayment by contesting it. Similarly,  
19 although general election candidates may not plan to reserve much money from active  
20 campaigning for winding down expenses, to the extent some of them have remaining  
21 public funds after the election, using them for winding down costs may be preferable to  
22 repaying them.

1           One commenter noted that the candidate's burden to demonstrate and document  
2 that winding down costs are qualified campaign expenses to avoid a repayment deters  
3 unreasonable winding down expenses. Others pointed out that winding down costs are  
4 not necessarily related to the amount of expenditures made by a campaign and that under-  
5 funded campaigns may have high winding down expenses because they did not have  
6 sufficient funds for compliance during the campaign and might need to spend more on  
7 post-election record reconstruction. Some noted that the costs of defending a campaign  
8 in enforcement matters, audits, repayment determinations, and other legal proceedings are  
9 unrelated to the amount of the candidate's expenditures, and that complaints and law suits  
10 may be politically motivated. Some expressed concern that winding down restrictions  
11 would result in numerous surplus repayments by primary candidates after their winding  
12 down in excess of the restrictions is disallowed, and candidates would have to raise  
13 private funds to defend themselves and defray winding down costs long after the election  
14 is over. Another argument against the winding down limit was that public funding is  
15 intended to reduce reliance on private contributions and that limiting winding down while  
16 allowing winding down costs to be paid from the GELAC would encourage candidates to  
17 rely more heavily upon private funds in the GELAC to meet legitimate and unavoidable  
18 campaign expenses.

19           On the other hand, one commenter argued that the three general election  
20 campaigns in 2000 that wound down for less than the proposed limit show that the limit  
21 is unnecessary because candidates would only exceed the limit under extraordinary  
22 circumstances.

23   1. Monetary Limit

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 104, 107, 110, 9001, 9003, 9004, 9008, 9031 – 9036, and 9038**

3 **[Notice 2003 - \_\_]**

4 **Public Financing of Presidential Candidates and Nominating Conventions**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Final rules and transmittal of regulations to Congress.

7 **SUMMARY:** The Federal Election Commission is revising several portions of its  
8 regulations governing the public financing of Presidential  
9 candidates, in both primary and general election campaigns, and  
10 Presidential nominating conventions. These regulations implement  
11 the provisions of the Presidential Election Campaign Fund Act  
12 (“Fund Act”) and the Presidential Matching Payment Account Act  
13 (“Matching Payment Act”), which establish eligibility  
14 requirements for Presidential candidates and convention  
15 committees seeking public financing and indicate how funds  
16 received under the public financing system may be spent. The  
17 revised rules also implement the Bipartisan Campaign Reform Act  
18 of 2002, as it applies particularly to the Fund Act and the Matching  
19 Payment Act. The revised rules reflect the Commission’s  
20 experience in administering these programs, particularly during the  
21 2000 election cycle, and anticipate some questions that may arise  
22 during the 2004 Presidential election cycle. Further information is  
23 contained in the Supplementary Information that follows.

1           The Commission has decided to adopt new 11 CFR 9004.11(b), which establishes  
2 a monetary limitation on the total amount of general election winding down expenses that  
3 may be paid for with public funds. In considering this issue, the Commission reviewed  
4 the amounts spent for winding down costs by publicly funded candidates during the 2000  
5 election cycle and compared their approximate winding down costs to the proposed  
6 winding down limitation. Of three publicly funded general election candidates, one  
7 would have spent less than 1% of the expenditure limitation, the second would have spent  
8 less than 2% of his expenditures, while the third would have spent only slightly more than  
9 the winding down limitation of 2.5% of the expenditure limitation. The last committee  
10 paid some of its winding down expenses with GELAC funds, which reduced its winding  
11 down costs to less than 2% of the expenditure limitation.

12           The “winding down limitation” in new section 9004.11(b) limits the total amount  
13 of publicly funded winding down expenses for general election candidates to the lesser  
14 of: 1) 2.5% of the expenditure limitation; or 2) 2.5% of the total of: (A) the candidate’s  
15 expenditures subject to the expenditure limitation as of the end of the expenditure report  
16 period; plus (B) the candidate’s expenses exempt from the expenditure limitation, such as  
17 fundraising expenses, as of the end of the expenditure report period. Basing the winding  
18 down limitation on a candidate’s expenditures or on the maximum expenditure limitation  
19 recognizes that larger campaigns will generally have more winding down expenses than  
20 smaller campaigns. Notwithstanding the amount determined based on these calculations,  
21 the new rule permits all general election candidates to spend a minimum of \$100,000 on  
22 winding down costs. The \$100,000 minimum winding down limitation recognizes that  
23 all publicly funded committees incur certain winding down expenses related to the



1 requirements of the audit and repayment process that do not vary with the total amount of  
2 the committees' expenditures.

3         Based in part on the 2000 winding down data and experience in prior election  
4 cycles, the Commission is satisfied that campaigns can wind down in compliance with the  
5 2.5% limit without any hardship and that the limitation will affect only campaigns with  
6 unusually high winding down costs. The monetary limitation is necessary to ensure that  
7 publicly funded campaign committees wind down as quickly and efficiently as possible  
8 and will not inflate winding down costs in order to avoid a surplus repayment to the  
9 United States Treasury. The monetary limitation establishes a fair and readily determined  
10 amount to ensure that all campaigns are treated consistently with respect to winding down  
11 costs and that public funds are used in accordance with statutory purposes.

12         The Commission expects that most PCCs of Presidential candidates will incur  
13 winding down expenses substantially below the new dollar limitations. Campaigns with  
14 unusually high compliance costs may use their GELAC or a primary candidate's private  
15 funds after no public funds remain in the candidate's accounts to pay for such expenses.  
16 Paying winding down expenses with a GELAC is justified because a large amount of  
17 winding down expenses are related to compliance and most winding down expenses are  
18 not directly related to active campaigning.

19         In practice, the winding down limitation for fully funded major party general  
20 election candidates will be the maximum winding down limitation, 2.5% of the  
21 expenditure limitation for general election candidates under section 9004.11(b)(1). This  
22 maximum winding down limitation is calculated based upon a percentage of the general  
23 election candidate's expenditure limitation pursuant to 2 U.S.C. 441a(b), similar to the

1 calculation of the 20% fundraising exemption or the 15% compliance exemption. See 11  
2 CFR 100.146, 100.152, and 9002.11(b)(5). Currently, the general election expenditure  
3 limitation is equal to \$72,960,000, so the 2.5% limit would equal \$1,824,000.<sup>1</sup>

4 In contrast, the winding down limitation for most minor party general election  
5 candidates will equal 2.5% of their expenses during the expenditure report period under  
6 section 9004.11(c)(2).<sup>2</sup> The final rule addresses the calculation of the winding down  
7 limitation for those general election candidates who may solicit contributions by  
8 calculating the total of their expenditures subject to the limit, section 9004.11(b)(2)(i),  
9 plus their exempt expenses, section 9004.11(b)(2)(ii). The calculation includes exempt  
10 expenses such as fundraising and legal and accounting compliance costs to reflect the  
11 actual size of the campaign that is winding down. The fundraising exemption for general  
12 election candidates is applicable only to those candidates who may accept contributions to  
13 defray qualified campaign expenses pursuant to 26 U.S.C. 9003(b)(2) or 9003(c)(2), i.e.,  
14 minor party candidates and major party candidates who may solicit contributions to make  
15 up a deficiency in public funds received. See 11 CFR 100.152, 9003.3(b) and (c). Those  
16 general election candidates who may solicit contributions may also exempt legal and  
17 accounting compliance expenses from their expenditure limitations. See 11 CFR  
18 100.146, 9003.3(b) and (c). Expenses for transportation of Secret Service and national

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<sup>1</sup> Before the 2004 general election, the general election expenditure limit under 2 U.S.C. § 441a(b)(1)(B) is subject to an additional annual adjustment under 2 U.S.C. § 441a(c).

<sup>2</sup> If major party candidates were required to solicit contributions to make up a deficiency in public funds, the winding down limitation would also equal 2.5% of their expenses during the expenditure report period.

1 security staff and media transportation expenses that are reimbursed by the media do not  
2 count against the expenditure limitations. See 11 CFR 9004.6(a), 9034.6(a). Thus, the  
3 exempt expenses considered under section 9004.11(c)(2)(ii) will include all three of the  
4 types of exempt expenses.

5 For purposes of calculating the amount of the winding down limitation under  
6 section 9004.11(b)(2), a candidate's expenses will include both disbursements and  
7 accounts payable as of the end of the expenditure report period for the following  
8 categories of expenses (as listed on page 2 of FEC Form 3P): operating expenses (line  
9 23), fundraising (line 25), exempt legal and accounting (line 26), and other disbursements  
10 (line 29). The following payments should not be included in the expenses used to  
11 calculate the winding down limitation: transfers to other authorized committees (line 24),  
12 loan repayments (line 27), or contribution refunds (line 28).

13 The winding down limitation calculation does not include any expenditures in  
14 excess of the general election candidate's expenditure limitation; thus, making  
15 expenditures or accepting in-kind contributions that exceed the expenditure limits would  
16 not provide a basis for an increased winding down limitation. In addition, the new rule  
17 restricts the expenses used to calculate the winding down limitation to the period prior to  
18 the end of a general election candidate's expenditure report period to prevent candidates  
19 from increasing their winding down limitation by spending more for winding down  
20 expenses.

## 21 2. Expenses Subject to Winding Down Limitation

22 All expenses incurred and paid by a candidate during the winding down period,  
23 including fundraising costs, are subject to the new winding down limitation in new 11

1 CFR 9004.11. Under the new rule, the use of public funds to pay for winding down  
2 expenses in excess of these restrictions will constitute a non-qualified campaign expense  
3 that may be subject to repayment. However, these restrictions apply to the use of public  
4 funds or a mixture of public and private funds for winding down costs and will not limit  
5 the payment of winding down expenses from private contributions in a candidate's  
6 GELAC. Thus, expenses for legal and accounting compliance costs paid for with public  
7 funds count against the winding down limitation, but compliance costs paid by a GELAC  
8 do not.

9

10 11 CFR 9004.11(c) – Allocation of Primary and General Winding Down Costs

11 Candidates who run in both the primary and general elections must allocate  
12 winding down expenses between the primary and general election campaigns. This can  
13 be complicated during the period after the general election because both campaigns are  
14 winding down simultaneously, often using the same staff, offices, equipment, vendors  
15 and legal representatives. To simplify the allocation, the NPRM proposed that  
16 committees could divide winding down costs between the primary and general campaigns  
17 using any allocation method, including allowing either the primary or the general  
18 campaign to pay 100% of winding down expenses.

19 One commenter advocated allowing campaigns to use any reasonable method that  
20 would require expenses indisputably related to one election be paid as winding down  
21 expenses of that election while shared winding down expenses such as legal fees could be  
22 allocated on any reasonable basis reflecting a good-faith estimate.

1           The final rules in new section 11 CFR 9004.11(c) allow a candidate who runs in  
2 both the primary and general election to divide winding down costs between the primary  
3 and general campaigns using any reasonable allocation method. The final rule also  
4 specifies that an allocation method will be considered reasonable if it divides the total  
5 winding down costs between the primary and general election committees and results in  
6 no less than one third of total winding down costs allocated to each committee. With this  
7 provision, the Commission has created a range of winding down cost allocations between  
8 a candidate's primary and general election authorized committees that will be considered  
9 the result of a reasonable method and therefore in compliance with this requirement. If  
10 particular circumstances require a candidate to allocate winding down costs so that one of  
11 the two committees is allocated less than one third of the total costs, with the other  
12 necessarily being allocated more than two thirds, those committees will be required to  
13 demonstrate that their allocation method was reasonable. This new rule will give  
14 candidates the flexibility to allocate their winding down expenses based on the particular  
15 circumstances of their campaigns. Winding down activity for some candidates may be  
16 largely or entirely focused on one election. For example, candidates who do not receive  
17 public funds for the general election might concentrate winding down activity on their  
18 publicly funded primary committee. In addition, candidates might concentrate winding  
19 down efforts and expenses on the committee that must address more difficult and  
20 complex issues in the audit and repayment process or that have larger potential  
21 repayments.

22   Temporal Limits

1           The NPRM proposed a temporal restriction on winding down expenses, the  
2 “winding down period,” based on the length of a committee’s audit and repayment  
3 process, including the administrative review of the repayment determination. Several  
4 commenters opposed these temporal limits because after the expiration of this period,  
5 campaigns may be involved in enforcement actions, repayment determination court  
6 challenges, investigations by other government entities, or other lawsuits.

7           The Commission believes that the winding down monetary limitation will be  
8 sufficient to address its concerns that winding down be completed expeditiously.  
9 Therefore, the Commission has decided not to include any temporal limitation in the final  
10 rule at 11 CFR 9004.11. Because the Commission is not including the temporal limit in  
11 the final rule, it is also not making the conforming changes proposed in the NPRM to 11  
12 CFR 9004.9(a)(4) and 9034.5(b)(2) that would have referred to the winding down period  
13 in the sections discussing NOQCE and NOCO statements.

#### 14 Other Winding Down Proposals

15           The NPRM also proposed increasing allowable winding down expenses to reflect  
16 the number of compliance actions involving a Presidential candidate’s campaign  
17 committee.

18           One commenter stated that the Commission should not limit the use of public  
19 funds for costs related to compliance actions because candidates do not elect these  
20 expenses, the compliance process is often used for political ends, campaigns and the  
21 Commission regularly dispute factual and legal issues, and are unwanted diversions that  
22 do not advance the candidate’s campaign. The commenter also suggested that candidates  
23 have the option of a separate legal defense account similar to a GELAC. In addition,

1 this commenter suggested that recent changes to the public financing rules, such as the  
2 limitation on the timing for creating a GELAC, limiting legal and compliance costs to  
3 15% of the primary spending limit and the new limits on winding down costs, discourage  
4 spending money on compliance.

5 As discussed above, winding down costs resulting from compliance actions were  
6 considered in determining the winding down limitations. This new rule continues the  
7 Commission's previous practice of allowing a publicly funded candidate to pay expenses  
8 for compliance matters arising from the campaign with public funds as winding down  
9 costs to the extent that those costs fall within the winding down limitation. In addition,  
10 new 11 CFR 9004.11(a) clarifies that winding down costs include the costs of complying  
11 with both the FECA and the Fund Act, which includes the audit and repayment processes,  
12 reporting and recordkeeping, and costs incurred in responding to compliance matters. If a  
13 general election candidate exceeds the winding down limitations, private funds will be  
14 available through their GELAC for compliance expenses related to enforcement matters.  
15 For primary candidates, private funds will be available once the public funds in the  
16 candidates' accounts have been exhausted.

#### 17 Combining Primary and General Winding Down Limitations

18 The Commission also considered whether to allow candidates who accept public  
19 funds for both the primary and general elections to combine their primary and general  
20 election winding down limitations into a joint monetary limit for the total winding down  
21 expenses of both committees. The Commission decided not to make this change because  
22 primary and general election winding down expenses are legally distinct and a  
23 candidate's primary and general election committees are generally treated as separate

1 entities; thus, they should be required to adhere to separate winding down limitations.

2 See new 11 CFR 9004.11(a) and 9034.11(a).

3 Alternative Proposals to Winding Down Restrictions

4         The NPRM sought comment on disallowing the use of public funds to pay any  
5 winding down costs. Under such an alternative, a primary election candidate would not  
6 have been permitted to use public funds to pay for any expenses incurred after the  
7 candidate's DOI or any expenses for goods or services to be used after the DOI. A  
8 general election candidate would not have been permitted to use public funds to pay for  
9 any expenses incurred after the end of the expenditure report period or any expenses for  
10 goods or services to be used after the end of the expenditure report period.

11         Two commenters opposed this proposal. One commenter argued that 26 U.S.C.  
12 9038(b)(3), which requires candidates to retain matching funds "for the liquidation of all  
13 obligations to pay qualified campaign expenses for a period not exceeding 6 months after  
14 the end of the matching payment period" and to "promptly" repay a ratio of any surplus  
15 funds, is not determinative as to whether winding down costs are qualified campaign  
16 expenses because the statute contemplates a completely different system than the current  
17 audit process administered by the Commission. This commenter asserted that the statute  
18 envisioned that all issues related to the campaign, including the audit, repayment and  
19 enforcement matters would conclude within six months and advocated a complete  
20 overhaul of the audit and related enforcement process if winding down costs were to be  
21 limited. Another commenter stated that winding down expenses are unavoidable costs of  
22 a campaign, and that changing the rules would make candidates spend more time raising



1 private funds to pay for these unavoidable costs, which could prolong the life of losing  
2 campaigns that must seek contributions to pay winding down costs.

3 The Commission is retaining its long-standing treatment of winding down costs as  
4 qualified campaign expenses. Although winding down costs are a category of qualified  
5 campaign expenses not specifically identified in the Fund Act or the Matching Payment  
6 Act, it is necessary to allow them to ensure that candidates may respond adequately  
7 during the audit, repayment and enforcement processes.

8 The NPRM also presented a second alternative approach to winding down costs  
9 which would have more precisely delineated the types of winding down costs that are  
10 permissible, consisting of staff salaries, legal and accounting services, office space rental,  
11 utilities, computer services, other overhead expenses, consultants, storage, insurance,  
12 office supplies and fundraising expenses. One commenter said this alternative could be  
13 useful if the list is not intended to be exhaustive, because of the possibility of unforeseen  
14 but legitimate types of winding down costs.

15 The Commission has decided not to adopt this alternative approach because it is  
16 unlikely to resolve the issues that have arisen and could generate more issues. Disputes  
17 over winding down expenses often concern the appropriate amounts spent for particular  
18 expenses, the appropriate length of time a campaign should continue to need certain  
19 goods or services, and whether the campaign committee has provided sufficient  
20 documentation of expenses rather than focusing on the type of expenditure. A list of  
21 permissible winding down expenses would not address these frequently disputed issue,  
22 nor would it reduce the amount of winding down expenses.

1 Please note that the Commission made no changes to 11 CFR 9008.10(g)(7),  
2 governing winding down costs of convention committees.

3 **11 CFR Part 9008—Federal Financing of Presidential Nominating Conventions**

4 11 CFR 9008.3 – Eligibility for payments; registration and reporting

5 The Commission has decided to revise the convention committee reporting  
6 requirements in 11 CFR 9008.3 to require convention committees to submit a copy of all  
7 written contracts and agreements they make with the cities, counties, or States hosting the  
8 convention or any host committee or municipal fund. See new 11 CFR 9008.3(b)(1)(ii).  
9 Convention committees, host committees, and municipal funds are also required to  
10 submit any subsequent modifications to a previous contract or agreement.

11 The Commission believes that it is necessary to have copies of all such  
12 agreements in order to understand fully the obligations that each of those entities has  
13 agreed to assume with respect to the convention. Such contracts must be submitted with  
14 the report for the applicable reporting period. Related changes are also being made to the  
15 host committee and municipal fund reporting requirements. See Explanation and  
16 Justification for 11 CFR 9008.51, below. The wording of the final rule is being slightly  
17 clarified from the proposed rule, which was not addressed by any of the commenters.

18 11 CFR 9008.7(a)(4)(xii) –Use of funds – Gifts and Bonuses

19 The NPRM sought comment on revising the rules governing the payment of gifts  
20 and bonuses by primary and general election candidates and by convention committees.  
21 The Commission has decided to make changes to 11 CFR 9008.7(a)(4)(xii), governing  
22 gifts and bonuses for convention committees, to make that section more consistent with  
23 the rules governing primary and general election committees. See newly redesignated 11

1 CFR 9004.4(a)(6) and 9034.4(a)(5). Specifically, the structure of the section is being  
2 changed to separate the requirements for gifts from those for bonuses. The new  
3 paragraph on bonuses requires that bonuses to committee staff and consultants in  
4 recognition for convention-related activities or services must be provided for pursuant to  
5 a written contract made prior to the date of the convention, and must be paid no later than  
6 30 days after the convention.

7 11 CFR 9008.8 – Limitation of expenditures

8 The NPRM proposed two revisions to 11 CFR 9008.8. The first proposal was to  
9 revise references in the title and text of paragraph (b)(2) to reflect the proposed new  
10 definition of “municipal fund” in 11 CFR 9008.50(c). 68 Fed. Reg. at 18508. As  
11 explained below, the Commission is adopting the proposed definition of “municipal  
12 fund.” See Explanation and Justification for new 11 CFR 9008.50(c). Thus, the  
13 Commission is revising 11 CFR 9008.8(b)(2) to change the references in this provision  
14 from “municipal corporations” to “municipal funds.” The NPRM also proposed deleting  
15 “government agencies.” However, because some State or local governments may directly  
16 make convention expenditures, the references to government agencies are retained.

17 The second proposal in the NPRM was to revise 11 CFR 9008.8(b)(4)(ii)(B) to  
18 permit convention committees to establish separate legal and accounting compliance  
19 funds (“CLAF”). 68 Fed. Reg. at 18512. Under this proposal, contributions to CLAFs  
20 would only have been permitted to be used to pay for legal and accounting services  
21 related to compliance with FECA and the Fund Act. Disbursements from the CLAF for  
22 legal and accounting compliance services would not have been considered “expenditures”  
23 and, therefore, would not have counted against the convention committee’s expenditure

1 limit in 11 CFR 9008.8. The CLAF would have had a separate contribution limit from  
2 the national committee's limit.

3 The NPRM also sought comment on the contribution limit that should apply to  
4 contributors who wish to contribute to both the CLAF and to the political committees  
5 established and maintained by the same national political party. The only commenter to  
6 address this issue argued that allowing convention committees to establish CLAFs would  
7 amount to effectively doubling the national party contribution limit in 2 U.S.C.  
8 441a(a)(1)(B) by allowing a donor to make two contributions up to the national party  
9 limit, one to the national party itself and the other to the CLAF. The commenter  
10 challenged the Commission's authority to allow convention committees to establish  
11 CLAFs since the receipt of public money by convention committees is conditioned on  
12 their abiding by set spending limits. The commenter also asserted that CLAFs would  
13 allow "the infusion of private money into a system where Congress intended the party  
14 spending to be fully financed with public funds."

15 The Commission has decided that permitting the national party committees to pay  
16 compliance expenses of the convention committee under 11 CFR 9008.8(b)(4)(ii)  
17 adequately addresses this issue. Therefore, the Commission has decided not to allow  
18 convention committees to establish separate legal and accounting compliance funds as  
19 proposed in the NPRM.

20 In addition to the proposals in the NPRM, the Commission is revising  
21 11 CFR 9008.8(b)(4)(ii)(B), which previously stated the contribution limits for  
22 contributions to national political party committees from persons and from multicandidate  
23 committees. BCRA amended the first of those two limits and indexed the limitation to

1 inflation. Therefore, the Commission is revising the regulation to refer to the amounts  
2 permitted under 11 CFR 110.1(c) and 110.2(c).

3 11 CFR 9008.10 – Documentation of disbursements; net outstanding convention  
4 expenses

5 The requirements for the documentation of disbursements applicable to all  
6 committees are described in 11 CFR 102.9(b). Additional documentation requirements  
7 for publicly funded convention committees are set forth in 11 CFR 9008.10. The  
8 introductory language in section 9008.10 is being revised to state that the requirements in  
9 this section are in addition to the requirements of 11 CFR 102.9(b) governing the  
10 documentation of disbursements. Adding this reference to 11 CFR 102.9(b) will assist  
11 the reader in locating these other pertinent provisions.

12 11 CFR 9008.12 – Repayments

13 The Commission is revising 11 CFR 9008.12(b)(7) to reflect changes in other  
14 portions of the convention regulations. First, two references within paragraph (b)(7) are  
15 being changed to reflect the new definition of “municipal fund” in 11 CFR 9008.50(c).  
16 See Explanation and Justification for 11 CFR 9008.50, below.

17 Second, the Commission is deleting the final clause in paragraph (b)(7), which  
18 had identified donations from a nonlocal businesses as impermissible host  
19 committee/municipal fund contributions, to reflect its deletion of the requirement in 11  
20 CFR 9008.52(c) and 11 CFR 9008.53(b) that only local entities and individuals may  
21 make donations to host committees and municipal funds to defray convention expenses.  
22 See Explanation and Justification for 11 CFR 9008.52 and 11 CFR 9008.53, below. The

1 final rules mostly follow the proposed rules, which were not addressed by any of the  
2 commenters.

3 **Subpart B – Host Committees and Municipal Funds Representing a Convention**

4 **City**

5 11 CFR 9008.50 – Scope and definitions

6 The NPRM noted that host committees and municipal funds have evolved to the  
7 point where their roles in convention financing are increasingly similar but the  
8 Commission’s rules had treated them differently. 68 Fed. Reg. at 18507. The NPRM  
9 sought public comment on whether host committees and municipal funds should be  
10 treated the same.

11 One discrepancy in the regulations relating to host committees and municipal  
12 funds was that the rules defined “host committee,” in 11 CFR 9008.52(a), but did not  
13 define “municipal fund.” 68 Fed. Reg. at 18507-08. The NPRM proposed to add a  
14 definition of “municipal fund” in new paragraph (c) of 11 CFR 9008.50, and to move the  
15 definition of “host committee” from 11 CFR 9008.52(a) to paragraph (b) of 11 CFR  
16 9008.50. The proposal defined a “municipal fund” as “any separate fund or account of a  
17 government agency, municipality, or municipal corporation whose principal purpose is  
18 the encouragement of commerce in the municipality and whose receipt and use of funds is  
19 subject to control of officials of the State or local government.”

20 The NPRM stated that any municipal fund that accepted donations and made  
21 disbursements related to convention activities would be required, under the proposed  
22 definition, to use a separate account for such purposes. Comment was sought on whether  
23 any other restrictions should be imposed on municipal funds to ensure that funds received

1 or disbursed by municipal funds are used solely for the purpose of promoting the city and  
2 its commerce, such as limiting them to accounts subject to audit by State or local public  
3 agencies.

4 No commenters addressed this topic. The Commission believes that it is helpful  
5 to add a definition of “municipal fund” and that it is important to require municipal funds  
6 to use a separate account for receiving and disbursing funds related to convention  
7 activities. Accordingly, the Commission has decided to adopt the proposed definition of  
8 “municipal fund,” which is located in paragraph (c) of 11 CFR 9008.50. This provision  
9 defines a municipal fund as a separate fund or account of a government agency,  
10 municipality, or municipal corporation. The Commission imposes this requirement as a  
11 condition on the two exemptions that convention committees invoke in accepting in-kind  
12 donations from municipal funds. Donations from municipal funds that are in compliance  
13 with 11 CFR 9008.53 are exempt from the convention committee’s expenditure  
14 limitation, 11 CFR 9008.8(b)(2), and from the prohibition on corporate and labor  
15 organization contributions and expenditures, 11 CFR 114.1(a)(2)(viii). Therefore, failure  
16 to use a separate account for a municipal fund’s convention-related transactions puts  
17 these exceptions at risk.

18 The definition also distinguishes a municipal fund from a host committee, in part,  
19 by limiting municipal funds to those separate funds or accounts owned by a government  
20 agency, municipality, or municipal corporation, and “whose receipt and use of funds is  
21 subject to the control of officials of the State or local government.” When engaged in  
22 activities that promote an area and its commerce, State and local governments participate  
23 in a wide variety of organizations that often permit the private sector to participate in

1 some role. The Commission intends that municipal funds will be limited to the narrow  
2 group of such organizations whose funds are under the control of government officials  
3 acting in their official capacities when they receive and disburse funds. Any  
4 organizational structure that includes public officials in some capacity but does not keep  
5 the funds under governmental control cannot qualify as a municipal fund, but may qualify  
6 as a host committee. For example, if a local civic association includes a city's mayor as  
7 an officer, but the association's funds are not maintained in a city account, the local civic  
8 association could not be a municipal fund, but could be a host committee, if it met the  
9 requirements of new 11 CFR 9008.50(b).

10 The Commission has decided to move the definition of "host committee" to  
11 paragraph (b) of 11 CFR 9008.50, so that the definitions are grouped together in the same  
12 section.

13 11 CFR 9008.51 – Registration and reports

14 11 CFR 9008.51(a)(1) – Registration requirements

15 The Commission has decided to make a number of changes to the host committee  
16 and municipal fund registration and reporting requirements. With respect to the  
17 registration requirements, 11 CFR 9008.51(a) is being revised to require host committees  
18 and municipal funds to file FEC Form 1 (Statement of Organization) within ten days of  
19 the date on which the national party chooses the convention city or ten days after the host  
20 committee or municipal fund is formed, whichever date occurs later.

21 These new registration requirements differ from the former requirements in two  
22 respects. First, the former provision required host committees and municipal funds to file  
23 a "Convention Registration Form," not a Statement of Organization. Second, the former



1 provision required host committees and municipal funds to register within ten days of the  
2 date on which the party selected the convention city.

3 The NPRM sought comment on the change in the registration deadline, as well as  
4 an alternative deadline that would have required host committees and municipal funds to  
5 register within 10 days of when they first solicit or accept donations or make  
6 disbursements for convention activities. No commenters specifically addressed the  
7 proposed changes to the host committee and municipal fund registration requirements in  
8 11 CFR 9008.51(a).

9 With respect to the proposal to require host committees and municipal funds to  
10 register using FEC Form 1, the Commission notes that host committees and municipal  
11 funds typically use this form already. Therefore, the Commission has decided to adopt  
12 the proposed change requiring host committees and municipal funds to register using  
13 Form 1.

14 The Commission is adopting the proposal to require host committees and  
15 municipal funds to file within 10 days of their formation or within 10 days of convention  
16 city selection, whichever date occurs later. This change represents a more realistic  
17 timeframe, in that it accounts for the possibility that not all host committees or municipal  
18 funds are established within 10 days of when the convention city is selected. The  
19 Commission is not adopting the alternative that would have required host committees and  
20 municipal funds to register within 10 days of soliciting, accepting, or disbursing funds for  
21 convention activities. The alternative could have made it difficult to determine when  
22 particular host committee or municipal fund registration statements would actually be  
23 due.

1 11 CFR 9008.51(a)(3) – Submission of convention committee, host committee, and  
2 municipal fund agreements

3 As discussed above, the NPRM proposed to require convention committees, host  
4 committees, and municipal funds to submit a copy of all agreements that any one of those  
5 organizations makes with the city, county, or State hosting the convention or any of the  
6 other convention-related organizations. See Explanation and Justification for 11 CFR  
7 9008.3(b)(ii), above; see also 68 Fed. Reg. at 18512. For the reasons stated above, the  
8 Commission has decided to adopt this proposed rule.

9 Accordingly, the Commission is revising 11 CFR 9008.51 to require host  
10 committees and municipal funds to submit any and all such written contracts and  
11 agreements with the report covering the reporting period during which the agreement is  
12 executed. See 11 CFR 9008.51(a)(3). As explained below, this will usually be the post-  
13 convention report. Host committees and municipal funds must also submit any  
14 subsequent modifications to a previous agreement. However, host committees and  
15 municipal funds need not submit contracts made with convention committees that have  
16 already been filed by the convention committees themselves. No commenters addressed  
17 these revisions.

18 11 CFR 9008.51(b) – Reporting requirements

19 The NPRM proposed a number of changes to the reporting requirements  
20 applicable to host committees and municipal funds in 11 CFR 9008.51(b) and (c). First,  
21 the NPRM proposed to apply the same reporting requirements to both host committees  
22 and municipal funds. Under previous Commission regulations, different reporting  
23 requirements applied to host committees and municipal funds. While host committees

1 were required to file a post convention report on FEC Form 4, municipal funds were only  
2 required to file a post convention letter, which did not need to contain all of the  
3 information required on FEC Form 4. Compare former 11 CFR 9008.51(b)(1) with  
4 former 11 CFR 9008.51(c). In addition, host committees were required to continue filing  
5 quarterly reports as long as they continued to accept funds or make disbursements after  
6 filing the post convention report, but municipal funds were not subject to such a  
7 requirement. Former 11 CFR 9008.51(b)(2). Furthermore, host committees were  
8 required to file a final report within 10 days of ceasing reportable activity, but municipal  
9 funds were not. Former 11 CFR 9008.51(b)(3).

10 One commenter contended that it was in the public interest to require municipal  
11 funds to file reports with the same frequency and containing the same level of detail  
12 regarding receipts and disbursements as those filed by host committees. The Commission  
13 agrees, especially since it is dropping the former restrictions on municipal fund  
14 fundraising so that they may accept donations under the same conditions as host  
15 committees. See Explanation and Justification for 11 CFR 9008.53. Accordingly, the  
16 Commission is revising 11 CFR 9008.51 to state that the reporting provisions in  
17 paragraphs (b)(1), (2), and (3) apply to both host committees and municipal funds.

18 The NPRM also proposed two other changes to the host committee reporting  
19 requirements in 11 CFR 9008.51(b)(1). First, noting that paragraph (b)(1) of section  
20 9008.51 did not provide a date for the close of books for host committees' post-  
21 convention reports, the NPRM proposed revising 11 CFR 9008.51(b)(1) to set the close  
22 of books as 15 days prior to the date of filing. No commenters specifically addressed this  
23 date. The Commission believes that the proposed timeframe is reasonable, in that it

1 should provide sufficient time for host committees and municipal funds to prepare their  
2 reports. In addition, the Commission believes that it makes sense to apply the same  
3 timeframe to host committees and municipal fund reports that currently applies to  
4 convention committee reports under 11 CFR 9008.3(b)(2)(ii). Accordingly, the  
5 Commission is revising 11 CFR 9008.51(b)(1) to establish the close of books for host  
6 committee and municipal fund reports as of 15 days prior to the due date for filing these  
7 reports.

8           Second, the NPRM proposed revising 11 CFR 9008.51(b)(1) to require that  
9 reports filed pursuant to 2 U.S.C. 437 must contain the information specified in 11 CFR  
10 part 104. While the statutory authority for 11 CFR part 104 is based in 2 U.S.C. 434, host  
11 committee and municipal fund reporting is required by 2 U.S.C. 437, which authorizes  
12 the Commission to prescribe the form and detail for any required financial statements.  
13 Nevertheless, requiring host committee and municipal fund reports to be presented in the  
14 same format as other reports that are filed with the Commission significantly enhances  
15 the public disclosure of convention-related financial activity. No commenters addressed  
16 this proposed change. The Commission concludes that it has the statutory authority to  
17 require host committees and municipal funds to report pursuant to 11 CFR part 104 and it  
18 continues to believe that this change is desirable to aid public disclosure. Accordingly,  
19 the Commission is revising 11 CFR 9008.51(b)(1) to state that host committee and  
20 municipal fund post-convention reports must “disclose all the information required by 11  
21 CFR part 104.”

22           The NPRM also sought comment on whether requiring host committees and  
23 municipal funds to file quarterly reports after the 60-day post-convention report is

1 required by and consistent with 2 U.S.C. 437, which refers to a single financial statement.

2 No commenters addressed this question.

3 The Commission concludes that it does have the authority to require further  
4 reports by municipal funds. Section 437 states that host committees and municipal funds  
5 must, “within 60 days following the end of the convention (but not later than 20 days  
6 prior to the date on which presidential and vice-presidential electors are chosen), file with  
7 the Commission a full and complete financial statement, in such form and detail as [the  
8 Commission] may prescribe, of the sources from which it derived its funds, and the  
9 purpose for which such funds were expended.” 2 U.S.C. 437. The Commission’s  
10 experience with convention financing indicates that it is often not possible for host  
11 committees and municipal funds to provide a full and complete financial statement within  
12 the prescribed timeframe because receipts and invoices pertaining to the convention tend  
13 to continue to arrive after the convention has ended and even after the November general  
14 election. The Commission believes that 2 U.S.C. 437 in conjunction with 26 U.S.C.  
15 9009, which grants the Commission the authority to require the submission of “such  
16 books, records, and information, as it deems necessary to carry out the functions and  
17 duties imposed on it by this chapter,” provides the Commission with sufficient statutory  
18 authority to require both host committees and municipal funds to continue filing reports  
19 with the Commission as long as they receive or spend funds relating to the conventions.  
20 Furthermore, the Commission notes that the reporting obligation beyond the initial report  
21 is expressly conditioned on further convention-related activity, which means that the  
22 obligation will only apply when the initial report is not a “full and complete financial  
23 statement,” as required by 2 U.S.C. 437.

1           The NPRM also sought comment on the form that convention committees, host  
2 committees, and municipal funds should be required to use for their reports. Convention  
3 committees and host committees were required to report using FEC Form 4, while  
4 municipal funds were not required to use any particular form. See 11 CFR  
5 9008.3(b)(2)(i) (convention committees); former 11 CFR 9008.51(b)(1) (host  
6 committees); and former 11 CFR 9008.51(c) (municipal funds). The NPRM indicated  
7 that the Commission was considering requiring convention committees, host committees,  
8 and municipal funds to use FEC Form 3P instead of FEC Form 4. FEC Form 3P is the  
9 report of receipts and disbursements filed by Presidential and Vice-Presidential  
10 candidates.

11           No commenters specifically addressed this issue. Given the familiarity that  
12 convention committees already have with FEC Form 4, the Commission has decided that  
13 the most prudent course is to continue requiring convention committees and host  
14 committees to file FEC Form 4. Accordingly, the Commission has decided to retain the  
15 references to Form 4 in 11 CFR 9008.3(b)(2)(i) and revised 11 CFR 9008.51(b)(1). The  
16 requirement to file using FEC Form 4 will also apply to municipal funds. This is  
17 consistent with the Commission's decision to treat host committees and municipal funds  
18 the same.

19 11 CFR 9008.51(c) – Post convention statements by State and local government agencies

20           States, cities, and other local government agencies often provide facilities and  
21 services to Presidential nominating conventions under 11 CFR 9008.53, which are in  
22 addition to what may be provided by a separate municipal fund. When States, cities and  
23 local governments provide such facilities and services, they generally file letters with the

1 Commission identifying the categories of facilities and services provided for the  
2 convention and the origin of the funds used for such facilities and services under  
3 11 CFR 9008.51(c). Because the NPRM proposed that municipal funds would be made  
4 subject to the same reporting requirements as host committees under 11 CFR 9008.51(b),  
5 the NPRM proposed deleting 11 CFR 9008.51(c). No comments were received on this  
6 issue.

7 The Commission has decided, instead, to retain 11 CFR 9008.51(c) and revise it  
8 to require these letters to be filed only by those government agencies at the State,  
9 municipal, or local levels, or any other political subdivision, that use their general  
10 revenues to provide convention facilities or services pursuant to 11 CFR 9008.53. If a  
11 city directly makes convention expenditures with its own funds, it must report under 11  
12 CFR 9008.51(c) but would not be required to report the same transactions on a municipal  
13 fund report under section 9008.51(b).

14 11 CFR 9008.52 – Receipts and disbursements of host committees Proposed restructuring  
15 of 11 CFR 9008.52

16 The Commission has decided to move the definition of “host committee” from 11  
17 CFR 9008.52(a) to 11 CFR 9008.50(b). See Explanation and Justification for revised 11  
18 CFR 9008.50, above. Accordingly, the Commission is restructuring 11 CFR 9008.52 as  
19 follows: former paragraph (b) is being redesignated as paragraph (a) and former  
20 paragraph (c) is being redesignated as paragraph (b).

21 Proposed relocation of commercial vendor provisions

22 The NPRM proposed moving the provisions in former 11 CFR 9008.9(b) and (c)  
23 to 11 CFR 9008.52(a). However, because the Commission has decided not to amend 11

1 CFR 9008.9, the corresponding changes proposed for 11 CFR 9008.52 are unnecessary.

2 See Explanation and Justification for 11 CFR 9008.55, below.

3 Proposed revisions to permissible expenses

4 The NPRM proposed a number of substantive revisions to the list of permissible  
5 host committee expenses in former 11 CFR 9008.52(c)(1).<sup>3</sup> The proposed revisions were  
6 intended to clarify and add specificity to the list of permissible expenses. Id. at 18509.

7 The NPRM proposed combining the expenses in former 11 CFR 9008.52(c)(1)(i)  
8 and (c)(1)(x). Former section 9008.52(c)(1)(i) allowed host committees to defray  
9 expenses incurred for the purpose of promoting the suitability of the city as a convention  
10 site whereas section 9008.52(c)(1)(x) permitted host committees to provide  
11 accommodations and hospitality for those responsible for choosing the convention site.  
12 The proposed combined list would have permitted host committees and municipal funds  
13 to “defray those expenses incurred for the purpose of promoting the city as a convention  
14 site, including accommodations and hospitality for officials and employees of the  
15 convention and national party committees who are responsible for choosing the sites of  
16 the conventions.”

17 The NPRM also proposed narrowing permissible host committee expenses for  
18 providing convention committees with the use of an auditorium or convention center.  
19 Whereas the former rule at 11 CFR 9008.52(c)(1)(v) permitted host committees and  
20 municipal funds to provide both construction- and convention-related services for  
21 convention committees, the proposal sought to limit them to providing only construction-

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<sup>3</sup> Under both previous and revised 11 CFR 9008.53(b)(1), municipal funds are permitted to pay the same expenses as host committees.



1 related services that are clearly related to designing, creating, or installing the physical or  
2 technological infrastructure of the convention facility. The proposed rule would have  
3 deleted the reference to convention-related services and added a non-exhaustive list of  
4 permissible construction-related services.

5 In addition, the NPRM proposed narrowing the description of transportation  
6 services that may be provided by host committees and municipal funds in former 11 CFR  
7 9008.52(c)(1)(vi) to permit the provision of only those transportation services that were  
8 made “widely available to convention delegates and other individuals attending the  
9 convention.” See proposed 11 CFR 9008.52(b)(6). Conversely, the proposed rules  
10 would have broadened the types of law enforcement services that host committees and  
11 municipal funds may provide to allow not only those necessary “to assure orderly  
12 conventions” but also other “law enforcement and security services, facilities, and  
13 personnel, including tickets, badges, and passes.”

14 Another proposal would have addressed the provision related to hotel rooms in  
15 former 11 CFR 9008.52(c)(1)(ix). Whereas the former and current provision states that  
16 host committees and municipal funds may provide hotel rooms “at no charge or a reduced  
17 rate on the basis of the number of rooms actually booked for the convention,” the  
18 proposed provision would have permitted the provision of hotel rooms at the rate paid by  
19 the host committee or municipal fund. This proposal would have allowed host  
20 committees and municipal funds to pass through to convention committees any discounts  
21 they received based on the number of rooms rented but would have prohibited host  
22 committees or municipal funds from subsidizing the actual cost of such accommodations.

1           The NPRM also proposed eliminating the final, catchall expense category in  
2 former 11 CFR 9008.52(c)(1)(xi), which allowed host committees and municipal funds to  
3 provide “other similar convention-related facilities and services,” and proposed adding a  
4 new list of impermissible host committee and municipal fund expenses. Proposed 11  
5 CFR 9008.52(c)(1) would have prohibited host committees and municipal funds from  
6 providing “anything of value” to a convention committee, national party committee, or  
7 other political committee, except those items that were expressly described in proposed  
8 11 CFR 9008.52(b)(1) and (b)(5) through (b)(8). Proposed 11 CFR 9008.52(c)(2) would  
9 have prohibited host committees and municipal funds from defraying any expenses  
10 related to “creating, producing, or directing convention proceedings.”

11           The NPRM also sought public comment on whether there was any need to  
12 continue to provide a list of permissible convention expenses, or whether the definition of  
13 “convention expenses,” standing alone, gives sufficient guidance to convention  
14 committees regarding what they may or may not pay. Comment was also sought on  
15 whether to refine the current list of permissible convention expenses, by deleting some  
16 examples and/or adding others.

17           The Commission also sought comment on whether BCRA requires that the list of  
18 permissible host committee and municipal fund expenses in former 11 CFR 9008.52 must  
19 be modified to ensure that convention committees will not receive “a contribution,  
20 donation, or transfer of funds or any other thing of value . . . that are not subject to the  
21 limitations, prohibitions, and reporting requirements of [FECA].” 2 U.S.C. 441i(a)(1). In  
22 many of the transactions contemplated by 11 CFR 9008.52(c)(1), host committees  
23 provide something of value to convention delegates, other attendees, press, local

1 businesses, and the local community, but in these transactions the convention committee  
2 is a bystander, not a recipient of something of value. When a host committee provides,  
3 for example, a shopping and dining guide, to convention attendees, it is difficult to  
4 conclude that the convention committee received anything of value.<sup>4</sup> One commenter  
5 advocated a variation on this approach.

6 In addition to the proposed substantive revisions, the NPRM proposed two  
7 alternative locations for the revised list of permissible host committee and municipal fund  
8 expenses located in former 11 CFR 9008.52(c)(1). The list of permissible convention  
9 committee expenses in 11 CFR 9008.7(a)(4) would have been affected by the proposed  
10 reorganization as well. The NPRM proposed either deleting the non-exhaustive list of  
11 thirteen permissible convention expenses that may be paid by convention committees, or  
12 in the alternative retaining the list of permissible convention expenses but moving them  
13 to a new section.

14  
15 With respect to the proposed substantive and structural changes, a number of  
16 commenters believed that the current regulations work well and are not in need of  
17 additional clarification. These commenters expressed concern that any changes to the list  
18 of permissible expenses this close to the 2004 election would be extremely disruptive,  
19 would invite confusion, and would interfere with the obligations that host committees

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<sup>4</sup> In contrast, other permissible host committee and municipal fund expenses certainly provide something of considerable value to the convention committee. For example, host committees and municipal funds are permitted to provide an auditorium or convention center and construction services for that location. 11 CFR 9008.52(c)(1)(v).

1 have already agreed by contract to undertake for the 2004 national nominating  
2 conventions. In their opinion, no deficiencies in the current list that warrant either of the  
3 proposed alternative changes had been identified. A number of the commenters also  
4 stated that there was no indication that Congress, in enacting BCRA, intended to restrict  
5 or modify the range of permissible convention committee, host committee, and municipal  
6 fund expenses prior to BCRA.

7         After carefully considering the concerns raised by these commenters, the  
8 Commission has decided not to adopt any of the proposed substantive or structural  
9 revisions to the list of permissible convention committee, host committee and municipal  
10 fund expenses. The Commission is mindful of the potentially disruptive effect of  
11 modifying existing regulations regarding the expenses that may be paid by convention  
12 committees, host committees, and municipal funds in such close proximity to the 2004  
13 conventions. See Explanation and Justification for Public Financing of Presidential  
14 Primary and General Election Candidates, 64 Fed. Reg. 49355, 49358 (Sept. 13, 1999)  
15 (declining to modify the existing list of permissible convention committee and host  
16 committee expenses “given that the party committees have already entered into  
17 contractual agreements with the sites selected”). Accordingly, the list of permissible host  
18 committee and municipal fund expenses will remain in 11 CFR 9008.52. The list is  
19 substantively identical to that in current 11 CFR 9008.52(c)(1), however, as explained  
20 above, it will be redesignated as 11 CFR 9008.52(b) in light of other changes to section  
21 9008.52.

22         With respect to the reorganization of permissible convention expenses in 11 CFR  
23 9008.7(a)(4), the Commission is persuaded that it should retain the current non-

1 exhaustive list of permissible convention expenses. In addition, rather than relocating the  
2 list to two different paragraphs in a new section, the Commission has decided to keep the  
3 list intact and in place in paragraph (a)(4) of 11 CFR 9008.7. The Commission concludes  
4 that the list of permissible convention expenses has worked reasonably well in practice.  
5 The Commission also concludes that the proposed changes would not add sufficient  
6 clarity or precision to justify the possible confusion and disruption they may engender at a  
7 time when preparations for the 2004 conventions are well advanced, and further  
8 concludes that none of the proposed changes are required by BCRA.

9 Definition of "local" businesses, labor organizations, other organizations, and individuals

10 The NPRM proposed to eliminate the requirement, in former 11 CFR  
11 9008.52(c)(1) and 11 CFR 9008.53(b)(1), that only "local" businesses, labor  
12 organizations, other organizations, and individuals are permitted to make donations to  
13 host committees and municipal funds.

14 The NPRM sought comment on whether eliminating that restriction would make  
15 it more feasible for smaller or mid-sized cities to host a Presidential nominating  
16 convention. Comment was also sought on two alternative proposals. Under the first  
17 alternative proposal, the locality requirements in former 11 CFR 9008.52(c)(1) and (c)(2)  
18 and former 11 CFR 9008.53(b)(1) and (b)(2) would have been retained, but modified to  
19 permit only those donations made by "individuals who maintain a local residence or who  
20 work for the local office of a business, labor organization, or other organization." Under  
21 the second alternative approach, the locality restrictions in both 11 CFR 9008.52(c)(1)  
22 and 11 CFR 9008.53(b)(1) would have been revised to permit donations only from those  
23 individuals who have a local residence.

1           Most of the commenters who addressed this issue favored deletion of the locality  
2 requirement. They pointed out that the physical location of a business is a poor indicator  
3 of the extent of a company's commercial interests in a particular geographic region,  
4 especially in light of the increasingly global nature of the economy. These commenters  
5 believed the restriction frustrated the ability of host committees to raise funds for the  
6 legitimate purpose of promoting the host city. They argued that deleting this restriction  
7 would make it easier for smaller cities, without large local business communities, to bid  
8 successfully for a future convention.

9           These commenters also maintained that donors to host committees and municipal  
10 funds are motivated by legitimate commercial considerations or by civic pride, but not by  
11 political considerations. They contended that many businesses that do not maintain an  
12 office in or near the convention city nevertheless have a legitimate commercial interest in  
13 supporting large-scale events such as conventions in the host city, such as developing  
14 business in the convention city or showcasing their products to a prominent national  
15 audience. They pointed out that many corporations also make sizeable donations to host  
16 committees for other large-scale events such as host committees for the Super Bowl and  
17 the Olympics. One commenter suggested that the motive of those making donations to  
18 host committees is irrelevant because such donors have no control over how the host  
19 committee spends the funds.

20           On the other hand, a different commenter opposed the Commission's proposal to  
21 delete the locality requirement in 11 CFR 9008.52(c)(1) and 11 CFR 9008.53(b)(1),  
22 expressing the view that the locality restriction already was too permissive and certainly  
23 should not be eliminated.

1           After careful consideration of the viewpoints expressed by the commenters on this  
2 issue, the Commission has decided to eliminate the locality requirement from 11 CFR  
3 9008.52 and 11 CFR 9008.53. The Commission is persuaded that this restriction no  
4 longer serves a meaningful purpose because the disbursements that host committees and  
5 municipal funds are permitted to make are consistent with the narrow purpose of  
6 promoting commerce in, and the suitability of, the convention city. The Commission  
7 notes that the requirement that donors be local has resulted in reliance on Metropolitan  
8 Areas to draw difficult and seemingly arbitrary distinctions in specific cases.  
9 Accordingly, under the revised rule at 11 CFR 9008.52(b) (host committees) and 11 CFR  
10 9008.53(a) (municipal funds), businesses, labor organizations, other organizations, and  
11 individuals are permitted to donate funds or make in-kind donations to host committees  
12 and municipal funds, regardless of their geographic locations.

13 11 CFR 9008.53 – Receipts and disbursements of municipal funds

14           As discussed in greater detail above, the NPRM proposed to eliminate many of  
15 the differences in the manner that the Commission's regulations treat host committees  
16 and municipal funds. (See Explanation and Justification for 11 CFR 5008.50, above.)  
17 One of these differences was that municipal funds were subject to certain fundraising  
18 requirements that did not apply to host committees. Former 11 CFR 9008.53(b)(1)(i) and  
19 (ii) provided that neither the municipal fund itself nor the donations the municipal fund  
20 received or solicited could be restricted to use in connection with a particular convention.  
21 Host committees were not subject to these fundraising restrictions.

22           These disparate requirements limited the ability of host committees and municipal  
23 funds to raise funds in concert with one another. The NPRM acknowledged that the

1 restrictions on municipal fund fundraising were based on Commission decisions in  
2 Advisory Opinion (“AO”) 1982-27 and AO 1983-29. Comment was sought on deleting  
3 these requirements on municipal funds. In the alternative the NPRM proposed retaining  
4 the restrictions and clarifying the appropriate standard for determining whether a  
5 municipal fund itself, or the funds it receives, are impermissibly restricted to the  
6 Presidential nominating convention.

7 No commenters addressed this topic. The Commission has concluded that the  
8 former restrictions serve little or no purpose, while, at the same time, they unnecessarily  
9 hamper the ability of host committees and municipal funds to undertake joint fundraising  
10 activities. Accordingly, the Commission has decided to eliminate the restrictions on  
11 municipal fund fundraising in former 11 CFR 9008.53(b)(1)(i) and (ii).

12 The NPRM also proposed eliminating the requirement, in 11 CFR 9008.53(b)(1),  
13 that only “local” businesses, labor organizations, other organizations, and individuals are  
14 permitted to make donations to municipal funds. For the reasons stated above, the  
15 Commission has decided to eliminate this limitation on donations to municipal funds as  
16 well as host committees. See Explanation and Justification for 11 CFR 9008.52.

17 11 CFR 9008.55 – Funding for Convention Committees, Host Committees and Municipal  
18 Funds.

19 The Commission is adopting a new section 9008.55 to explain the application of  
20 BCRA to convention committees, host committees, and municipal funds. This new  
21 regulation should be viewed in the overall context of the legal structure of public  
22 financing and the development of the Commission’s regulatory approach regarding the  
23 role of host committees and municipal funds.



1           The national committees of both major and minor political parties are entitled to  
2 receive public funds to defray their expenses incurred in connection with a Presidential  
3 nominating convention under 26 U.S.C. 9008(b). Major party committees may receive an  
4 inflation-adjusted payment from the Presidential Election Campaign Fund for their  
5 national nominating conventions. 26 U.S.C. 9008(b)(1).<sup>5</sup> For the 2004 conventions, the  
6 major party committees will be entitled to receive \$14,880,000 in July 2003 and an  
7 additional payment in 2004 for an inflation adjustment, subject to all applicable  
8 requirements.<sup>6</sup> A national committee of a major party may not make expenditures related  
9 to the convention that exceed the expenditure limitations, which are equal to the full  
10 amount of the payment to major parties. 26 U.S.C. 9008(d). Thus, the major party  
11 convention committees that accept public funding may not receive any contributions, as  
12 defined in 2 U.S.C. 431(8), that would count towards their expenditure limit if they  
13 accepted the full Federal payment.

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<sup>5</sup> Minor party committees may receive a proportional amount of that payment based on the number of votes the party's candidate received in the last presidential election compared to the average number of votes received by the major party candidates. 26 U.S.C. 9008(b)(2). The Commission plans to conduct a separate rulemaking at a later date on issues that affect only minor and new party candidates. Issues related to convention financing for minor parties will be considered as part of that rulemaking. In 2000, the Reform Party received \$2,522,690 for its Presidential nominating convention. No candidate (other than the major party candidates) received a sufficient number of votes in the 2000 presidential general election to provide his or her party with minor party status in 2004.

<sup>6</sup> In 2000, the Democratic and Republican National Committees each received \$13,512,000 for their national nominating convention.

1 Development of Commission Rules on Host Committees and Municipal Funds

2 In 1977, the Commission first issued rules defining host committees, permitting  
3 them to accept in-kind contributions for their own use, and permitting them to use  
4 donated funds to promote their cities. 11 CFR 121.7 and 121.9(a) (1977). The  
5 Commission explained the basis for permitting in-kind contributions to host committees  
6 from corporations and labor organizations, stating: "Such in-kind contributions are  
7 presumably not politically motivated but are undertaken chiefly to promote economic  
8 activity and good will of the host city." Explanation and Justification for 1977  
9 Amendments to the Federal Election Campaign Act of 1971, H.R. Doc. No. 95-44, 136  
10 (1977).<sup>7</sup> Similarly, monetary donations to host committees were described as  
11 "presumably commercially motivated rather than politically, and thus will not be  
12 considered an unlawful contribution." Id. at 137. Host committee funds were "to be used  
13 for purposes designed to promote a good image of the host city to the convention  
14 attendees." Id. at 136-37.

15 The Commission also permitted host committees to accept donated funds from  
16 certain labor organizations and corporations and to use those funds to pay for what would  
17 otherwise be a convention expense, under certain circumstances. 11 CFR 121.9(b)  
18 (1977). The regulations distinguished between a host committee's use of donated funds  
19 "to defray expenditures made for the purpose of promoting a good image of the city to the  
20 convention attendees," 11 CFR 121.9(a) (1977), and the use of such funds "to defray

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<sup>7</sup> These regulations were issued prior to INS v. Chadha, 462 U.S. 919 (1983), and thus Congress had an opportunity to disapprove of these regulations by resolution of either the Senate or the House of Representatives, but did not do so.

1 convention expenses of the national party,” 11 CFR 121.9(b) (1977). For the latter, any  
2 corporate funds had to be donated from local retail businesses and must have been  
3 donated in amounts proportionate to a reasonably expected commercial return during the  
4 life of the convention. Id. Convention expense funds had to be maintained in a separate  
5 account by the host committee. Id.

6 The Commission acknowledged that the host committee exception to the  
7 convention committee’s expenditure limit could be considered a means of avoiding the  
8 expenditure limit. Explanation and Justification for 1977 Amendments, at 137. The  
9 explanation and justification stated that “it appears from the testimony of the major  
10 parties before the Commission that the Congress in deciding upon a dollar figure for  
11 expenditure limitations, took into consideration only those expenses actually paid by the  
12 national party for the 1972 convention and ignored in its computation the value of  
13 services provided by host cities and committees.” Id. The Commission described its  
14 regulation of the use of funds by host committees as “represent[ing] an interpretation of  
15 26 U.S.C. § 9008(1) that the [expenditure] limit applies only to expenditures made by the  
16 national party, and that expenditures made by private host committees under certain  
17 restrictions will not be counted toward the ceiling.” Id. (emphasis in original).

18 In 1979, the Commission recodified some of its regulations, including those  
19 related to corporate donations to host committees. 11 CFR 9008.7(d)(2) and (3) (1980).  
20 The regulations continued to distinguish between funds received and spent to promote the  
21 convention city and its commerce, 11 CFR 9008.7(d)(2) (1980), and funds received and  
22 spent to defray convention expenses, 11 CFR 9008.7(d)(3) (1980). The Explanation and  
23 Justification stated with respect to the latter amounts that “Far greater restrictions are ...

1 placed on funds received and expended to defray convention expenses. . . . The  
2 restrictions concerning who may donate funds to defray convention expenses and the  
3 amounts which may be donated are necessary to insure that such donations are  
4 commercially, rather than politically motivated.” Explanation and Justification of  
5 Presidential Election Campaign Fund and Federal Financing of Presidential Nominating  
6 Conventions, 44 Fed. Reg. 63036, 63037-38 (Nov. 1, 1979). The Commission described  
7 again the basis for this exception to the prohibition on corporate and labor organization  
8 funds in 2 U.S.C. 441b, stating: “While incorporated businesses are prohibited by  
9 2 U.S.C. 441b from making contributions or expenditures in connection with a Federal  
10 election, donations by such corporations to a host committee in accordance with  
11 restrictions set forth in [11 CFR 9008.7(d) (1979)] are sufficiently akin to commercial  
12 transactions to fall outside the scope of that prohibition.” 44 Fed. Reg. at 63037-38. The  
13 Commission also observed that “Defrayal of convention expenses by a host committee is  
14 intended to be a very narrow exception to the statutory limitation on convention  
15 expenses.” See id.

16 The explanation and justification also indicated that the municipality exception  
17 was created because the expenditure limit would be “unrealistically low” if the value of  
18 “certain facilities and services” provided by the city “as part of an overall package to  
19 attract the convention to that city” counted toward the convention committee’s  
20 expenditure limit. Id. at 63037. The Explanation and Justification also noted the  
21 apparent Congressional intent to permit private funding of certain expenses when  
22 establishing the level of public funding. Id. at 63037.

1           In 1994, the Commission again revised its regulations governing publicly financed  
2 Presidential nominating conventions. Incorporating the conclusions reached in AO 1982-  
3 27 and 1983-29, the Commission promulgated its municipal fund regulation,  
4 11 CFR 9008.53. Explanation and Justification of Presidential Election Campaign Fund  
5 and Federal Financing of Presidential Nominating Conventions, 59 Fed. Reg. 33606,  
6 33614 (June 29, 1994).<sup>8</sup> The 1994 rules eliminated the previous requirements that the  
7 local business be a retail business and that the amount of the donation be proportionate to  
8 the commercial return reasonably expected during the life of the convention. The  
9 explanation and justification stated that “the new rules recognize that local businesses and  
10 organizations that donate to municipal funds are motivated by commercial and civic  
11 reasons, rather than election-influencing purposes.” Id. at 33615.

12           When the Commission again revised these rules in 1999, it reiterated the  
13 presumed motivation of donors to host committees and municipal funds. In lifting the  
14 prohibition on bank donations to host committees, the Commission agreed with the  
15 observation that “local branches of national banks have the same interest in promoting the  
16 city and supporting commerce” as local corporations. Explanation and Justification for

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<sup>8</sup> These rules were submitted to Congress, and their effective date was delayed during that review. See 59 Fed. Reg. 33606 (June 29, 1994). The Congressional submission requirement in 26 U.S.C. § 9009(c) remains in effect even after INS v. Chadha.

1 Public Financing of Presidential Primary and General Election Candidates, 64 Fed. Reg.  
2 49355, 49357 (Sept. 13, 1999).<sup>9</sup>

3         Given this long history, for the reasons stated more fully below, the Commission  
4 has decided to avoid making changes to these longstanding rules on sources of funding  
5 for convention committees, host committees, and municipal funds unless it is required to  
6 do so by BCRA.

7 Application of BCRA's Non-Federal Funds Provisions to Convention Committees, Host  
8 Committees and Municipal Funds

9         Title I of BCRA includes several provisions potentially applicable to Presidential  
10 nominating convention financing. Under BCRA, “[a] national committee of a political  
11 party . . . may not solicit, receive, or direct to another person a contribution, donation, or  
12 transfer of funds or any other thing of value, or spend any funds, that are not subject to  
13 the limitations, prohibitions, and reporting requirements of [FECA].” 2 U.S.C.  
14 441i(a)(1). BCRA also prohibits officers and agents of the national party committees and  
15 entities that are “directly or indirectly established, financed, maintained, or controlled” by  
16 national party committees from soliciting, receiving, directing, or spending such non-  
17 Federal funds. 2 U.S.C. 441i(a)(2).

18         BCRA prohibits national party committees, their officers and agents, and entities  
19 directly or indirectly established, financed, maintained, or controlled by them from raising  
20 any funds for, or making or directing any donations to, certain tax exempt organizations.

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<sup>9</sup>         Implementation of the Federal Reports Elimination and Sunset Act of 1995, Pub. L. No. 104-66  
(1995), has not eliminated the Congressional review requirement of 26 U.S.C. § 9009(c), and these  
regulations were also submitted to Congress for their review. See 64 Fed. Reg. 49355 (Sept. 13, 1999).

1 2 U.S.C. 441i(d). This prohibition extends only to organizations that are described in  
2 section 501(c) of the Internal Revenue Code of 1986 and that are exempt from taxation  
3 under section 501(a) of such Code (or that have submitted an application for  
4 determination of tax exempt status under such section) [“501(c) organizations”] and that  
5 make “expenditures or disbursements in connection with an election for Federal office  
6 (including expenditures or disbursements for Federal election activity).” Id.

7 BCRA also prohibits Federal candidates and officeholders, their agents, and  
8 entities directly or indirectly established, financed, maintained, or controlled by or acting  
9 on behalf of one or more Federal candidate or officeholder from soliciting, receiving,  
10 directing, transferring, or spending funds in connection with an election for Federal office  
11 that do not comply with the limitations, prohibitions, and reporting requirements of  
12 FECA. 2 U.S.C. 441i(e)(1)(A). With respect to fundraising for non-profit organizations,  
13 BCRA provides two exceptions. Under the exception relevant here, BCRA permits  
14 Federal candidates and officeholders to make “general solicitations” of funds on behalf of  
15 organizations described in section 501(c) of the Internal Revenue Code, other than  
16 entities whose principal purpose is to conduct certain types of Federal election activity  
17 (including voter registration, voter identification, and get-out-the-vote activity), where the  
18 solicitations do not specify how the funds will or should be spent.

19 2 U.S.C. 441i(e)(4)(A).<sup>10</sup> Convention committees, host committees, and municipal funds  
20 are unlikely to engage in these types of Federal election activity.

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<sup>10</sup> BCRA also permits Federal candidates and officeholders to make “specific solicitations” on behalf of organizations described in Section 501(c) of the Internal Revenue Code, where the entities’ principal purpose is to conduct certain Federal election activities or where the solicitation is “explicitly to obtain

1 In 2002, the Commission promulgated rules implementing BCRA's new  
2 restrictions and prohibitions on the receipt, solicitation, direction, transfer and use of  
3 funds by political party committees, candidates, and officeholders. See 11 CFR part 300;  
4 Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal  
5 Funds or Soft Money, 67 Fed. Reg. 49064 (July 29, 2002) (hereinafter "Non-Federal  
6 Funds Final Rules"). It decided to defer its consideration of the specific impact of these  
7 new restrictions and prohibitions in BCRA on Presidential nominating conventions to a  
8 future rulemaking, if necessary. Non-Federal Funds Final Rules, 67 Fed. Reg. at 49088.  
9 11 CFR 9008.55(a) – Convention Committees Are Subject to 2 U.S.C. 441i(a)(1).

10 Convention committees are, as a matter of law, entities directly established,  
11 financed, maintained, or controlled by national party committees. The Commission's  
12 regulations at 11 CFR 9008.3(a)(2) require national party committees to "establish a  
13 convention committee which shall be responsible for conducting the day to day  
14 arrangements and operations of that party's Presidential nominating convention." In  
15 addition, under 11 CFR 9008.3(a)(2), convention committees are required to receive the  
16 national party's entitlement to public funds and are responsible for making "[a]ll  
17 expenditures on behalf of the national committee for convention expenses."

18 In the Non-Federal Funds Final Rules, the Commission provided a non-exhaustive  
19 list of factors that may be considered in determining whether an entity is directly or  
20 indirectly established, financed, maintained, or controlled by a national party committee.  
21 11 CFR 300.2(c). See 67 Fed. Reg. at 49084 ("the affiliation factors laid out in 11 CFR

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funds" for certain Federal election activities. 2 U.S.C. 441i(e)(4)(B). Such "specific solicitations" may only be made to individuals in amounts not exceeding \$20,000 per calendar year. Id.



1 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or  
2 controlled’ for purposes of BCRA”). Given the legal relationship between national party  
3 committees and convention committees under 11 CFR 9008.3(a)(2) described above,  
4 convention committees clearly are “entities directly or indirectly established, financed,  
5 maintained, or controlled” by the national party committees, as that term is defined in 11  
6 CFR 300.2(c). Typically, convention committees list the national party committees as an  
7 affiliated committee on their Statements of Organization.

8 Convention committees are also “agents” of the national party committees. Under  
9 the Commission’s definition of “agent,” a principal cannot be held liable for the actions  
10 of an agent unless (1) the agent has actual authority, (2) the agent is acting on behalf of  
11 the principal, and (3), with respect to national party committees, the agent is soliciting,  
12 directing, or receiving any contribution, donation or transfer of funds on behalf of the  
13 national party committee. 11 CFR 300.2(b). Given that convention committees by law  
14 are authorized to receive the national party committee’s convention funds, this aspect of  
15 their relationship is sufficient to make convention committees agents of the relevant  
16 national party committee under 11 CFR 300.2(b).

17 The NPRM proposed that BCRA’s ban in 2 U.S.C. 441i(a)(1) on national parties  
18 soliciting, receiving, directing, and spending funds that do not comply with the source  
19 prohibitions and amount limitations should apply to convention committees by operation  
20 of 2 U.S.C. 441i(a)(2) and 11 CFR 300.10(c). One of the national party committees  
21 commenting on this proposal agreed that convention committees are required by law to be  
22 established by national party committees, which triggers 2 U.S.C. 441i(a)(2). No other  
23 commenter addressed this issue.

1           The Commission concludes that as a matter of law convention committees are  
2 subject to 2 U.S.C. 441i(a)(1) and 11 CFR 300.10(a) by operation of 2 U.S.C. 441i(a)(2)  
3 and 11 CFR 300.2(b), (c) and 11 CFR 300.10(c). Accordingly, under new 11 CFR  
4 9008.55(a), all convention committees established pursuant to 11 CFR 9008.2(a)(2) are  
5 subject to the national party committee prohibitions in 11 CFR 300.10(a).

6 11 CFR 9008.55(a) – Donations From Host Committees and Municipal Funds to  
7 Convention Committees

8           The Commission sought comment on whether BCRA bars convention committees  
9 from accepting many of the in-kind donations typically provided by host committees and  
10 municipal funds. The current rules on permitted expenditures of host committees and  
11 convention committees overlap, which reflects the fact that some host committee  
12 disbursements are for goods or services related to the conduct of a convention, and not  
13 merely the promotion of their cities. See, e.g., revised 11 CFR 9008.52(b)(5), discussed  
14 above. There was no consensus among the commenters on this issue.

15           Several commenters argued that there is no language in BCRA that compels or  
16 even anticipates changes to the long-standing regulations regarding convention financing.  
17 Some commenters also emphasized the non-political nature of host committee activities  
18 and that nothing in BCRA requires or justifies the Commission to alter its conclusion that  
19 donations to host committees are commercially, not politically, motivated. According to  
20 some commenters, the provision of goods and services by a host committee has never  
21 been considered an in-kind contribution, and BCRA did not amend that statutory  
22 definition of in-kind contribution in 2 U.S.C. 431(8)(A)(i). A commenter also pointed  
23 out that another provision of BCRA repealed certain Commission regulations. Because

1 Congress did not similarly address the convention financing regulations, its silence is “a  
2 conclusive indication that there was no Congressional intent that the Commission modify  
3 these regulations in any way,” according to this commenter. One commenter argued that  
4 BCRA’s prohibitions in 2 U.S.C. 441i(a) are limited to national party committees, their  
5 agents, and any entity that is established, financed, maintained, or controlled by the  
6 national party committees. In this commenter’s view, host committees do not constitute  
7 any of these covered persons, so host committees should be permitted to continue  
8 accepting and using “soft money contributions” to pay for certain convention related  
9 costs.

10 Other commenters advocated for the exact opposite position, citing BCRA’s  
11 unqualified prohibition on the national party committees’ accepting any non-Federal  
12 funds. These commenters construed both FECA and BCRA to prohibit a convention  
13 committee from accepting in-kind contributions from a host committee funded by  
14 corporate donations. These commenters also contended that conventions have become  
15 vehicles for the infusion of massive amounts of non-Federal funds into both political  
16 parties and to their candidates and officeholders. More than 1,100 timely, essentially  
17 identical, comments that the Commission received by e-mail expressed support for the  
18 use of tax dollars to fund party conventions “precisely so that parties may turn away other  
19 sources of inappropriate funds.”

20 For many of these same reasons, a petition for rulemaking jointly filed by three  
21 organizations sought the repeal or revision of the Commission’s regulations that permit  
22 host committees to accept corporate and labor organization funds and to use these funds

1 for expenses incurred in conducting a nominating convention.<sup>11</sup> The petition contended  
2 that the host committee rules in 11 CFR 9008.52, as well as the exemption from the  
3 definition of “contribution and expenditure” of activity permitted by the host committee  
4 rules (11 CFR 114.1(a)(2)(viii)), are contrary to FECA and BCRA.

5 One commenter presented data that it claimed challenged some of the  
6 assumptions upon which the Commission’s host committee rules are based. This  
7 commenter argued that the tremendous escalation of private contributions to finance host  
8 committees, traced over the course of several conventions, is inconsistent with the  
9 assumptions that the host committee and municipal fund exception to the expenditure  
10 limit is a “very narrow exception” and that such donations are not politically motivated.  
11 They also observed that party leaders at the State and local level have been active in  
12 raising funds for conventions held by the other party.

13 Other commenters challenged the data and conclusions drawn by this commenter.  
14 They argued that the increase in corporate funding reflects a general trend of increasing  
15 corporate sponsorship for large-scale civic events. A decreased willingness or ability of  
16 State and local governments to assist endeavors of this scale was also cited as a potential  
17 explanation for rising private donations.

18 The Commission’s consideration of the issues commented upon begins with  
19 consideration of BCRA’s language. The Commission agrees that one reasonable  
20 interpretation of BCRA’s prohibition in 2 U.S.C. 441i(a) on national party committees’  
21 receipt of anything of value that is not subject to FECA’s limitations and prohibitions

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<sup>11</sup> The Center for Responsive Politics, Common Cause, and Democracy 21 filed the petition.

1 would be to prohibit national party committees' receipt of any goods, services, and  
2 facilities provided by host committees that are funded by unlimited corporate or labor  
3 organization donations or donations exceeding the amount limitations with respect to  
4 contributions made to the national party committees. The Commission is nonetheless  
5 aware that nothing in the text of BCRA expressly addresses convention financing. For  
6 the reasons stated below, the Commission is adopting a competing reasonable  
7 interpretation of BCRA.

8         The Commission also considered BCRA's legislative history on these issues. In  
9 light of the sparse and inconclusive legislative history, the NPRM sought comment as to  
10 whether Congress intended BCRA to change the rules for convention financing, and it  
11 cited the very few statements on this topic made during the Senate's consideration of  
12 BCRA. For example, Senator Mitch McConnell said the bill "will end national party  
13 conventions as we have known them." 148 Cong. Rec. S2122 (daily ed. Mar. 20, 2002).

14         Only two commenters addressed these remarks. One noted that the Supreme  
15 Court and other courts have found the views of legislative opponents to be an unreliable  
16 guide to the construction of a statute, citing National Labor Relations Board v. Fruit &  
17 Vegetable Packers, Local 760, 377 U.S. 58, 66 (1964); Bryan v. United States, 525 U.S.  
18 384, 196 (1998) (quoting Schwegman Bros. v. Calvert Distillers Corp., 341 U.S. 384,  
19 394-95 (1951)); and Illinois Commerce Comm'n v. Interstate Commerce Comm'n, 879  
20 F.2d 917, 923 n. 47 (D.C. Cir. 1989). The commenter characterized the one statement of  
21 Senator Thompson, a BCRA supporter, as "a fleeting 8-word aside" with an unclear  
22 meaning. The only other commenter to address these remarks stated that they show that

1 Congress understood that BCRA's national party and Federal candidate provisions would  
2 prohibit non-Federal funds in relation to Presidential nominating conventions.

3 While the unrebutted predictions of opponents made during Congressional  
4 debates can provides some indication of Congressional intent,<sup>12</sup> in these circumstances,  
5 the Commission affords them little weight. See NLRB v. Fruit & Vegetable Packers,  
6 Local 760, 377 U.S. 58, 66 (1964) (noting that legislative opponents, "[i]n their zeal to  
7 defeat a bill, . . . understandably tend to overstate its reach").

8 BCRA's principal sponsors in Congress did not file comments in response to the  
9 NPRM in this rulemaking. However, in comments filed in the Non-Federal Funds  
10 rulemaking, the sponsors did address convention financing. They noted that "the soft  
11 money ban prohibits the national parties from raising soft money for any person. It  
12 therefore does prohibit the national parties from raising or directing soft money  
13 contributions for or to host committees for the political conventions. We note with  
14 respect to future rulemaking on political conventions that BCRA places tight restrictions  
15 on the use of soft money for political conventions." The sponsors also stated in their  
16 2002 comments that "BCRA places tight restriction on the use of soft money for political  
17 conventions." However, the comments do not identify what those "tight restrictions" are,  
18 other than the solicitation prohibition on national parties, which is discussed below. Nor  
19 were those restriction described as a complete ban, but rather "tight restrictions on the use  
20 of soft money for political conventions," which certainly suggests that the sponsors

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<sup>12</sup> See Arizona v. California, 373 U.S. 546, 583 n.85 (1963) ("statements of opponents of a bill . . . [are] relevant and useful, especially where, as here, the proponents of the bill made no response to the opponents' criticisms").

1 believe that use of corporate or labor organization funds or amounts exceeding the  
2 contribution limits may be permissible. The Commission declines to rely on a single  
3 post-enactment statement in a separate rulemaking that unspecified “tight restrictions”  
4 exist as a basis to determine that BCRA effectively prohibits a major source of funding  
5 for the Presidential nominating conventions.

6 In considering whether BCRA bars convention committees from accepting in-kind  
7 donations from host committees and municipal funds, the Commission considered several  
8 other factors as well. Title I of BCRA, entitled “Reduction of Special Interest Influence”  
9 and the cornerstone of BCRA, begins with the prohibition on national party committees.  
10 BCRA, sec. 101(a), 116 Stat. at 82. Presidential nominating conventions are the only  
11 publicly funded endeavors of a national party committee. Underlying the convention  
12 public funding program is an elaborate statutory regime, 26 U.S.C. § 9008, which  
13 Congress created. Moreover, Members of Congress often play substantial roles in  
14 Presidential nominating conventions. In fact, since 1996, all Democratic Members of  
15 Congress have served as automatic delegates to their party’s convention, according to one  
16 of the commenters.

17 The Commission’s regulations on host committees have been in effect since the  
18 earliest days of the Commission. Despite other changes to the host committee  
19 regulations, the Commission has consistently maintained that donations of funds to host  
20 committees are, as a matter of law, distinct from other donations by prohibited sources in  
21 that they are motivated by a desire to promote the convention city and hence are not  
22 subject to the absolute ban on corporate contributions in 2 U.S.C. 441b. While it is  
23 always difficult to interpret Congressional silence, the Commission does note that BCRA

1 specifically repealed another of the Commission's regulations, BCRA, sec. 214(b), 116  
2 Stat. at 94, and yet did not similarly repeal or otherwise address the Commission  
3 regulations on convention financing. Congress has also declined other opportunities to  
4 disapprove of the Commission's regulations on host committees. These regulations were  
5 submitted to Congress in 1977, 1994, and 1999, and Congress has not taken action to  
6 invalidate the regulations. In those regulations, one of only two subparts is devoted to  
7 host committees and municipal funds, 11 CFR part 9008, subpart B, which provides host  
8 committees a legal prominence in the regulatory structure as well.

9 In light of all of these specific circumstances described above – the absence in  
10 BCRA of an express reference to conventions, the dearth of legislative history on the  
11 subject of convention financing, the prominence of conventions for the parties, the role of  
12 Members of Congress in convention activities, the extensive, existing regulations for  
13 convention financing, and the Commission's long-standing regulatory position regarding  
14 host committee funds, which has never been repudiated by Congress – the Commission  
15 declines to interpret the general prohibitions in 2 U.S.C. 441i(a) to eliminate the  
16 Commission's discretion to interpret 2 U.S.C. 441b, 441i(a), and 26 U.S.C. 9008(d) to  
17 permit the financing regime established by its rules in 11 CFR part 9008. Courts have  
18 recognized that when it is not clear whether statutory amendments affect past agency  
19 interpretations, agencies are left with their ordinary ability to interpret the law as  
20 amended, subject to deferential judicial review. See, e.g., Chisholm v. FCC, 538 F.2d  
21 349, 366 (D.C. Cir. 1976) (noting court's obligation to defer to agency's interpretation  
22 even if it is not the only interpretation permissible). Thus, the Commission must decide  
23 whether to maintain its interpretation of 2 U.S.C. § 441b and 26 U.S.C. § 9008(d) and



1 extend it to 2 U.S.C. 441i(a) or to overturn the regulatory system governing convention  
2 financing.

3         In considering whether to maintain the current convention financing system, the  
4 Commission evaluated the relationship between the convention committee and the  
5 localities hosting the convention. This relationship is established by an arms-length  
6 agreement negotiated by independent actors. There is keen competition among cities to  
7 host conventions, and on more than one occasion, cities have sought the conventions of  
8 both major national parties. The highly detailed contract underlying this relationship calls  
9 for the city, its host committee, its municipal fund, or some combination of the three to  
10 provide very specific facilities and services to the convention committee in exchange for  
11 the convention committee agreement to bring the Presidential convention to that city  
12 instead of any other. In turn, the city and region receive a significant economic benefit  
13 from the commerce that directly results from the convention.

14         If this exchange between the convention committee and the host committee is of  
15 equal value, then the convention committee has not received anything of value, and  
16 therefore has not violated the general prohibition in 2 U.S.C. 441i(a). As the  
17 Commission stated in another context: “When . . . exchanges of equal value occur, which  
18 are non-reportable events under the Act, no ‘contribution, donation, or transfer of funds  
19 or any other thing of value’ takes place under 2 U.S.C 441i(a), 11 CFR 300.10(a), or any  
20 other provision of the Act or the Commission’s regulations.” AO 2002-14. Therefore, a  
21 determination that equal value was exchanged would also exempt this transaction from  
22 the prohibitions of 2 U.S.C. 441b, which BCRA revised to include “anything of value . . .

1 in connection with any election to any of the offices referred to in [2 U.S.C. 441b].”  
2 2 U.S.C. 441b(2).

3 To determine if equal value has been exchanged, so that a net receipt does not  
4 result, the appropriate standard is the “usual and normal” charge. The Commission’s  
5 regulations have recognized such an exception to the definition of contribution. See  
6 11 CFR 100.52(d)(1).

7 Quantifying the value of the facilities and services provided in connection with  
8 these events and then quantifying the value of the increased commerce that results from  
9 events of this scale is exceedingly difficult. Although some of these costs and benefits  
10 could be easily determined (for example, construction costs for improvements to the  
11 convention center, the total amount of hotel room rentals during the convention week  
12 related to the convention), the value of other costs and benefits can only be estimated, and  
13 each estimate makes the final calculation less precise. One of the avowed purposes of a  
14 host committee is to increase tourism to its city not just during the convention, but for  
15 some time afterwards. Thus, increased tourism even a year or more after the convention  
16 should be assessed a value as part of the consideration cities and host committees receive  
17 for hosting the Presidential convention. Any monetary valuation of such commerce and  
18 its connection to the convention would unavoidably involve assumptions and estimates.

19 Further complicating this calculation would be the wide variation in the suitability  
20 of convention centers available for events of this scale. Some are mere shells with  
21 interiors custom designed for every event, while others have many facilities and service  
22 capabilities built into the center, although these, too, can require customization. Should  
23 the focus of any valuation be placed on the facilities and services ultimately provided to

1 the convention committee, or should the costs incurred by the host committee be the  
2 focus, so that the more completed convention centers would show a lower cost, even if  
3 providing the same facilities to the convention committee? These are some of the issues  
4 the Commission would have to resolve to develop a methodology to determine the value  
5 exchanged by the city and the convention committee.

6 Other costs such as security are borne by the some combination of the city, its host  
7 committee, its municipal fund, the State, and the Federal government. Many of the  
8 decisions that will directly affect the value of those services will not be subject to  
9 convention committee control. This complicates both the calculation of costs and the  
10 comparisons of different venues that may have different security arrangements.

11 Rather than adopting a rule that requires convention committees, host committees,  
12 and municipal funds to perform such an analysis and then rely on it at the risk of  
13 repayment findings and enforcement actions, the Commission has decided to adopt a  
14 bright-line approach to this issue. Under this approach, the Commission will focus on the  
15 purposes of the host committee and municipal fund disbursements related to the  
16 convention, rather than their amount. So long as the host committee or municipal fund  
17 disbursements are for the facilities and services listed in 11 CFR 9008.52(b), and so long  
18 as there was an arms-length negotiation between the convention committee, on the one  
19 hand, and the convention city and related entities, on the other, the Commission will  
20 consider the exchange to be of equal value. For the same reasons that the Commission  
21 has treated host committee disbursements for the permitted purposes listed in  
22 11 CFR 9008.52 as exempt from the convention committee expenditure limit and the  
23 prohibition of corporate or labor organization contributions in 2 U.S.C. 441b, the

1 Commission concludes that the decisions leading to the amount of such expenditures will  
2 share the same non-political motivation and therefore can be considered an equal  
3 exchange for the agreement to conduct the convention in that city.

4 For these reasons, the Commission concludes that convention committees may  
5 continue to receive in-kind donations from host committees and municipal funds of the  
6 convention expenses described in 11 CFR 9008.52. The Commission is adopting new  
7 11 CFR 9008.55(a), stating in part that convention committees may accept in-kind  
8 donations that are in compliance with 11 CFR 9008.52 or 9008.53 from host committees  
9 or municipal funds. The Commission emphasizes that this interpretation is limited to the  
10 unique circumstances of Presidential nominating convention financing.

11 11 CFR 9008.55(b) – Historically, Host Committees and Municipal Funds Are Not  
12 “Agents” of National Party Committees.

13 BCRA’s ban on national parties soliciting, receiving, directing, transferring and  
14 spending non-Federal funds also applies to “agents” of national party committees. In the  
15 Non-Federal Funds Final Rules, the Commission defined an “agent,” for purposes of 11  
16 CFR part 300, as “any person who has actual authority, either express or implied . . . to  
17 solicit, direct, or receive any contribution, donation, or transfer of funds” on behalf of a  
18 national committee of a political party. 11 CFR 300.2(b)(1)(i). Section 300.2(b)(1)  
19 therefore requires a fact-specific determination of the nature of any authority conferred by  
20 a national party committee.

21 The NPRM sought comment on whether host committees and municipal funds  
22 satisfy the definition of “agents” under 11 CFR 300.2(b)(1) with respect to the national  
23 political party committees or their convention committees. Comment was also sought on

1 whether host committees and municipal funds should be treated as per se agents of  
2 national party committees. Such an approach would have limited permissible funds for a  
3 host committee or municipal fund to funds subject to FECA's limitations, prohibitions,  
4 and reporting requirements, regardless of how the host committees and municipal funds  
5 function in practice, and regardless of their actual relationship with the national party  
6 committees. An alternative approach would have treated host committees and municipal  
7 funds as per se not agents of national party committees and, therefore, not subject as a  
8 matter of law to 2 U.S.C. 441i(a)(2) or 11 CFR 300.10(c)(1), no matter how such host  
9 committees and municipal funds actually operate or interact with the national party  
10 committees. The commenters were divided on these issues.

11         Some commenters argued that host committees are independent from convention  
12 committees and should therefore not be considered agents of convention committees.  
13 Both host committees for the 2004 Presidential nominating conventions for the two major  
14 parties assured the Commission that their sole purpose was to encourage commerce in  
15 their cities and project a favorable image of their cities to the convention attendees. One  
16 host committee explained that it conducts its own fundraising by its own staff and  
17 consultants, without national party committee participation. The other host committee  
18 stated that it does not fundraise on behalf of the national party committee holding its  
19 convention in that city. Conversely, other commenters would treat host committees as  
20 agents. One commenter reasoned that because host committees raise funds to pay for  
21 convention expenses, they are in essence raising funds for the convention committee,  
22 which would make host committees agents under 11 CFR 300.2(b)(1)(i).

1           The Commission has decided that the regulatory definition of “agent” of a  
2 national committee of a political party in 11 CFR 300.2(b)(1) sufficiently addresses the  
3 issue of when a host committee will be considered an agent of a national committee of a  
4 political party. It provides for a fact-specific determination, rather than a per se rule  
5 applicable to all host committees and municipal funds. Accordingly, the Commission has  
6 decided to adopt a new provision, 11 CFR 9008.55(b), simply stating that host  
7 committees and municipal funds are not agents of national party committees, except as  
8 provided in 11 CFR 300.2(b)(1).

9           The Commission’s experience is that host committees typically do not have  
10 authority to solicit, direct, or receive any contribution, donation, or transfer of funds on  
11 behalf of the national committees of political parties. Thus, so long as host committees  
12 and convention committees conduct their affairs as they have in the past, host committees  
13 will not be considered agents of convention committees. National party committees,  
14 convention committees, and host committees should look to 11 CFR 300.2(b)(1) for  
15 guidance on under what circumstances a host committee would be an agent of a national  
16 party committee or convention committee. In effect, this approach amounts to a  
17 presumption that host committees and municipal funds are not agents of the national  
18 party committee. Such a presumption could be rebutted by a showing that the conditions  
19 of section 300.2(b)(1)(i) or (ii) are satisfied by the relationship of a particular host  
20 committee and convention committee. If host committees and municipal funds ever  
21 became “agents” of national party committees, then they, like the national party  
22 committees themselves, would be prohibited from soliciting, receiving, directing, or

1 spending non-Federal funds by operation of 2 U.S.C. 441i(a)(1) and (2) and 11 CFR  
2 300.10(a) and (c)(1).

3 11 CFR 9008.55(c) – Historically, Host Committees and Municipal Funds Are Not  
4 Entities “Directly or Indirectly Established, Financed, Maintained, or  
5 Controlled” by National Party Committees.

6 The prohibitions on national party committees under BCRA also apply to entities  
7 that are “directly or indirectly established, financed, maintained, or controlled” by a  
8 national party committee. 2 U.S.C. 441i(a)(2); 11 CFR 300.10(c)(2). As noted above,  
9 11 CFR 300.2(c) provides a non-exhaustive list of factors that may be considered in  
10 determining whether an entity is directly or indirectly established, financed, maintained,  
11 or controlled by a national party committee. 11 CFR 300.2(c). See Non-Federal Funds  
12 Final Rules, 67 Fed. Reg. at 49084 (“the affiliation factors laid out in 11 CFR 100.5(g)  
13 properly define ‘directly or indirectly established, financed, maintained, or controlled’ for  
14 purposes of BCRA”). The resolution of this issue requires a fact-specific evaluation of  
15 the circumstances.

16 The NPRM sought comment on whether host committees and municipal funds  
17 satisfy the factors listed in 11 CFR 300.2(c) and should, therefore, be considered entities  
18 that are directly or indirectly established, financed, maintained, or controlled by the  
19 national party committees holding conventions in the relevant cities. The NPRM posed  
20 the corresponding per se alternatives on this question as it did on the agency issue,  
21 discussed above.

22 The commenters divided on this issue as well. Some commenters contended that  
23 the party committees control or coordinate with host committees so closely that host

1 committees are affiliates of the national party committees. One commenter argued that  
2 the rules should not presume the organizations affiliated, but should instead rely on the  
3 factors listed in 11 CFR 300.2(c). This commenter also noted that two of those factors  
4 nearly always exist between the host committee and the convention committee. The two  
5 factors are that the party committees provide funds in a significant amount to host  
6 committees by virtue of selecting their cities to host the conventions,  
7 11 CFR 300.2(c)(1)(vii), and that the party committees and host committees have a  
8 similar pattern of receipts that indicate a formal or ongoing relationship under  
9 11 CFR 300.2(c)(1)(x). Other commenters disagreed; they argued that host committees  
10 are not directly or indirectly established, financed, maintained, or controlled under  
11 11 CFR 300.2(c)(1). Both host committees cited detailed facts about their organizations  
12 to show that their organizations' relationship with the respective national party  
13 committees do not satisfy the factors listed in the definition of "directly or indirectly  
14 establish, finance, maintain, or control." 11 CFR 300.2(c)(2)(i) through (x).

15         The Commission has decided that the regulatory definition of "directly or  
16 indirectly establish, finance, maintain or control" by a national committee of a political  
17 party in 11 CFR 300.2(c)(1) sufficiently addresses the issue. Section 300.2(c)(1) provides  
18 for a fact-specific evaluation of particular circumstances, rather than a per se rule  
19 applicable to all host committees and municipal funds. The Commission has decided  
20 therefore to adopt a new provision, 11 CFR 9008.55(c), stating that host committees and  
21 municipal funds are not directly or indirectly established, financed, maintained, or  
22 controlled by a national political party, except as provided in 11 CFR 300.2(c).



1           The Commission’s experience is that host committees typically would not meet  
2 the affiliation test established in 11 CFR 300.2(c)(1). Thus, so long as host committees  
3 and convention committees conduct their affairs as they have in the past, host committees  
4 will not be considered directly or indirectly established, financed, maintained, or  
5 controlled by a national party committee. This approach does not preclude the  
6 Commission from determining that the relationship between a particular host committee  
7 or municipal fund and a national party committee satisfies 11 CFR 300.2(c).

8 11 CFR 9008.55(d) – National Party Solicitations of Funds for Host Committees and

9 Municipal Funds

10           BCRA prohibits national party committees, their officers and agents acting on  
11 their behalf, and entities directly or indirectly established, financed, maintained, or  
12 controlled by them from soliciting any funds for, or making or directing any donations to,  
13 certain tax-exempt organizations. 2 U.S.C. 441i(d). These prohibitions extend to funds  
14 solicited or directed for only certain tax-exempt organizations described in 26 U.S.C.  
15 501(c) that make “expenditures or disbursements in connection with an election for  
16 Federal office (including expenditures or disbursements for Federal election activity)”  
17 and organizations described in 26 U.S.C. 527. Id.; 11 CFR 300.2(a).

18           A “disbursement” is defined, in 11 CFR 300.2(d), as “any purchase or payment  
19 made by: (1) a political committee; or (2) any other person, including an organization  
20 that is not a political committee, that is subject to [FECA].” FECA defines “election” to  
21 include nominating conventions. 2 U.S.C. 431(1)(B). The Commission’s previous  
22 treatment of permissible host committee and municipal fund disbursements has been that  
23 they are not “expenditures” under 2 U.S.C. 431(9)(A)(i) because they are not made “for

1 the purpose of influencing an election.” However, BCRA reaches beyond expenditures  
2 and requires only “disbursements in connection with an election” to make a 501(c)  
3 organization subject to the prohibition in 2 U.S.C. 441i(d)(1). In light of these definitions  
4 and the previous treatment of host committees and municipal funds, the Commission  
5 sought comment on whether, as a matter of law, host committees and municipal funds  
6 make “disbursements” in connection with an election for Federal office, even as they  
7 adhere to the requirements in current 11 CFR 9008.52.

8 Two commenters stated that because host committees have not been considered  
9 political committees, host committees cannot be considered to make “disbursements in  
10 connection with an election.” However, the Commission notes that FECA defines  
11 “political committee,” in part, as any committee that receives contributions or makes  
12 expenditures aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. 431(4).  
13 The definitions of “contribution,” 2 U.S.C. 431(8)(A)(i), and “expenditure,”  
14 2 U.S.C. 431(9)(A)(i), both include the requirement that the transaction be “for the  
15 purpose of influencing any election for Federal office.” Thus, the determination that host  
16 committees are not political committees does not resolve the question of whether they  
17 make “disbursements in connection with a Federal election.”

18 One commenter also asserted that, in litigation challenging BCRA, the  
19 Commission explained that 2 U.S.C. 441i(d) reflected Congressional recognition that  
20 some tax-exempt organizations engage in campaign activities to benefit Federal  
21 candidates. The commenter suggested that because this purpose is not relevant to host  
22 committees, the Commission should not consider solicitations for host committees  
23 subject to 2 U.S.C. 441i(d). The Commission disagrees. The passage of the

1 government's brief quoted by this commenter did not purport to be an exhaustive list of  
2 activities prohibited by 2 U.S.C. 441i(d). Indeed, later in the same brief, the wider effect  
3 of the provision was made clear: "Moreover, donations solicited or directed by national  
4 party committees to benefit tax-exempt organizations that conduct political activities  
5 create the same potential problems of corruption that other unregulated fund-raising by  
6 the national party engenders ...." Brief of Defendants, at 118, McConnell v. FEC, 251 F.  
7 Supp. 2d 176 (D.D.C. 2003); prob. juris. noted, 123 S.Ct. 2268 (U.S. 2003).

8         The Commission has determined that host committee and municipal fund  
9 disbursements related to convention activities are "disbursements in connection with an  
10 election" sufficient to trigger the prohibition in 2 U.S.C. 441i(d) with respect to those  
11 host committee and municipal funds that are 501(c) organizations. Section 431(1)(B) of  
12 FECA defines "election" to include Presidential nominating conventions. BCRA's  
13 provision in this regard, 2 U.S.C. 441i(d)(1), very specifically applies to 501(c)  
14 organizations. In crafting the activities of these organizations covered by the provision,  
15 Congress took care to use a well-defined term of art in campaign finance law,  
16 "expenditure." 2 U.S.C. 431(9). However, the language of BCRA plainly includes more  
17 than expenditures under FECA in this provision; the provision includes "expenditures  
18 and disbursements in connection with an election for Federal office."

19         In another context, the Commission has recognized the distinction between  
20 disbursements for election-related activities and contributions or expenditures.  
21 Commission regulations at 11 CFR 114.2(c) state: "Disbursements by corporations and  
22 labor organizations for the election-related activities described in 11 CFR 114.3 and  
23 114.4 will not cause those activities to be contributions or expenditures, even when

1 coordinated with any candidate's authorized committee(s) or any party committee to the  
2 extent permitted in those sections." Thus, "disbursements ... for ... election-related  
3 activities" need not be "contributions or expenditures." Because Presidential nominating  
4 conventions are elections, and because host committees and municipal funds are  
5 permitted to provide convention-related facilities and services to convention committees,  
6 the Commission has determined that host committee and municipal fund disbursements  
7 are in connection with an election for Federal office sufficient to trigger the prohibition in  
8 2 U.S.C. 441i(d)(1).

9 Therefore, the Commission is promulgating a new rule, 11 CFR 9008.55(d), in  
10 order to apply 11 CFR part 300 to the solicitation of funds for those host committees or  
11 municipal funds that have 26 U.S.C. 501(c) status. Section 9008.55(d) provides that host  
12 committee and municipal fund payments in connection with a Presidential nominating  
13 convention are disbursements in connection with a Federal election for purposes of 11  
14 CFR part 300. The proposed rules are being slightly modified to clearly include any  
15 convention-related activities not in compliance with 11 CFR part 9008. The final rule is  
16 intended to cover all host committee and municipal fund activities in connection with a  
17 Presidential nominating convention.<sup>13</sup>

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<sup>13</sup> The determination that host committee and municipal fund activities are in connection with a Federal election does not contradict their exemption from 2 U.S.C. 441b. The exemption from 2 U.S.C. 441b was not premised on a determination that the activities were not in connection with an election, but instead was premised on the determination that equal value is exchanged between the convention committee and the community hosting the convention, which means no payment of anything of value results.

1           Because host committees and municipal funds do make disbursements in  
2 connection with a Federal election, such organizations will not be eligible to make the  
3 certification pursuant to 11 CFR 300.11(d) or 300.50(d). Therefore, new  
4 11 CFR 9008.55(d) also clarifies that host committees and municipal funds are not  
5 eligible to make the certification pursuant to 11 CFR 300.11(d) or 300.50(d).

6 11 CFR 9008.55(e) – Candidate Solicitations for Host Committee and Mutual Funds

7           BCRA also prohibits Federal candidates and individuals holding Federal office<sup>14</sup>  
8 from soliciting, receiving, directing, transferring, or spending funds in connection with an  
9 election for Federal office unless the funds are subject to the limitations, prohibitions, and  
10 reporting requirements of FECA. 2 U.S.C. 441i(e)(1)(A). BCRA extends these  
11 prohibitions to agents acting on their behalf of either Federal candidates or individuals  
12 holding Federal office, as well as entities directly or indirectly established, financed,  
13 maintained, or controlled by such candidates or officeholders. 2 U.S.C. 441i(e)(1).

14           BCRA creates two exceptions from that general rule in 2 U.S.C. 441i(e)(4), only  
15 one of which is relevant to Presidential nominating conventions. BCRA allows Federal  
16 candidates, individuals holding Federal office, and individuals who are agents acting on  
17 behalf of either to make “general solicitations,” without source or amount restrictions, for

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<sup>14</sup>           An “individual holding Federal office” is defined as “an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.” 11 CFR 300.2(o). It does not include those “who are appointed to positions such as the secretaries of departments in the executive branch, or other positions that are not filled by election.” Non-Federal Funds Final Rules, 67 Fed. Reg. at 49,087. This definition is identical to the definition of “Federal officeholder” in 11 CFR 113.2(c).

1 a 501(c) organization, other than organizations whose “principal purpose” is to conduct  
2 certain Federal election activity, so long as the solicitation does not specify how the funds  
3 will or should be spent. 2 U.S.C. 441i(e)(4)(A). The “Federal election activity”  
4 referenced in this exception is voter registration within 120 days of a Federal election and  
5 voter identification, GOTV activities, or generic campaign activity conducted in  
6 connection with an election in which a candidate for Federal office appears on the ballot.  
7 2 U.S.C. 441i(e)(4)(A) (citing 2 U.S.C. 431(20)(A)(i) and (ii)).

8 The principal purpose of a host committee or municipal fund is to promote and  
9 generate commerce in the host city; its principal purpose is not to conduct the specified  
10 types of Federal election activity that would trigger the exception to the rule permitting  
11 general solicitations for 501(c) organizations. Therefore, under 2 U.S.C. 441i(e)(4)(A),  
12 Federal candidates and officeholders may make general solicitations of funds on behalf of  
13 any host committee or municipal fund that is a 501(c) organization where such  
14 solicitations do not specify how the funds will or should be spent and where the Federal  
15 candidates and officeholders do not establish, finance, maintain, or control these  
16 organizations.<sup>15</sup>

17 The final rule at 11 CFR 9008.55(e) is modified from the proposed rule to state  
18 that Federal candidates and officeholders and their agents may make general solicitations  
19 on behalf of host committees or municipal funds that are section 501(c) organizations,

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<sup>15</sup> In AO 2003-12, the Commission determined that the exceptions in 2 U.S.C. 441i(e)(4) do not apply to a section 501(c) organization established, financed, maintained, or controlled by a Federal candidate or officeholder, or agent of either.

1 provided the solicitations do not specify how the funds will or should be spent and  
2 provided that the solicitations are otherwise permitted by 2 U.S.C. 441i(e)(4)(A).<sup>16</sup>

3 Other Convention-Related Issues

4 A. Goods and Services Provided to Convention Committees by Commercial Vendors

5 The NPRM also sought comment on proposed changes to the rule on convention  
6 committees receiving goods and services from commercial vendors, 11 CFR 9008.9.

7 Some commenters argued that nothing in BCRA should change the conclusion that the  
8 provision of these goods and services is permissible. In contrast, a different commenter  
9 argued that this exception violates both FECA and BCRA, citing many of the same  
10 reasons some commenters used to argue that the Commission's current host committee  
11 and municipal regulations are contrary to FECA and BCRA. For the same reasons stated  
12 above regarding the host committee and municipal fund exception, the Commission has  
13 determined that no change to 11 CFR 9008.9 is required by BCRA.

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<sup>16</sup> The new regulations at 11 CFR 300.52 and 300.65 could be read to restrict a broader range of general solicitations made on behalf of 501(c) organizations than does the related provision of BCRA, 2 U.S.C. 441(e)(4)(A). Specifically, the regulations appear to bar general solicitations on behalf of 501(c) organizations for any election activity, including certain types of Federal election activity; section 441(e)(4)(A), however, bars only those general solicitations on behalf of 501(c) organizations whose principal purpose is to conduct these specified types of Federal election activity. The regulations should be read as barring only those solicitations covered by the statute.

1 B. Offsets

2           The NPRM sought comment on whether BCRA required any reevaluation of the  
3 practice of permitting convention committees to “offset” in-kind contributions received  
4 from host committees that are deemed impermissible in post-convention audits. Under  
5 this practice, rather than require repayment of 100% of these receipts, the convention  
6 committee is permitted to offset the impermissible in-kind contributions with convention  
7 committee expenditures that could have been paid by the host committee. The  
8 Commission has concluded that under BCRA convention committees may continue to  
9 receive in-kind donations from host committees and municipal funds provided the in-kind  
10 donations are in accordance with 11 CFR 9008.52 and 9008.53. See new  
11 11 CFR 9008.55(a). Therefore, the Commission has also determined that convention  
12 committees may offset host committee or municipal fund impermissible in-kind  
13 contributions. Accordingly, no revisions need be made in the final rules.

14 C. Private Hospitality Events

15           The NPRM also sought comment on whether BCRA requires regulation of private  
16 hospitality events held by corporations, labor organizations, and other groups in the  
17 convention city during the convention. Such events are typically held in locations outside  
18 the convention venue, but often in close proximity to it. Convention attendees including  
19 delegates, Federal candidates and officeholders, and political party officials are often  
20 invited to these events, and such individuals frequently speak or are recognized at such  
21 events.

22           Four commenters addressed this issue, and they all agreed that BCRA does not  
23 require regulatory language regarding these hospitality events. One of the commenters



1 noted that these events could be subject to regulation on some other basis, if, for example,  
2 the events were also fundraisers for a political committee under the Act.

3 The Commission has concluded that BCRA does not change the determination  
4 that the temporal and geographic proximity of these events to Presidential nominating  
5 conventions does not subject the events to regulation under FECA solely because of that  
6 proximity. The Commission notes that FECA regulation could be triggered nonetheless  
7 by such events if, for example, a Federal political committee holds a fundraising event.

#### 8 D. Host Committee Audits

9 The NPRM sought comment on whether the examination and audit authority set  
10 forth in current 11 CFR 9008.54 has an adequate statutory basis under FECA or the Fund  
11 Act. This section mandates audits of all host committees. The Fund Act gives the  
12 Commission the authority “to conduct such examinations and audits (in addition to the  
13 examinations and audits required by section 9007(a)) . . . as it deems necessary to carry  
14 out the functions and duties imposed on [the Commission] by this chapter.” 26 U.S.C.  
15 9009(b).

16 When the predecessor to the current version of 11 CFR 9008.54 was promulgated  
17 in 1979, the Commission determined it was necessary to audit host committees because  
18 host committees are allowed to accept donations to defray convention expenses and,  
19 therefore, the Commission had a responsibility to insure that such donations “were  
20 properly raised and spent.” Explanation and Justification for Presidential Election  
21 Campaign Fund and Federal Financing of Presidential Nominating Conventions, 44 Fed.  
22 Reg. 63036, 63038 (Nov. 1, 1979).

1 Two commenters argued that the Commission does not have statutory authority to  
2 conduct routine audits of host committees. In their view, the Commission's routine audit  
3 authority is limited to candidates and committees that receive public funds, and is meant  
4 to ensure that such candidates and committees do not misspend those public funds. One  
5 commenter stated that routine audits of host committees are unwarranted because host  
6 committees do not receive public funds. Both commenters favored repealing 11 CFR  
7 9008.54.

8 After considering the comments, the Commission has concluded that it possesses  
9 authority to audit host committees on a routine basis. The Commission notes that the  
10 audit authority in 26 U.S.C. 9009(b) is broad. That section grants the Commission the  
11 power "to conduct such examinations and audits" as it deems necessary to carry out the  
12 responsibilities with which the Commission has been charged. While it is true that  
13 section 9009(b), unlike 26 U.S.C. 9007(a), which requires the Commission to conduct  
14 routine audits of publicly-financed candidates and convention committees, does not  
15 require the Commission to audit host committees, it grants the Commission the discretion  
16 to do so. Given the increasingly vital role that host committees play in financing the  
17 national nominating conventions, the Commission continues to find it necessary to  
18 conduct routine host committee audits to ensure that such entities do not provide  
19 "anything of value" to convention committees, except as expressly permitted in 11 CFR  
20 9008.52(b).

#### 21 E. Municipal Fund Audits

22 While the NPRM proposed to eliminate many of the discrepancies in the manner  
23 that the Commission's regulations applied to host committees and municipal funds, it did

1 not propose extending the routine audit provision applicable to host committees, 11 CFR  
2 9008.54, to municipal funds as well.

3 While the NPRM did not propose to conduct routine audits of municipal funds,  
4 however, it indicated that the Commission retains the authority to conduct a detailed and  
5 thorough review of municipal fund transactions if such an examination is necessary in  
6 particular circumstances. Comment was sought on whether, because municipal funds are  
7 already subject to government oversight, as well as for the sake of comity between  
8 Federal and State or local agencies, the Commission should decline to revise 11 CFR  
9 9008.54 to extend its audit authority to cover municipal funds. One commenter opposed  
10 subjecting municipal funds to automatic audits.

11 The Commission has decided not to extend the audit authority set forth in 11 CFR  
12 9008.54 to municipal funds because routine, full-scale audits of municipal funds are  
13 unnecessary, given that municipal funds' financial transactions are already subject to  
14 careful scrutiny by local authorities. The Commission does, however, retain the authority  
15 to conduct detailed and thorough examinations of municipal fund transactions and  
16 accounts related to the convention when warranted.

17 **11 CFR Part 9031—Scope**

18 11 CFR 9031.1 – Scope

19 The Commission is making two technical amendments to this section to update  
20 the references to its other regulations.

21 **11 CFR Part 9032—Definitions**

1 11 CFR 9032.9 – Qualified Campaign Expenses

2 Section 9032.9 defines qualified campaign expenses. One technical correction is  
3 being made in section 9032.9(c). Previously, this rule stated that expenditures incurred  
4 “before the beginning of the expenditure report period” are qualified campaign expenses  
5 if they meet the requirements of 11 CFR 9034.4(a), which addresses, inter alia, testing the  
6 waters expenses prior to the date an individual becomes a candidate. The reference to  
7 “expenditure report period” was an error because that term applies to general election  
8 candidates. See 11 CFR 9002.12. This reference is being changed to “prior to the date  
9 the individual becomes a candidate,” the same wording used in 11 CFR 9034.4(a)(2),  
10 governing testing the waters expenses. No commenters addressed this topic.

11 **11 CFR Part 9033—Eligibility for Payments**

12 11 CFR 9033.1 – Candidate and committee agreements

13 Similar to the technical amendment to 11 CFR 9003.1(b)(8) discussed above, the  
14 Commission is revising section 9033.1. The reference to 11 CFR parts 100-116 in  
15 paragraph (b)(10) is amended to encompass all the regulations up to and including  
16 11 CFR part 400 among the regulations with which candidates and their authorized  
17 committees agree to comply.

18 11 CFR 9033.11 – Documentation of Disbursements

19 The changes to section 9033.11 follow the changes to 11 CFR 9003.5 discussed  
20 above.

21 **11 CFR Part 9034—Entitlements**

1 11 CFR 9034.4 – Use of contributions and matching payments; examples of qualified  
2 campaign expenses and non-qualified campaign expenses

3 Section 9034.4, which concerns the use of contributions and matching payments  
4 for qualified and non-qualified campaign expenses, is being amended in several respects.  
5 First, the heading for this section is being modified by adding the words “examples of  
6 qualified campaign expenses and nonqualified campaign expenses” to assist the reader in  
7 locating these examples.

8 11 CFR 9034.4(a)(3)(i) – Definition of “Winding Down Costs”

9 The Commission is revising 11 CFR 9034.4 to move provisions from paragraph  
10 (a)(3)(i) to the new rule on winding down costs in 11 CFR 9034.11, discussed below.  
11 Revised section 9034.4(a)(3)(i) indicates that winding down costs that satisfy new 11  
12 CFR 9034.11 are qualified campaign expenses.

13 11 CFR 9034.4(a)(3)(ii) – Private Contributions Received after DOI

14 The Commission is also revising 11 CFR 9034.4(a)(3)(ii) to clarify the rules  
15 governing ineligible primary election Presidential candidates who continue to campaign  
16 after their dates of ineligibility. Previously, paragraph (a)(3)(ii) provided that these  
17 candidates may use “contributions received after” the DOI to continue to campaign.  
18 However, 11 CFR 9034.5(a)(2)(i) provides that a candidate’s cash on hand on the NOCO  
19 Statement should include “all contributions dated on or before” the DOI, whether or not  
20 submitted for matching. Thus, contributions that were dated on or before the DOI but  
21 received after the DOI were subject to both rules, and the previous rules did not make  
22 clear how they should be treated. Section 9034.4(a)(3)(ii) is being revised to eliminate

1 the overlap by stating that only a contribution that is dated after a candidate's DOI may be  
2 used to continue to campaign.

3 In addition, the Commission is deleting the sentence in former section  
4 9034.4(a)(3)(ii) that stated: "The candidate shall be entitled to receive the same  
5 proportion of matching funds to defray net outstanding campaign obligations as the  
6 candidate received before his or her date of ineligibility." In practice, each submission  
7 for matching funds is reviewed individually; thus, a candidate receives a different  
8 proportion of matching funds for each submission. Deleting this sentence makes clear  
9 that candidates will continue to receive matching funds based on the Commission's  
10 review of each matching fund submission, rather than on the proportion of matching  
11 funds the candidate received for any previous submission. Revised 11 CFR  
12 9034.4(a)(3)(ii) also includes a new reference to 11 CFR 9034.11. No comments were  
13 received regarding these changes to section 9034.4(a)(3)(ii).

14 11 CFR 9034.4(a)(3)(iii)

15 As discussed below in the explanation and justification of 11 CFR 9035.1(c)(1),  
16 paragraph (a)(3)(iii) is being moved from section 9034.4 to section 9035.1(c)(1).

1 11 CFR 9034.4(a)(5) – Gifts and Bonuses

2 The NPRM sought comment on revising 11 CFR 9034.4(a)(5) regarding gifts and  
3 bonuses paid to campaign employees, consultants, and volunteers. For the reasons  
4 explained above in the explanation and justification for newly redesignated 11 CFR  
5 9004.4(a)(6), the Commission has decided to make no changes to 11 CFR 9034.4(a)(5).

6 11 CFR 9034.4(a)(6) – Convention Expenses of Ineligible Candidates

7 The NPRM proposed adding a new section 11 CFR 9034.4(a)(6) to reflect its  
8 decision in AO 2000-12 permitting certain convention expenses incurred by Presidential  
9 primary candidates after their dates of ineligibility to be considered qualified campaign  
10 expenses. In AO 2000-12, the Commission permitted ineligible candidates to treat as  
11 qualified campaign expenses certain costs related to meetings and events at the national  
12 nominating conventions subject to some restrictions. Specifically, the Commission  
13 allowed costs related to meetings and receptions to thank delegates and supporters to be  
14 treated as qualified campaign expenses, but did not also allow travel costs related to such  
15 events to be considered qualified campaign expenses. The Commission also permitted  
16 ineligible candidates to incur qualified campaign expenses related to specific fundraising  
17 events at the national nominating conventions, as well as travel expenses to attend such  
18 events.

19 One commenter agreed that the expenses in AO 2000-12 should be treated as  
20 qualified campaign expenses, and suggested that the rule should be extended to cover  
21 most convention expenses of primary candidates incurred after DOI. This commenter  
22 asserted that reasonable convention expenses are in connection with a candidate's  
23 campaign for nomination both for candidates who continue to campaign past their

1 eligibility date and those who withdraw or suspend their campaigns. Candidates who  
2 withdraw or suspend their campaigns might restart their campaigns depending on  
3 changed circumstances. The commenter suggested a ceiling of \$100,000 to \$250,000 for  
4 such expenses.

5 The Commission is adding new 11 CFR 9034.4(a)(6) to provide a simpler  
6 approach in which a candidate may treat expenses related to the national nominating  
7 convention of up to \$30,000 as qualified campaign expenses. This rule recognizes that  
8 ineligible candidates have interests in participating in their parties' national nominating  
9 convention related to their candidacy for the nomination. Thus, it is reasonable to allow  
10 candidates to use public funds to participate in their party's national nominating  
11 convention. This bright line rule avoids the necessity of considering whether convention  
12 expenses are in fact necessary for fundraising activities or are genuinely to thank those  
13 who assisted the campaign as required by AO 2002-12.

14 The new rule in 11 CFR 9034.4(a)(6) provides that an ineligible candidate may  
15 treat up to \$30,000 in expenses related to the national nominating convention as qualified  
16 campaign expenses. Any costs reasonably related to the candidate's attendance,  
17 participation or activities at the Presidential nominating convention would be a qualified  
18 campaign expense under the new rule, including travel and lodging costs of the candidate,  
19 his or her family, and campaign staff, consultants and volunteers to attend the convention,  
20 the costs of hosting receptions and events, and other convention-related costs. Any  
21 amount in excess of \$30,000 will not be considered a qualified campaign expense and  
22 may be subject to repayment. The \$30,000 cap is based on the Commission's experience  
23 as to how much is reasonably necessary for this purpose.



1 11 CFR 9034.4(b)(3) – Non-Qualified Campaign Expenses

2 Revisions are being made to 11 CFR 9034.4(b)(3) to more clearly state that  
3 winding down and continuing-to-campaign costs addressed in paragraph (a)(3) of this  
4 section are qualified campaign expenses. The revised rules also indicate that certain  
5 convention expenses permitted under paragraph (a)(6) of this section are qualified  
6 campaign expenses.

7 11 CFR 9034.10 – Pre-Candidacy Payments by Multicandidate Political Committees

8 Deemed In-kind Contributions and Qualified Campaign Expenses; Effect  
9 of Reimbursement

10 In the NPRM, the Commission proposed adding language at 11 CFR 9034.10 to  
11 treat certain expenses incurred by multicandidate committees as in-kind contributions  
12 benefiting publicly funded Presidential candidates. Similar language was proposed at 11  
13 CFR 110.2(l) to reach a similar result where multicandidate committees incur such  
14 expenses benefiting Presidential candidates who are not publicly funded. These  
15 provisions were designed to address situations where unauthorized political committees  
16 closely associated with a particular individual planning to run for President defray costs  
17 that are properly treated as in-kind contributions unless reimbursed by the Presidential  
18 campaign.

19 Two commenters addressed this topic. One commenter generally supported the  
20 proposed rule, but noted that it did not address similar issues in Congressional campaigns.  
21 The other commenter suggested that in this context even polling that did not mention a  
22 particular Presidential candidate should be covered.

1           The Commission is adopting final rules that use much of the approach set forth in  
2 the proposed rules. The final rules, though, narrow their focus so they are clearer in  
3 application and better targeted to the situations that truly present the potential for evasion  
4 of the contribution and spending limits. The final rules also provide a mechanism for a  
5 Presidential campaign to achieve compliance with the law by promptly reimbursing the  
6 multicandidate committee. If there is full and timely reimbursement, the multicandidate  
7 political committee's payment is not to be treated as an in-kind contribution for either  
8 entity, but rather the reimbursement of it is a qualified campaign expense of the candidate  
9 (in the case of a publicly funded candidate).

10           One distinction built into the final rules is that they cover only payments by  
11 multicandidate political committees before the individual benefiting actually becomes a  
12 candidate within the meaning of 2 U.S.C. § 431(2) and 26 U.S.C. § 9032(2). The  
13 Commission's experience is that after an individual becomes a candidate for the  
14 Presidency by virtue of receiving more than \$5,000 in contributions or making more than  
15 \$5,000 in expenditures, and taking into account the "testing the waters" allowances at 11  
16 CFR 100.72 and 100.131, the candidate's principal campaign committee or other  
17 authorized committee would pay the types of expenses involved here. The focus of the  
18 final rules, therefore, is those expenses paid by multicandidate political committees prior  
19 to actual candidacy under the law, i.e., during the "testing the waters" phase and before.  
20 For other expenses not addressed in new sections 110.2(l) or 9034.10, the general  
21 provisions describing in-kind contributions at 11 CFR 100.52(a) and (d), 109.20, 109.21,  
22 109.23, and 109.37 would apply. The covered expenses in the new rules at  
23 11 CFR 110.2(l) and 9034.10 would not trigger candidacy themselves, but would count as

1 contributions in-kind and/or qualified campaign expenses if and when the individual  
2 benefiting becomes a candidate, including by operation of 11 CFR 100.72(b) and  
3 100.131(b).

4 Both final rules narrow the types of expenses covered in the proposed rules by  
5 qualifying each. For example, only polling expenses that involve measuring the  
6 favorability, name recognition, or relative support of the person who becomes a  
7 Presidential candidate are subject to the rules. General polling solely regarding issues  
8 would not be covered. Compensation and office expenses would be covered only to the  
9 extent they relate to activities in states where Presidential primaries, caucuses, or  
10 preference polls are yet to be conducted.

11 Both final rules also narrow the coverage to situations where there is some  
12 involvement of the benefiting candidate. It became apparent that there may be some  
13 multicandidate political committee payments of the type described that are undertaken  
14 without any involvement of the individual who becomes a Presidential candidate. For  
15 example, some multicandidate committees might independently undertake polling to test  
16 the relative support of various potential candidates for President in order to make  
17 decisions about which candidate to support with contributions or independent  
18 expenditures. Other committees might be setting up staffed offices in States that will be  
19 conducting Presidential primaries, but have no involvement whatsoever with a person  
20 who becomes a Presidential candidate.

21 The Commission decided to refer to standards already in the regulations to reach  
22 only those expenditures that properly should be treated as in-kind contributions and/or  
23 qualified campaign expenses. Thus, the final rules cover only those situations where the

1 benefiting candidate “accepted or received” the goods or services, “requested or  
2 suggested” the goods or services, had “material involvement” in the decision to provide  
3 the goods or services, or was involved in “substantial discussions” about providing the  
4 goods or services. See 11 CFR 106.4(b); 109.21(b)(2), (d)(1), (d)(2), (d)(3). This  
5 approach was driven, in part, by the fact that the Commission did not in these rules want  
6 to try to differentiate between various types of multicandidate committees, such as those  
7 commonly referred to as “leadership PACs.” However, without some nexus with a  
8 particular benefiting candidate, the rules would reach too broadly. As a practical matter,  
9 the final rules probably will have the most impact on so called “leadership PACs,” but  
10 other types of multicandidate political committees will be covered as well.

11         If reimbursement is made by the Presidential campaign within 30 days after the  
12 benefiting candidate becomes a candidate, the multicandidate political committee’s  
13 payment will not be deemed an in-kind contribution. Since some such payments may fall  
14 within the last 30 days of a multicandidate committee’s and a Presidential candidate’s  
15 reporting period, and before the reimbursement has been made, the question of whether to  
16 initially report the payment as a contribution in-kind arises. Because of the nature of  
17 these expenses, and the fact that treatment as an in-kind contribution does not arise unless  
18 and until the benefiting Presidential aspirant legally becomes a candidate, the  
19 Commission will not require the payment to be treated as an in-kind contribution under  
20 these circumstances. After the reimbursement opportunity has passed, though (30 days  
21 after candidacy), the payment must be treated as an in-kind contribution, and any such  
22 payments not previously reported as such would have to be so reported through the  
23 amendment process.

1 Please note that nothing in these final rules alters the application of  
2 11 CFR 109.21(b)(2) or 109.37(a)(3) or (b). The Commission also notes that these final  
3 rules in no way address situations where the Commission determines that the  
4 multicandidate political committee and the candidate's principal campaign committee are  
5 affiliated under 11 CFR 100.5(g)(4).

#### 6 11 CFR 9034.11 – Winding Down Costs

7 This new section addresses winding down costs for primary election candidates.  
8 For reasons stated in the explanation and justification for new 11 CFR 9004.11, which  
9 addresses winding down costs for general election candidates, the Commission is  
10 adopting a similar approach to winding down costs of primary candidates in new section  
11 9034.11, with some differences described below.

#### 12 11 CFR 9034.11(a) – Definition of “Winding Down Costs”

13 The definition of “winding down costs” in new section 9034.11(a) is similar to the  
14 definition in section 9004.11(a) except that the costs are related to the candidate's  
15 campaign for nomination rather than the candidate's general election campaign. New  
16 section 9034.11(a) includes a revised version of the first sentence of previous 11 CFR  
17 9034.4(a)(3)(i) to clarify that winding down costs are limited to costs associated with the  
18 termination of political activity related to seeking that candidate's nomination for  
19 election. This change helps to clarify that primary election campaign winding down  
20 expenses are legally distinct from general election campaign winding down expenses.

#### 21 11 CFR 9034.11(b) – Winding Down Limitation

22 In the NPRM the Commission proposed placing a 5% amount limitation on  
23 winding down costs for primary election candidates similar to the limit proposed for

1 general election candidates. One commenter opposed the 5% limit, noting that in the  
2 2000 election cycle a number of candidates would have exceeded this limitation. The  
3 commenter viewed winding down costs as fixed costs. The commenter stated that media  
4 costs become an increasingly larger percentage of a campaign's expenditures as money  
5 becomes available, while the percentage of expenditures for accounting, legal services,  
6 office space and supplies diminishes because such costs are often provided at a fixed  
7 price for the anticipated duration of the service and are not directly dependent upon  
8 whether the campaign is active or closing down.

9       As it did with the 2000 general election candidates, the Commission compared the  
10 approximate winding down costs of the primary election candidates to the proposed  
11 winding down limitations. Ten primary candidates received matching funds in 2000.  
12 Three of these primary candidates' winding down limitations would have been calculated  
13 based on the maximum winding down limitation. Of these, only one would have  
14 exceeded the proposed winding down limitation, having spent approximately 8% of the  
15 expenditure limitation. Six primary candidates' winding down limitations would have  
16 been calculated based on their expenditures. Of these, four candidates would have  
17 exceeded the 5% winding down limitation proposed in the NPRM, with winding down  
18 costs ranging between approximately 13% and 42% of their expenditures. One candidate  
19 who would have been subject to the minimum winding down limitation of \$100,000  
20 spent substantially less than that amount. Thus, of the ten publicly funded primary  
21 committees in the 2000 Presidential elections, five committees had winding down  
22 expenses that would have exceeded the proposed limitation. One of these had sufficient

1 funds in its related GELAC that could have paid the excessive winding down expenses.  
2 The other four committees would have received less matching funds after their DOIs.<sup>17</sup>

3 The Commission also considered the results of the hypothetical application to the  
4 2000 candidates of 10% winding down limitation for primary election candidates. This  
5 percentage would allow most campaigns, particularly small campaigns of unsuccessful  
6 candidates, to pay necessary winding down costs without exceeding the winding down  
7 limitation, and ensure that only campaigns with extraordinarily high winding down  
8 expenses exceed the winding down limitation. Although four of the ten 2000 election  
9 cycle primary candidates would have spent more than a 10% limitation, two of those  
10 candidates spent close to that amount (13% and 14%) and might have been able to adjust  
11 their expenditures to fall within the new limitation; only two candidates spent far in  
12 excess of a 10% limitation.

13 Accordingly the Commission is adopting a winding down limitation for primary  
14 election candidates in new section 9034.11(b). Specifically, the new primary election  
15 winding down limitation is 1) 10% of the overall expenditure limitation; or 2) 10% of the  
16 total of the candidate's expenditures subject to the overall expenditure limitation as of the  
17 candidate's DOI, plus the candidate's expenses exempt from the overall expenditure  
18 limitation as of DOI, such as fundraising, legal and accounting compliance expenses and  
19 other expenses. Like general election candidates, all primary candidates may spend a  
20 minimum winding down limitation of \$100,000 on winding down costs.

<sup>17</sup> Of course, this comparison is hypothetical because the committees might have curbed certain expenses had the new rules been in effect.

1           This limitation only applies to the use of public funds or a mixture of public and  
2 private funds for winding down costs. The final rule allows a primary candidate who is in  
3 a deficit position at the DOI to pay for winding down costs in excess of the limitation  
4 after the committee's accounts no longer contain any matching funds. See 11 CFR  
5 9038.2(b)(2)(iii)(B) and (iv). Primary candidates who have a surplus at the DOI will be  
6 required to make a surplus repayment to the United States Treasury before they may use  
7 private funds for winding down costs in excess of the limitation. See 11 CFR 9038.3(c).  
8 The rule restricts the expenses used to calculate the winding down limitation to the period  
9 prior to a primary candidate's DOI to prevent candidates from increasing their winding  
10 down limitation by spending more for winding down expenses.

11           In practice, the winding down limitation for primary candidates with large  
12 campaigns would be the maximum winding down limitation: 10% of the overall  
13 expenditure limitation. Currently, the primary election expenditure limitation is equal to  
14 \$36,480,000, so the 10% limit would equal \$3,648,000.<sup>18</sup> For primary candidates with  
15 smaller campaigns, the winding down limitation would equal 10% of their expenses prior  
16 to DOI. For purposes of calculating the amount of the winding down limitation based on  
17 a primary candidate's expenses, a candidate's expenses include both disbursements and  
18 accounts payable as of the DOI for the same categories of expenses that are listed above  
19 in the discussion of the general election candidate limitation at 11 CFR 9004.11(b). In  
20 addition, taxes on non-exempt function income such as interest, dividends and sale of

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<sup>18</sup> Before the 2004 primary elections, the primary election expenditure limit under 2 U.S.C. § 441a(b)(1)(A) is subject to an additional annual adjustment under 2 U.S.C. § 441a(c).



1 property are exempt from a primary candidate's overall expenditure limitation. See  
2 11 CFR 9034.4(a)(4).

3 After a primary candidate's accounts no longer contain public funds, including  
4 after making any required surplus repayments, private funds may be used to pay for  
5 expenses in excess of the winding down limitation without resulting in non-qualified  
6 campaign expenses. In addition, as discussed above, the new rule will permit a  
7 candidate's GELAC to pay the primary committee's winding down expenses under  
8 certain conditions.

9 One commenter argued that the Commission has the authority to create a fund for  
10 primary candidates like the GELAC and could provide clear guidance as to the  
11 permissible expenses from the fund, which would create an incentive for candidates to  
12 adopt strong compliance procedures. The Commission disagrees. Fully funded general  
13 election candidates may not accept private contributions; thus, the GELAC allows such  
14 candidates to accept contributions, but only for limited legal and compliance costs. See  
15 11 CFR 9003.3. General election candidates are also permitted some expenses that do  
16 not count toward the expenditure limitations and the GELAC is a source of funds for  
17 these exempt expenditures. Primary candidates may accept private contributions. To the  
18 extent that primary candidates are not in a surplus position and no longer retain any  
19 matching funds in their accounts, they may use private contributions for winding down  
20 expenses in excess of the new restrictions without having to make a repayment for non-  
21 qualified campaign expenses. Thus, a separate compliance fund is not necessary for  
22 primary candidates. In addition, there is no basis for permitting primary candidates to

1 have more than one contribution limitation for the same election by allowing a separate  
2 contribution limitation for a legal defense fund or legal and accounting compliance fund.

3 For these reasons, the Commission does not believe that a new primary legal  
4 defense fund for enforcement matters and other legal proceedings or a primary legal and  
5 compliance fund similar to a GELAC is necessary or appropriate for primary election  
6 candidates.

7 11 CFR 9034.11(c) – Allocation of Primary and General Election Winding Down Costs

8 The rules in new 11 CFR 9034.11(c) on the allocation of primary and general  
9 election winding down costs follow the new rules in 11 CFR 9004.11(c).

10 11 CFR 9034.11(d) – Candidates Who Run in Both Primary and General Elections

11 The Commission is revising its rules to clarify which costs constitute primary  
12 winding down costs for candidates who participate in both the primary and general  
13 elections. The Commission's rules in former 11 CFR 9034.4(a)(3)(i) and (iii) allowed  
14 only candidates who do not accept public funding in the general election to begin to incur  
15 winding down costs and to treat winding down expenses for salary, overhead and  
16 computer costs as 100% compliance costs beginning immediately after their DOI. The  
17 former rule, however, did not expressly address the situation of a candidate who runs in  
18 both the primary and general elections and does not receive public funding for the general  
19 election. In the 2000 election, questions arose about how to treat administrative expenses  
20 incurred during the general election expenditure report period by a publicly funded  
21 primary election candidate who also ran in the general election but did not receive public  
22 funds for the general election.

1           The Commission believes that candidates who are actively campaigning in the  
2 general election should not be considered to be terminating political activity and winding  
3 down their primary campaigns. Candidates who run in the general election, whether or  
4 not they receive public funds for that election, must wait until 31 days after the general  
5 election, which is the first day after the end of the expenditure report period for publicly  
6 financed general election candidates, before they may begin to incur and pay winding  
7 down expenses or allocate them as 100% compliance expenses. Consequently, the new  
8 rule at 11 CFR 9034.11(d) expressly applies without regard to whether candidates'  
9 general election campaigns are publicly funded. Expenses incurred during the  
10 expenditure report period for publicly funded general election candidates or the  
11 equivalent time period ending 30 days after the general election for other general election  
12 candidates, are general election expenses, rather than primary winding down costs. This  
13 rule prevents the use of primary matching funds for non-qualified expenses related to the  
14 general election. See 11 CFR 9032.9(a) and 9034.4(b). Although this revised rule may  
15 result in general election campaigns incurring a small amount of administrative costs  
16 related to terminating the primary campaign during the general election period, in  
17 practice, these expenses are offset by general election start up costs that are incurred and  
18 paid by the primary committee prior to the candidate's DOI. This approach is also  
19 consistent with the Commission's bright line rules for allocating expenses between  
20 primary and general campaigns at 11 CFR 9034.4(e), which allow some primary related  
21 expenses to be paid by the general election committee and vice versa.

22           One commenter believed that this approach addresses the danger of primary funds  
23 paying for general election activity but fails to address the situation where a candidate

1 only receives public funds in the general election and could use primary campaign funds  
2 to defray general election expenses. The Commission does not agree that this is a  
3 problem because a candidate is not permitted to supplement the general election grant by  
4 paying general election expenses with primary funds.

5 New paragraph 11 CFR 9034.11(d) is based on former 11 CFR 9034.4(a)(3)(i)  
6 with certain revisions. The new rule at 11 CFR 9034.11(d) states that a candidate who  
7 runs in the general election must wait until the day following the date 30 days after the  
8 general election before using matching funds for primary winding down costs, regardless  
9 of whether the candidate receives public funds for the general election. This rule also  
10 clarifies that no expenses incurred prior to 31 days after the general election by candidates  
11 who run in the general election may be considered primary winding down costs or paid  
12 with matching funds. Other portions of former section 9034.4(a)(3)(i) are discussed  
13 below in the explanation and justification for 11 CFR 9035.1(c)(i)..

#### 14 **11 CFR Part 9035—Expenditure Limitations**

##### 15 11 CFR 9035.1 – Campaign expenditure limitation; compliance and fundraising 16 exemptions

17 Section 9035.1(a)(1) of the Commission’s regulations implements the spending  
18 limit for primary election candidates and their authorized committees in 2 U.S.C.  
19 441a(b)(1)(A). Section 9035.1(a)(2) prescribes how the amounts of expenditures  
20 attributed to the spending limits will be calculated. The NPRM proposed to clarify 11  
21 CFR 9035.1(a) to provide guidance on the extent to which coordinated expenditures,  
22 coordinated communications, coordinated party expenditures, party coordinated  
23 communications and other in-kind contributions will count against the spending limits in

1 section 9035.1(a)(1). The Commission has decided to adopt the proposed additions to the  
2 rules at 11 CFR 9035.1.

3 The Commission has generally treated the receipt of in-kind contributions by  
4 Presidential primary candidates as expenditures made by those candidates subject to the  
5 expenditure limitations and has included such in-kind contributions in the total amount of  
6 a candidate's expenditures subject to the limits in calculating repayments based on  
7 excessive expenditures. In one repayment determination arising from an audit of a 1988  
8 candidate, the Commission concluded that in-kind contributions for testing-the-waters  
9 expenses from a multicandidate political committee associated with that candidate, which  
10 was considered his "leadership PAC," were subject to the candidate's state-by-state  
11 spending limits. The Commission considered in-kind contributions to be part of the  
12 mixed pool of public and private funds, and thus, these expenditures were included in  
13 calculating the amount in excess of the limitations subject to repayment. The final rules  
14 amend 11 CFR 9035.1(a) and 9038.2(b)(2) (discussed below) to reflect this approach.

15 In the BCRA rulemaking on coordinated and independent expenditures, the  
16 Commission defined the terms "coordinated," "coordinated communication," and "party  
17 coordinated communications" in 11 CFR 109.20, 109.21, and 109.37, respectively. See  
18 Explanation and Justification for Final Rules on Coordinated and Independent  
19 Expenditures, 68 Fed. Reg. 421 (Jan. 3, 2003). These rules also describe circumstances  
20 in which coordinated expenditures and coordinated communications are treated as in-kind  
21 contributions.

22 Under 11 CFR 109.21(b)(2) and 11 CFR 109.37(a)(3), some coordinated  
23 expenditures are made by a person or party committee, but are not received or accepted

1 by a candidate. Specifically, expenditures that meet the conduct standards for a common  
2 vendor at 11 CFR 109.21(d)(4) or a former employee or independent contractor at 11  
3 CFR 109.21(d)(5) are not treated as received or accepted by a candidate, unless the  
4 candidate, authorized committee, or their agent engages in the conduct described in 11  
5 CFR 109.21(d)(1) (request or suggestion), 11 CFR 109.21(d)(2) (material involvement),  
6 or 11 CFR 109.21(d)(3) (substantial discussion). Thus, only certain, specific actions  
7 taken by the candidate or the candidate's authorized committee or agents, as set forth in  
8 11 CFR 109.21 and 11 CFR 109.37, result in the receipt or acceptance of an in-kind  
9 contribution arising from a coordinated communication or a party coordinated  
10 communication. Only in-kind contributions received or accepted by the candidate or  
11 authorized committee or agent are treated as expenditures made by the candidate. See  
12 11 CFR 109.20(b) (requiring a candidate to report coordinated expenditures as  
13 expenditures); 11 CFR 109.21(b)(1) (requiring a candidate to report received or accepted  
14 coordinated communications as expenditures); 11 CFR 109.37(a)(3) (stating that  
15 candidates are not required to report as expenditures party coordinated communications  
16 that do not constitute received or accepted in-kind contributions).

17 The final rules add new paragraph (a)(3) to section 9035.1 to specify that  
18 coordinated expenditures pursuant to 11 CFR 109.20, coordinated communications  
19 pursuant to section 109.21, coordinated party expenditures, party coordinated  
20 communications pursuant to section 109.37, and in-kind contributions count against the  
21 expenditure limitations and are included in the total amount of a publicly funded  
22 candidate's expenditures subject to the limits. New 11 CFR 9035.1(a)(3) states that the  
23 Commission will attribute to a candidate's overall and state-by-state expenditure

1 limitations the total of all: 1) coordinated expenditures under 11 CFR 109.20; 2)  
2 coordinated communications under 11 CFR 109.21 that are in-kind contributions received  
3 or accepted by the candidate, authorized committee or agent; 3) coordinated party  
4 expenditures, including party coordinated communications under 11 CFR 109.37 that are  
5 in-kind contributions received or accepted by the candidate, authorized committee or  
6 agent and that exceed the coordinated party expenditure limitation at 11 CFR 109.32(a);  
7 and 4) other in-kind contributions received or accepted by the candidate, authorized  
8 committee or agent. This new paragraph is consistent with the Commission's general  
9 past practice in audits of treating in-kind contributions as expenditures by the recipient  
10 Presidential candidates and their authorized committees.

11 The phrase "receive or accept" in 11 CFR 9035.1 is consistent with the  
12 terminology used in 11 CFR 109.21(b)(2), 11 CFR 109.23(a) and 11 CFR 109.37(a)(3) to  
13 ensure that any coordinated expenditures that are not "received or accepted" by a  
14 candidate do not count against that candidate's expenditure limitations. One commenter  
15 stated that limiting the rule to in-kind contributions that the candidate has received or  
16 accepted under 11 CFR part 109 is a common sense extension of the existing rules, which  
17 provide that a person may make an excessive in-kind contribution but the intended  
18 beneficiary will not violate the law unless the candidate or committee accepts or receives  
19 the contribution. This commenter stated that it is appropriate to apply the legal principle  
20 that liability is the consequence of one's own acts and not the acts of others to regulations  
21 governing whether a candidate has made expenditures in excess of the limitations. The  
22 Commission is limiting the new rule to in-kind contributions received or accepted by the

1 candidate, authorized committee or agents to be consistent with the rules in 11 CFR part  
2 109.

3         Additionally, new paragraph (a)(4) provides that the value of an in-kind  
4 contribution is the usual and normal charge for the goods and services provided.

5         The revised rule in 11 CFR 9035.1 does not specifically list the dissemination,  
6 distribution or republication of campaign material prepared by a candidate, which is  
7 governed by 11 CFR 109.23. Section 109.23(a) provides that the candidate who prepared  
8 the campaign materials does not receive or accept an in-kind contribution, and need not  
9 report an expenditure, unless the dissemination, distribution, or republication of campaign  
10 materials is a coordinated communication under 11 CFR 109.21 or a party coordinated  
11 communication under 11 CFR 109.37. Thus, the cost of such campaign materials would  
12 not count against the candidate's expenditure limitations unless the candidate receives or  
13 accepts them as in-kind contributions in the form of coordinated communications or party  
14 coordinated communications, as provided in 11 CFR 109.21 and 11 CFR 109.37,  
15 respectively. Since the revised rule at 11 CFR 9035.1(a)(3) specifically includes  
16 coordinated communications and party coordinated communications that are received or  
17 accepted, a reference to the republication of campaign materials is unnecessary.

18         The Commission also notes that 11 CFR 109.32(a)(4) provides that any  
19 coordinated party expenditures made under section 109.32(a), which specifies the  
20 limitations for coordinated party expenditures in Presidential elections, do not count  
21 against the candidate's expenditure limitations. However, any party coordinated  
22 expenditures exceeding the 2 U.S.C. 441a(d)(2) party expenditure limitations would  
23 count against the candidate's expenditure limitations. Thus, the new rule in 11 CFR



1 9035.1(a)(3) does not adversely affect coordinated party expenditures because section  
2 9035.1(a)(3) applies only to amounts in excess of the statutory limitations in 2 U.S.C.  
3 441a(d)(2).

4 Although coordinated party expenditures are made in connection with the general  
5 election campaign of a Presidential candidate, they may be made prior to the date of the  
6 candidate's nomination, pursuant to 11 CFR 109.34. Any coordinated party expenditures  
7 that are in excess of the coordinated party expenditure limitation at 11 CFR 109.32(a)  
8 may be attributable to a Presidential primary candidate's expenditure limitations based on  
9 the "bright line" rules at 11 CFR 9034.4(e) for attributing expenditures between the  
10 primary and general election spending limitations. For example, party coordinated  
11 communications broadcast prior to the date of the candidate's nomination may count  
12 against the Presidential candidate's primary expenditure limitations. See 11 CFR  
13 9034.4(e)(6).

#### 14 11 CFR 9035.1(c)(1) – Compliance Exemption

15 Section 11 CFR 9035.1(c)(1) addresses the legal and accounting compliance  
16 exemption to the expenditure limitations. For greater clarity, the Commission is revising  
17 the rule to include a revised version of former 11 CFR 9034.4(a)(3)(iii), related to the  
18 treatment of certain winding down expenses as 100% compliance costs. The revised  
19 regulation provides that only candidates who do not run in the general election may treat  
20 100% of salary, overhead and computer expenses as exempt compliance expenses  
21 immediately after their date of ineligibility. Candidates who run in the general election  
22 must wait until 31 days after the general election to treat these expenses as exempt  
23 compliance costs. For further discussion of the treatment of winding down costs for

1 candidates who run in both the primary and general elections, see the explanation and  
2 justification for 11 CFR 9034.11(d) above.

3 11 CFR 9035.1(c)(3) – Shortfall Bridge Loan Exemption

4 During recent election cycles, the Presidential Primary Matching Payment  
5 Account has occasionally contained insufficient funds to fully pay all of the matching  
6 funds to which primary candidates were entitled on the dates payments were due. See  
7 generally 26 U.S.C. 9037(b); 11 CFR 9036.4(c)(2), 9037.1, 9037.2. The delay or  
8 deficiency in matching fund payments has resulted in inconvenience and additional costs  
9 for candidates, such as additional costs for “bridge loans” to pay for their expenses until  
10 they received their full entitlement of matching funds several months later. Such  
11 expenses currently count against a candidate’s overall expenditure limitation, reducing  
12 the amount the candidate may spend on other campaign activities.

13 To mitigate the effect of a potential shortfall on candidates, the Commission is  
14 creating a new “shortfall bridge loan exemption” from a primary candidate’s overall  
15 expenditure limitation at new 11 CFR 9035.1(c)(3). The NPRM proposed a flat  
16 exemption of 5% of the amount of all delayed or deficient payments of matching funds to  
17 which the candidate is entitled. One commenter supported this concept but noted the  
18 difficulty in choosing a fair formula that would not favor candidates whose payments are  
19 delayed over those who are less dependent on public funds. The commenter argued that a  
20 candidate’s expenditure limitation should not be raised significantly over that applicable  
21 to other candidates unless the amount accurately reflects costs actually incurred by the  
22 candidate.

1           Rather than the flat percentage proposed in the NPRM, the Commission has  
2           decided to base the new exemption on the amount of interest charges accrued during a  
3           shortfall period on all bridge loans obtained by a candidate if the candidate experiences  
4           any delay or deficiency in matching fund payments due to a shortfall. Under new 11 CFR  
5           9035.1(c)(3), only loans secured or guaranteed by matching funds will be eligible for this  
6           exemption. The interest charges that are exempt from the expenditure limit are those  
7           that accrued during a shortfall period, which the new rule defines as beginning when the  
8           shortfall first impacts the candidate—the first payment date on which the candidate does  
9           not receive the entire amount of matching funds certified by the Commission. The  
10          shortfall period ends on the date the candidate receives the last of the insufficient funds or  
11          becomes ineligible to receive them because the Commission revises the amount it  
12          previously certified.

13          If a candidate experiences a delay or deficiency in matching fund payments, the  
14          candidate need not demonstrate that any bridge loan was necessitated by the deficiency in  
15          matching fund payments to claim this exemption. In practice, it is difficult to distinguish  
16          between the costs of bridge loans that are a direct result of a shortfall in matching funds  
17          and other loan expenses because a shortfall in public funds may be only one of several  
18          reasons a candidate needs to obtain a bridge loan. The new rule also requires that the  
19          candidate must provide documentation demonstrating the amount of interest charged on  
20          all loans guaranteed or secured by matching funds.

21          Finally, the Commission is not creating a similar exemption for general election  
22          candidates because payments of public funds to general election candidates and  
23          conventions receive priority over matching funds payments. While there has been a

1 shortfall in matching fund payments in previous election cycles, there has never been a  
2 shortfall in payments to general election candidates.

3 **11 CFR Part 9036—Review of Matching Fund Submissions and Certification of**  
4 **Payments by Commission**

5 11 CFR 9036.1 – Matching Fund Submission

6 In 2000, the Commission revised its rules at 11 CFR 104.3 to require authorized  
7 committees to aggregate, itemize, and report all receipts and disbursements on an  
8 election-cycle basis rather than on a calendar-year-to-date basis. See Explanation and  
9 Justification for the Rules Governing Election Cycle Reporting by Authorized  
10 Committees, 65 Fed. Reg. 42619 (July 11, 2000). The new rules, which reflect a 1999  
11 amendment to 2 U.S.C. 434(b), apply to reporting periods beginning on or after January  
12 1, 2001. See Pub. L. No. 106-58, § 641, 113 Stat. 430, 477 (1999); Announcement of  
13 Effective Date for the Rules Governing Election Cycle Reporting by Authorized  
14 Committees, 65 Fed. Reg. 70644 (Nov. 27, 2000). Under 11 CFR 100.3(b), an election  
15 cycle begins on the first day after the date of the previous general election for the office  
16 the candidate seeks or on the date an individual becomes a candidate and ends on the date  
17 of the next general election for that office. The election cycle is thus four years or less for  
18 Presidential candidates.

19 The Commission's rules regarding threshold submissions for matching funds in  
20 11 CFR 9036.1(b)(1)(ii) previously required candidates to submit a contributor list  
21 including occupation and name of employer information for contributions from  
22 individuals aggregating in excess of \$200 per calendar year. Section 9036.1(b)(1)(ii) is  
23 being revised to specify that the matching fund submission and recordkeeping

1 requirements include occupation and employer information for those individuals who  
2 contribute more than \$200 in an election cycle, rather than in a calendar year, to reflect  
3 the statutory change. One commenter noted that these changes are not controversial and  
4 aim to reconcile the statute and regulations.

5 11 CFR 9036.2 – Additional Submissions for Matching Fund Payments

6 The changes to the rules on additional submissions for matching funds at 11 CFR  
7 9036.2(b)(1)(v) follow the changes made to 11 CFR 9036.1 regarding threshold  
8 submissions.

9 **11 CFR Part 9038—Examination and Audits**

10 11 CFR 9038.2(b)(2)(ii)(A) – Repayments Based on Expenditures in Excess of the  
11 Expenditure Limitations

12 The Commission is amending its rules at 11 CFR 9038.2(b)(2)(ii)(A) concerning  
13 repayments based on expenditures in excess of a Presidential primary candidate's overall  
14 or state-by-state expenditure limitations. The revised rule in 11 CFR 9038.2(b) operates  
15 together with new paragraphs (a)(3) and (a)(4) of 11 CFR 9035.1. Section 9038.2(b)  
16 provides that in-kind contributions, coordinated expenditures, coordinated  
17 communications, coordinated party expenditures and party coordinated communications  
18 that count against a candidate's state-by-state and overall expenditure limitations set forth  
19 in 11 CFR 110.8 and 11 CFR 9035.1 are included in the total amount of expenditures for  
20 purposes of calculating repayment determinations for expenditures in excess of the  
21 limitations.

22 During certain audits from the 1996 and 2000 cycles, the Commission considered  
23 whether some of the costs of producing and airing television advertisements during the

1 Presidential primary and general election campaigns, which were paid by the national  
2 party committees, should be treated as coordinated in-kind contributions to Presidential  
3 primary candidates, and if so, whether such costs should count against Presidential  
4 candidates' expenditure limitations and be included in the amount of expenditures in  
5 excess of the limitations that would be subject to repayment. After considering this issue,  
6 the Commission divided on whether to make repayment determinations on this basis in  
7 these audits.

8 A related issue is whether the Matching Payment Act may be interpreted to  
9 require repayment of expenditures in excess of the expenditure limitations, as set forth in  
10 the previous 11 CFR 9038.2(b)(2)(ii)(A). The Commission considered this issue in a  
11 rulemaking proceeding prior to the 2000 election cycle, but made no changes to the  
12 regulation at that time. Notice of Disposition for the Rules Governing Public Funding of  
13 Presidential Primary Candidates- Repayments, 65 Fed. Reg. 15273 (Mar. 22, 2000). The  
14 Notice of Disposition sets forth alternative arguments concerning whether this rule has a  
15 statutory basis and states that the Commission did not change the rule because there was  
16 no consensus in favor of changing the regulation. Id. at 15275. Although the  
17 Commission subsequently recommended that Congress revise 26 U.S.C. 9038(b) to  
18 specifically state whether repayments must be made by publicly funded primary  
19 candidates who have made expenditures that exceed the spending limits, to date Congress  
20 has not acted on this recommendation. See FEC, Legislative Recommendations 2002  
21 (May 14, 2002). One commenter urged the Commission to state whether it will seek  
22 repayment for primary expenditures in excess of the expenditure limitations. The  
23 Commission has determined that the Matching Payment Act should be interpreted to

1 require repayments of expenditures in excess of the expenditure limitations. Accordingly,  
2 the Commission is promulgating these changes to the regulations at 11 CFR 9038.2 to  
3 demonstrate that the Commission intends to seek repayment from publicly funded  
4 primary committees that make expenditures in excess of the spending limits, including in-  
5 kind contributions. Further, the Commission has decided to amend 11 CFR  
6 9038.2(b)(2)(ii)(A) to require that repayments by candidates who exceed the expenditure  
7 limitations may be based on expenditures made by: the primary election candidate; the  
8 candidate's authorized committees; or agents of either. These repayments may be based  
9 directly by disbursing campaign funds for expenditures, or indirectly by receiving or  
10 accepting in-kind contributions that are subject to the expenditure limitations pursuant to  
11 11 CFR 9035.1(a)(3) or both. The wording "receive or accept" in this section is  
12 consistent with the terminology used in 11 CFR 109.21(b)(2), 109.23(a), 109.37(a)(3),  
13 and 9035.1(a)(3) to ensure that any coordinated expenditures or republished campaign  
14 materials that are not considered "received or accepted" by a candidate will not count  
15 against the expenditure limitations or be subject to repayment.

16 11 CFR 9038.2(b)(2)(iii) – In-kind Contributions in the Repayment Ratio

17 The Commission has decided to revise its rule at 11 CFR 9038.2(b)(2)(iii) that  
18 provides for a ratio repayment to the United States Treasury of amounts used for  
19 nonqualified campaign expenses, which includes expenditures in excess of the spending  
20 limitations. See 11 CFR 9038.2(b)(2)(ii)(A). Specifically, the repayment formula in  
21 section 9038.2(b)(2)(iii) is being revised to include both total deposits and in-kind  
22 contributions received or accepted by the candidate or the candidate's authorized  
23 committee or agents in the calculation of the repayment ratio for non-qualified campaign

1 expenses. In-kind contributions will be valued at the usual and normal charge for the  
2 goods and services provided to the candidate. Under the revised rule, for example, if a  
3 candidate receives matching funds of \$500,000, has total deposits of \$1,750,000, and  
4 receives in-kind contributions with a value of \$250,000, the ratio would be: the amount  
5 of certified matching funds (\$500,000) divided by total deposits (\$1,750,000) plus in-kind  
6 contributions (\$250,000) or \$2,000,000, for a repayment ratio of 25%. One commenter  
7 stated that this change is consistent with the statute and regulations and that the change  
8 would reduce repayment amounts.

9         The Commission agrees with this comment. Including in-kind contributions  
10 received or accepted in the calculation of the repayment ratio better reflects the  
11 composition of resources available to a publicly funded campaign committee. This more  
12 accurately reflects the proportion of the funds that are spent in excess of the expenditure  
13 limitations or used for other non-qualified campaign expenses that are derived from  
14 public, and therefore repayable funds. If a candidate receives a large amount of in-kind  
15 contributions, this regulatory change will result in a lower repayment ratio and repayment  
16 amount than the previous formula. The lower repayment amount is more proportionate to  
17 the amount of the candidate's total resources that are made up of public funds.

18         The Commission also considered parallel changes to the rules governing the  
19 expenditure limitations and repayments for general election committees at 11 CFR  
20 9004.4(b)(2) and 11 CFR 9007.2(b)(2), but decided not to make any changes to those  
21 rules. The Commission notes that expenditures in excess of the coordinated party  
22 expenditure limitations at 2 U.S.C. 441a(d) and 11 CFR 109.32(a) are in connection with  
23 the general election and may be attributable to a Presidential candidate's general election



1 expenditure limitation under the “bright line” rules at 11 CFR 9034.4(e). The  
2 Commission also notes that general election candidates who receive the full public grant  
3 may not accept any contributions, including in-kind contributions, and must repay the  
4 entire amount of any in-kind contribution received. See 26 U.S.C. 9007(b)(3). One  
5 commenter described this regulatory regime as sufficiently understood to require no  
6 change. The Commission agrees.

7 11 CFR 9038.2(b)(4) – Technical correction

8 Under 11 CFR 9038.2(b)(4), the Commission may determine that the net income  
9 derived from an investment or other use of surplus public funds after a candidate’s DOI,  
10 less Federal, State and local taxes paid on that income, shall be paid to the Federal  
11 Treasury. However, the word “taxes” was inadvertently dropped from that paragraph in  
12 the previous regulations. This word is being restored in the final rule.

13 **Other Candidate Issues**

14 **A. Candidate Salary**

15 The Commission recently revised its rules governing personal use of campaign  
16 funds at 11 CFR part 113 to implement BCRA’s changes to 2 U.S.C. 439a. In that  
17 rulemaking, the Commission decided to allow certain campaign funds to be used for  
18 candidate salaries, including privately funded Presidential candidates, under certain  
19 conditions delineated at 11 CFR 113.1(g)(1)(i)(I). See Explanation and Justification for  
20 the Rules Governing Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal  
21 Use of Campaign Funds, 67 Fed. Reg. 76962, 76971-73 (Dec. 13, 2002). The  
22 Explanation and Justification for 11 CFR 113.1(g) indicated that a salary payment to a  
23 candidate from campaign funds is personal use if the salary payment is “in excess of the

1 salary paid to a Federal officeholder – U.S. House, U.S. Senate, or the Presidency.” 67  
2 Fed. Reg. at 76972. The Commission noted that a candidate’s salary does not constitute a  
3 qualified campaign expense under 11 CFR 9002.11 and 9032.9. Id.

4 Sections 9004.4(b)(6) and 9034.4(b)(5) state that payments made to a publicly  
5 funded candidate by the candidate’s general election or primary campaign committee,  
6 other than to reimburse funds advanced by the candidate, are non-qualified campaign  
7 expenses. In promulgating these rules in 1987, the Commission explained that “no  
8 payments may be made to the candidate from accounts containing public funds” except  
9 for reimbursements, and candidates “may not receive a salary for services performed for  
10 the campaign nor may a candidate receive compensation for lost income while  
11 campaigning.” See Explanation and Justification for the Rules on Public Financing of  
12 Presidential Primary and General Election Candidates, 52 Fed. Reg. 20864, 20866 and  
13 20870 (June 3, 1987).

14 The NPRM for these Final Rules indicated that the Commission was considering  
15 whether to revise 11 CFR 9004.4 and 9034.4 to allow publicly funded primary and  
16 general election Presidential candidates to receive salaries paid, in whole or part, with  
17 Federal funds, and to treat salary payments to candidates as qualified campaign expenses  
18 under similar conditions as those for salary payments to other Federal candidates at 11  
19 CFR 113.1(g)(1)(i)(I).

20 There was no consensus among the commenters on this issue. One commenter  
21 cautioned that this is a policy issue best left to Congress, and it could have an adverse  
22 effect on the public financing system by depressing public participation in the tax check-  
23 off system. In addition, this commenter observed that it may not be logical to allow

1 public funds to be used to pay for candidate salary but not for household expenses,  
2 mortgages and tuition for the candidate's family. Conversely, other commenters agreed  
3 with the proposal, noting that currently, incumbent Members of Congress, Presidents and  
4 Vice Presidents maintain their salaries while they are Presidential candidates, but some  
5 challengers might be unable to do so. Some commenters believed the proposal had  
6 sufficient safeguards and disclosure to prevent Presidential candidates from receiving a  
7 windfall from a campaign, while others saw a potential for abuse.

8 The Commission has decided to maintain its longstanding rule that payments out  
9 of public funds to a Presidential candidate, except for campaign expense reimbursements,  
10 are not qualified campaign expenses. Because public funds are involved, the  
11 Commission believes that this issue is a policy question that is best addressed by  
12 Congress. Therefore, the rules in 11 CFR 9004.4(b) and 9034.4(b) will continue to treat  
13 salaries paid out of public funds to publicly funded candidates as non-qualified campaign  
14 expenses.

#### 15 B. Media Travel Expenses

16 The Commission's rules at 11 CFR 9004.6 and 9034.6 establish procedures for  
17 authorized committees of Presidential primary and general election candidates to obtain  
18 reimbursement for transportation and other services that are provided to the news media  
19 and the Secret Service over the course of a campaign. These rules contain a non-  
20 exhaustive list of such services. Sections 9004.6(a)(3) and 9034.6(a)(3) state that  
21 Presidential campaign committees may seek reimbursement from the news media only for  
22 the billable items specified in the White House Press Corps Travel Policies and  
23 Procedures issued by the White House Travel Office, in conjunction with the White

1 House Correspondents' Association ["White House Travel Manual"]. Expenses for  
2 which a publicly-funded committee receives no reimbursement are considered qualified  
3 campaign expenses, and, with the exception of those expenses relating to Secret Service  
4 personnel and national security staff, are subject to the overall expenditure limitation  
5 under 11 CFR 9004.6(a)(2) and 9034.6(a)(2).

6 In the 1996 campaign, some Presidential campaign committees incurred  
7 significant expenses to reconfigure campaign aircraft. The expenses included both  
8 interior work, such as equipment installation, and exterior work such as campaign logos.  
9 However, these expenses were not included in the White House Travel Manual for 1996,  
10 which has not changed to date. The NPRM in this rulemaking sought comment on  
11 whether the Commission should revise the rules to permit Presidential campaign  
12 committees to obtain reimbursement for aircraft reconfiguration expenses from the news  
13 media.

14 One joint comment submitted by 23 news organizations supported continued use  
15 of the White House Travel Manual. It also argued that most previous aircraft  
16 reconfigurations have been minor and for the convenience for the campaign, so that any  
17 cost sharing should be negotiated by the campaign and the press organizations. Another  
18 commenter stated that the White House Travel Manual does not address aircraft  
19 reconfiguration because the needs of the press have been taken into consideration when  
20 government aircraft are originally designed or reconfigured, but candidates who do not  
21 travel on government aircraft should be able to make the necessary changes to an aircraft  
22 and seek press reimbursement. This commenter stated that the use of the White House  
23 Travel Manual to determine reimbursable expenses is generally a wise policy, but

1 advocated a mechanism for candidates to seek exceptions to the general rule if the  
2 candidate can demonstrate that an expense was incurred at the request of and to  
3 accommodate the press.

4           The Commission has determined that the aircraft reconfiguration expenses are not  
5 suitable for a rule of general applicability particularly because that any reconfiguration  
6 will likely involve an airplane to be used by many members of the press on many  
7 different flights over the life of the campaign. Accordingly, it would be quite difficult to  
8 determine the appropriate amount of any monetary payment at a point when neither the  
9 press corps nor the campaign staff can predict the number of flights or their costs. The  
10 advisory opinion process, however, might serve as the appropriate means for the  
11 Commission to consider any particular arrangement for the sharing of these one-time  
12 expenses. Consequently, 11 CFR 9004.6 and 9034.6 are not being revised.

13

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

2           The Commission certifies that the attached final rules will not have a significant  
3 economic impact on a substantial number of small entities. The basis for this certification  
4 is that few small entities will be affected by these rules, which apply only to Presidential  
5 candidates, their campaign committees, national party committees, host committees, and  
6 municipal funds. Most of these are not small entities. Most of the Presidential  
7 campaigns and convention committees receive full or partial funding from the Federal  
8 Government, and are subsequently audited by the Commission. The Commission amends  
9 these rules every four years to reflect its experience in the previous Presidential  
10 campaign. These rules propose no sweeping changes, and are largely intended to simplify  
11 this process. Many expand committee options; several are technical; and others codify  
12 past Commission practice. Those few proposals that might increase the cost of  
13 compliance by small entities would not do so in such an amount as to cause a significant  
14 economic impact.

- 1 **List of Subjects**
- 2 11 CFR Part 104
- 3 Campaign funds, political committees and parties, reporting and recordkeeping
- 4 requirements
- 5 11 CFR Part 107
- 6 Campaign funds, political committees and parties, reporting and recordkeeping
- 7 requirements
- 8 11 CFR Part 110
- 9 Campaign funds, political committees and parties
- 10 11 CFR Part 9001
- 11 Campaign funds
- 12 11 CFR Part 9003
- 13 Campaign funds, reporting and recordkeeping requirements
- 14 11 CFR Part 9004
- 15 Campaign funds
- 16 11 CFR Part 9008
- 17 Campaign funds, political committees and parties, reporting and recordkeeping
- 18 requirements
- 19 11 CFR Part 9031
- 20 Campaign funds
- 21 11 CFR Part 9032
- 22 Campaign funds

- 1 11 CFR Part 9033 - 9035
- 2 Campaign funds, reporting and recordkeeping requirements
- 3 11 CFR Part 9036
- 4 Administrative practice and procedure, campaign funds, reporting and recordkeeping
- 5 requirements
- 6 11 CFR Part 9038
- 7 Administrative practice and procedure, campaign funds
- 8.



1 For the reasons set out in the preamble, subchapters A, E and F of Chapter I of  
2 Title 11 of the Code of Federal Regulations are amended as follows:

3 **PART 104 – REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)**

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

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

7 2. Section 104.5 is amended by:

- 8 a. Revising paragraph (b)(1)(i)(C);
- 9 b. Revising paragraph (b)(1)(ii); and
- 10 c. Revising paragraph (b)(2).

11 Revisions read as follows:

12 **§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).**

13 \* \* \* \* \*

14 (b) \* \* \*

15 (1) \* \* \*

16 (i) \* \* \*

17 (C) In lieu of the monthly reports due in November and  
18 December, a pre- election report shall be filed as prescribed  
19 at ~~11 CFR 104.5(a)(1)(i)~~, paragraph (a)(2)(i) of this section,  
20 a post-general election report shall be filed as prescribed at  
21 ~~11 CFR 104.5(a)(1)(ii)~~ paragraph (a)(2)(ii) of this section,  
22 and a year-end report shall be filed no later than January 31  
23 of the following calendar year.

1 (ii) If on January 1 of the election year, the committee does not  
2 anticipate receiving ~~and~~ has not received contributions  
3 aggregating \$100,000 ~~and~~ does not anticipate making ~~and~~ has  
4 not made expenditures aggregating \$100,000, the committee shall  
5 file a preelection report or reports, a post general election report  
6 and, quarterly reports, as prescribed in ~~11 CFR 104.5(a)(1)~~  
7 paragraphs (a)(1) and (2) of this section.

8 \* \* \* \* \*

9 (2) Non-election year reports. During a non-election year, the treasurer shall  
10 file either (i) monthly reports as prescribed by paragraph at 11 CFR 104.5  
11 (b)(1)(i) of this section; or (ii) quarterly reports as prescribed by paragraph  
12 at 11 CFR 104.5(a)(1) of this section. A principal campaign committee of  
13 a Presidential candidate may elect to change the frequency of its reporting  
14 from monthly to quarterly or vice versa during a non-election year only  
15 after notifying the Commission in writing of its intention at the time it files  
16 a required report under its current filing frequency. The committee will  
17 then be required to file the next required report under its new filing  
18 frequency. The committee may change its filing frequency no more than  
19 once per calendar year.

20 \* \* \* \* \*

21 **PART 107 – PRESIDENTIAL NOMINATING CONVENTION, REGISTRATION**  
22 **AND REPORTS**

23  
24 3. The authority citation for part 107 continues to read as follows:

1 Authority: 2 U.S.C. 437, 438(a)(8).

2 4. Section 107.2 is revised to read as follows:

3 **§ 107.2 Registration and reports by host committees and ~~committees, organizations~~**  
4 **~~or other groups representing a state, city or other local government~~**  
5 **~~agency~~ municipal funds.**

6 Each host committee and ~~each committee or other organization or group of~~  
7 ~~persons which represents a State, municipality, local government agency or other political~~  
8 ~~subdivision in dealing with officials of a national political party with respect to matters~~  
9 ~~involving a presidential nominating convention,~~ municipal fund shall register and report  
10 in accordance with 11 CFR 9008.51. The reports shall contain the information specified  
11 in 11 CFR part 104.

12 **PART 110 – CONTRIBUTION AND EXPENDITURE LIMITATIONS AND**  
13 **PROHIBITIONS**

14 5. The authority citation for part 110 continues to read as follows:

15 Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d,  
16 441e, 441f, 441g, 441h, and 441k.

17 6. Section 110.2 is amended by adding new paragraph (l) to read as follows:

18 (l) Pre-candidacy expenditures by multicandidate political committees deemed in-kind  
19 contributions; effect of reimbursement.

20 (1) A payment by a multicandidate political committee is deemed an in-kind  
21 contribution to and an expenditure by a Presidential candidate, even  
22 though made before the individual becomes a candidate under 11 CFR  
23 100.3, if—

- 1           (i)    The expenditure is made on or after January 1 of the year  
2                   immediately following the last Presidential election year;
- 3           (ii)   With respect to the goods or services involved, the candidate  
4                   accepted or received them, requested or suggested their provision,  
5                   was materially involved in the decision to provide them, or was  
6                   involved in substantial discussions about their provision; and
- 7           (iii)   The goods or services are—
- 8                   (A)   Polling expenses for determining the favorability,  
9                           name recognition, or relative support level of the  
10                           candidate involved;
- 11                  (B)   Compensation paid to employees, consultants, or  
12                           vendors for services rendered in connection with  
13                           establishing and staffing offices in States where  
14                           Presidential primaries, caucuses, or preference polls  
15                           are to be held;
- 16                  (C)   Administrative expenses, including rent, utilities,  
17                           office supplies and equipment in connection with  
18                           establishing and staffing offices in States where  
19                           Presidential primaries, caucuses, or preference polls  
20                           are to be held; or
- 21                  (D)   Expenses of individuals seeking to become  
22                           delegates in the Presidential nomination process.

1           (2)    Notwithstanding paragraph (1)(1) of this section, if the candidate, through  
2                    an authorized committee, reimburses the multicandidate political  
3                    committee within 30 days of becoming a candidate, the payment  
4                    retroactively will not be deemed an in-kind contribution for either entity,  
5                    and the reimbursement is an expenditure of the candidate.

6   **PART 9001 – SCOPE**

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

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

9   8.     Section 9001.1 is amended by removing the number “116” and adding in its place  
10   the number “400” in both instances in which “116” appears.

11   **PART 9003 – ELIGIBILITY FOR PAYMENTS**

12   9.     The authority citation for part 9003 continues to read as follows:

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

14   10.    In section 9003.1, paragraph (b)(8) is amended by removing the number “116”  
15   and adding in its place the number “400”.

16   11.    Section 9003.3 is amended by:

17       a.     Revising the introductory language in paragraph (a)(1)(i);

18       b.     Revising paragraph (a)(1)(i)(A);

19       c.     Revising paragraph (a)(1)(ii)(A)(3);

20       d.     Revising paragraph (a)(1)(ii)(A)(4);

21       e.     Revising the introductory language in paragraph (a)(1)(iv);

22       f.     Revising paragraph (a)(1)(iv)(C);

23       g.     Revising paragraph (a)(1)(v);

- 1 h. Revising paragraph (a)(2)(i)(D);
- 2 i. Revising paragraph (a)(2)(i)(G);
- 3 j. Revising paragraph (a)(2)(i)(H);
- 4 k. Adding new paragraph (a)(2)(i)(I);
- 5 l. Revising paragraph (a)(2)(iii); and
- 6 m. Revising paragraph (a)(2)(iv).

7 Revisions and additions read as follows:

8 **§ 9003.3 Allowable contributions; General election legal and accounting compliance**  
9 **fund.**

10 (a) \* \* \*

11 (1) \* \* \*

12 (i) A major party candidate, or an individual who is seeking the  
13 nomination of a major party, may accept contributions to a legal  
14 and accounting compliance fund if such contributions are received  
15 and disbursed in accordance with this section. A general election  
16 legal and accounting compliance fund ("GELAC") may be  
17 established by such individual prior to being nominated or selected  
18 as the candidate of a political party for the office of President or  
19 Vice President of the United States. Before ~~June~~ April 1 of the  
20 calendar year in which a Presidential general election is held,  
21 contributions may only be deposited in the GELAC if they are  
22 made for the primary and exceed the contributor's contribution

1 limits for the primary and are lawfully redesignated by the  
2 contributor for the GELAC pursuant to 11 CFR 110.1.

3 (A) All solicitations for contributions to the GELAC shall  
4 clearly state that Federal law prohibits private contributions  
5 from being used for the candidate's election and that  
6 contributions will be used solely for legal and accounting  
7 services to ensure compliance with Federal law, and shall  
8 clearly state how contribution checks should be made  
9 payable. Contributions shall not be solicited for the  
10 GELAC before ~~June~~ April 1 of the calendar year in which a  
11 Presidential general election is held. If the candidate does  
12 not become the nominee, all contributions accepted for the  
13 GELAC, including redesignated contributions, shall be  
14 refunded within sixty (60) days after the candidate's date of  
15 ineligibility.

16 \* \* \* \* \*

17 (ii) \* \* \*

18 (A) \* \* \*

19 (3) The written redesignations are received within 60  
20 days of the Treasurer's receipt of the contributions;  
21 and

1 (4) The requirements of 11 CFR 110.1(b)(5)(i) and  
2 (ii)(A) and 110.1(l) regarding redesignation are  
3 satisfied.

4 \* \* \* \* \*

5 (iv) Contributions that are made after the beginning of the expenditure  
6 report period but ~~which that~~ are not designated in writing for the  
7 GELAC are considered made with respect to the primary election  
8 and may be redesignated for the GELAC and transferred to the  
9 GELAC only if—

10 \* \* \* \* \*

11 (C) The candidate obtains the contributor's written  
12 redesignation in accordance with 11 CFR 110.1.

13 (v) Contributions made with respect to the primary election that  
14 exceed the contributor's limit for the primary election may be  
15 redesignated for the GELAC and transferred to the GELAC if the  
16 candidate ~~obtains the contributor's redesignation~~ redesignates the  
17 contribution for the GELAC in accordance with 11 CFR  
18 110.1(b)(5)(i) and (ii)(A) or (ii)(B). For purposes of this section  
19 only, 11 CFR 110.1(b)(5)(ii)(B)(1) shall not apply.

20 \* \* \* \* \*

21 (2) \* \* \*

22 (i) \* \* \*



1 (D) To make repayments under 11 CFR 9007.2, 9038.2, or  
2 9038.3;

3 \* \* \* \* \*

4 (G) To make a loan to an account established pursuant to 11  
5 CFR 9003.4 to defray qualified campaign expenses  
6 incurred prior to the expenditure report period or prior to  
7 receipt of Federal funds, provided that the amounts so  
8 loaned are restored to the GELAC; and

9 (H) To defray unreimbursed costs incurred in providing  
10 transportation and services for the Secret Service and  
11 national security staff pursuant to 11 CFR 9004.6; and

12 (I) To defray winding down expenses for legal and accounting  
13 compliance activities incurred after the end of the  
14 expenditure report period by either the candidate's primary  
15 election committee, general election committee, or both  
16 committees. For purposes of this section, 100% of salary,  
17 overhead and computer expenses incurred after the end of  
18 the expenditure report period shall be considered winding  
19 down expenses for legal and accounting compliance  
20 activities payable from GELAC funds, and will be  
21 presumed to be solely to ensure compliance with 2 U.S.C.  
22 431 et seq. and 26 U.S.C. 9001 et seq.

23 \* \* \* \* \*

1 (iii) Amounts paid from the GELAC for the purposes permitted by  
2 paragraphs (a)(2)(i) (A) through (F), ~~and (H) and (I)~~ of this section  
3 shall not be subject to the expenditure limits of 2 U.S.C. 441a(b)  
4 and 11 CFR 110.8. (See also 11 CFR 100.146.) When the  
5 proceeds of loans made in accordance with paragraph (a)(2)(i)(G)  
6 of this section are expended on qualified campaign expenses, such  
7 expenditures shall count against the candidate's expenditure limit.

8 (iv) Contributions to ~~or~~ and funds deposited in the GELAC may not be  
9 used to retire debts remaining from the presidential primaries,  
10 except that, after payment of all expenses set out in paragraph  
11 (a)(2)(i) of this section, ~~there are excess campaign funds, such and~~  
12 the completion of the audit and repayment process, including the  
13 making of all repayments owed to the United States Treasury by  
14 both the candidate's primary and general election committees,  
15 funds remaining in the GELAC may be used for any purpose  
16 permitted under 2 U.S.C. 439a and 11 CFR part 113, including  
17 payment of primary election debts.

18 \* \* \* \* \*

19 12. Section 9003.5 is amended by adding new paragraph (b)(4) to read as follows:

20 **§ 9003.5 Documentation of disbursements.**

21 \* \* \* \* \*

22 (b) \* \* \*

1           (4) The documentation requirements of 11 CFR 102.9(b) shall also apply to  
2           disbursements.

3       \*       \*       \*       \*       \*

4       **PART 9004 – ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS;**  
5       **USE OF PAYMENTS**

6  
7       13.     The authority citation for part 9004 continues to read as follows:

8           Authority: 26 U.S.C. 9004 and 9009(b).

9       14.     Section 9004.4 is amended by:

- 10           a.     Revising the section heading;
- 11           b.     Revising paragraph (a)(3);
- 12           c.     Revising paragraph (a)(4);
- 13           d.     Removing paragraph (a)(4)(i);
- 14           e.     Redesignating paragraph (a)(5) as paragraph (a)(6), redesignating  
15           paragraph (a)(4)(ii) as paragraph (a)(5) and revising newly designated  
16           (a)(5); and
- 17           f.     Revising paragraph (b)(3).

18       Revisions, removals, and redesignations read as follows:

19       **§ 9004.4 Use of payments; examples of qualified campaign expenses and non-**  
20       **qualified campaign expenses.**

21

22       (a)     \*       \*       \*

1 (3) To restore funds expended in accordance with 11 CFR 9003.4 for qualified  
2 campaign expenses incurred by the candidate prior to the beginning of the  
3 expenditure report period;

4 (4) To defray winding down costs pursuant to 11 CFR 9004.11; Winding  
5 down costs. The following costs shall be considered qualified campaign  
6 expenses:

7 (i) ~~Costs associated with the termination of the candidate's general~~  
8 ~~election campaign such as complying with the post-election~~  
9 ~~requirements of the Act and other necessary administrative costs~~  
10 ~~associated with winding down the campaign, including office~~  
11 ~~space rental, staff salaries, and office supplies; and~~

12 (ii) ~~Costs~~

13 (5) To defray costs associated with the candidate's general election campaign  
14 paid after the end of the expenditure report period, but and incurred by the  
15 candidate prior to the end of the expenditure report period, for which  
16 written arrangement or commitment was made on or before the close of  
17 the expenditure report period for goods and services received during the  
18 expenditure reporting period; and

19 \* \* \* \* \*

20 (b) \* \* \*

21 (3) Expenditures incurred after the close of the expenditure report period.  
22 Except for accounts payable pursuant to paragraph (a)(5) of this section  
23 and winding down cost pursuant to 11 CFR 9004.11, Any expenditures

1 incurred after the close of the expenditure report period, as defined in  
2 11 CFR 9002.12, are not qualified campaign expenses ~~except to the extent~~  
3 ~~permitted under 11 CFR 9004.4(a)(4).~~

4 \* \* \* \* \*

5 15. New section 9004.11 is added, to read as follows:

6  
7 **§ 9004.11 Winding down costs.**

8 (a) Winding down costs. Winding down costs are costs associated with the  
9 termination of the candidate's general election campaign such as complying with the  
10 post-election requirements of the Federal Election Campaign Act and the Presidential  
11 Election Campaign Fund Act, and other necessary administrative costs associated with  
12 winding down the campaign, including office space rental, staff salaries, and office  
13 supplies. Winding down costs are qualified campaign expenses.

14 (b) Winding down limitation. The total amount of winding down costs that may be  
15 paid for with public funds shall not exceed the lesser of:

16 (1) 2.5% of the expenditure limitation pursuant to 11 CFR 110.8(a)(2); or

17 (2) 2.5% of the total of:

18 (i) The candidate's expenditures subject to the expenditure limitation  
19 as of the end of the expenditure report period; plus

20 (ii) The candidate's expenses exempt from the expenditure limitation  
21 as of the end of the expenditure report period; except that

22 (iii) The winding down limitation shall be no less than \$100,000.

23 (c) Allocation of primary and general election winding down costs. A candidate who  
24 runs in both the primary and general election may divide winding down expenses

1 between his or her primary and general election committees using any reasonable  
2 allocation method. An allocation method is reasonable if it divides the total winding  
3 down costs between the primary and general election committees and results in no less  
4 than one third of total winding down costs allocated to each committee. A candidate may  
5 demonstrate that an allocation method is reasonable even if either the primary or the  
6 general election committee is allocated less than one third of total winding down costs.

7 **PART 9008 – FEDERAL FINANCING OF PRESIDENTIAL NOMINATING**  
8 **CONVENTIONS**

9 16. The authority citation for Part 9008 is revised to read as follows:

10 Authority: 2 U.S.C. 437, 438(a)(8), 441i; 26 U.S.C. 9008, 9009(b).

11 17. Section 9008.3 is amended by redesignating paragraph (b)(1)(ii) as paragraph  
12 (b)(1)(iii) and adding new paragraph (b)(1)(ii), to read as follows:

13 **§ 9008.3 Eligibility for payments; registration and reporting.**

14 \* \* \* \* \*

15 (b) \* \* \*

16 (1) \* \* \*

17 (ii) Each convention committee established by a national committee  
18 under paragraph (a)(2) of this section shall submit to the  
19 Commission a copy of any and all written contracts or agreements  
20 that the convention committee has entered into with the city,  
21 county, or State hosting the convention, a host committee, or a  
22 municipal fund, including subsequent written modifications to  
23 previous contracts or agreements. Each such contract, agreement

1 or modification shall be filed with the report covering the reporting  
2 period in which the contract or agreement or modification is  
3 executed.

4 \* \* \* \* \*  
5 18. Section 9008.7 is amended by revising paragraph (a)(4)(xii) to read as follows:

6 **§ 9008.7 Use of funds**

7 (a) \* \* \*

8 (4) \* \* \*

9 (xii) Expenses for gifts or monetary bonuses for national committee or  
10 convention committee -employees, consultants, volunteers and  
11 convention officials in recognition for convention-related activities  
12 or services, provided that:

13 (A) Gifts for committee employees, consultants, volunteers and  
14 convention officials in recognition for convention-related  
15 activities or services do not exceed \$150 total per  
16 individual and the total of all gifts does not exceed  
17 \$20,000; and

18 (B) All monetary bonuses for committee employees and  
19 consultants in recognition for convention-related activities  
20 or services are provided for pursuant to a written contract  
21 made prior to the date of the convention and are paid no  
22 later than 30 days after the convention; the gifts and

bonuses do not exceed \$150 total per individual, and the total for all gifts and bonuses does not exceed \$20,000; and

\* \* \* \* \*

19. Section 9008.8 is amended by revising the paragraph heading for paragraph (b)(2), revising paragraph (b)(2), and revising paragraph (b)(4)(ii)(B) to read as follows:

**§ 9008.8 Limitation of expenditures.**

\* \* \* \* \*

(b) \* \* \*

(2) Expenditures by government agencies and municipal corporations funds.

Expenditures made by government agencies and municipal corporations funds shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section if the funds are spent in accordance with the requirements of 11 CFR 9008.53.

\* \* \* \* \*

(4) \* \* \*

(ii) \* \* \*

(B) The contributions raised to pay for the legal and accounting services comply with the limitations and prohibitions of 11 CFR parts 110, 114 and 115. These contributions, when aggregated with other contributions from the same contributor to the political committees established and maintained by the national political party, shall not exceed



1 \$20,000 per person, and \$15,000 per multicandidate  
2 political committee in any calendar year the amounts  
3 permitted under 11 CFR 110.1(c) and 110.2(c), as  
4 applicable.

5 \* \* \* \* \*

6 20. Section 9008.10 is amended by revising the introductory language to read as  
7 follows:

8 **§ 9008.10 Documentation of disbursements; net outstanding convention expenses.**

9 In addition to the requirements set forth at 11 CFR 102.9(b), ~~the~~ convention  
10 committee must include as part of the evidence of convention expenses the following  
11 documentation:

12 \* \* \* \* \*

13 21. Section 9008.12 is amended by revising paragraph (b)(7) to read as follows:

14 **§ 9008.12 Repayments.**

15 \* \* \* \* \*

16 (b) \* \* \*

17 (7) The Commission may seek repayment, or may initiate an enforcement  
18 action, if the convention committee knowingly helps, assists or  
19 participates in the making of a convention expenditure by the host  
20 committee, government agency or municipal corporation ~~which~~ fund that  
21 is not in accordance with 11 CFR 9008.52 or 9008.53, or the acceptance of  
22 a contribution by the host committee or government agency or municipal

1            ~~corporation fund~~ from an impermissible source, ~~such as a nonlocal~~  
2            ~~business.~~

3            \*        \*        \*        \*        \*

4            22.        The title of Subpart B of Part 9008 is revised to read as follows:

5            **SUBPART B--HOST COMMITTEES AND MUNICIPAL FUNDS**  
6            **~~REPRESENTING A CONVENTION CITY; CONVENTION EXPENDITURES BY~~**  
7            **~~GOVERNMENT AGENCIES AND MUNICIPAL CORPORATIONS~~**

8            23.        Section 9008.50 is revised to read as follows:

9            **§ 9008.50 Scope and definitions.**

10          (a)        Scope. This ~~S~~subpart B governs registration and reporting by host committees and  
11          municipal funds representing convention cities ~~and by government agencies and~~  
12          ~~municipalities.~~ Unsuccessful efforts to attract a convention need not be reported by any  
13          city, committee or other organization. Subpart B also describes permissible sources of  
14          funds and other permissible donations to host committees, ~~government agencies, and~~  
15          ~~municipal corporations~~funds. In addition, subpart B describes permissible disbursements  
16          by host committees and municipal funds to defray convention expenses and to promote  
17          the convention city and its commerce.

18          (b)        Definition of host committee. A host committee includes any local organization,  
19          such as a local civil association, business league, chamber of commerce, real estate board,  
20          board of trade, or convention bureau that satisfies all of the following conditions:

- 21            (1)        It is not organized for profit;  
22            (2)        Its net earnings do not inure to the benefit of any private shareholder or  
23            individual; and

1           (3) Its principal purpose is the encouragement of commerce in the convention  
2                     city, as well as the projection of a favorable image of the city to  
3                     convention attendees.

4 (c) Definition of municipal fund. A municipal fund is any separate fund or account of  
5 a government agency, municipality, or municipal corporation whose principal purpose is  
6 the encouragement of commerce in the municipality and whose receipt and use of funds is  
7 subject to the control of officials of the State or local government.

8 24. Section 9008.51 is amended by:

- 9           a. Revising the paragraph heading for paragraph (a);
- 10          b. Revising paragraph (a)(1);
- 11          c. Adding paragraph (a)(3);
- 12          d. Revising paragraph (b); and
- 13          e. Revising paragraph (c).

14 The revisions, additions, and deletions read as follows:

15 **§ 9008.51 Registration and reports.**

16 (a) Registration by host committees and municipal funds.

- 17           (1) ~~Each host committee and municipal fund including a host committee,~~  
18                     ~~other organization or group of persons which represents a State,~~  
19                     ~~municipality, local government agency or other political subdivision in~~  
20                     ~~dealing with officials of a national political party with respect to matters~~  
21                     ~~involving a presidential nominating convention shall register with the~~  
22                     ~~Commission on the Convention Registration Form by filing a Statement of~~  
23                     Organization on FEC Form 1 within 10 days of the date on which such

1 party chooses the convention city, or within 10 days after the formation of  
2 the host committee or municipal fund, whichever is later. In addition to  
3 the information already required to be provided on FEC Form 1, the The  
4 following information shall be ~~required of the registrant~~ disclosed by the  
5 registering entity on FEC Form 1: the name and address; the name and  
6 address of its officers; and a list of the activities that the registering entity  
7 plans to undertake in connection with the convention.

8 \* \* \* \* \*

9 (3) Each host committee and municipal fund required to register with the  
10 Commission under paragraph (a) of this section, shall submit to the  
11 Commission a copy of any and all written contracts or agreements that it  
12 has entered into with the city, county, or State hosting the convention, a  
13 host committee, a municipal fund, or a convention committee, including  
14 subsequent written modifications to previous contracts or agreements,  
15 unless such contracts, agreements or modifications have already been the  
16 Commission by the convention committee. Each such contract or  
17 agreement or modification shall be filed with the first report due under  
18 paragraph (b) of this section after the contract or agreement or  
19 modification is executed.

20 (b) Post-convention and quarterly reports by host committees and municipal funds;  
21 content and time of filing.

22 (1) Each ~~host committee, organization or group~~committee or municipal fund  
23 required to register with the Commission pursuant to paragraph (a) of

1 under this section shall file a post convention report with the Commission  
2 on FEC Form 4. The report shall be filed on the earlier of: 60 days  
3 following the last day the convention is officially in session; or 20 days  
4 prior to the presidential general election. This report shall be complete as  
5 of 15 days prior to the date on which the report must be filed and shall  
6 disclose all the information required by 11 CFR part 104 receipts and  
7 disbursements, including in-kind contributions, made with respect to a all  
8 activities related to a presidential nominating convention.

9 (2) If such host committee or municipal fund organization or group has  
10 receipts or makes disbursements after the completion date of the post  
11 convention report, it shall begin to file quarterly reports no later than 15  
12 days after the end of the following calendar quarter. This report shall  
13 disclose all transactions completed as of the close of that calendar quarter.  
14 Quarterly reports shall be filed thereafter until the host committee or  
15 municipal fund ceases all activity ~~which~~that must be reported under this  
16 section.

17 (3) Such ~~host committee, organization or group~~ or municipal fund shall file a  
18 final report with the Commission not later than 10 days after it ceases  
19 activity that must be reported under this section, unless such status is  
20 reflected in either the post-convention report or a quarterly report.

21 (c) Registration and pPost-convention statements by municipalities and State and  
22 local government agencies. Each government agency~~organization or group of persons~~  
23 which represents of a State, municipality, ~~local government agency~~ or other political

1 subdivision in dealing with officials of a national political party with respect to matters  
2 involving that provides facilities or services related to a Presidential nominating  
3 convention shall file, by letter, a statement with the Commission reporting the total  
4 amount spent to provide facilities and services for the convention under 11 CFR  
5 9008.53(e)52(b), a list of the categories of facilities and services the municipality or  
6 government agency provided for the convention, the total amount spent for each category  
7 of facilities and services provided, and the total amount defrayed from general revenues,  
8 and the total amount of all private donations received to defray these expenses. This  
9 statement shall be filed on the earlier of: 60 days following the last day the convention is  
10 officially in session; or 20 days prior to the presidential general election. Categories of  
11 facilities and services may include construction, security, communications, transportation,  
12 utilities, clean up, meeting rooms and accommodations. This paragraph (c) does not  
13 apply to any activities of a State or local government agency through a municipal fund  
14 that are reported pursuant to paragraph (b) of this section.

15 25. Section 9008.52 is revised to read as follows:

16 **§ 9008.52 Receipts and disbursements of host committees.**

17 (a) ~~Definition of host committee. A host committee includes any local organization,~~  
18 ~~such as a local civic association, business league, chamber of commerce, real estate~~  
19 ~~board, board of trade, or convention bureau. Which is not organized for profit; whose net~~  
20 ~~earnings do not inure to the benefit of any private shareholder or individual; and whose~~  
21 ~~principal objective is the encouragement of commerce in the convention city, as well as~~  
22 ~~the projection of a favorable image of the city to convention attendees. A host committee~~  
23 ~~must register in accordance with 11 CFR 9008.51.~~

1 ~~(b)~~ Receipt of goods or services from commercial vendors. Host committees may  
2 accept goods or services from commercial vendors under the same terms and conditions  
3 (including reporting requirements) set forth at 11 CFR 9008.9 for convention committees.

4 ~~(eb)~~ Receipt of donations from local businesses, and organizations, and individuals.

5 ~~(1)~~ Local bBusinesses (including banks), ~~local~~ labor organizations, and other  
6 ~~local organizations or individuals who maintain a local residence or who work for a local~~  
7 ~~business, local labor organization, or local organization~~ may donate funds or make in-  
8 kind donations to a host committee to be used for the following purposes:

9 ~~(i1)~~ To defray those expenses incurred for the purpose of promoting the  
10 suitability of the city as a convention site;

11 ~~(ii2)~~ To defray those expenses incurred for welcoming the convention attendees  
12 to the city, such as expenses for information booths, receptions, and tours;

13 ~~(iii3)~~ To defray those expenses incurred in facilitating commerce, such as  
14 providing the convention and attendees with shopping and entertainment  
15 guides and distributing the samples and promotional material specified in  
16 11 CFR 9008.9(c);

17 ~~(iv4)~~ To defray the administrative expenses incurred by the host committee,  
18 such as salaries, rent, travel, and liability insurance;

19 ~~(v5)~~ To provide the national committee use of an auditorium or convention  
20 center and to provide construction and convention related services for that  
21 location such as: construction of podiums; press tables; false floors;  
22 camera platforms; additional seating; lighting, electrical, air conditioning  
23 and loudspeaker systems; offices; office equipment; and decorations;





1 § 9008.53 Receipts and disbursements of government agencies and municipal  
2 corporations funds.

3 (a) Receipt of goods and services provided by commercial vendors. Government  
4 agencies and municipal corporations funds may accept goods or services from  
5 commercial vendors for convention uses under the same terms and conditions (except  
6 including reporting requirements) set forth at 11 CFR 9008.9 for convention committees.

7 (b) Receipt and use of donations to a separate municipal fund or account.

8 (1) ~~Local~~ Businesses (including banks), ~~local~~ labor organizations, and other  
9 ~~local organizations or~~ and individuals who maintain a local residence or  
10 who work for a local business, local labor organization, or local  
11 organization may donate funds or make in-kind donations to a separate  
12 municipal fund or account of a government agency or municipality to pay  
13 for expenses listed in 11 CFR 9008.52(eb).:

14 (i) ~~The fund or account is not restricted to use in connection with any~~  
15 ~~particular convention; and~~

16 (ii) ~~Donations to the fund or account are unrestricted and are not~~  
17 ~~solicited or designated for use in connection with any particular~~  
18 ~~convention, event or activity.~~

19 (2) ~~For purposes of this section, any business (including a branch of a national~~  
20 ~~or regional chain, a franchise, or a licensed dealer) or labor organization or~~  
21 ~~other organization with offices or facilities located within the Metropolitan~~  
22 ~~Area (MA) of the convention city shall be considered local. There shall be~~  
23 ~~a rebuttable presumption that any such entity located outside the MA is not~~

1           ~~local. This presumption may be rebutted by a showing that the volume of~~  
2           ~~business of activity in an area lying outside the MA would be directly~~  
3           ~~affected by the presence of the convention.~~

4   27.    Section 9008.55 is added to read as follows:

5   § 9008.55 Funding for Convention Committees, Host Committees and Municipal  
6   Funds.

7   (a)    Convention committees, including any established pursuant to  
8   11 CFR 9008.3(a)(2), are subject to 11 CFR 300.10, except that convention committees  
9   may accept in-kind donations from host committees and municipal funds provided the in-  
10   kind donations are in accordance with the requirements of 11 CFR 9008.52 and 9008.53.

11   (b)    Host committees and municipal funds are not “agents” of national committees of  
12   political parties or convention committees, unless they satisfy the prerequisites of  
13   11 CFR 300.2(b)(1).

14   (c)    Host committees and municipal funds are not “directly or indirectly established,  
15   financed, maintained, or controlled” by national committees of political parties or  
16   convention committees, unless they satisfy the prerequisites of 11 CFR 300.2(c).

17   (d)    Host committee and municipal fund payments are disbursements in connection  
18   with a Federal election for purposes of 11 CFR part 300. Host committees and municipal  
19   funds are not eligible to certify under 11 CFR 300.11(d) or 300.50(d) that they do not  
20   make disbursements in connection with an election for Federal office.

21   (e)    In accordance with 2 U.S.C. 441i(e)(4)(A), a person described in 11 CFR 300.60  
22   may make a general solicitation of funds, without regard to source or amount limitation,  
23   for or on behalf of any host committee or municipal fund that is described in 26 U.S.C.

1 501(c) and exempt from taxation under 26 U.S.C. 501(a) (or has submitted an application  
2 for determination of tax exempt status under such section) where such solicitation does  
3 not specify how the funds will or should be spent.

4 **PART 9031 – SCOPE**

5 28. The authority citation for part 9031 continues to read as follows:

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

7 29. Section 9003.1 is amended by removing the number “116” and adding in its place  
8 the number “400” in both instances in which “116” appears.

9 **PART 9032 – DEFINITIONS**

10 30. The authority citation for part 9032 continues to read as follows:

11 Authority: 26 U.S.C. 9032 and 9039(b).

12 31. Section 9032.9 is amended by revising paragraph (c) to read as follows:

13 **§ 9032.9 Qualified campaign expense.**

14 \* \* \* \* \*

15 (c) Except as provided in 11 CFR 9034.4(e), expenditures incurred either prior to the  
16 date the individual becomes a candidate ~~before the beginning of the expenditure report~~  
17 ~~period~~ or after the last day of a candidate’s eligibility will be considered qualified  
18 campaign expenses if they meet the provisions of 11 CFR 9034.4(a). Expenditures  
19 described under 11 CFR 9034.4(b) will not be considered qualified campaign expenses.

20 **PART 9033 – ELIGIBILITY FOR PAYMENTS**

21 32. Authority: The authority citation for part 9033 continues to read as follows:

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

1 33. In section 9033.1, paragraph (b)(10) is amended by removing the number “116”  
2 and adding in its place the number “400”.

3 34. Section 9033.11 is amended by adding new paragraph (b)(4), to read as follows:

4 **§ 9033.11 Documentation of disbursements.**

5 \* \* \* \* \*

6 (b) \* \* \*

7 (4) The documentation requirements of 11 CFR 102.9(b) shall also apply to  
8 disbursements.

9 \* \* \* \* \*

10 **PART 9034 – ENTITLEMENTS**

11 35. The authority citation for Part 9034 continues to read as follows:

12 Authority: 26 U.S.C. 9034 and 9039(b).

13 36. Section 9034.4 is amended by:

- 14 a. Revising the section heading;
- 15 b. Revising paragraph (a)(3)(i);
- 16 c. Revising paragraph (a)(3)(ii);
- 17 d. Removing paragraph (a)(3)(iii);
- 18 e. Adding paragraph (a)(6); and
- 19 f. Revising paragraph (b)(3).

20 Revisions, removals, and additions read as follows:

21 **§ 9034.4 Use of contributions and matching payments; examples of qualified**  
22 **campaign expenses and non-qualified campaign expenses.**

23 (a) \* \* \*

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(3) \* \* \*

(i) ~~Costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies, shall be considered qualified campaign expenses. A candidate may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention.~~  
Winding down costs subject to the restrictions in 11 CFR 9034.11 shall be considered qualified campaign expenses.

(ii) If the candidate continues to campaign after becoming ineligible due to the operation of 11 CFR 9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies

1 to receive winding down costs under 11 CFR 9034.11 paragraph  
2 ~~(a)(3)(i)~~ of this section. Each Contributions contribution that is  
3 dated received after the candidate's date of ineligibility may be  
4 used to continue to campaign, and may be submitted for matching  
5 fund payments. ~~The candidate shall be entitled to receive the same~~  
6 ~~proportion of matching funds to defray net outstanding campaign~~  
7 ~~obligations as the candidate received before his or her date of~~  
8 ~~ineligibility.~~ Payments from the matching payment account that  
9 are received after the candidate's date of ineligibility may be used  
10 to defray the candidate's net outstanding campaign obligations, but  
11 shall not be used to defray any costs associated with continuing to  
12 campaign unless the candidate reestablishes eligibility under 11  
13 CFR 9033.8.

14 ~~(iii) In the case of a candidate who does not receive public funding for~~  
15 ~~the general election, for purposes of the expenditure limitations set~~  
16 ~~forth in 11 CFR 9035.1, 100% of salary, overhead and computer~~  
17 ~~expenses incurred after a candidate's date of ineligibility may be~~  
18 ~~treated as exempt legal and accounting compliance expenses~~  
19 ~~beginning with the first full reporting period after the candidate's~~  
20 ~~date of ineligibility. For candidates who continue to campaign or~~  
21 ~~re-establish eligibility, this paragraph shall not apply to expenses~~  
22 ~~incurred during the period between the date of ineligibility and the~~  
23 ~~date on which the candidate either re-establishes eligibility or~~

1 ceases to continue to campaign. For purposes of the expenditure  
2 limitations set forth in 11 CFR 9035.1, candidates who receive  
3 public funding for the general election must wait until the end of  
4 the expenditure report period described in 11 CFR 9002.12 before  
5 they may treat 100% of salary, overhead and computer expenses as  
6 exempt legal and accounting compliance expenses.

7 \* \* \* \* \*

8 (6) Expenses incurred by ineligible candidates attending national nominating  
9 conventions. Expenses incurred by an ineligible candidate to attend,  
10 participate in, or conduct activities at a national nominating convention  
11 may be treated as qualified campaign expenses, but such convention-  
12 related expenses shall not exceed to a total of \$30,000.

13 (b) \* \* \*

14 (3) General election and post-ineligibility expenditures. Except for continuing  
15 to campaign costs and winding down costs pursuant to paragraph (a)(3) of  
16 this section and certain convention expenses described in paragraph (a)(6)  
17 of this section, any expenses incurred after a candidate's date of  
18 ineligibility, as determined under 11 CFR 9033.5, are not qualified  
19 campaign expenses. In addition, any expenses incurred before the  
20 candidate's date of ineligibility for goods and services to be received after  
21 the candidate's date of ineligibility, or for property, services, or facilities  
22 used to benefit the candidate's general election campaign, are not qualified  
23 campaign expenses.

1 \* \* \* \* \*

2 37. New section 9034.10 is added, to read as follows:

3 **§ 9034.10 Pre-candidacy payments by multicandidate political committees deemed**  
4 **in-kind contributions and qualified campaign expenses; effect of reimbursement.**

5 (a) A payment by a multicandidate political committee is an in-kind contribution to  
6 and qualified campaign expense by a Presidential candidate, even though made before the  
7 individual becomes a candidate under 11 CFR 100.3 and 9032.2, if—

8 (1) The expenditure is made on or after January 1 of the year immediately  
9 following the last Presidential election year;

10 (2) With respect to the goods or services involved, the candidate accepted or  
11 received them, requested or suggested their provision, was materially  
12 involved in the decision to provide them, or was involved in substantial  
13 discussions about their provision; and

14 (3) The goods or services are—

15 (i) Polling expenses for determining the favorability, name  
16 recognition, or relative support level of the candidate involved;

17 (ii) Compensation paid to employees, consultants, or vendors for  
18 services rendered in connection with establishing and staffing  
19 offices in States where Presidential primaries, caucuses, or  
20 preference polls are to be held;

21 (iii) Administrative expenses, including rent, utilities, office supplies  
22 and equipment in connection with establishing and staffing offices



1 in States where Presidential primaries, caucuses, or preference

2 polls are to be held; or

3 (iv) Expenses of individuals seeking to become delegates in the

4 Presidential nomination process.

5 (b) Notwithstanding paragraph (a) of this section, if the candidate, through an

6 authorized committee, reimburses the multicandidate political committee within 30 days

7 of becoming a candidate, the payment retroactively will not be deemed an in-kind

8 contribution for either entity, and the reimbursement is a qualified campaign expense of

9 the candidate.

10 38. New section 9034.11 is added, to read as follows:

11 **§ 9034.11 Winding down costs.**

12 (a) Winding down costs. Winding down costs are costs associated with the

13 termination of political activity related to a candidate's seeking his or her nomination for

14 election, such as the costs of complying with the post election requirements of the Federal

15 Election Campaign Act and the Presidential Primary Matching Payment Account Act, and

16 other necessary administrative costs associated with winding down the campaign,

17 including office space rental, staff salaries, and office supplies. Winding down costs are

18 qualified campaign expenses.

19 (b) Winding down limitation. The total amount of winding down costs that may be

20 paid for, in whole or part, with matching funds shall not exceed the lesser of:

21 (1) 10% of the overall expenditure limitation pursuant to 11 CFR 9035.1; or

22 (2) 10% of the total of:

1           (i) The candidate's expenditures subject to the overall expenditure

2                           limitation as of the candidate's date of ineligibility; plus

3           (ii) The candidate's expenses exempt from the expenditure limitations

4                           as of the candidate's date of ineligibility; except that

5           (iii) The winding down limitation shall be no less than \$100,000.

6   (c) Allocation of primary and general election winding down costs. A candidate who

7 runs in both the primary and general election may divide winding down expenses

8 between his or her primary and general election committees using any reasonable

9 allocation method. An allocation method is reasonable if it divides the total winding

10 down costs between the primary and general election committees and results in no less

11 than one third of total winding down costs allocated to each committee. A candidate may

12 demonstrate that an allocation method is reasonable even if either the primary or the

13 general election committee is allocated less than one third of total winding down costs.

14 (d) Primary winding down costs during the general election period. A primary

15 election candidate who does not run in the general election may receive and use matching

16 funds for these purposes either after he or she has notified the Commission in writing of

17 his or her withdrawal from the campaign for nomination or after the date of the party's

18 nominating convention, if he or she has not withdrawn before the convention. A primary

19 election candidate who runs in the general election, regardless of whether the candidate

20 receives public funds for the general election, must wait until 31 days after the general

21 election before using any matching funds for winding down costs related to the primary

22 election. No expenses incurred by a primary election candidate who runs in the general

1 election prior to 31 days after the general election shall be considered primary winding  
2 down costs.

3 **PART 9035 – EXPENDITURE LIMITATIONS**

4 39. The authority citation for part 9035 continues to read as follows:

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

6 40. Section 9035.1 is amended by;

- 7 a. Adding new paragraph (a)(3);
- 8 b. Adding new paragraph (a)(4);
- 9 c. Revising the paragraph heading in paragraph (c);
- 10 d. Revising paragraph (c)(1); and
- 11 e. Adding new paragraph (c)(3).

12 Additions and revisions read as follows:

13 **§ 9035.1 Campaign expenditure limitation; compliance and fundraising**  
14 **exemptions.**

15 (a) \* \* \*

16 (3) In addition to expenditures made by a candidate or the candidate's  
17 authorized committee(s) using campaign funds, the Commission will  
18 attribute to the candidate's overall expenditure limitation and to the  
19 expenditure limitations of particular states under 11 CFR 110.8 the total  
20 amount of all:

- 21 (i) Coordinated expenditures under 11 CFR 109.20;
- 22 (ii) Coordinated communications under 11 CFR 109.21 that are in-  
23 kind contributions received or accepted by the candidate, the

1 candidate's authorized committee(s), or agents, under  
2 11 CFR 109.21(b);  
3 (iii) Coordinated party expenditures, including party coordinated  
4 communications pursuant to 11 CFR 109.37 that are in-kind  
5 contributions received or accepted by the candidate, the candidate's  
6 authorized committee(s), or agents under 11 CFR 109.37(a)(3), and  
7 that exceed the coordinated party expenditure limitation for the  
8 Presidential general election at 11 CFR 109.32(a); and  
9 (iv) Other in-kind contributions received or accepted by the candidate  
10 or the candidate's authorized committee(s) or agents.

11 (4) The amount of each in-kind contribution attributed to the expenditure  
12 limitations under this section is the usual and normal charge for the goods  
13 or services provided to the candidate or the candidate's authorized  
14 committee(s) as an in-kind contribution.

15 \* \* \* \* \*

16 (c) Compliance, ~~and fundraising~~ and shortfall bridge loan exemptions.

17 (1) A candidate may exclude from the overall expenditure limitation set forth  
18 in paragraph (a) of this section an amount equal to 15% of the overall  
19 expenditure limitation as exempt legal and accounting compliance costs  
20 under 11 CFR 100.146. In the case of a candidate who does not run in the  
21 general election, for purposes of the expenditure limitations set forth in  
22 this section, 100% of salary, overhead and computer expenses incurred  
23 after a candidate's date of ineligibility may be treated as exempt legal and

1 accounting compliance expenses beginning with the first full reporting  
2 period after the candidate's date of ineligibility. Candidates who continue  
3 to campaign or re-establish eligibility may not treat 100% of salary,  
4 overhead and computer expenses incurred during the period between the  
5 date of ineligibility and the date on which the candidate either  
6 re-establishes eligibility or ceases to continue to campaign as exempt legal  
7 and accounting compliance expenses. For purposes of the expenditure  
8 limitations set forth in this section, candidates who run in the general  
9 election, regardless of whether they receive public funds, must wait until  
10 31 days after the general election before they may treat 100% of salary,  
11 overhead and computer expenses as exempt legal and accounting  
12 compliance expenses.

13 \* \* \* \* \*

14 (3) If any matching funds to which the candidate is entitled are not paid to the  
15 candidate, or are paid after the date on which payment is due, the  
16 candidate may exclude from the overall expenditure limitation in  
17 paragraph (a) of this section the amount of all interest charges that accrued  
18 during the shortfall period on all loans obtained by the candidate or  
19 authorized committee that are guaranteed or secured with matching funds,  
20 provided the candidate submits documentation as to the amount of all  
21 interest charges on such loans. The shortfall period begins on the first  
22 regularly scheduled payment date on which the candidate does not receive  
23 the entire amount of matching funds and ends on the payment date when

1 the candidate receives the previously certified matching funds or the date  
2 on which the Commission revises the amount previously certified to  
3 eliminate the entitlement to the previously certified matching funds.

4 \* \* \* \* \*  
5  
6 **PART 9036 – REVIEW OF MATCHING FUND SUBMISSIONS AND**  
7 **CERTIFICATION OF PAYMENTS BY COMMISSION**  
8

9 41. The authority citation for part 9036 continues to read as follows:

10 Authority: 26 U.S.C. 9036 and 9039(b).

11 42. Section 9036.1 is amended by revising paragraph (b)(1)(ii) to read as follows:

12 **§ 9036.1 Threshold submission.**

13 \* \* \* \* \*

14 (b) \* \* \*

15 (1) \* \* \*

16 (ii) The occupation and name of employer for individuals whose  
17 aggregate contributions exceed \$200 in the calendar year in an  
18 election cycle;

19 \* \* \* \* \*

20 43. Section 9036.2 is amended by revising paragraph (b)(1)(v) to read as follows:

21 **§ 9036.2 Additional submissions for matching fund payments.**

22 \* \* \* \* \*

23 (b) \* \* \*

24 (1) \* \* \*

1 (v) The occupation and employer's name need not be disclosed on the  
2 contributor list for individuals whose aggregate contributions  
3 exceed \$200 ~~in the calendar year~~ in the election cycle, but such  
4 information is subject to the recordkeeping and reporting  
5 requirements of 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR  
6 .102.9(a)(2), 104.3(a)(4)(i); and

7 \* \* \* \* \*

8 **PART 9038 – EXAMINATIONS AND AUDITS**

9 44. The authority citation for part 9038 continues to read as follows:

10 Authority: 26 U.S.C. 9038 and 9039(b).

11 45. Section 9038.2 is amended by:

- 12 a. Revising paragraph (b)(2)(ii)(A);
- 13 b. Revising the introductory text of paragraph (b)(2)(iii); and
- 14 c. Revising paragraph (b)(4).

15 Revisions read as follows:

16 **§ 9038.2 Repayments.**

17 \* \* \* \* \*

18 (b) \* \* \*

19 (2) \* \* \*

20 (ii) \* \* \*

21 (A) Determinations that a candidate, a candidate's authorized  
22 committee(s) or agents have made expenditures in excess  
23 of the limitations set forth in 11 CFR part 9035, by either

1 making disbursements that are expenditures or by receiving  
2 or accepting in-kind contributions that are subject to the  
3 expenditure limitations set forth in 11 CFR 9035.1(a);

4 \* \* \* \* \*

5 (iii) The amount of any repayment sought under this section shall bear  
6 the same ratio to the total amount determined to have been used for  
7 non-qualified campaign expenses as the amount of matching funds  
8 certified to the candidate bears to the candidate's total deposits, as  
9 of 90 days after the candidate's date of ineligibility; plus the usual  
10 and normal charge for all goods or services provided as in-kind  
11 contributions. For the purposes of this paragraph (b)(2)(iii)--

12 \* \* \* \* \*

13 (4) The Commission may determine that the candidate's net outstanding  
14 campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus. The  
15 Commission may determine that the net income derived from an  
16 investment or other use of surplus public funds after the candidate's date  
17 of ineligibility, less Federal, State and local taxes paid on such income,  
18 shall be paid to the Treasury.

19 \* \* \* \* \*

20  
21 

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Ellen L. Weintraub  
22 Chair



1  
2

Federal Election Commission

3 DATED: \_\_\_\_\_  
4 BILLING CODE: 6715-01-P