FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 101, 104, 110, 116, 400, and 9035

[Notice 2003—3]

Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates

AGENCY: Federal Election Commission.

ACTION: Interim final rules.

SUMMARY: The Federal Election Commission (''FEC'' or ''Commission'') is adopting, as interim final rules, new regulations relating to increased contribution limits for individuals when contributing to candidates who are facing self-financed candidates under the Federal Election Campaign Act of 1971 (''FECA'' or the ''Act''), as amended by the Bipartisan Campaign Reform Act of 2002 (''BCRA''). The so-called ''Millionaires' Amendment'' in BCRA raises the individual contribution limits for candidates for the Senate and House of Representatives depending on the amount that opposing candidates expend from personal funds in connection with an election. BCRA also removes the limitations on national and State party committee expenditures on behalf of a candidate if the opposing candidate's expenditures from personal funds exceed a threshold amount. These interim final rules implement the various provisions of the Millionaires' Amendment including thresholds, computation formulas, increased contribution limits with overall caps, repayment of personal loans, and reporting requirements.

The Commission is promulgating these rules on an interim final basis. The Commission is soliciting comments on all aspects of the interim final rules and may amend the interim rules as appropriate in response to comments received. Further information is contained in the Supplementary Information that follows.

DATES: The interim final rules are effective on February 26, 2003. Comments must be received on or before March 28, 2003. If the Commission receives sufficient requests to testify, it may hold a hearing on these interim final rules. If the Commission decides to hold a hearing, it will announce the date after the end of the comment period. Persons wishing to testify at a hearing should so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *millionaire@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh, Jr., Acting Special Assistant General Counsel, or Mr. Robert M. Knop, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: In the Bipartisan Campaign Reform Act of 2002 (''BCRA''), Public Law 107–155, 116 Stat. 81 (March 27, 2002), Congress made extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended (''FECA'' or the ''Act''), 2 U.S.C. 431 *et seq.* This is one of a series of rulemaking notices the Commission has published over the past several months in order to meet the rulemaking deadlines set out in BCRA. The Commission adopted these interim final rules on December 19, 2002.

These interim final rules address the so-called ''Millionaires' Amendment'' to BCRA. Section 304 of BCRA adds a new paragraph (i) to 2 U.S.C. 441a, which addresses Senate elections. Section 319 of BCRA adds a new section 441a–1 to the FECA, which addresses elections for the House of Representatives. The Senate provisions also add new notification or reporting requirements in 2 U.S.C. 434. Collectively, these provisions address elections in which a candidate for the Senate or the House of Representatives faces an opponent who is spending significant amounts of his or her personal funds on the race. It is important to note that the increased contribution and coordinated party expenditure limitations available to candidates opposing self-financed candidates under the Millionaires' Amendment apply *only* to candidates running for the Senate or the House of Representatives and do *not* apply to candidates running for President or Vice-President. These interim final rules also address a provision of BCRA limiting how a candidate may repay a loan he or she has made to his or her campaign. 2 U.S.C. 441a(j).

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The interim final rules on Increased Contribution Limits for Candidates Opposing Self-financed Candidates were transmitted to Congress on January 17, 2003.

Explanation and Justification

As of January 1, 2003, the Act, as amended by BCRA, limits the amount that a person, other than a multicandidate political committee, may contribute to a candidate to $2,000 per election, which is indexed for inflation. 2 U.S.C. 441a(a)(1)(A). Under the Act, an individual may not contribute, in the aggregate, more than $37,500 to candidates and their authorized committees during a 2-year period. 2 U.S.C. 441a(a)(3)(A). The Act also limits the amounts of coordinated expenditures by national and State political party committees (including subordinate committees) made in connection with the general election campaign of a candidate. 2 U.S.C. 441a(d)(3).

The Millionaires' Amendment raises contribution limits on contributions received by a candidate for the Senate or the House of Representatives who is facing a ''self-financed'' opponent, that is, an opponent who spends significant amounts of his or her personal funds on the race. As the opponent's spending from personal funds reaches certain prescribed levels, the candidate is granted limited relief from certain contribution limits and party spending limits.[1] First, when the spending of personal wealth by the opponent reaches certain thresholds (and other conditions are met), the candidate may accept contributions from individuals under increased contribution limits. Second, national and State political party committees may make unlimited coordinated party expenditures on behalf of the candidate under 2 U.S.C.

[1] ''Candidate'' is used in this document to mean that candidate who is facing an ''opponent,'' or ''opposing candidate,'' whose expenditures from personal funds are sizeable.

441a(d)(3). These increased contribution and coordinated expenditure limits are in effect only when certain specific conditions are met, and are rescinded if other contingencies occur.

The Millionaires' Amendment establishes a ''threshold amount'' for each election. For House of Representatives races, the threshold amount is a set amount, $350,000. 2 U.S.C. 441a–1(a)(1). For Senate races, the threshold amount varies, according to a formula driven by the ''voting age population'' of the State. 2 U.S.C. 441a(i)(1)(B).

The Millionaires' Amendment measures the opponent's expenditure of personal funds relative to the candidate's expenditures from personal funds. BCRA defines two new terms, ''personal funds'' and ''opposition personal funds amount.'' 2 U.S.C. 431(26); 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). For both Senate elections and House of Representatives elections, the opposition personal funds amount is the difference between the opponent's expenditures from personal funds and the candidate's expenditures from personal funds. 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). This provision precludes the acceptance of contributions under increased limits, as well as the lifting of the coordinated spending limits, in a situation where a candidate's own expenditures from personal funds offset the opponent's expenditures from personal funds.

The calculation of the opposition personal funds amount also takes into account any fundraising advantage the candidate may have which negates the advantage the opponent gains from his or her expenditures from personal funds. This ''gross receipts advantage'' is another check on the operation of the Millionaires'' Amendment, accounting for the situation where a candidate's advantage in ''ordinary'' fundraising may offset the expenditures from personal funds by the opponent. 2 U.S.C. 441a(i)(1)(E) (Senate); 2 U.S.C. 441a–1(a)(2)(B) (House of Representatives).

In Senate elections, when the opposition personal funds amount reaches certain multiples of the threshold amount, the candidate may accept increased contributions according to a tiered schedule. The first such multiple is twice the threshold amount. When the opposition personal funds amount reaches twice the threshold amount, the contribution limit for individuals is tripled. 2 U.S.C. 441a(i)(1)(C)(i)(I). A contribution accepted under this increased contribution limit does not count against the individual's aggregate contribution limit under 2 U.S.C. 441a(a)(3). 2 U.S.C. 441a(i)(1)(C)(i)(II). The contribution limits also increase at multiples of four times and ten times the threshold amount. When the opposition personal funds amount reaches four times the threshold amount, the contribution limit for individuals is raised six-fold. When the opposition personal funds amount reaches ten times the threshold amount, the contribution limit for individuals is raised six-fold and the Act's limits on coordinated political party expenditures on behalf of the candidate are lifted. 2 U.S.C. 441a(i)(1)(C)(iii)(III).

In House of Representatives elections, if the opposition personal funds amount reaches the threshold amount, the individual contribution limits are tripled, such increased contributions do not count against the section 441a(a)(3) individual aggregate contribution limits, and the coordinated political party expenditures limits in section 441a(d)(3) are lifted. 2 U.S.C. 441a–1(a)(1)(A) through (C). Note that for House of Representatives candidates, unlike Senate candidates, the limits are raised or lifted all at once, and not in increments.

For both Senate and House of Representatives candidates, the operation of the increased contribution limits and the suspension of the limit on coordinated political party expenditures are subject to an on-going check in the form of the so-called ''proportionality provision.'' *See* 147 CR S2538 (daily ed. March 20, 2001) (Sen. DeWine). If the sum of the contributions accepted under the increased limits plus the coordinated party expenditures made by political party committees under the increased limits exceeds 110% of the opposition personal funds amount in a Senate election or 100% of the opposition personal funds amount in a House of Representatives election, then the contribution limits revert to the original amount, and the political party expenditure limits also revert to their original amount. 2 U.S.C. 441a(i)(2)(A)(ii) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(ii) (House of Representatives). Thus, the Millionaires' Amendment does not permit those candidates facing wealthy self-financed opponents to raise individual contributions significantly in excess of the amount of personal funds wealthy opponents actually spend on their own elections.

The increased contribution limits are also terminated if the self-financed opponent withdraws from the race. 2 U.S.C. 441a(i)(2)(B) (Senate); 2 U.S.C. 441a–1(a)(3)(B) (House of Representatives). Additionally, both the Senate and House of Representatives versions of the Millionaires' Amendment prescribe rules for disposing of ''excess contributions'' received under the increased contribution limits. 2 U.S.C. 441a(i)(3) (Senate); 2 U.S.C. 441a–1(b) (House of Representatives).

Part 100—Definitions

1. 11 CFR 100.19 File, Filed, or Filing (2 U.S.C. 434(a))

The Commission's regulations at 11 CFR 100.19 define ''file, filed, and filing.'' The rule in current paragraph (b) states that a document is considered timely filed if it is: (1) Delivered to the appropriate filing office (either the Commission or the Secretary of the Senate), or (2) sent by registered or certified mail and postmarked by 11:59 p.m. Eastern Standard/Daylight Time of the prescribed filing date—except for pre-election reports. The final rule adds paragraph (g), discussed below, to the list of reports not subject to the rule in paragraph (b). Thus, paragraph (b) notes that this rule does not apply to reports described in 11 CFR 100.19(c) through (g) which are electronic filings, 48-hour and 24-hour reports of independent expenditures, 48-hour notices of last-minute contributions, electioneering communication statements, and notifications of expenditures from personal funds, respectively.

New paragraph (g) states that notifications of self-financed candidates' expenditures from personal funds, required under 11 CFR part 400, are considered timely filed by Senate candidates' principal campaign committees only if they are faxed or e-mailed to the Commission and faxed or e-mailed to each opposing candidate within 24 hours of the time the thresholds set forth in 11 CFR 400.21 and 400.22 are exceeded, thereby triggering the reporting requirement. As discussed in greater detail below (*see* Explanation and Justification for new 11 CFR 400.21, 400.22, and 400.24), Senate candidates' principal campaign committees are required to file their original notifications with the Secretary of the Senate and copies of their notifications with the Commission and each opposing candidate. Notifications by House of Representatives candidates' principal campaign committees are considered timely filed only when they are both electronically filed (if required under 11 CFR 104.18, 400.20, and 400.23) with the Commission and when they are faxed or e-mailed to each opposing candidate within 24 hours of the time the thresholds defined in 11

CFR 400.21 and 400.22 are exceeded, thereby triggering the reporting requirement.

2. 11 CFR 100.33 Definition of ''Personal Funds'' (2 U.S.C. 431(26))

The definition of ''personal funds'' in new section 100.33 largely tracks the definition provided in BCRA (2 U.S.C. 431(26)), which, in turn, appears to be based primarily on the definition of ''personal funds'' in former 11 CFR 110.10(b). Because BCRA placed the new statutory definition of ''personal funds'' in 2 U.S.C. 431, giving it general applicability in FECA, the Commission has decided to place the corresponding regulatory definition in 11 CFR part 100 to give general applicability to the definition in all of the Commission's regulations relating to Title 2 of the United States Code. Therefore, the version of the definition in 11 CFR 110.10(b) is deleted. The Commission notes that the regulations relating to Title 26 of the United States Code also contain a definition of ''personal funds'' at 11 CFR 9003.2(c)(3). The definition of ''personal funds'' in 11 CFR 9003.2(c)(3) is not being changed. Only the definition of ''personal funds'' in former 11 CFR 110.10(b) is being altered in conformance with the definition of ''personal funds'' in BCRA.

Although the new statutory definition of ''personal funds'' seems to be based largely on the previous definition contained in former 11 CFR 110.10(b), it differs from that prior rule in a number of respects. First, although both definitions include salary and income from *bona fide* employment, BCRA considers only salary and earned income received during the current election cycle (as defined in new 11 CFR 400.2, discussed below) to be the candidate's personal funds. Second, while both definitions include income from trusts established before and after certain points in time, the relevant date in BCRA is the beginning of the election cycle (again, as defined in new 11 CFR 400.2) whereas in former 11 CFR 110.10(b) the relevant date is the point at which an individual becomes a candidate for Federal office.

A third difference between the definition of ''personal funds'' in BCRA and former § 110.10(b) involves the receipt of gifts by the candidate. While both definitions include gifts of a personal nature that had been customarily received by the candidate before a certain point in time, BCRA counts only those that had been customarily received prior to the beginning of the election cycle (*see* Explanation and Justification for new 11 CFR 400.2, below) whereas former 11 CFR 110.10(b) counted those that had been customarily received prior to candidacy.

Part 101—Candidate Status and Designations

11 CFR 101.1 Candidate Designations (2 U.S.C. 432(e)(1))

Currently, § 101.1(a) requires Statements of Candidacy (FEC Form 2) to be filed with the Commission or with the Secretary of the Senate, as appropriate under 11 CFR part 105, within 15 days of the time an individual becomes a candidate. Since this is the same time in which a candidate will be required to file a Declaration of Intent under new section 11 CFR 400.20 (*see* Explanation and Justification for new 11 CFR 400.20, below), the Commission has decided to add the information required in the Declaration of Intent to FEC Form 2.

We note that current sections of 11 CFR 101.1(a) and 105.2 require Senate candidates to file their Statements of Candidacy with the Secretary of the Senate. This requirement will not change under the Commission's interim final rules. However, in the interest of rapid notification to the Commission and to each opposing candidate, new 11 CFR 400.20(b)(1) will require Senate candidates to fax or electronically mail a *copy* of their Statement of Candidacy to the Commission. Further, both Senate and House of Representatives candidates will be required to send a fax or an electronic mail message to each opposing candidate that either attaches their FEC Form 2 or contains the information required by 11 CFR 400.23 (*see* Explanation and Justification for new 11 CFR 400.23, below).

Part 102—Registration, Organization, and Recordkeeping by Political Committees (2 U.S.C. 433)

11 CFR 102.2 Statement of Organization: Forms and Committee Identification Number (2 U.S.C. 433(b), (c))

New 11 CFR 102.2(a)(1)(viii) requires the principal campaign committee of each Senate and House of Representatives candidate to provide either an electronic mail address or a facsimile number, for the purpose of receiving Declarations of Intent and Notifications of Expenditures from Personal Funds from other candidates in the same election as required by subpart B of part 400. This requirement is intended to facilitate the notification of expenditures from personal funds under part 400. Use of facsimile machines or electronic mail will provide candidates' principal campaign committees nearly instantaneous notification. The Commission recognizes that not all principal campaign committees may have a facsimile machine, an electronic mail address, or even a computer system. However, the Commission notes that most public libraries have computers available for free public use and several Web sites provide free access to electronic mail. Thus, the Commission concludes that this requirement will at most create only a minimal burden on some candidates, and to whatever extent it might do so is outweighed by the overall benefits.

Part 104—Reports by Political Committees (2 U.S.C. 434)

11 CFR 104.19 Special Reporting Requirements for Principal Campaign Committees of Candidates for Election to the United States Senate or United States House of Representatives

The definition of ''opposition personal funds amount'' in new 11 CFR 400.10 includes the computation for ''gross receipts advantage,'' as defined in 2 U.S.C. 441a(i)(1)(E) (Senate) and 441a–1(a)(2)(B) (House of Representatives). *See* below for discussion and explanation and justification of these definitions. To compute the ''gross receipt advantage,'' candidates must know of the gross receipts of each of their opposing candidates during any election cycle that may be expended in connection with the election where they are running against a self-financed candidate. The ''gross receipts advantage'' also takes into account amounts that candidates contribute to their own campaign by subtracting that amount from the gross receipts their authorized committees received.

Because the former regulations and the reporting forms did not require candidates' authorized committees to report the information necessary to compute ''gross receipts advantage'' in a concise and comprehensive manner, the Commission is adding a new section, 11 CFR 104.19, to require supplemental reporting by the principal campaign committees of candidates who are seeking election to the U.S. Senate or U.S. House of Representatives. This ensures that the candidates in the same election have sufficient and timely information to do the necessary computations under 11 CFR part 400.

Paragraph (a) limits the scope of this new section to only these candidates. It also provides that the reports required under this section must be filed with the Commission. Paragraph (b) describes when these reports must be filed and the content required. Paragraph (b)(1)

requires principal campaign committees to file by July 15 of the year before the general election of the office sought that discloses the gross receipts available to the candidates and their authorized committees to expend in connection with the primary election and the general election as determined on June 30 of that year. The gross receipts amounts must include the contributions that have been designated, deemed to be designated, or redesignated for both the primary election and the general election. Principal campaign committees must report the amount of contributions from personal funds of their candidates received by any of the candidates' authorized committees by June 30 that have been designated for the primary election and the general election. They must then subtract the contributions from personal funds that have been designated for the primary election from the gross receipts that may be expended in connection with the primary election and disclose that amount. Likewise, they must also compute and disclose the amount for the general election.

Paragraph (b)(2) requires that principal campaign committees file another report on January 31 of the year of the general election of the office sought. This paragraph is similar to paragraph (b)(1) except that the pertinent date is December 31 of the year preceding the relevant general election. Principal campaign committees must disclose the same information under paragraph (b)(2) as in paragraph (b)(1) but instead of reporting the amount determined as of June 30, this amount is determined as of December 31.

While BCRA mandates that the opposition personal funds amount use the amounts determined for June 30 and December 31, the interim final rules set the deadlines for the reports at July 15 and January 31, respectively, to coincide with the filing deadlines of the second quarterly reports and the year-end reports that all authorized committees are required to file. The Commission seeks comment whether these are appropriate deadlines.

Part 110—Contribution and Expenditure Limitations and Prohibitions

1. 11 CFR 110.1 Conforming Amendment to 11 CFR 110.1(b)(3) Regarding Net Debts Outstanding (2 U.S.C. 441a(j))

Current 11 CFR 110.1(b)(3) restricts the ability of candidates and their authorized committees to accept contributions after the election. It states that they can accept contributions up to the amount of their ''net debts outstanding.'' ''Net debts outstanding'' is defined in current 11 CFR 110.1(b)(3)(ii). In order to conform with the fundraising restrictions in new 11 CFR 116.11 (*see* Explanation and Justification for new 11 CFR 116.11, below), new paragraph (b)(3)(ii)(C) would be added to current 11 CFR 110.1 to exclude the amount of personal loans that exceed $250,000 from the definition of ''net debts outstanding.''

2. 11 CFR 110.10 Deletion of Former 11 CFR 110.10(b) Definition of ''Personal Funds''

As explained in greater detail above (*see* Explanation and Justification for new 11 CFR 100.33), the Commission is implementing BCRA's new definition of ''personal funds.'' The Commission has decided to locate this new definition in new 11 CFR 100.33. Accordingly, the Commission is deleting the former definition of ''personal funds'' in former 11 CFR 110.10(b).

Part 116—Debts Owed by Candidates and Political Committees

BCRA added a new subsection (j) to 2 U.S.C. 441a, which restricts the ability of candidates and their authorized committees to raise funds after the election to repay loans that the candidates made to their authorized committees. These loans are referred to as ''personal loans.'' Section 441a(j) of FECA states that:

> Any candidate who incurs personal loans after the effective date of the Bipartisan Campaign Reform Act of 2002 in connection with the candidate's campaign for election shall not repay (directly or indirectly), to the extent such loans exceed $250,000, such loans from any contributions made to such candidate or any authorized committee of such candidate after the date of such election.

Although 2 U.S.C. 441a(j) is part of the Millionaires' Amendment, the provision has wider application than the other provisions of the Millionaires' Amendment because it is placed as a separate subsection within 2 U.S.C. 441a. This statutory provision thus applies to all personal loans from candidates to their authorized committees regardless of whether the increased contribution and party spending limits in 2 U.S.C. 441a(i) or 441a–1 apply. BCRA's amendment to 2 U.S.C. 441a regarding candidate loans also applies to presidential candidates, who may be self-financed, or who may be permitted under the public funding regime to make limited expenditures from personal funds for their campaigns. Therefore, the interim final rules add new section 11 CFR 116.11—*Debts Owed by Candidates or Political Committees* rather than include new rules implementing 2 U.S.C. 441a(j) in 11 CFR part 400 with the other Millionaires' Amendment regulations. The interim final rules also include a conforming amendment to 11 CFR 110.1(b)(3) regarding net debts outstanding, *see* above.

1. 11 CFR 116.11 Restriction on an Authorized Committee's Repayment of Personal Loans Exceeding $250,000 Made by the Candidate to the Authorized Committee

A. Interim Final Rule

According to the sponsors of the Millionaires' Amendment, the purpose of 2 U.S.C. 441a(j) is to restrict the amount of money candidates and their authorized committees can raise after the election to repay the candidates for personal loans.[2] Essentially, authorized committees may only use up to $250,000 of contributions made after the election to repay the candidates. New 11 CFR 116.11 sets forth these restrictions.

The interim final rules define ''personal loans'' in paragraph (a) of 11 CFR 116.11. The definition includes not only loans made by candidates to their authorized committees, but also loans made by other persons to the authorized committees that are endorsed or guaranteed by the candidate or that are secured by the personal funds of the candidate. This definition ensures that loans to authorized committees that are used in connection with the candidate's campaign for election, for which the candidate is personally liable, are subject to the provisions of 11 CFR 116.11. It is important to note that new 11 CFR 116.11 applies to all loans made, endorsed, or guaranteed by candidates regardless of whether the other provisions of the Millionaires' Amendment are triggered, *i.e.,* the increased contribution limits.

The definition of ''personal loans'' in paragraph (a) specifies that advances made by the candidate to their authorized committees are personal loans subject to the repayment restrictions in 11 CFR 116.11. The Commission seeks comment on whether the interim final rules should specify within this definition of ''personal loans'' other debts and obligations that

[2] ''This (amendment) limits candidates who incur personal loans in connection with their campaign in excess of $250,000. They can do $250,000 and then reimburse themselves with fundraisers. But anything more than that, they cannot repay it by going out and having fundraisers once they are elected with their own money.'' 147 CR S2451 (daily ed. Mar. 19, 2001) (statement of Sen. Domenici).

the candidate's authorized committee owes to the candidate.

The introductory text in paragraph (b) makes clear that if a candidate makes several personal loans over the course of an election, those loans will not be treated separately for purposes of this section but will, instead, be considered in the aggregate. Paragraphs (b) and (d) treat a primary election as a separate election from a general election. If a candidate makes several personal loans to the authorized committee, all the loans will be added together to determine whether they exceed $250,000 and are, therefore, subject to the provisions of this section.

Under paragraph (b)(1), authorized committees may repay the entire amount of any personal loans from contributions that are made *on the date of the election or before that date.* Repayment of the entire loan amount is permitted under BCRA and FECA even if the total loan amount exceeds $250,000 and as long as these contributions were made on or before the date of the election.

In contrast, paragraphs (b)(2) and (3) both address repayments using contributions made after the election. Paragraph (b)(2) allows authorized committees to use only $250,000 of contributions that are made after the election to repay the candidate's personal loans to his or her campaign committee. Consequently, paragraph (b)(3) prohibits authorized committees from using more than $250,000 of contributions that are made after the election to repay the candidate for personal loans.

It is important to note that 11 CFR 116.11(b)(1), (b)(2), and (b)(3) are not mutually exclusive. Under the interim final rules, authorized committees may use contributions that are made *before* the election to repay candidate loans in any amount, and contributions made *after* the election to repay candidate loans up to $250,000. For example, Candidate A loans $600,000 to her authorized committee. The authorized committee receives $350,000 in contributions by election day and receives an additional $400,000 in contributions after the election. Candidate A's authorized committee may use $250,000 of the $400,000 received after the election and $350,000 received before the election to repay the entire amount of the candidate's personal loan.

Paragraph (c) of new 11 CFR 116.11 outlines certain conditions regarding the repayment of candidates' personal loans after the election. Paragraph (c)(1) establishes a post-election time limit for the use of remaining cash on hand for the repayment of personal loans. If a candidate's authorized committee wishes to use the cash on hand as of the day after the election to repay any portion of the candidate's personal loan(s), it must repay the personal loan(s) within 20 days of the election, which is the close of books for the post-general election report. After the 20-day post-election time period has elapsed, paragraph (c)(2) requires a candidate's authorized committee to treat the remaining balance of the candidate's personal loan that exceeds $250,000 as a contribution from the candidate to the authorized committee, given that this amount could never be repaid, and given that the amount must be accounted for on the authorized committee's next report.

Further, paragraph (c)(3) requires the candidate's authorized committee to report both the amount of cash on hand used to repay the candidate's personal loan(s) (under paragraph (c)(1)) and the treatment of the remaining loan amount as a contribution from the candidate (under paragraph (c)(2)) in the authorized committee's next scheduled report.

Example: Candidate X loans $500,000 to her campaign on October 1 for the general election. As of the day after the general election, Candidate X's authorized committee has cash on hand from the general election in the amount of $100,000. Candidate X's authorized committee decides to use $50,000 of the cash on hand to repay part of the candidate's personal loan, leaving an outstanding balance of $450,000. Candidate X's authorized committee must repay $50,000 of the personal loan and must treat $200,000 as a contribution from the candidate within 20 days of the general election because that is the amount that exceeds $250,000 of the remaining balance. Candidate X's authorized committee must report the repayment of $50,000 of the personal loan and the treatment of $200,000 of the personal loan's outstanding balance as a contribution on the next regularly scheduled report, the post-general election report.

BCRA specifically states that 2 U.S.C. 441a(j) applies only to personal loans that are made after November 6, 2002. Thus, the limitations on repayment of personal loans from contributions made after the respective election do not apply to personal loans made before this date. Consequently, any outstanding loan balances of candidate loans that were made before November 6, 2002, may be repaid with contributions made after this date subject to the provisions concerning net debts outstanding in 11 CFR 110.1(b)(3).

B. Alternative Interpretation of 2 U.S.C. 441a(j)

The definition of ''personal loans'' in new 11 CFR 116.11(a) is based on a broad interpretation of the opening phrase ''[a]ny candidate who incurs personal loans'' in 2 U.S.C. 441a(j) to mean loans made by candidates to their authorized committees. This interpretation is based on the legislative history of the Senate debates on this provision.[3]

The Commission, however, seeks comments on its interpretation of ''incurs'' in 2 U.S.C. 441a(j). ''Incur'' means ''[t]o become liable or subject to * * * and to become through one's own action liable or subject to.''[4] In the opening phrase of 2 U.S.C. 441a(j), it is the candidate who is ''incurring'' the personal loans. Thus, arguably, the use of ''incurs'' could refer to the candidate's liability and not the authorized committee's liability to the candidate. The interim final rules reject this interpretation of 2 U.S.C. 441a(j) to mean loans that are made *to* candidates rather than loans made *by* candidates for two reasons. First, the legislative history supports a different interpretation. Second, the practical consequence of interpreting 2 U.S.C. 441a(j) to apply to loans made *to* candidates rather than loans made *by* candidates to their authorized committee would be that similarly situated candidates may be treated differently. Under this interpretation, a candidate who takes out a loan from a lending institution and then lends the loan proceeds to his or her authorized committee would be subject to the restrictions of 2 U.S.C. 441a(j) and 11 CFR 116.11. Conversely, a candidate who liquidates an asset and loans the proceeds from the sale to his or her authorized committee would not be subject to these sections and the candidate's authorized committee would be able to raise funds after the election to repay him or her. For these two reasons, the Commission rejects this possible interpretation of 2 U.S.C. 441a(j) at this time.

[3] ''If you incur debt from a personal loan and then you get elected as Senator, and then you go around and say, now I am Senator, I want you to get my money so I can pay back what I used of my own money to run for election. It is clear in this amendment that you cannot do that in the future.'' 147 CR S2537 (daily ed. Mar. 20, 2001) (statement of Sen. Domenici); ''[The] language [of 2 U.S.C. 441a(j)] makes it clear there will not be any effort after the election to raise money to repay those loans; * * *'' *Id.* at S2462 (daily ed. Mar. 19, 2001) (statement of Sen. Durbin); *see also* footnote 2, above.

[4] *Black's Law Dictionary* 108 (6th ed. 1990).

2. 11 CFR 116.12 Repayment of Candidate Loans of $250,000 or Less

In a recent BCRA-related rulemaking, the Commission deleted 11 CFR 113.2(d) from the regulations. ''Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds: Final Rules and Explanation and Justification,'' 67 FR 76962 (December 13, 2002). That now-deleted paragraph addressed, among other things, the repayment of candidate loans using campaign funds. In the Explanation and Justification, the Commission noted that it would return to the issue of repayment of candidate loans in the Millionaires' Amendment rulemaking, if necessary. 67 FR at 76975. The Commission has decided to address this issue in 11 CFR 116.11 and 116.12 as part of this rulemaking, rather than in part 113, because part 116 specifically implements statutory changes directly affecting the repayment of candidate loans (*i.e.*, 2 U.S.C. 441a(j)).

Whereas 11 CFR 116.11 outlines the requirements regarding the repayment of candidate's personal loans that, in the aggregate, exceed $250,000, new 11 CFR 116.12 contains requirements regarding the repayment of candidate's personal loans that, in the aggregate, are equal to or less than $250,000. Paragraph (a) of 11 CFR 116.12, states that a candidate's authorized committee may repay up to $250,000 of a candidate's personal loans using contributions to the candidate or the candidate's authorized committee made any time before, on, or after the date of the election as long as the personal loans were used in connection with the candidate's campaign for election. BCRA places no temporal limit on the contributions that may be used to repay personal loans of $250,000 or less, so paragraph (a) permits candidate's authorized committees to use contributions received before, during, or after the election for this purpose.

Paragraph (b) of 11 CFR 116.12 states that this section applies separately to each election. This means that, if a candidate were to make a personal loan or loans in connection with more than one election, his or her authorized committee may repay up to $250,000 of the aggregate loan amount for each election. For example, Candidate X makes a $250,000 personal loan to her campaign for the primary election and a $250,000 personal loan to her campaign committee for the general election. As of the date after the general election, Candidate X has $500,000 in aggregate outstanding personal loans made to her authorized committee for the primary and general elections. Candidate X's authorized committee may use contributions received before, during, or after the primary election to repay Candidate X's $500,000 outstanding personal loan balance, $250,000 for the primary election loan and $250,000 for the general election loan.

Paragraph (c) states that nothing in 11 CFR 116.12 shall supercede 11 CFR 9035.2 regarding the limitations on expenditures from personal funds or family funds of a presidential candidate who accepts matching funds. Presidential primary candidates must still comply with the limit on expenditures from personal funds exceeding $50,000 prescribed by 11 CFR 9035.2 and 2 U.S.C. 9035.

Part 400—Increased Limits for Candidates Opposing Self-financed Candidates

Scope and Definitions

1. 11 CFR 400.1 Scope and Effective Date

The Commission is promulgating new rules implementing the Millionaires' Amendment. These rules are in new part 400 of Title 11 of the Code of Federal Regulations.

Paragraph (a) of new 11 CFR 400.1 introduces the scope of the part, which is elections to the office of United States Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress, in which a candidate is permitted an increased contribution limit in response to certain expenditures from personal funds by an opposing candidate. Paragraph (a) also states expressly that part 400 does not apply to presidential and vice-presidential elections. Paragraph (b) of 11 CFR 400.1 specifies the effective date of part 400, February 26, 2003, and makes the important clarification that part 400 will not apply to any runoff elections, recounts, or election contests resulting from elections prior to that date. Pub. L. 107–155, Sec. 402(a)(4).

The Commission seeks comment on whether it should adopt a provision, in 11 CFR 400.1, whereby candidates and national and State committees of political parties would be permitted to affirmatively ''opt-out'' of the Millionaires'' Amendment's benefits and obligations, in cases where all of the following conditions were met: (1) The candidate has no intention of making expenditures from personal funds in excess of the relevant threshold amount in 11 CFR 400.9; (2) the candidate and the candidate's authorized committee have no intention of accepting contributions under the increased limits; and (3) the national and State committees of the candidate's political party have no intention of making coordinated expenditures on behalf of the candidate's election. By ''opting-out,'' the candidate would be prohibited from accepting contributions under the increased limits and the national and State committees of the candidate's political party would be prohibited from making coordinated expenditures on behalf of the candidate's election in excess of the usual coordinated expenditure limits in 11 CFR 109.32(b). In return, the candidate and the national and State committees of the candidate's political party would be exempt from all the notification and reporting obligations under 11 CFR part 400.

In addition, the Commission seeks comment on whether, and under what circumstances, candidates and national and State committees of political parties who had ''opted out'' should be permitted to opt back in to the Millionaires'' Amendment's benefits and obligations.

2. 11 CFR 400.2 Definition of ''Election Cycle''

BCRA provides a definition of ''election cycle,'' which is, by its own terms, specific to the Millionaires'' Amendment. 2 U.S.C. 431(25). New 11 CFR 400.2 implements this definition, tracking the specific language of the statute. Ordinarily, statutory definitions from 2 U.S.C. 431 are implemented by regulations in part 100, which includes definitions that have application throughout Title 11. However, the regulatory definition of ''election cycle'' in 2 U.S.C. 431(25) is codified in part 400 because the scope of the definition in 2 U.S.C. 431(25) is limited, by its own terms, to the Millionaires' Amendment.

''Election cycle'' is defined in the Millionaires'' Amendment in BCRA to be the period from election-to-election, with the primary election and the general election considered to be separate elections. 2 U.S.C. 431(25). Thus, the period from the day after the last general election for a particular office to the day of the next primary election for that same office is one election cycle, and the period from the day after the primary election to the day of the general election is another separate election cycle.

In the case of a run-off election, the Commission has decided to treat it as an extension of the election cycle containing the election that necessitated the run-off under 11 CFR 400.2(c). For example, in the case of a primary election where no candidate receives the necessary percentage of votes to be declared the winner and where, therefore, a run-off election must be

held to determine the winner, the Commission will consider the run-off election to be part of the primary election cycle, for purposes of the Millionaires' Amendment.

3. 11 CFR 400.3 Definition of ''Opposing Candidate''

The operative provisions of the Millionaires'' Amendment are triggered by expenditures of personal funds by ''an opposing candidate.'' *See* 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). New 11 CFR 400.3 defines ''opposing candidate.'' Paragraph (a) applies to primary elections. It establishes that ''opposing candidate'' means another candidate seeking the nomination of the same party as the candidate who may benefit from increased contribution limits and the lifting of the coordinated party expenditure limits. The final sentence of this paragraph clarifies that a candidate may have more than one ''opposing candidate'' in a primary.

The Commission seeks comment as to whether ''opposing candidate'' should be expanded to include candidates seeking *another* political party's nomination for the same office. Under such an expanded definition, for example, a self-financed candidate seeking the nomination of political party ABC would be an ''opposing candidate'' where his or her personal funds are intended to influence the primary of political party XYZ by working to defeat whichever candidate of political party XYZ is judged to be the strongest opponent of the self-financed candidate in the general election.

Paragraph (b) of 11 CFR 400.3 applies to general elections, and establishes that ''opposing candidate'' means another candidate seeking election to the same office as the candidate who may benefit from increased contribution limits. Again, the final sentence states that a candidate may have more than one ''opposing candidate'' in the general election.

4. 11 CFR 400.4 Definition of ''Expenditure From Personal Funds''

The amount of ''expenditures from personal funds'' by an opposing candidate is an important factor in determining whether the increased contribution limits and unlimited coordinated party expenditures are permitted under the Millionaires' Amendment. 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). This term is defined in both the Senate and the House of Representatives versions of the Millionaires' Amendment as ''an expenditure made by a candidate using personal funds,'' as ''a contribution or loan made by a candidate using personal funds,'' and as ''a loan secured using such funds to candidate's authorized committee.'' 2 U.S.C. 434(a)(6)(B)(i) (Senate); 2 U.S.C. 441a–1(b)(1)(A) (House of Representatives).

New 11 CFR 400.4 implements this statutory definition and includes cross-references to 11 CFR 100.33, which defines ''personal funds.'' The introductory wording of 11 CFR 400.4(a) states that all of the items described in paragraphs (a)(1) through (a)(4) are aggregated to determine expenditures from personal funds.

Paragraph (a)(1) follows the definition of ''expenditure'' in 11 CFR part 100, subparts D and E. It includes payments made directly by the candidate for purposes of influencing the election in which he or she is a candidate. Paragraph (a)(2) includes in the definition contributions and loans made by the candidate to his or her authorized committee using personal funds. 2 U.S.C. 434(a)(6)(B)(i)(II). Paragraph (a)(3) includes in the definition a loan made by any person to the candidate's authorized committee if that loan is secured or guaranteed by the candidate's personal funds. BCRA requires that obligations to make expenditures from personal funds be included when aggregating such expenditures. 2 U.S.C. 434(a)(6)(B)(ii) (Senate); 2 U.S.C. 441a–1(b)(1)(A)(ii) (House of Representatives). Thus, 11 CFR 400.4(a)(4) states that any obligation to make an expenditure from personal funds that is legally enforceable against the candidate falls within the definition of ''expenditure from personal funds.''

BCRA does not define when an expenditure from personal funds is considered to be made. The Commission, in 11 CFR 400.4(b), defines when an expenditure from personal funds will be considered made for purposes of 11 CFR part 400. Paragraph (b) states that an expenditure is considered made on the date the funds are deposited into the bank account designated by the candidate's authorized committee as the campaign depository, on the date the instrument transferring the funds is signed, or on the date the contract obligating the personal funds is executed, whichever date is earlier. Accordingly, contributions or loans made by the candidate to his or her authorized committee or loans made by any person but secured or guaranteed with the candidate's personal funds will be considered made on the date the loaned funds are deposited into the authorized committee's bank account or, in the case of a loan from a third party secured by the candidate's personal funds, the date the contract obligating the candidate's personal funds was signed, whichever date is earlier. In the situation where a candidate makes direct expenditures on behalf of his or her authorized committee, the expenditure will be considered to have been made on the date he or she signed the check or other instrument conveying the funds or signed a contract obligating his or her personal funds in connection with the direct expenditure. Evidence of expenditures will be receipts, cancelled checks, and signed contracts and such documents must be maintained under the recordkeeping provisions of 11 CFR 102.9.

5. 11 CFR 400.5 Definition of ''Applicable Limit''

The Senate provisions of the Millionaires'' Amendment use the term ''applicable limit.'' 2 U.S.C. 441a(i)(1)(A). This means the amount limitation on contributions to candidates by persons other than multicandidate committees in 2 U.S.C. 441a(a)(1)(A) that is modified by the operation of the Millionaires' Amendment. Although the House of Representatives version does not use the term ''applicable limit,'' it also operates to increase the 2 U.S.C. 441a(a)(1)(A) limits for individuals. 2 U.S.C. 441a–1(a)(1)(A). Accordingly, new 11 CFR 400.5 defines ''applicable limit'' by linking the term to the contribution limitation in 11 CFR 110.1(b)(1), which implements 2 U.S.C. 441a(a)(1)(A). The Commission notes this applicable limit will most likely change every two years due to the indexing of the applicable limit for inflation under 2 U.S.C. 441a(c) and 11 CFR 110.1(b)(1). *See* 11 CFR 110.17(b).

6. 11 CFR 400.6 Definition of ''Increased Limit''

The Millionaires'' Amendment, under certain circumstances, allows a candidate certain advantages to respond to expenditures from personal funds by an opposing candidate. One of these advantages is an increase in the amount limitation on contributions to the candidate by individuals. The other advantage is a suspension of the usual limits on coordinated expenditures by national and State political party committees in connection with the general election campaign of the candidate (*see* 11 CFR 109.32(b)). 2 U.S.C. 441a(i)(1)(C) (Senate); 2 U.S.C. 441a–1(a)(1) (House of Representatives). This suspension of the coordinated expenditure limits applies to *any*

coordinated spending authority either of these party committees may assign to another party committee, such as a Congressional campaign committee or a district or local party committee, under 11 CFR 109.33.

New 11 CFR 400.6 defines ''increased limit'' to mean an amount limitation on contributions from individuals that exceed the applicable limit (*see* Explanation and Justification for new 11 CFR 400.5, above) in 11 CFR 110.1(b). It is important to note that under the Millionaires' Amendment the amount limitations for contributions from persons other than individuals (political committees, multicandidate political committees (PACs), partnerships, limited liability corporations, Indian tribes, etc.) to candidates do not increase.

New 11 CFR 400.6 also includes within the definition of ''increased limit'' the suspension of party expenditure limits, where applicable. The Commission notes that nothing in the Millionaires' Amendment changes the restrictions on coordinated party expenditures in 11 CFR 109.35.

7. 11 CFR 400.7 Definition of ''Contribution That Exceeds the Applicable Limit''

The Millionaires' Amendment provides that, in certain circumstances, an individual may contribute more to a candidate than otherwise allowed under 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(b). The limits in 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(b) are defined as the ''applicable limit'' in new 11 CFR part 400. *See* Explanation and Justification for new 11 CFR 400.5, above. New 11 CFR 400.7 defines ''contribution that exceeds the applicable limit'' as the difference between the contribution amount and the applicable limit.

Example: A contributor delivered a check for $6,000 to a Senate candidate who had been accepting contributions up to that amount under the increased limits. *See* 2 U.S.C. 441a(i)(1)(C)(i)(I). Because the current applicable limit under 11 CFR 110.1(b)(1) is $2,000, the ''amount of the contribution above the applicable limit'' is $4,000.

8. 11 CFR 400.8 Definition of ''Gross Receipts''

Both the Senate and House of Representatives provisions of the Millionaires' Amendment take into account any overall fundraising advantage that a candidate may have over his or her opposing candidate before allowing the opposing candidate's expenditures from personal funds to trigger increased limits on contributions to the candidate and unlimited coordinated party expenditures on behalf of the candidate. The candidate's fundraising advantage, if any, is called the ''gross receipts advantage'' in both versions of the Millionaires' Amendment. 2 U.S.C. 441a(i)(1)(E) (Senate); 2 U.S.C. 441a–1(2)(B) (House of Representatives). If the candidate's gross receipts advantage offsets the advantage the opposing candidate derives from the expenditure of his or her personal funds, then the increased contribution limits do not come into play. The Commission's regulations do not define the term ''gross receipts advantage.'' Instead, the Commission has incorporated the calculation of ''gross receipts advantage'' into the formulas for determining the opposition personal funds amount in 11 CFR 400.10 (*see* Explanation and Justification for new 11 CFR 400.10, below).

''Gross receipts'' is not defined in BCRA. New 11 CFR 400.8 defines ''gross receipts'' by reference to an existing reporting regulation already applicable to authorized committees in other contexts, 11 CFR 104.3(a)(3). Section 104.3(a)(3) enumerates the types of receipts that make up the ''total amount of receipts'' and that must be reported by a candidate's principal campaign committee on behalf of all the candidate's authorized committees.[5] This approach has the benefit of relying on rules and concepts already familiar to candidates and authorized committees to implement this part of BCRA.

9. 11 CFR 400.9 Definition of ''Threshold Amount''

Both the Senate and House of Representatives provisions of the Millionaires' Amendment define a ''threshold amount.'' If the opposing candidate's expenditures from personal funds, adjusted for the candidate's expenditures from personal funds and the candidate' gross receipts advantage (*see* Explanation and Justification for new 11 CFR 400.10, below), exceed this threshold amount, or specified multiples of this threshold amount, and other conditions are met, the candidate receives the advantage of increased contribution limits and the lifting of the coordinated party spending limits.

In the Senate provisions, the threshold amount varies from State to State according to a statutory formula called ''State-by-State Competitive and Fair Campaign Formula.'' 2 U.S.C. 441a(i)(1)(B)(i). The formula is the sum of $150,000 plus the product of the ''voting age population'' of the State and $0.04. *Id.*

The interim final rules define ''threshold amount'' in new 11 CFR 400.9. Paragraph (a) applies to Senate elections. It defines threshold amount by restating the ''State-by-State Competitive and Fair Campaign Formula'' from 2 U.S.C. 441a(i)(1)(B)(i). Paragraph (a) also defines ''voting age population'' by reference to new 11 CFR 110.18, which is entitled ''voting age population.'' *See also* former 11 CFR 110.9(d). New 11 CFR 110.18 provides that the term means ''resident population, 18 years of age or older.'' That section also provides that the Commission will assure that this data is published annually in the **Federal Register**. The Commission will also post this data on its website.

Paragraph (b) applies to House of Representatives elections. Because the threshold amount in House of Representatives elections is statutorily fixed at $350,000, paragraph (b) simply restates that amount. 2 U.S.C. 441a–1(a)(1).

10. 11 CFR 400.10 Definition of ''Opposition Personal Funds Amount''

The purpose of the Millionaires' Amendment is to allow a candidate to respond to very large expenditures of personal funds by an opposing candidate. However, the operative provisions of the Millionaires' Amendment are not triggered directly by the opposing candidate's expenditures from personal funds. Instead, the opposing candidate's expenditure of personal funds is measured relative to the candidate's own expenditures from personal funds. For both Senate and House of Representatives elections, the ''opposition personal funds amount'' is the difference between the opponents' expenditures from personal funds and the candidate's own expenditures from personal funds. 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). This provision precludes the operation of the Amendment in a situation where a candidate's own expenditures from personal funds offsets the opponent's expenditures from personal funds.

The opposition personal funds amount is subject to one other factor, called the ''gross receipts advantage.'' 2 U.S.C. 441a(i)(1)(E) (Senate); 2 U.S.C.

[5] Note that certain amounts that qualify as ''expenditures from personal funds'' are reported under 11 CFR 104.3(a)(3), *e.g.*, contributions from candidates under 11 CFR 104.3(a)(3)(ii). However, expenditures from personal funds are expressly excluded from BCRA's definition of ''gross receipts advantage.'' 2 U.S.C. 441a(i)(8)(E) (Senate); 2 U.S.C. 441a–1(a)(2)(B)(ii) (House of Representatives). The Commission has accounted for this in the computation of ''opposition personal funds amount'' in 11 CFR 400.10, below.

441a–1(a)(2)(B) (House of Representatives). As explained in more detail above, if the candidate's overall fundraising advantage, called the ''gross receipts advantage,'' offsets an opposing candidate's expenditures from personal funds, the increased contribution and coordinated party expenditure limits will not be triggered. Given that gross receipts advantage must be taken into account in determining the opposition personal funds amount, the Commission has decided to imbed the factors necessary for calculating gross receipts advantage into the formulas in the regulations for determining the opposition personal funds amount, as explained below.

Accordingly, 11 CFR 400.10 defines ''opposition personal funds amount'' by setting out three mutually exclusive formulas. Only one of the formulas will apply at a given time, depending on the date of the computation. The date of computation is important because Congress, in BCRA, specified two benchmark dates for making the determination of gross receipts advantage: June 30 and December 31 of the year preceding the year in which the general election is held. Before June 30 of the year preceding the year in which the general election is held, gross receipts advantage does not seem to be given effect by the statute. 2 U.S.C. 441a(i)(1)(D)(ii) (Senate); 2 U.S.C. 441a–1(a)(2)(B) (House of Representatives). On or after June 30 of the year preceding the year in which the general election is held, however, gross receipts advantage must be taken into account in determining the opposition personal funds amount.

The Commission notes that, although the statute uses the benchmark dates of June 30 and December 31 of the year preceding the year in which the general election is held for determining gross receipts advantage, the formulas in the Commission's rule for calculating opposition personal funds amount (new 11 CFR 400.10), are framed in terms of the later dates of July 16 of the year preceding the year in which the general election is held and February 1 of the year in which the general election is held, respectively. The reason for this discrepancy is that the disclosure reports containing the necessary information for determining gross receipts advantage as of June 30 and December 31 of the year preceding the year in which the general election is held, the Second Quarterly Report, the Year End Report, and the supplement reports required under new 11 CFR 104.19, are not due until July 15 of the year preceding the year in which the general election is held and January 31 of the year in which the general election is held, respectively. Furthermore, it will not actually be possible to make the necessary calculations until the day after each of those reports is due.

Accordingly, the formulas for calculating the opposition personal funds amount revolve around two important dates: July 16 of the year preceding the year in which the general election is held (the day after the Second Quarterly Report is due) and February 1 of the year in which the general election is held (the day after the Year End Report is due).

The formulas and their respective effective dates are set out in paragraph (a) of new 11 CFR 400.10 using variables that are defined in paragraph (b). The first term is the same in each of the formulas: The difference between the expenditures of personal funds by the candidate and the opposing candidates. This is expressed as a formula, ''a – b,'' where ''a'' is the amount of expenditures from personal funds by the opposing candidate and ''b'' is the amount of expenditures from personal funds by the candidate seeking to accept contributions under the increased limits. The difference between the three sets of formulas is how gross receipts advantage is computed. In the formula that applies prior to July 16 of the year before the general election year (paragraph (a)(1)), gross receipts advantage is *not* factored into the formula, as explained above. Thus, during this timeframe, the opposition personal funds amount is simply the difference between the expenditures from personal funds by the candidate and each opposing candidate.

The first of the benchmark dates set by Congress for computing gross receipts advantage is June 30 of the year before the general election year. As explained above, the information necessary for calculating gross receipts advantage as of that date will not be available to the public until July 16 of the year before the general election year. Accordingly, July 16, rather than June 30 of the year before the general election year, marks the beginning date for applicability of the second formula (paragraph (a)(2)).

Paragraph (a)(2) sets out two different formulas (using the terminology of the formula, ''a – b – ((c – d)÷2)'' or ''a – b''). Variable ''c'' is the aggregate amount of the gross receipts of the candidate's authorized committees, minus any contributions by the candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on June 30 of the year preceding the year in which the general election is held. Variable ''d'' is the aggregate amount of the gross receipts of the opposing candidate's authorized committee, minus any contributions by that opposing candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on June 30 of the year preceding the year in which the general election is held.

If the amount for variable ''c'' is greater than the amount for variable ''d,'' then the first of these formulas must be used to determine the opposition personal funds amount (a – b – ((c – d)÷2)). If the reverse is true, however, then the gross receipts advantage is considered to be equal to $0 because BCRA states that the gross receipts advantage is taken into consideration only if the candidate's authorized committee's gross receipts exceed the opposing candidate's authorized committee's gross receipts. 2 U.S.C. 441a(i)(1)(E)(ii) (Senate); 2 U.S.C. 441a–1(a)(2)(B)(ii) (House of Representatives) (''* * * the term 'gross receipts advantage' means the excess, *if any* * * *'') (emphasis added). Thus, the opposition personal funds amount simply equals the difference between the greatest aggregate amount of expenditures from personal funds made by the opposing candidate and the candidate opposing the opposing candidate in the same election (using the terminology of the formulas, ''a – b''). The computation of gross receipts advantage then remains constant until the next statutory benchmark date occurs. It is important to note, however, that the opposition personal funds amount is still subject to change during this time period, depending on changes in the amounts of expenditures from personal funds of the candidates in the same election.

The second of the benchmark dates set by Congress for computing gross receipts advantage is December 31 of the year before the general election year. As explained above, the information necessary for calculating gross receipts advantage as of that date will not be available to the public until February 1 of the general election year. Accordingly, February 1 of the general election year, rather than December 31 of the year before the general election year, marks the beginning date for applicability of the third set of formulas (paragraph (a)(3)).

Like paragraph (a)(2), paragraph (a)(3) sets out two formulas (using the terminology of the formula, ''a – b – ((e – f)÷2)'' or ''a – b''). Variable ''e'' is the aggregate amount of the gross receipts of the candidate's authorized committees, minus any contributions by

the candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on December 31 of the year preceding the year in which the general election is held. Variable ''f'' is the aggregate amount of the gross receipts of the opposing candidate's authorized committee, minus any contributions by that opposing candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on December 31 of the year preceding the year in which the general election is held.

If the amount for variable ''e'' is greater than the amount for variable ''f,'' then the first of these formulas must be used to determine the opposition personal funds amount $(a-b-((e-f)\div 2))$. If the reverse is true, however, then the gross receipts advantage is not taken into consideration, for the same reason stated in the Explanation and Justification for paragraph (a)(2), above, and consequently is equal to $0. The opposition personal funds amount simply equals the difference between the greatest aggregate amount of expenditures from personal funds made by the opposing candidate and the candidate opposing the opposing candidate in the same election (using the terminology of the formulas, ''$a-b$''). The computation of gross receipts advantage then remains constant until the day of the general election. Once again, however, it is important to note that the opposition personal funds amount is still subject to change during this time period, depending on changes in the amounts of expenditures from personal funds of the candidates in the same election.

Notification and Reporting Requirements

1. 11 CFR 400.20 Declaration of Intent

Both the Senate and the House of Representatives versions of the Millionaires' Amendment (2 U.S.C. 434(a)(6)(B)(ii) (Senate) and 441a–1(b)(1)(B) (House of Representatives)) require candidates to file a ''declaration of intent'' within 15 days of becoming a candidate. This declaration must state the amount by which the candidate intends to exceed the threshold amount (*see* Explanation and Justification for new 11 CFR 400.9, above). New 11 CFR 400.20 implements these statutory requirements.

Paragraph (a) sets forth the basic requirements for filing Declarations of Intent, including the 15 day filing deadline. *See* 11 CFR 100.3 for the definition of ''candidate.'' The declaration must be filed with the Commission and with each ''opposing candidate'' as described in 11 CFR 400.3.

Paragraph (b) sets forth the methods of filing for the Senate in paragraph (b)(1) and for the House of Representatives in paragraph (b)(2). Because Senate candidates are exempt from the FECA's electronic filing requirements at 2 U.S.C. 434(a)(11), under paragraph (b)(1), Senate candidates must send a *copy* of their Statement of Candidacy with the declaration to the Commission, *in addition* to their paper filing with the Secretary of the Senate. Candidates will be required to send the copy of their filing to the Commission using either a facsimile machine or as an attachment to an electronic mail message to ensure that it is received within the statutorily required time frame. Additionally, Senate candidates will be required to fax or electronically mail either their FEC Form 2 as an attachment, or the information required in FEC Form 2 by 11 CFR 101.1(a), including the amount by which the they expect to exceed the threshold amount to each opposing candidate.

Under paragraph (b)(2), candidates for the House of Representatives will also be required to include the Declaration of Intent information on their Statement of Candidacy, FEC Form 2. Currently, political committees that exceed, or that have reason to expect to exceed, $50,000 in contributions or expenditures must file electronically. Paragraph (b)(2) requires candidates for the House of Representatives who state on FEC Form 2 that they intend to exceed the threshold amount, as defined in 11 CFR 400.9, to file electronically. This is because the electronic filing threshold in 11 CFR 104.18 ($50,000) is lower than the $350,000 threshold for part 400. By declaring his or her intention to exceed $350,000 in expenditures from personal funds, a House of Representatives candidate is stating that he or she anticipates spending more than seven times the $50,000 electronic filing threshold. Additionally, House of Representatives candidates are required to fax or electronically mail their FEC Form 2 as an attachment, or the information required therein by 11 CFR 101.1(a), including the amount by which they intend to exceed the threshold amount, to each opposing candidate.

With these required methods of filing, the Commission seeks to facilitate the making and receiving of the Declaration of Intent by all candidates. As explained in the discussion of revised § 101.1 above, due to the availability of computers in public libraries and the availability of free electronic mail on several Web sites, the Commission does not believe that requiring the use of electronic mail will pose an undue burden on candidates, especially when weighed against the fact that electronic mail will provide the most rapid manner of notification possible.

2. 11 CFR 400.21 Initial Notification of Expenditures From Personal Funds

BCRA (2 U.S.C. 434(a)(6)(B)(iii) (Senate) and 441a–1(b)(1)(C) (House of Representatives)) requires the filing of an ''initial notification'' of expenditures from personal funds within 24 hours of the time certain threshold amounts of expenditures from candidates' personal funds are exceeded. For Senate candidates, that amount is two times the threshold amount defined in 11 CFR 400.9(a). For House of Representatives candidates, that amount is the threshold amount as defined in 11 CFR 400.9(b). New 11 CFR 400.21 largely tracks the wording of the statute at 2 U.S.C. 434(a)(6)(B)(iii) (Senate) and 441a–1(b)(1)(C) (House of Representatives), with two modifications. First, as discussed in greater detail below (*see* Explanation and Justification for new 11 CFR 400.25), while BCRA seems to require candidates themselves to file initial notifications of expenditures from personal funds, the Commission interprets this to mean that the candidates' principal campaign committees are primarily responsible for these notifications, consistent with their other reporting obligations. Second, as explained in more detail below (*see* Explanation and Justification for new 11 CFR 400.24), FECA requires all original documents filed by Senate candidates' principal campaign committees to be filed with the Secretary of the Senate. Accordingly, paragraph (a) of new 11 CFR 400.21 requires Senate candidates' principal campaign committees to file their original notifications with the Secretary of the Senate and to file copies with other required recipients, including the Commission.

New 11 CFR 400.21 addresses the requirements for the principal campaign committees of Senate candidates in paragraph (a). Paragraph (a) states that Senate candidates' principal campaign committees must notify the Secretary of the Senate, the Commission, and each opposing candidate when making expenditures from personal funds in connection with the election exceeding two times the threshold amount, as defined in 11 CFR 400.9. Paragraph (a) makes clear that such notifications must be received by each required recipient

within 24 hours of when the expenditures are made.

Paragraph (b) of 11 CFR 400.21 contains the requirements for the principal campaign committees of House of Representatives candidates. Paragraph (b) states that House of Representatives candidates' principal campaign committees must notify the Commission, each opposing candidate, and the national party of each opposing candidate when making expenditures from personal funds in connection with the election exceeding the $350,000 threshold amount, as defined in 11 CFR 400.9. Paragraph (b) also makes clear that such notifications must be received by each required recipient within 24 hours of when the expenditures are made. The content and method of filing of initial notification of expenditures from personal funds are discussed below in the Explanation and Justification for new 11 CFR 400.23 and 400.24.

3. 11 CFR 400.22 Additional Notification of Expenditures From Personal Funds

After the initial notification discussed above, BCRA (2 U.S.C. 434(a)(6)(B)(iv) and 441a–1(b)(1)(D)) requires the filing of additional notices each time expenditures from the candidate's personal funds exceed $10,000. Like 11 CFR 400.21, new 11 CFR 400.22 largely tracks the language of the statute, with two modifications. First, as discussed in greater detail below (*see* Explanation and Justification for new 11 CFR 400.25), while BCRA seems to require candidates themselves to file additional notifications of expenditures from personal funds, the Commission interprets this to mean that the candidates' principal campaign committees are primarily responsible for these notifications, consistent with their other reporting obligations. Second, as explained in more detail below (*see* Explanation and Justification for new 11 CFR 400.24), FECA requires all original documents filed by Senate candidates' principal campaign committees to be filed with the Secretary of the Senate. Accordingly, paragraph (a) of new 11 CFR 400.22 requires Senate candidates' principal campaign committees to file their original notifications with the Secretary of the Senate and to file copies with other required recipients.

New 11 CFR 400.22 addresses the requirements for the principal campaign committees of Senate candidates in paragraph (a). Paragraph (a) states that Senate candidates' principal campaign committees must notify the Secretary of the Senate, the Commission, and each opposing candidate when making additional expenditures from personal funds in connection with the election exceeding $10,000. Paragraph (a) makes clear that such notifications must be received by each required recipient within 24 hours of when the expenditures are made.

Paragraph (b) of 11 CFR 400.22 contains the requirements for the principal campaign committees of House of Representatives candidates. Paragraph (b) states that House of Representatives candidates' principal campaign committees must notify the Commission, each opposing candidate, and the national party of each opposing candidate when making additional expenditures from personal funds in connection with the election exceeding $10,000. Paragraph (b) also makes clear that such notifications must be received by each required recipient within 24 hours of when the expenditures are made. The content and method of filing of additional notifications of expenditures from personal funds are discussed below in the Explanation and Justification for new 11 CFR 400.23 and 400.24.

4. 11 CFR 400.23 Contents of Notifications of Expenditures From Personal Funds

The Millionaires' Amendment at 2 U.S.C. 434(a)(6)(B)(v) (Senate) and 441a–1(b)(1)(E) (House of Representatives) specifically sets forth the contents of the initial and additional notifications discussed above. BCRA requires that the initial and each additional notification contain the following information: (1) The name and office sought by the candidate making the expenditures from personal funds, (2) the date and amount of each such expenditure, and (3) the total amount of expenditures from personal funds that the candidate has made in connection with the election from the beginning of the election cycle to the date of the expenditure that, when aggregated with all others, exceed the $10,000 threshold, thereby triggering the additional notification requirement. The interim final rule in 11 CFR 400.23 largely tracks the notification requirements of the statute.

While new 11 CFR 400.23(c) requires candidates and their authorized committees to provide information regarding the date and amount of each expenditure from personal funds, the Commission has included language in paragraph (c) to make it clear that the candidate's principal campaign committee is not required to supply such detailed information regarding each expenditure from personal funds more than once.

Example: Candidate X, a candidate for the House of Representatives, spends $200,000 from personal funds in connection with his election campaign on April 1 and another $200,000 on April 10. On April 11, within 24 hours of triggering the $350,000 threshold, Candidate X's principal campaign committee files an initial notification of expenditures from personal funds pursuant to 11 CFR 400.21, on which the committee provides the dates and amounts of all expenditures from personal funds to date, namely the expenditure of $200,000 on April 1 and the subsequent expenditure of $200,000 on April 10. On April 12, Candidate X spends an additional $15,000 from personal funds. On April 13, within 24 hours, Candidate X's principal campaign committee files an additional notification of expenditures from personal funds as required by 11 CFR 400.22. On the April 13 additional notification, Candidate X's principal campaign committee would provide the date and amount of the $15,000 expenditure and would report the total aggregate amount of expenditures from personal funds as $415,000 ($200,000 + $200,000 + $15,000). Candidate X's principal campaign committee would not be required to report the date and amount of the two $200,000 expenditures on the April 13 additional notification because details regarding those expenditures were already provided in the initial notification of expenditures from personal funds that the committee filed on April 11.

5. 11 CFR 400.24 Methods of Filing Notifications

BCRA does not specify methods of filing the initial and additional Notifications of Expenditures from Personal Funds. New 11 CFR 400.24 addresses methods of filing. Paragraph (a) contains the requirements for Senate candidates and paragraph (b) contains the requirements for House of Representatives candidates. As discussed in greater detail below (*see* Explanation and Justification for 11 CFR 400.25), while BCRA could be interpreted to require candidates themselves to file initial and additional notifications of expenditures from personal funds, the Commission concludes that the primary reporting obligation should reside with the candidates' principal campaign committees, although candidates must ensure that their principal campaign committees comply with this obligation.

Although 2 U.S.C. 434(a)(6) does not specifically require Senate candidates to file their initial and additional notifications of expenditures from personal funds with the Secretary of the Senate, 2 U.S.C. 432(g)(1), which was not amended by BCRA, states that all reports required to be filed by Senate candidates under the FECA must be filed with the Secretary of the Senate. Accordingly, paragraph (a) of 11 CFR 400.24 requires Senate candidates'

principal campaign committees to file their initial and additional notifications of expenditures from personal funds with the Secretary of the Senate on FEC Form 10. Paragraph (a) also requires Senate candidates' principal campaign committees to send a copy of FEC Form 10 by either facsimile machine or electronic mail or to send an electronic mail containing the information required by 11 CFR 400.23 to the Commission and to each opposing candidate. Although Senate candidates are exempt from the FECA's electronic filing requirements, the Commission is requiring their principal campaign committees to send this time-sensitive information regarding their expenditures from personal funds by facsimile machine or electronic mail in order to provide the most rapid notification possible.

Paragraph (b) of 11 CFR 400.24 requires certain methods of filing for House of Representatives candidates. As noted above, House of Representatives candidates are subject to the electronic filing requirements of 2 U.S.C. 434(a)(11). Therefore, whereas Senate candidates' principal campaign committees must send their notifications to the Commission by facsimile machine or by electronic mail, House of Representatives candidates' principal campaign committees must electronically file FEC Form 10 as they would any other report using the Commission's electronic filing system. This is because House of Representatives candidates who exceed the threshold amount in 11 CFR 400.10(b) will be well over the $50,000 electronic filing threshold. Additionally, House of Representatives candidates' principal campaign committees will be required to send their FEC Form 10 via facsimile or as an attachment to an electronic mail message, or to send an electronic mail message containing the information required in new 11 CFR 400.23 to each opposing candidate as well as to the national party committees of each opposing candidate.

Although 11 CFR 400.21 and 400.22 require candidates to file the initial notification of expenditures from personal funds and additional notification of expenditures from personal funds with their opposing candidates, they may not be able to do so because they are unable to obtain the phone number of the facsimile machine or the electronic mail address of one or more of their opposing candidates' principal campaign committees. This may be because the opposing candidate's principal campaign committee failed to supply that information in its Statement of Organization. The Commission seeks comment on whether it should waive these notification to opposing candidates requirements where the opposing candidate's authorized committee does not report the phone number for its facsimile machine or its electronic mail address on FEC Form 1, the Statement of Organization.

6. 11 CFR 400.25 Reporting Obligations of Candidates and Candidates' Principal Campaign Committees

The Commission notes that BCRA states that *candidates* are required to file various notifications under the Millionaires' Amendments. For example, BCRA requires candidates to file initial notifications of expenditures from personal funds (2 U.S.C. 434(a)(6)(B)(iii) and 441a-1(b)(1)(C)) and additional notifications of expenditures from personal funds (2 U.S.C. 434(a)(6)(B)(iv) and 441a-1(b)(1)(D)). In the case of notifications of the disposal of excess contributions (2 U.S.C. 441a(i)(3) and 441a-1(a)(4)), either the candidates or their authorized committees must file the notifications. These reporting obligations are similar in nature and extent to other reporting requirements in FECA. Accordingly, the Commission has decided to implement these new reporting requirements in a manner consistent with the way in which other reporting requirements operate under 2 U.S.C. 434 and 11 CFR part 104.

Under FECA, political committees, including candidates' authorized political committees and principal campaign committees, are required to file regularly scheduled reports of receipts and disbursements. *See* 11 CFR 104.3. Although the obligation to file the reports rests with political committees, it is the committees' treasurers who are liable if their committees fail to file the required reports. *See* 11 CFR 104.1(a). Consequently, the Commission is taking a similar approach to the reporting requirements under the Millionaires' Amendment. While the Commission's regulations implementing the new reporting provisions state that candidates' principal campaign committees are required to file the required reports and notifications (*see* 11 CFR 400.21, 400.22, 400.24, and 400.54, below), candidates are responsible for ensuring that their principal campaign committees meet these new disclosure obligations under new 11 CFR 400.25. The Commission seeks comment on whether holding candidates personally liable for violations of the reporting requirements under subpart B of part 400 is consistent with Congressional intent.

Determining When the Increased Limits Apply

The Millionaires' Amendment prescribes rules for calculating the amounts of the increased limits to allow response to expenditures from personal funds by an opposing candidate, and also for determining when these increased limits do and do not apply. New 11 CFR part 400, subpart C implements the Millionaires' Amendment provisions concerning when a candidate may and must not accept contributions from individuals under the increased limits and when a national or State political party political party committee may and must not make coordinated party expenditures exceeding the limits in 2 U.S.C. 441a(d). New subpart D of part 400 covers the procedures for calculating the increased limits.

1. 11 CFR 400.30 Receipt of Notification of Opposing Candidate's Expenditures From Personal Funds

Paragraph (a) of new 11 CFR 400.30 clarifies that the section applies to both Senate races and House of Representatives races.

Paragraph (b) sets the conditions under which a candidate may accept contributions above the applicable limit, while paragraph (c) sets the conditions under which certain political party committees may make unlimited coordinated party expenditures on behalf of the candidate. There are several conditions that must be satisfied before a candidate may accept contributions above the applicable limit (*see* 11 CFR 400.5) pursuant to the increased contribution limits (*see* 11 CFR 400.6), and before a national or State political party committee may make unlimited coordinated party expenditures on behalf of the candidate in the general election. The first of these conditions is that the candidate must receive certain notification from the opposing candidate. 2 U.S.C. 441a(i)(2)(A)(i) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(i) (House of Representatives). This condition is implemented in new 11 CFR 400.30.

There seems to be an inconsistency in the statute between the notification that the opposing candidate must give, and the notification that the candidate must receive. In both the Senate and the House of Representatives versions, the opposing candidate must give notifications in terms of his or her ''expenditures from personal funds.'' 2 U.S.C. 434(a)(6)(B)(ii) through (v) (Senate); 2 U.S.C. 441a–1(b)(1)(B)

through (E) (House of Representatives). The candidate must, however, receive notification of the ''opposition personal funds amount.'' 2 U.S.C. 441a(i)(2)(A)(i) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(i) (House of Representatives). The terms ''expenditure from personal funds'' and ''opposition personal funds amount'' mean different things in the Millionaires' Amendment. *See* 11 CFR 400.4 and 400.10, respectively.

New 11 CFR 400.30 reconciles these provisions by interpreting the reference to ''opposition personal funds amount'' in 2 U.S.C. 441a(i)(2)(A)(i) (Senate) and 2 U.S.C. 441a–1(a)(3)(A)(i) (House of Representatives) to mean ''expenditure from personal funds.'' Thus, paragraph (b) of new 11 CFR 400.30 provides that a candidate must not accept, pursuant to this part, any contribution above the applicable limits (*see* 11 CFR 400.5) until the candidate has received the initial notification of an opposing candidate's expenditures from personal funds, as defined in new 11 CFR 400.4.

Although this regulatory interpretation diverges to some extent from the wording of 2 U.S.C. 441a(i)(2)(A)(i) (Senate) and 441a–1(a)(3)(A)(i) (House of Representatives), this interpretation harmonizes the statutory scheme by reconciling the nature of the notification that the opposing candidate must give with the nature of notification that the candidate must receive. This interpretation also makes sense when one considers that the self-financed candidate is not able to calculate the opposition personal funds amount in order to give notification of this amount to the candidate in the initial notification. To calculate the opposition personal funds amount, one must have data from both candidates (*i.e.*, about expenditures from personal funds by both candidates). *See* 11 CFR 400.10. The purpose of the notification requirements in the statute seems to be to provide the candidate with all the data necessary to calculate the opposition personal funds amount. The regulatory interpretation in paragraph (b) of new 11 CFR 400.30 thus accomplishes the apparent purpose of the statute.

Under the Millionaires' Amendment, one of the advantages that may be granted to a candidate to allow response to expenditures from personal funds by the opposing candidate is unlimited coordinated party expenditures on the candidate's behalf. *See* 2 U.S.C. 441a(i)(1)(C)(iii)(III) (Senate); 2 U.S.C. 441a–1(a)(1)(C) (House of Representatives). Paragraph (c) of new 11 CFR 400.30 applies to national and State committees of a political party (including Congressional campaign committees), and makes it clear that such party committees may not make unlimited coordinated party expenditures on behalf of a candidate until that candidate has received the initial notification.

The Commission is aware that, under some circumstances, candidates, authorized committees, and party committees may not actually receive initial and additional notifications sent by opposing candidates in a timely manner due to technological difficulties, faulty equipment, or other reasons. To enable candidates and authorized committees to accept contributions and party committees to make coordinated expenditures under the increased limits as soon as possible once expenditures from personal funds above the threshold amount have been made, the Commission is adding the concept of ''constructive notification'' to paragraphs (b) and (c) of 11 CFR 400.30. Under paragraph (d), a candidate, authorized committee, or party committee is considered to have received constructive notice of the filing of an opposing candidate's initial or addition notification of expenditures from personal funds when they obtain a copy of such notification that is received by the Commission.

2. 11 CFR 400.31 Preventing Disproportionate Advantage Resulting From Increased Contribution and Coordinated Party Expenditure Limits

Congress placed several checks on the operation of the Millionaires' Amendment. Among these checks is the so-called ''proportionality provision.'' 147 Cong. Rec. S2538 (daily ed. March 20, 2001) (Sen. DeWine). The proportionality provision ensures that the advantages of the increased contribution and coordinated party spending limits allowed to the candidate facing a self-financed opponent do not tip the scales disproportionately in favor of the candidate enjoying the increased limits. 2 U.S.C. 441a(i)(2)(A)(ii) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(ii) (House of Representatives). New 11 CFR 400.31 implements the statutory proportionality provision.

The proportionality provision requires a candidate and his or her authorized committee that accepts contributions under the increased limits, and a political party committee that makes coordinated party expenditures on behalf of the candidate under the increased limits, to monitor a certain proportion. The numerator of the proportion is the running total of contributions previously accepted and coordinated party expenditures previously made under the increased limits. The denominator of the proportion is the opposition personal funds amount. 2 U.S.C. 441a(i)(2)(A)(ii) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(ii) (House of Representatives).

In the Senate version of the proportionality provision, a candidate and his or her authorized committee must not accept a contribution ''to the extent'' the contribution causes the proportion to exceed 110 percent. Similarly, a national or State political party committee must not make a coordinated party expenditure on behalf of the candidate ''to the extent'' that the expenditure causes the proportion to exceed 110 percent. 2 U.S.C. 441a(i)(2)(A)(ii). The House of Representatives version operates in an almost identical manner. The only difference in the House of Representatives version is that the proportion must not exceed 100 percent. 2 U.S.C. 441a–1(a)(3)(A)(ii).

Thus, the effect of the proportionality provision on the increased individual contribution limits is to cause the contribution limits to revert to the applicable limit in 11 CFR 110.1(b)(1) from the increased limits specified by the Millionaires' Amendment once the advantages of the increased limits reach a specified level that is disproportionate to the opposing candidate's expenditures from personal funds. Similarly, the effect of the proportionality provision on the suspension of coordinated party expenditure limits is to reintroduce the limit on national and State coordinated party expenditures in 11 CFR 109.32(b) when the advantages of the increased coordinated spending limits also become disproportionate.

Paragraph (a) of new 11 CFR 400.31 clarifies that the proportionality provision applies to both Senate and House of Representatives elections. Paragraph (b) identifies those who have responsibilities under the proportionality provision: Any candidate and his or her authorized committee that accepts contributions under the increased limits, and any party committee that makes coordinated party expenditures on behalf of such a candidate under the increased limits. The Commission seeks comment on whether holding candidates personally liable for violations of 11 CFR 400.31 is consistent with Congressional intent.

Paragraph (c) sets out the information that must be monitored by the candidates and authorized committees that accept contributions from individuals under the increased coordinated spending limits, and the party committees that make coordinated

party expenditures on behalf of candidates under the increased limits. This information consists of the three elements necessary to compute the proportion required by the statute: (1) The aggregate amount of contributions previously accepted by the candidate under the increased limits (paragraph (c)(1)); (2) the aggregate amount of coordinated party expenditures in connection with the general election campaign of the candidate previously made by any political party committee under the increased limits (paragraph (c)(2)); and (3) the opposition personal funds amount (paragraph (c)(3)).

Paragraph (d) of 11 CFR 400.31 applies to Senate elections. Paragraph (d)(1)(i) provides that a candidate must not accept that part of a contribution that exceeds the applicable limit (*see* 11 CFR 400.7) if the contribution would cause the proportion to exceed 110%. Note that, under this circumstance, the candidate would be able to accept that part of the contribution up to the applicable limit. This would be so because, even if the increased limits do not apply because of the proportionality provision, contributions up to the applicable limit are still permitted under 11 CFR 110.1(b).

Example: A contributor who had made no prior contributions delivered a check for $6,000 to a Senate candidate who had been accepting contributions up to that amount under the increased limits. *See* 2 U.S.C. 441a(i)(1)(C)(i)(I). The candidate determines that accepting the entire amount of the contribution would cause the proportion of the sum of the contributions previously accepted under the increased individual limits, plus coordinated party expenditures previously made under the increased limits, to the opposition personal funds amount to exceed 110%. Therefore, the candidate may accept the first $2,000 of the contribution, but not the amount above that.

Paragraph (d)(1)(ii) states that the candidate or the candidate's authorized committee has an affirmative duty to notify the national and State committees of their political party and the Commission, by facsimile machine or electronic mail, within 24 hours of when the aggregate amounts described in 11 CFR 400.31(c)(1) plus the aggregate amounts described in 11 CFR 400.31(c)(2) equals 110 percent of the opposition personal funds amount. The purpose of this requirement is to ensure that national and State committees of the candidate's political party and the Commission are put on notice that the committees may no longer make coordinated party expenditures in connection with the candidate's general election campaign that exceed the ordinary expenditure limitations in 11 CFR 109.32(b).

Paragraph (d)(2) prohibits national and State committees of political parties from making coordinated party expenditures in excess of the expenditure limits in 11 CFR 109.32(b) in connection with a candidate's general election campaign when the sum of the aggregate amounts described in 11 CFR 400.31(c)(1) and the aggregate amounts described in 11 CFR 400.31(c)(2) reach the proportionality provision threshold. Again, as provided in the statute, the obligation is on the party committee not to make any coordinated party expenditures pursuant to the increased limits if the amount of that expenditure would cause the proportion of the sum of the contributions previously accepted under the increased limits, plus coordinated party expenditures previously made under the increased limits, to the opposition personal funds amount to exceed 110%.

Paragraphs (e)(1) and (e)(2) operate analogously to paragraphs (d)(1) and (d)(2), respectively, in the context of House of Representatives elections. It is important to note that, like their Senate counterparts, candidates for the House of Representatives or their authorized committees have an affirmative duty, under 11 CFR 400.31(e)(2)(B), to notify the national and State committees of their political party and the Commission, by facsimile machine or electronic mail, within 24 hours of when the aggregate amounts described in 11 CFR 400.31(c)(1) plus the aggregate amounts described in 11 CFR 400.31(c)(2) reach the proportionality provision threshold. In House of Representatives elections, however, the proportionality provision threshold is 100 percent of the opposition personal funds amount, not 110 percent, as in Senate elections.

3. 11 CFR 400.32 Effect of the Withdrawal of an Opposing Candidate

One of the checks placed on the operation of the Millionaires' Amendment by Congress comes into play when a candidate, whose expenditures of personal funds has triggered increased limits for another candidate, ceases to be a candidate. 2 U.S.C. 441a(i)(2)(B) (Senate); 2 U.S.C. 441a-1(a)(3)(B) (House of Representatives). 11 CFR 400.32 implements these provisions of the Millionaires' Amendment.

Paragraph (a)(1) clarifies that this new rule applies to both Senate and House of Representatives elections. Paragraph (a)(2) sets out the conditions under which the section operates. It is critical to determine when a candidate ''ceases to be a candidate'' within the meaning of the statute. To this end, paragraph (a)(2) of new 11 CFR 400.32 follows the approach of existing 11 CFR 110.3(c)(4)(iv), which defines when a candidate ceases to be a candidate for purposes of certain other contribution limits in the Act. This may occur, for example, when a candidate publicly withdraws from the race, or fails to file by the filing date specified in State law, or fails to qualify for a run-off election under State law.

Paragraph (b) of 11 CFR 400.32 applies to candidates and their authorized committees. It provides that candidates must not accept contributions under the increased individual contribution limits after the opposing candidate, whose expenditures from personal funds triggered the increased limits, ceases to be a candidate. Paragraph (c) applies to national and State political party committees. It provides that such committees must not make any coordinated party expenditures under the increased spending limits after the opposing candidate, whose expenditures from personal funds triggered the increased limits, ceases to be a candidate. Given that the events triggering the end of both the increased contribution limits and unrestricted coordinated party expenditures are matters of public knowledge, the opposing candidate need not provide notification of these events to any candidate or political party committee, as all candidates and party committees will be deemed to have constructive knowledge of these events.

4. Additional Reporting Issue

The Commission seeks comment on whether candidates and authorized committees that are entitled to accept contributions under the increased limits pursuant to 11 CFR part 400 should be required, at regular intervals (such as daily or weekly), to notify the Commission, of the opposition personal funds amount, the aggregate amount of contributions received to date under the increased limits, and the aggregate coordinated party expenditures made to date in connection with their campaign for election.

5. Additional Issue Regarding Repayment of Outstanding Debts to Vendors

The Commission seeks comments on the following issue. An authorized committee of a candidate that is opposing a self-financed candidate incurs debts to vendors in anticipation of being able to raise contributions above the applicable limit under 11 CFR

part 400 because the self-financed candidate's expenditures from personal funds allow the authorized committee to accept contributions under the increased limit. After the self-financed candidate ceases to be a candidate, either because the candidate has withdrawn from the campaign or the election has taken place, should the authorized committee be able to continue to raise funds under the increased limits to pay off the outstanding debts?

Calculating the Increased Limits

The rules in new subpart C of part 400 address the determination as to when, if ever, a candidate for the House of Representatives or Senate may accept contributions under the increased limits, and when, if ever, a political party committee may make coordinated party expenditures on behalf of the candidate under the increased limits. The regulations in subpart D go to determining the amounts of the increased limits.

Under 2 U.S.C. 441a(i) (Senate) and 2 U.S.C. 441a–1 (House of Representatives), when the relevant thresholds are triggered the contribution limit in 2 U.S.C. 441a(a)(1)(A) is increased. The Commission notes that 2 U.S.C. 441a(a)(1)(A) applies to *all* persons and is not limited to individuals. The Commission has decided to limit the increased contribution limit to individuals, however, based on the titles given to the Millionaires' Amendment provisions in BCRA and on the legislative history of the Millionaires' Amendment. *See, e.g.,* BCRA Secs. 304 and 319 (entitled ''Modification of *individual* contribution limits in response to expenditures from personal funds'' and ''Modification of *individual* contribution limits for House candidates in response to expenditures from personal funds,'' respectively) (emphasis added)); 147 CR S2537 (daily ed. Mar. 20, 2001) (statement of Sen. Domenici); 147 CR S2538 (daily ed. Mar. 20, 2001) (statement of Sen. DeWine) (explaining effect of triggering threshold amount on *individual* contribution limits). The Commission seeks public comment, however, on whether, despite provisions' titles in BCRA and the legislative history of the Millionaires' Amendment, the Commission should expand the availability of the increased contribution limit to include all persons and not only individuals.

1. 11 CFR 400.40 Calculating the Increased Limits for Senate Elections

Although the Senate and House of Representatives versions of the Millionaires' Amendment are similar in many respects, they differ in the amounts of the increased limits once those increased limits are triggered. 11 CFR 400.40 implements the increased limits for Senate elections. (11 CFR 400.41, below, implements the increased limits for House of Representatives elections.) Paragraph (a) of 11 CFR 400.40 states that the section applies to Senate elections.

Paragraph (b) states conditions on the operation of the increased limits as calculated under this section. Paragraph (b)(1) cross-references the conditions and restrictions in new subpart C. Paragraph (b)(2) clarifies that the amount limitations on contributions by persons other than multicandidate political committees under the increased limits are indexed for inflation, just as are the underlying applicable limits in 2 U.S.C. 441a(a)(1)(A) on which they are based. *See* 2 U.S.C. 441a(c).

Paragraph (c) outlines the procedure for calculating the increased contribution and coordinated party expenditure limits. Paragraph (c)(1) cross-references 11 CFR 400.10 and instructs the calculator to determine the opposition personal funds amount. Paragraph (c)(2) cross-references 11 CFR 110.18 and directs the calculator to determine the voting age population (''VAP'') of the candidate's State. Once those numbers have been determined, paragraph (c)(3) directs the calculator to a table containing formulas for computing the applicable increased contribution and coordinated party expenditure limits.

While the formulas in the table in paragraph (c)(3) may appear to differ from those provided in the statute, the resulting calculations are the same. If the Commission were to simply incorporate the language of the statutory formulas into the table, those seeking to calculate the increased limits would first have to perform a separate calculation to determine the relevant threshold amount before they would be able to make use of the formulas in the table. The Commission has determined that it is preferable to provide a table that synthesizes all of the calculations of the relevant thresholds needed to determine the increased contribution limits in one place.

2. 11 CFR 400.41 Calculating the Increased Limits for House of Representatives Elections

Unlike the increased limits in Senate elections, which vary according to increasing level of expenditures from personal funds by the opposing candidate, the increased limits in House of Representatives elections are fixed. If the opposing candidate's expenditures from personal funds cause the opposition personal funds amount to exceed the threshold amount, $350,000, a single set of increased limits is triggered. 2 U.S.C. 441a–1(a)(1)(A)–(C). 11 CFR 400.41 implements these increased limits.

Paragraph (a) clarifies that the section applies to House of Representatives elections. Paragraph (b) states the increased limits. Paragraph (b)(1) sets the increased contribution limit for individuals at $6,000, *i.e.,* three times the applicable limit in 2 U.S.C. 441a(a)(1)(A). 2 U.S.C. 441a–1(a)(1)(A). Paragraph (b)(2) states that the limit on coordinated party expenditures in 11 CFR 109.32(b) does not apply. 2 U.S.C. 441a–1(a)(1)(B).

3. 11 CFR 400.42 Effect of Increased Limits on the Aggregate Contribution Limits for Individuals

Under the Act, an individual may not contribute, in the aggregate, more than $37,500 to candidates and their authorized committees during the period which runs from January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year. 2 U.S.C. 441a(a)(3)(A). Both the Senate and House of Representatives versions of the Millionaires' Amendment provide, however, that contributions made under the increased limits do not count against the aggregate contribution limit in section 441a(a)(3)(A). 2 U.S.C. 441a(i)(1)(C)(i)(II), 2 U.S.C. 441a(i)(1)(C)(ii)(II) (Senate); 2 U.S.C. 441a–1(a)(1)(B). New 11 CFR 400.42 implements these statutory provisions.

Paragraph (a) clarifies that this section applies to all elections covered by the part, that is, both Senate and House of Representatives elections.

Both the Senate and the House of Representatives provisions of the Millionaires' Amendment provide that the 2 U.S.C. 441a(a)(3) aggregate contribution limit ''shall not apply with respect to any contribution made with respect to a candidate'' if such contribution is lawfully made under the increased limits. 2 U.S.C. 441a(i)(1)(C)(i)(II), 2 U.S.C. 441a(i)(1)(C)(ii)(II) (Senate); 2 U.S.C. 441a-1(a)(1)(B) (House of

Representatives). The Commission is interpreting these provisions to mean that the amount of the contribution that exceeds the individual contribution limit in 11 CFR 110.1 does not count when aggregating contributions for purposes of 11 CFR 110.5, taking into account previous contributions made during the election cycle. New 11 CFR 400.5 allows an individual to include only the first $2,000 he or she contributes, regardless of whether it was a prior contribution or part of a contribution accepted under the increased limit, in the biannual aggregate contribution limit.

Example: In 2004, the contribution limit under 11 CFR 110.1 is $2,000. Contributor X contributes $1,500 to Candidate Y in April for the general election. Because Candidate Y is opposing a self-financed candidate, she can accept up to $6,000 under the increased limit. After learning this, Contributor X contributes an additional $3,000 to Candidate Y's campaign in May for the general election. Under 11 CFR 400.5, Contributor X should count the initial $1,500 contribution and $500 of the subsequent contribution towards the biannual aggregate limit. The remaining $2,500 of the $3,000 contribution accepted in May should not count towards that limit.

The Commission, however, seeks comment on whether 2 U.S.C. 441a(i)(1)(C) (i)(II) and (ii)(II) (Senate) and 2 U.S.C. 441a–1(a)(1)(B) (House of Representatives) should be interpreted in an alternative manner. Does the plain language of these statutory sections indicate that no part of a contribution accepted under the increased limits counts against the aggregate contribution limit in section 441a(a)(3), regardless of whether the contributor has made prior contributions to the candidate for that election? Under this alternative interpretation, Contributor X in the above example would not include *any* of the $3,000 contribution accepted in May in the biannual aggregate limit.

Paragraph (c) addresses situations where an individual contributor has contributed the maximum permitted under the aggregate biannual contribution limitation for individuals in 11 CFR 110.5, but has not contributed the maximum under the increased limits of 11 CFR part 400. Under this circumstance, a contributor may make contributions that, in the aggregate, do not exceed the applicable increased limit under 11 CFR 400.40(b) or 400.41(b) minus the applicable limit as defined in 11 CFR 400.5.

Example: Between January 1, 2003 and June 30, 2004, Contributor X has already contributed $37,500 to various candidates including $1,000 to Candidate Y. On July 10, 2004, Candidate Y determined that she could accept up to $6,000 under 11 CFR 400.40(b)(3) and solicited Contributor X for a $6,000 contribution. The applicable limit in 2004 is $2,000. Because Contributor X has already reached his aggregate biannual contribution limit, he may contribute up to $4,000 to Candidate Y ($6,000 – $2,000).

Disposal of Excess Contributions

BCRA added two identical provisions to FECA, one for the Senate and one for the House of Representatives, requiring candidates and their authorized committees to refund excess contributions that are not spent in connection with their elections. 2 U.S.C. 441a(i)(3) and 441a–1(a)(4). Subpart E of 11 CFR part 400, implements the requirements of these BCRA provisions.

1. 11 CFR 400.50 Definition of ''Excess Contributions''

The first section in subpart E defines the term ''excess contributions.'' BCRA describes the term ''excess contributions'' as ''the aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit * * * and not otherwise expended in connection with the election with respect to which such contributions relate * * *.'' 2 U.S.C. 441a(i)(3) (Senate); 2 U.S.C. 441a-1(a)(4) (House of Representatives). By referencing back to the definition of ''increased limit'' in 11 CFR 400.6, the regulatory definition of ''excess contribution'' allows candidates and their authorized committees to exclude the amount of a contribution, when added to previous contributions made by a person, that is less than or equal to the regular contribution limitations of 11 CFR 110.1 from the computation of excess contributions. This allows the candidates and their authorized committees the benefit of contributions that they would have received regardless of whether the increased limit provisions of the Millionaires' Amendment were triggered.

2. 11 CFR 400.51 Relation of Excess Contributions to the Election in Which They Are Made

The purpose of new 11 CFR 400.51 is to make clear that contributions accepted under the increased limit, that are accepted during an election cycle, whether a primary election cycle or a general election cycle, can only be spent for that election. A primary election is treated as an election separate from the general election. Thus, paragraph (a) requires that any excess contributions made during the primary election cycle must be refunded to the original contributor within 50 days of the primary election. Paragraph (b) contains a similar provision for the general election.

Paragraph (c) creates an exception from paragraphs (a) and (b) for run-off elections. Run-off elections will be considered as extensions of the elections that resulted in the run-off elections. Thus, candidates and their authorized committees are able to use contributions made under the increased limit during the applicable election cycle for the run-off election. Refunds of all excess contributions must be made within 50 days of the run-off election.

The Commission seeks comments on whether treating run-off elections as extensions of the elections that resulted in the run-off elections is an appropriate approach. Should the Commission, instead, treat run-off elections as separate elections and require that excess contributions be refunded within 50 days of the applicable primary or general election? Conversely, should the Commission treat the primary, general, and any run-off elections as one election with the refund period being within 50 days of the general election? Under this approach, however, candidates who do not participate in the general election would be required to refund excess contributions within 50 days of the primary election.

3. 11 CFR 400.52 Prohibition Against Redesignation of Excess Contributions

New 11 CFR 400.52 prohibits candidates and their authorized committees from seeking redesignation of contributions made under the increased limits to another election. It also prohibits contributors from redesignating a contribution made under the increased limits once the contribution has been made. The focus of the Millionaires' Amendment is on the fundraising ability of the candidate facing an opposing candidate who is a self-financed. The Commission concludes that nothing in BCRA suggests that once the election is over, the candidate should be able to carry over the benefit of the increased contribution limits into the next election where he or she would be opposing an entirely different candidate. In addition, BCRA (2 U.S.C. 441a(i)(3) and 441a–1(a)(4)) provides for only one method of disposing of excess contributions and that is the refund of the excess contributions to the original contributors, which is incorporated into the interim final rules. Nevertheless, the Commission seeks comments on whether to amend the interim final rules by adding a similar prohibition against reattribution to a joint contributor of a contribution made under the increased limits in accordance with 11 CFR 110.1(k).

4. 11 CFR 400.53 Disposal of Excess Contributions

As stated above, BCRA (2 U.S.C. 441a(i)(3) and 441a–1(a)(4)) requires candidates and their authorized committees to refund excess contributions to the original contributors within 50 days of the election. New 11 CFR 400.53 implements this requirement.

Paragraph (a) states that the candidate's authorized committee must refund the excess contributions to individuals who made contributions to the candidate or the candidate's authorized committee under 11 CFR part 400. This ensures that only those contributors who actually made contributions to the candidate under the increased individual contribution limit provided for by the Millionaires' Amendment may receive refunds. Paragraph (a) also states that the refund to each individual must not exceed that individual's aggregate contributions to the candidate or the candidate's authorized committee for the relevant election cycle. This restriction prohibits authorized committees from refunding more money to an individual than that individual actually contributed.

Paragraph (b) of 11 CFR 400.53 addresses the situation where contributors do not cash, deposit, or otherwise negotiate the refunds checks sent to them under 11 CFR 400.53(a). Authorized committees will be required to disgorge to the United States Treasury an amount equal to the aggregate amount of any refund checks not cashed, deposited, or otherwise negotiated within six months of the date of the refund checks. Authorized committees will be required to disgorge this amount within nine months of the election. This would allow for 50 days after the election to make the refunds and for six months for contributors to cash, deposit, or otherwise negotiate the refund checks with an additional 40 days to determine the disgorgement amount and send the check to the United States Treasury.

5. 11 CFR 400.54 Notification of Disposal of Excess Contributions

BCRA requires that candidates dispose of excess contributions within 50 days of the election. 2 U.S.C. 441a(i)(3) and 441a–1(a)(4) (*See* Explanation and Justification for new 11 CFR 400.50, above.) BCRA also requires that, in the first regular report after the election, the candidate or the authorized committee report the source and amount of each excess contribution and the manner in which the candidate or the authorized committee used such funds. 2 U.S.C. 441a(i)(3) and 441a–1(a)(4). New 11 CFR 400.54 largely tracks the wording of the statute with two modifications. First, rather than requiring that the ''source'' of excess contributions be reported, the new rule requires the ''identification,'' as defined in 11 CFR 100.12, of the contributor of each excess contribution.

The second modification addresses an inconsistency in the statute. While 2 U.S.C. 441a(i)(3) (Senate) and 2 U.S.C. 441a–1(a)(4) (House of Representatives) require that excess contributions be disposed of within 50 days of the election, 2 U.S.C. 434(a)(6)(C) (Senate) and 2 U.S.C. 441a–1(b)(2) (House of Representatives) require that candidates or their authorized committees report the source of each excess contribution and the manner in which it *was used*. Note that the first regular report after a primary election would be the quarterly report for the quarter in which the primary was held, and the first regular report after the general election would be the post-general election report. In the case of a primary election, the next quarterly report may be due *before* the expiration of the 50 day post-election time period for the election in which the candidate who must dispose of excess contributions has run, depending on the date the primary election is held. In the case of a general election, the next regular report after the election, the post-general election report, would most definitely be due *before* the expiration of the 50 day post-election time period for the election in which the candidate who must dispose of excess contributions has run.

To reconcile these two provisions of BCRA, 11 CFR 400.54 requires principal campaign committees to report the identification of the contributors of excess contributions and the manner in which such funds were refunded in the first regular report due *after* the 50 day time for disposing of such funds has expired. For example, in the case of a primary election, the principal campaign committee would have to report the excess contributions and the manner in which they were refunded in the first report that quarterly filers are required to file after the 50-day post-primary time period has elapsed. For example, for a primary on May 31, the principal campaign committee would report the excess funds and the manner in which they were refunded in its third quarterly report rather than its second quarterly report because the 50-day post-primary time period would elapse on July 20, five days after the second quarterly report was due. Thus, the principal campaign committee would report this information with its third quarterly report, due on October 15. Similarly, for the general election, the principal campaign committee would report the excess funds and the manner in which they were refunded not in the post-general report, but rather in the year-end report.

The Commission requests comments on this inconsistency and the Commission's reconciliation, as well as an alternative interpretation. To avoid reading an inconsistency in BCRA, the requirement that authorized committees report the source and amount of excess campaign funds and the manner in which they were ''used'', 2 U.S.C. 434(a)(6)(C) (Senate) and 2 U.S.C. 441a–1(b)(2) (House of Representatives), could be read as requiring the reporting of whether and, if so, to what extent funds raised under the increased contribution limits were spent. Consequently, the Commission seeks comment on a reading of the foregoing statutory provisions that would require an authorized committee taking advantage of the increased contribution limits to identify in the first report following each election the identity of each contributor of a contribution in excess of the normal limits, the aggregate amount raised and how much of that was spent in connection with the election. It is plausible that Congress intended to capture in a single report the identity of all ''excess'' contributors and the extent to which campaign spending was affected by the increased contribution limits. This reading would resolve the conflict between the requirement to dispose of excess contributions within 50 days under 2 U.S.C. 441a(i)(3) (Senate) and 2 U.S.C. 441a–1(a)(4) (House of Representatives) and the reporting of excess contributions, prior to that deadline.

Part 9035—Expenditure Limitations

11 CFR 9035.2 Limitation on Expenditures From Personal or Family Funds

The Commission is changing a cross-reference in 11 CFR 9035.2(c) to the definition of ''personal funds.'' As explained in greater detail above, the Commission is changing the definition of ''personal funds'' in former 11 CFR 110.10 and moving it to 11 CFR 100.33 (*see* Explanation and Justification for former 11 CFR 110.10, above). The new definition of ''personal funds'' in 11 CFR 100.33 applies only to the Commission's rules implementing Title 2 of the U.S. Code, however, and not to the Commission's rules implementing Title 26 of the U.S. Code.

Current 11 CFR 9003.2 includes a definition of ''personal funds'' that is

nearly identical to the definition in former 11 CFR 110.10. Because that definition remains appropriate in the context of the Title 26 regulations, the Commission is adopting the definition of ''personal funds'' in 11 CFR 9003.2 for purposes of 11 CFR 9035.2. Accordingly, rather than changing the cross-reference in 11 CFR 9035.2(c) from former 11 CFR 110.10 to new 11 CFR 100.33, the Commission is changing the cross-reference to the existing Title 26 definition of ''personal funds'' in 11 CFR 9003.2.

Millionaires' Amendment Hypothetical

In an effort to provide a better understanding of the manner in which the various provisions of the Millionaires' Amendment would operate in the context of a primary and general election, the Commission presents the following hypothetical example. All candidates in the following example are fictional and any similarities to past or present candidates or elections for Federal office are purely coincidental. The contribution and coordinated party expenditure limits in the example will probably be different in subsequent years due to indexing for inflation.

Statement of Candidacy

For months, local newspapers had been speculating about the possibility that Frank Rogers, an independently wealthy investment banker from New Franklin was planning to enter the race for the Democratic Party's nomination for the U.S. Senate. Some of Rogers's most ardent supporters had already formed a committee, called the ''Draft Frank Rogers Committee'' and had been soliciting contributions on behalf of his potential candidacy. By February 1, 2003, the Draft Frank Rogers Committee (''Committee'') had received contributions aggregating in excess of $5,000. On February 15, 2003, Rogers received a letter from the Federal Election Commission (''FEC'' or ''Commission'') notifying him of the Committee's efforts on his behalf and informing Rogers that, unless he disavowed the Committee's activities within 30 days of receiving the Commission's notification, the Commission would consider Frank Rogers to be a candidate, under 11 CFR 100.3(a).

On March 3, 2003, Frank Rogers filed a Statement of Candidacy on FEC Form 2 and designated a principal campaign committee by filing a Statement of Organization on FEC Form 1, pursuant to 11 CFR 102.12 and 102.2, respectively. Because Rogers was running for the Senate, he was required to file the original FEC Form 2 and FEC Form 1 with the Secretary of the United States Senate, under 11 CFR 105.2. Rogers noticed that he was also required to send a copy of FEC Form 2 (but not FEC Form 1) to the Commission and to each opposing candidate in the same election, under 11 CFR 400.20.

When he began to fill out the forms, Rogers noticed that they had changed since the last time he had seen them, a year earlier, when he considered but decided against a race for Federal office. In addition to the information Form 2 used to require (name, address, party affiliation, office sought, *etc.*), he was now also required to state a dollar figure representing the amount of his personal funds that he intended to spend on behalf of his campaign in excess of a certain ''threshold amount,'' as defined in 11 CFR 400.9. In addition, the new Form 1 required Rogers' principal campaign committee to provide either its electronic mail address or its facsimile number. Rogers completed Form 1 first and then turned his attention to FEC Form 2.

Rogers retrieved his copy of the Code of Federal Regulations and determined that, for Senate candidates like him, the threshold amount was equal to the sum of $150,000 plus the product of the voting age population of his State (as certified under 11 CFR 110.18) multiplied by $0.04. After looking at 11 CFR 110.18, Rogers realized that, in order to determine the voting age population of New Franklin, he needed to search the **Federal Register** for the most recent voting age population estimate published annually by the Department of Commerce. Considering that the voting age population of New Franklin was listed as 24,800,000, he calculated the threshold amount, as follows:

$150,000 + (24,800,000 × $0.04) = $1,142,000.

Rogers's personal fortune was estimated to be at least $500 million. Frank Rogers had determined that his campaign would need an initial infusion of $7.5 million of his personal funds. Rogers sincerely hoped he would not have to spend any more of his personal funds, but he was willing to spend more if necessary. Thus, on FEC Form 2, Rogers stated his intention to exceed the threshold amount by $6,358,000 ($7,500,000 − $1,142,000 threshold amount). In addition to filing the original FEC Form 2 and FEC Form 1 with the Secretary of the Senate, Rogers faxed a copy of FEC Form 2 to the Commission as required by 11 CFR 400.20. Considering that Rogers was the only candidate in the race at that point, he was not required to fax or e-mail a copy of FEC Form 2 to any opposing candidates.

On March 31, 2003, Arlene Miller announced her intention to oppose Frank Rogers for the Democratic Party's nomination for the U.S. Senate. Although Miller was not nearly as wealthy as Frank Rogers, she stated on her FEC Form 2 that she intended to exceed the threshold amount ($1,142,000) by $1,858,000. This meant that Miller intended to make expenditures from personal funds totaling $3,000,000 ($1,858,000 + $1,142,000 threshold amount). Miller also designated a principal campaign committee on FEC Form 1. Miller filed her original FEC Form 2 and FEC Form 1 with the Secretary of the Senate, faxed a copy of FEC Form 2 to the Commission, and sent an electronic copy of FEC Form 2 to opposing candidate Frank Rogers as an attachment to an e-mail message.

On April 3, 2003, Jim Hyer entered the Democratic primary race. Given his position as Chairman of the New Franklin Democratic Party, Hyer had high name recognition among party activists but almost no money. He was counting on his popularity with the state's Democratic Party activists to carry him to victory in the June 1, 2004, primary election. Within 15 days of becoming a candidate, Hyer filed his original FEC Form 2 and FEC Form 1 with the Secretary of the Senate, and faxed copies of FEC Form 2 to the Commission and to the Rogers and Miller campaigns. On FEC Form 2, Hyer indicated that he did not intend to spend any of his personal funds on the race.

On April 15, 2003, James Rockford, a venture capitalist, announced his intention to seek the Republican Party's nomination for the U.S. Senate. Rockford had made a fortune in the technology boom of the late 1990s (he was worth an estimated $20 billion) and was extremely well known throughout the state for his support of a popular statewide referendum, Proposition 895. At the time that Rockford announced his candidacy, he was the only candidate seeking the Republican Party's nomination. Within 15 days of becoming a candidate, Rockford filed his original FEC Form 2 and FEC Form 1 with the Secretary of the Senate. On FEC Form 2, Rockford stated that he intended to exceed the threshold amount ($1,142,000) by $148,858,000. This meant that Rockford intended to spend $150 million of his personal funds on the race ($148,858,000 = $150,000,000 − $1,142,000 threshold amount). The same day, Rockford

deposited $50 million in his authorized committee's account and filed an initial notification of expenditures from personal funds on FEC Form 10 with the Secretary of the Senate. Given that there were no opposing candidates vying for the Republican nomination, Rockford satisfied his remaining reporting obligations by faxing copies of his FEC Form 2 and FEC Form 10 to the Commission.

Initial Notification of Expenditure From Personal Funds

On April 4, 2003, the day after Hyer entered the race, Rogers immediately pumped $7.5 million of his personal funds into his authorized committee's account. Because $7.5 million was more than two times the threshold amount of $1,142,000, within 24 hours of depositing the funds, Rogers filed an initial notification of expenditures from personal funds on FEC Form 10 with the Secretary of the Senate and faxed a copy of the form to the FEC and to the Miller and Hyer campaigns, as required by 11 CFR 400.21, 400.23, and 400.24.

Miller's campaign received Rogers's notification on April 5, 2003. Miller responded by contributing to her authorized committee $3,000,000. Because a contribution from a candidate to the candidate's authorized committee was considered an expenditure of personal funds under 11 CFR 400.4 and because the total contribution amount ($3,000,000) exceeded two times the threshold amount (2 × $1,142,000 = $2,284,000), within 24 hours of making the loan, Miller was required to file a notification of expenditures from personal funds on FEC Form 10. On April 6, 2003, Miller filed her original FEC Form 10 with the Secretary of the Senate and faxed copies of the form to the Commission and to the Rogers and Hyer campaigns.

Miller was aware that once she received Rogers's initial notification, it was possible for her authorized committee to begin receiving contributions from individuals in excess of the usual $2,000 limit. She scrambled to do the necessary calculations to determine the increased limit. According to the procedure outlined in 11 CFR 400.40, Miller first needed to determine the ''opposition personal funds amount,'' the computation of which is explained at 11 CFR 400.10.

Calculating the Opposition Personal Funds Amount for the Miller Campaign

Miller quickly noticed that there were three different formulas for calculating the opposition personal funds amount and that the appropriate formula depended on the date of calculation. Because the date was April 7, 2003, she determined that the first formula was the correct one to use because April 7, 2003, was prior to July 16 of the year preceding the year in which the general election was to be held. (The general election was scheduled to be held on November 8, 2004.) According to the formula, the opposition personal funds amount on April 6, 2003 was equal to the greatest aggregate amount of expenditures from personal funds made by her opposing candidate (Rogers) minus the greatest aggregate amount of expenditures from personal funds made by her. Thus, as of April 7, 2003, the opposition personal funds amount was $7,500,000 minus $3,000,000, or $4,500,000. Miller notified her national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the Increased Contribution and Coordinated Party Expenditure Limits for the Miller Campaign

Miller returned to the table in 11 CFR 400.10 to continue calculating the increased limit. According to the table, if the opposition personal funds amount ($4,500,000) was greater than the sum of the product of $0.08 times the voting age population of New Franklin (24,800,000) plus $300,000 but less than or equal to the sum of the product of $0.16 times the voting age population of New Franklin (24,800,000) plus $600,000, then her authorized committee may accept three times the ordinary contribution limit of $2,000, or $6,000.

Miller made the following calculations:

($0.08 × 24,800,000) + $300,000 = $2,284,000

($0.16 × 24,800,000) + $600,000 = $4,568,000.

Because the opposition personal funds amount ($4,500,000) was between $2,284,000 and $4,568,000, the increased limit for individual contributions to Miller's authorized committee was $6,000 (three times the ordinary limit). According to the table, Miller's national party committee was also able to make coordinated expenditures on behalf of her campaign in connection with the general election. Miller located a copy of the March 2002 FEC Record, which contained a table showing the coordinated party expenditure limits for 2002 Senate nominees. Miller found the amount for New Franklin, $1,781,136, which represented $0.02 times the voting age population of New Franklin (24,800,000), indexed for inflation. Given that her national and State party committees have a policy of not making coordinated expenditures before the primary election when there are multiple candidates vying for the Democratic Party's nomination, Miller knew that she could not count on any assistance from either committee until the general election.

Calculating the Proportionality Provision Amount for the Miller Campaign

Miller was all set to call her closest supporters to begin soliciting $6,000 checks when she suddenly realized that she and her authorized committee were required, under 11 CFR 400.31 to constantly monitor a certain proportion to make sure that the aggregate amount of contributions made under the increased limit never exceeded 110 percent of the opposition personal funds amount ($4,500,000). Miller made the calculation as follows: 1.10 × $4,500,000 = $4,950,000. She immediately started making calls, realizing that she could accept contributions under the increased limits only until the aggregate amount of such contributions to her campaign equaled $4,950,000.

Calculating the Opposition Personal Funds Amount for the Hyer Campaign

Having received Rogers's initial notification of expenditure from personal funds on April 5, 2003, and Miller's initial notification on April 6, 2003, Hyer set out to determine the increased contribution and coordinated party expenditure limits applicable to his campaign. In order to perform the necessary calculations, Hyer first needed to determine the opposition personal funds amount as of April 5, 2003.

Under 11 CFR 400.10, the opposition personal funds amount prior to June 30 of the year preceding the year in which the general election is held is the difference between the greatest aggregate amount of expenditures from personal funds made by the opposing candidate and the candidate himself in the same election. Hyer considered for a minute which of the three announced Senate candidates, Rogers, Miller, or Rockford, was his ''opposing candidate,'' for purposes of the formula. He quickly ruled out Rockford because he realized that in the primary election cycle, he and Rockford were not seeking the nomination of the same political party.

Of the two remaining candidates, Hyer concluded that the contribution and coordinated expenditure limits would be much higher if Rogers were the opposing candidate. As of April 6, 2003, the aggregate amount of Rogers's

expenditures from personal funds was $7.5 million while the aggregate amount of Miller's expenditures from personal funds was $3 million. Unlike Arlene Miller, Hyer had not yet made any expenditures from personal funds, so the aggregate amount of his expenditures was $0.00. Plugging these numbers into the formula, Hyer calculated the possible opposition personal funds amounts as follows:

Opposing candidate Rogers: $7,500,000 − $0.00 = $7,500,000

Opposing candidate Miller: $3,000,000 − $0.00 = $3,000,000

Thus, Hyer concluded that it would be to his advantage to consider Rogers to be his ''opposing candidate'' for purposes of determining the opposition personal funds amount. According to his calculations, the applicable opposition personal funds amount as of April 6, 2003, was $7.5 million. Hyer notified his national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the Increased Contribution and Coordinated Party Expenditure Limits for the Hyer Campaign

Hyer proceeded to calculate the increased contribution and coordinated party expenditure limits pursuant to the formulas in 11 CFR 400.40. Doing the necessary calculations according to the formulas in the table (illustrated below), Hyer determined that because the opposition personal funds amount ($7,500,000) was between $4,568,000 and $11,420,000, the increased limit for individual contributions to his campaign was $12,000 (six times the applicable limit ($2,000)).

($0.16 × 24,800,000 (VAP of New Franklin)) + $600,000 = $4,568,000

($0.40 × 24,800,000 (VAP of New Franklin)) + $1,500,000 = $11,420,000

Hyer also determined that the increased coordinated party expenditure limit applicable to his campaign was $1,781,136 (the greater of $20,000 or $0.02 times the voting age population of the State of New Franklin (24,800,000), as adjusted for inflation). Like Miller, Hyer was well aware of his party committees' policy of not making coordinated expenditures prior to the date of nomination when there was a contested primary.

Calculating the Proportionality Provision Amount for the Hyer Campaign

Before soliciting $12,000 checks, however, Hyer decided it would be wise to figure out the aggregate amount of contributions his committee could accept under the increased limit before it would become necessary, under 11 CFR 400.31, to refuse that portion of contributions made under the increased limit that exceeded the ordinary limit of $2,000. Given that the opposition personal funds amount as of April 6, 2003, was $7,500,000, Hyer made the following calculation: 1.10 × $7,500,000 = $8,250,000. Hyer began fundraising at once, knowing that he could accept contributions under the increased limits only until the aggregate amount all such contributions received by his campaign equaled $8,250,000.

Additional Notification of Expenditure from Personal Funds

Meanwhile, Frank Rogers was starting to flounder. His campaign had already spent the $7.5 million he had deposited on April 4th plus an additional $1,000,000 in contributions his authorized committee had received to date. He decided that, in order to remain competitive with Miller and Hyer, he had no choice but to commit more of his personal funds to the race. So, on June 30, 2003, Rogers deposited an additional $2,500,000 into his authorized committee's account. Because this expenditure from personal funds exceeded $10,000, within 24 hours of depositing the funds, Rogers was required to file an additional notification of expenditure from personal funds on FEC Form 10, under 11 CFR 400.22. As he did with the initial notification, Rogers filed the original form with the Secretary of the Senate, and faxed copies of the form to the FEC and the Miller and Hyer campaigns. Although this amount was in excess of the amount stated on Roger's FEC Form 2, he was *not* required to amend that form.

Calculating the New Opposition Personal Funds Amount for the Miller and Hyer Campaigns

The Miller and Hyer campaigns received Rogers's additional notification of expenditures from personal funds on July 1, 2003. The Miller and Hyer campaigns endeavored to determine how Rogers's increase in spending from personal funds might affect their increased contribution limits. Before figuring out their new limits, however, each campaign first had to recalculate the opposition personal funds amount.

Turning to the formulas in 11 CFR 400.10, each candidate realized that as soon as July 16 the applicable formula would no longer be the one that applied prior to July 16, 2003. With vacations taking many staffers and potential contributors away, both committees elected to wait until the new formulas were in effect before accepting any contributions. Once it was July 16, 2003, which was between July 16 of the year preceding the year in which the general election would be held and February 1 of the year in which the general election would be held, the formula required that the gross receipts advantage be taken into account.

Opposition Personal Funds Amount—Miller Campaign

To calculate the opposition personal funds amounts for the Miller campaign as of July 16, 2003, the following formula had to be used: $a - b - ((c - d) \div 2)$, where:

(a) Represented the greatest amount of expenditures from personal funds made by the opposing candidate (Rogers) in the same election;

(b) Represented the greatest amount of expenditures from personal funds made by Miller in the same election;

(c) Represented the aggregate amount of the gross receipts of Miller's authorized committee, minus any contributions by Miller from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30 of the year (2003) preceding the year in which the general election was to be held (2004); and

(d) Represented the aggregate amount of the gross receipts of Rogers's authorized committee, minus any contributions by Rogers from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30, 2003.

Variable (a)—Miller Campaign

Considering each variable in turn, as of June 30, 2003, Rogers had made aggregate expenditures from personal funds in the amount of $10 million. So, as of that date, variable (a) in the formula for the Miller campaign equaled $10,000,000.

Variable (b)—Miller Campaign

As of June 30, 2003, Miller had made aggregate expenditures from personal funds in the amount of $3,000,000. Thus, as of that date, variable (b) in the formula for Miller's campaign equaled $3,000,000.

Variable (c)—Miller Campaign

As of June 30, 2003, Miller's authorized committee had received contributions in connection with the primary election totaling $4,000,000 and Miller's aggregate contributions from personal funds totaled $3,000,000. Accordingly, as of June 30, 2003, variable (c) in the formula for the Miller

campaign equaled $4,000,000 − $3,000,000, or $1,000,000.

Variable (d)—Miller Campaign

As of June 30, 2003, Rogers's authorized committee had received contributions in connection with the primary election totaling $11,000,000 and Rogers's aggregate contributions from personal funds totaled $10,000,000. Accordingly, as of June 30, 2003, variable (d) in the formula for the Miller campaign equaled $11,000,000 − $10,000,000, or $1,000,000.

Plugging the above numbers into the applicable formula (a − b − ((c − d) ÷ 2)), the opposition personal funds amount for the Miller campaign as of June 30, 2003, was $7,000,000, calculated as follows:

$10,000,000 − $3,000,000 − (($1,000,000 − $1,000,000)/2) = $7,000,000.

Opposition Personal Funds Amount—Hyer Campaign

To calculate the opposition personal funds amounts for the Hyer campaign as of July 16, 2003, the following formula had to be used: a − b − ((c − d) ÷ 2), where:

(a) Represented the greatest amount of expenditures from personal funds made by the opposing candidate (Rogers) in the same election;

(b) Represented the greatest amount of expenditures from personal funds made by Hyer in the same election;

(c) Represented the aggregate amount of the gross receipts of Hyer's authorized committee, minus any contributions by Hyer from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30 of the year (2003) preceding the year in which the general election was to be held (2004); and

(d) Represented the aggregate amount of the gross receipts of Rogers's authorized committee, minus any contributions by Rogers from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30, 2003.

Variable (a)—Hyer Campaign

Considering each variable in turn, as of June 30, 2003, Rogers had made aggregate expenditures from personal funds in the amount of $10 million. So, as of that date, variable (a) in the formula for the Hyer campaign equaled $10,000,000.

Variable (b)—Hyer Campaign

As of June 30, 2003, Hyer had not made any expenditures from personal funds. Accordingly, as of that date, variable (b) in the formula for Hyer's campaign equaled $0.

Variable (c)—Hyer Campaign

As of June 30, 2003, Hyer's authorized committee had received contributions in connection with the primary election totaling $1,000,000 and Hyer's aggregate contributions from personal funds totaled $0. Accordingly, as of June 30, 2003, variable (c) in the formula for the Hyer campaign equaled $1,000,000 − $0, or $1,000,000.

Variable (d)—Hyer Campaign

As of June 30, 2003, Rogers's authorized committee had received contributions in connection with the primary election totaling $11,000,000 and Rogers's aggregate contributions from personal funds totaled $10,000,000. Accordingly, as of June 30, 2002, variable (d) in the formula for the Hyer campaign equaled $11,000,000 − $10,000,000, or $1,000,000.

Plugging the above numbers into the applicable formula (a − b − ((c − d) ÷ 2)), the opposition personal funds amount for the Hyer campaign as of June 30, 2003, was $10,000,000, calculated as follows:

$10,000,000 − $0 − (($1,000,000 − $1,000,000 ÷ 2) = $10,000,000.

Both Miller and Hyer notified their national and state party committees and the Commission of their calculations, as required by 11 CFR 400.30(b).

Calculating the New Contribution Limits for the Miller and Hyer Campaigns

After calculating the new opposition personal funds amount, the Miller and Hyer campaigns recalculated the new individual contribution limits as follows:

Contribution Limit—Miller Campaign

Because the opposition personal funds amount of $7,000,000 was greater than:

$4,568,000 = ($0.16 × 24,800,000 (VAP of New Franklin)) + $600,000

But less than or equal to:

$11,420,000 = ($0.40 × 24,800,000 (VAP of New Franklin)) + $1,500,000

Miller determined that the new increased contribution limit for the Miller campaign was:

$12,000 = 6 × $2,000 (the applicable limit).

Contribution Limit—Hyer Campaign

Because the opposition personal funds amount of $10,000,000 was greater than:

$4,568,000 = ($0.16 × 24,800,000 (VAP of New Franklin)) + $600,000

But less than or equal to:

$11,420,000 = ($0.40 × 24,800,000 (VAP of New Franklin)) + $1,500,000

Hyer determined that the new increased contribution limit for the Hyer campaign was the same as the old increased contribution limit:

$12,000 = 6 × $2,000 (the applicable limit).

Calculating the New Proportionality Provision Amount for the Miller and Hyer Campaigns

Before calling to solicit contributions under the new increased limits, however, both the Miller and Hyer campaigns sought to determine the maximum amount they could accept before being in danger of exceeding 110 percent of the new opposition personal funds amount in violation of the proportionality provision (11 CFR 400.31).

Proportionality Provision Amount—Miller Campaign

Taking into account the new opposition personal funds amount ($7,000,000), the Miller campaign determined that the new proportionality provision amount was $7,700,000, calculated as follows:

1.10 × $7,000,000 = $7,700,000

As of July 16, 2003, the Miller campaign had received $4,500,000 in contributions, $1,500,000 from contributors plus the $3,000,000 contribution from Miller's personal funds. Of the $1,500,000, the Miller Committee received $500,000 under the increased limits. Only this $500,000 of her committee's gross receipts counted towards the proportionality provision limit. Accordingly, the Miller campaign determined that it could receive another $7,200,000 ($7,700,000 limit − $500,000 already received) in contributions under the increased limit without violating the proportionality provision.

Proportionality Provision Amount—Hyer Campaign

As of July 16, 2003, the Hyer campaign had received $1,000,000 in contributions, $400,000 of which was received under the increased limits, well short of the old $5,500,000 maximum proportionality provision amount. Taking into account the new opposition personal funds amount

($10,000,000), the Hyer campaign determined that the new proportionality provision amount was $11,000,000, calculated as follows:

$1.10 \times \$10,000,000 = \$11,000,000$

Accordingly, the Hyer campaign determined that it could receive another $10,600,000 ($11,000,000 limit − $400,000 already received) in contributions under the increased limit without violating the proportionality provision.

Withdrawal of Opposing Candidate

As summer turned into fall and fall faded into winter, the polls consistently showed Miller with a double-digit lead over Rogers. The Hyer campaign polled in the single digits.

Rogers had already spent $10 million of his personal funds and, although willing to spend more, he did not want to do so unless there was a real chance that he might make some headway against Miller. Rogers figured that he could not gain ground against Miller. So, on December 20, 2003, Rogers held a press conference and announced his decision to quit the race.

Once the initial shock of Rogers's withdrawal from the race wore off, both Miller and Hyer realized that his departure might have a significant impact on their ability to raise funds for the last seven months of the primary campaign. Under 11 CFR 400.32, Rogers ceased to be a candidate on December 20, 2003, the date he publicly announced his withdrawal from the race. From that day forward, Miller was prohibited from accepting that portion of contributions made under the increased limits that exceeded the applicable limit ($2,000 per person) because it was Rogers's expenditures from personal funds that had allowed her to receive contributions above the applicable limit in the first place. While her campaign was permitted to continue accepting contributions up to the applicable limit ($2,000 per individual), it would have to refuse any portion of any contribution above the applicable limit. Any amount above the applicable limit would have to be refunded to the contributor.

Calculating the New Opposition Personal Funds Amount for the Hyer Campaign

Rogers's withdrawal from the race affected the Hyer campaign differently than the Miller campaign. With Rogers out of the race, Hyer must now consider Miller to be his ''opposing candidate'' for purposes of calculating the opposition personal funds amount and the increased contribution limits. To determine the new opposition personal funds amount as of December 20, 2003, Hyer used the same formula he had used on July 16, 2003 ($a - b - ((c - d) \div 2)$), substituting Miller for Rogers, where:

(a) Represented the greatest amount of expenditures from personal funds made by the opposing candidate (Miller) in the same election;

(b) Represented the greatest amount of expenditures from personal funds made by Hyer in the same election;

(c) Represented the aggregate amount of the gross receipts of Hyer's authorized committee, minus any contributions by Hyer from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30 of the year (2003) preceding the year in which the general election was to be held (2004); and

(d) Represented the aggregate amount of the gross receipts of Miller's authorized committee, minus any contributions by Miller from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30, 2003.

Variable (a)—Hyer Campaign

Considering each variable in turn, as of June 30, 2003, Miller had made aggregate expenditures from personal funds in the amount of $3,000,000. So, as of that date, variable (a) in the formula for the Hyer campaign equaled $3,000,000.

Variable (b)—Hyer Campaign

As of June 30, 2003, Hyer had not made any expenditures from personal funds. Accordingly, as of that date, variable (b) in the formula for Hyer's campaign equaled $0.

Variable (c)—Hyer Campaign

As of June 30, 2003, Hyer's authorized committee had received contributions in connection with the primary election totaling $1,000,000 and Hyer's aggregate contributions from personal funds totaled $0. Accordingly, as of June 30, 2003, variable (c) in the formula for the Hyer campaign equaled $1,000,000 − $0, or $1,000,000.

Variable (d)—Hyer Campaign

As of June 30, 2003, Miller's authorized committee had received contributions in connection with the primary election totaling $4,000,000 and Miller's aggregate contributions from personal funds totaled $3,000,000. Accordingly, as of June 30, 2003, variable (d) in the formula for the Hyer campaign equaled $4,000,000 − $3,000,000, or $1,000,000.

Inserting the above numbers into the applicable formula ($a - b - ((c - d) \div 2)$), the opposition personal funds amount for the Hyer campaign as of December 20, 2003, was $3,000,000, calculated as follows:

$\$3,000,000 - \$0 - ((\$1,000,000 - \$1,000,000) \div 2) = \$3,000,000$

Hyer notified his national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the New Increased Contribution Limit for the Hyer Campaign

Hyer was optimistic that he would still be able to receive contributions above the applicable limit. Hyer performed the following calculations and determined that with the new opposition personal funds amount of $3,000,000, the new contribution limit applicable to his campaign was three times the applicable limit, or $6,000:

Opposition personal funds amount of $3,000,000 was more than * * *

$\$2,284,000 = (\$0.08 \times 24,800,000$ (VAP of New Franklin)) + $300,000

But less than or equal to * * *

$\$4,568,000 = (\$0.16 \times 24,800,000$ (VAP of New Franklin)) + $600,000

Calculating the New Proportionality Provision Amount for the Hyer Campaign

Before calling to solicit contributions under the new increased limit, however, the Hyer campaign sought to determine the maximum amount he could accept before being in danger of exceeding 110 percent of the new opposition personal funds amount in violation of the proportionality provision (11 CFR 400.31).

As of December 20, 2003, the Hyer campaign had received $1,200,000 in contributions, $750,000 of which was received under the increased limits. Taking into account the new opposition personal funds amount ($3,000,000), the Hyer campaign determined that the new proportionality provision amount was $3,300,000, calculated as follows:

$1.10 \times \$3,000,000 = \$3,300,000$

Accordingly, the Hyer campaign determined that it could receive $2,550,000 ($3,300,000 limit − $750,000 already received) in contributions under the increased limit without violating the proportionality provision.

Reporting of Gross Receipts as of December 31, 2003

On January 31, 2004, the principal campaign committees of Arlene Miller, Jim Hyer, and James Rockford filed the reports required under 11 CFR 104.19(b)(2) disclosing gross receipts as of December 31, 2003. Frank Rogers's principal campaign committee did not have to file a report because he had withdrawn from the election.

Arlene Miller's principal campaign committee reported that it had received $6 million in gross receipts in connection with the primary. That $6 million included her $3 million contribution from personal funds. The committee also reported that it had $2 million in gross receipts that could be spent on the general election. This amount came from contributions it had received under the applicable limit that had been designated for the general election. Miller did not make any contribution from personal funds for the general election.

Jim Hyer's principal campaign committee disclosed that it had $1.2 million in gross receipts that could be spent for the primary. He did not make any contribution from personal funds. Additionally, the committee reported that it had no gross receipts for the general election.

James Rockford was a candidate for the Republican nomination for the Senate. His principal campaign committee was also required to file this report. It disclosed that it had received $50.3 million in gross receipts in connection with the primary including a $50 million contribution from Rockford's personal funds. The committee also reported that, as of December 31, 2003, it had $1.1 million in gross receipts for the general election, $1 million of which was a contribution from Rockford's personal funds made on December 15, 2003. The remaining $100,000 of the committee's gross receipts represented contributions from contributors other than Rockford.

The remaining months of the primary campaign were brutal. As the primary election day neared, polls showed Miller and Hyer in a statistical dead heat. On June 1, 2004, Miller received 47% of the vote, Hyer received 43% of the vote, and, despite the fact that he withdrew from the race more than five months before the primary election, 10% of New Franklin's Democratic primary voters wrote in Frank Rogers name. Because neither Miller nor Hyer received 50% or more of the vote, New Franklin law required that a run-off election be held.

The run-off election was scheduled for July 1, 2004. Neither campaign had much money left at this point because both had spent nearly every available dollar on a last-minute advertising blitz. The Miller campaign, however, was in a better position than the Hyer campaign. Whereas Hyer's authorized committee had only $25,000 cash on hand, Miller's authorized committee had $2,075,000 total cash on hand, but only $75,000 was available for the primary run-off. Both candidates wondered whether they were permitted to use any of these funds for the run-off election, though, considering that they were raised in the primary election cycle under the increased contribution limits. They turned to the definition of ''election cycle'' at 11 CFR 400.2, however, and determined that a run-off election was considered to be an extension of the election cycle containing the election that necessitated the run-off election. Thus, the Miller and Hyer campaigns were permitted to use the funds remaining from the primary election for the July 1, 2004, run-off election because the July 1, 2004, run-off was considered to be part of the June 1, 2004, primary election cycle.

On July 1, 2004, Arlene Miller won the run-off election and prepared to face off against James Rockford in the general election. Rockford ran unopposed in the Republican primary and managed to secure the Republican Party's nomination without spending more than $1 million of his personal funds. After winning the Republican endorsement, Rockford's authorized committee refunded the remaining $49 million to the candidate. (His contribution on December 15th of $1 million was for the general election.) Miller's authorized committee was completely out of primary cash by the time the run-off election ended.

General Election Campaign

The general election cycle got off to a raucous start. On July 2, 2004, Rockford used his own funds to purchase $20 million in air time, locking up key commercial slots in every major media market in the state through Labor Day. As required by 11 CFR 400.21, within 24 hours of executing the air time contract, Rockford filed an initial notification of expenditures from personal funds on FEC Form 10. He filed the original form with the Secretary of the Senate and faxed copies to the Commission and the Miller campaign.

When Miller received Rockford's initial notification on July 3, 2004, she scrambled to determine the opposition personal funds amount, under 11 CFR 400.10, and the increased contribution and party expenditure limits under 11 CFR 400.40.

Calculating the Opposition Personal Funds Amount for the Miller Campaign

Given that the date of computation was on or after December 31 of the year preceding the year in which the general election was to be held, the applicable formula was the one outlined in 11 CFR 400.10(a)(3) $(a - b - ((e - f) \div (2))$, where:

(a) Represented the greatest aggregate amount of expenditures from personal funds made by Rockford in the general election ($21 million);

(b) Represented the greatest amount of expenditures from personal funds made by Miller in the general election ($0);

(e) Represented the aggregate amount of gross receipts of Miller's authorized committee ($2 million), minus any contributions by Miller from personal funds (Note: This amount is $0, because the $3 million Miller contributed to her authorized committee on April 5, 2003 was made in connection with the primary and entirely spent), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003; and

(f) Represented the aggregate amount of gross receipts of Rockford's authorized committee ($1.1 million), minus any contributions by Rockford from personal funds ($1 million), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003, so the July 2, 2004, $20 million expenditure is *not* included.

Miller determined the value of each variable as follows:

(a) = $21,000,000
(b) = $0.00
(e) = $2,000,000 ($2,000,000 − $0)
(f) = $100,000 ($1,100,000 − $100,000)

Inserting these above values into the applicable formula $(a - b - ((e - f) \div (2))$, Miller determined that the opposition personal funds amount was $20,050,000, calculated as follows:

$$\$21{,}000{,}000 - \$0 - ((\$2{,}000{,}000 - \$100{,}000) \div (2) = \$20{,}050{,}000$$

Miller notified her national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the Increased Contribution and Coordinated Party Expenditure Limits for the Miller campaign

Having determined that the opposition personal funds amount was $20,050,000, Miller determined that, because the opposition personal funds

amount was more than $11,420,000 ($0.40 × 24,800,000 (VAP of New Franklin) + $1,500,000), the following increased contribution and coordinated party expenditure limits applied to her campaign, under 11 CFR 400.40:

Increased contribution limit

$12,000 (6 × $2,000 (applicable limit))

Coordinated party expenditure limit

Unlimited

Calculating the Proportionality Provision Amount for the Miller Campaign

Miller next calculated the aggregate amount of contributions her authorized committee would be able to receive before being in danger of exceeding 110 percent of the opposition personal funds amount ($20,050,000), under 11 CFR 400.31:

1.10 × $20,050,000 = $22,055,000

Miller started raising money in earnest. By the end of July, her campaign had managed to raise $4,500,000, $2,300,000 of which was received under the increased limits. In addition, sometime in the middle of the month, someone from the DSCC called to say they had not made any independent expenditures on her behalf, and wanted to make coordinated party expenditures to help her out. The DSCC official wanted to know what sort of help Miller needed most. Miller told the DSCC official that her campaign desperately needed air time in all of New Franklin's major media markets in order to compete with Rockford. The DSCC immediately purchased as much air time as was available between July 15, 2004, and Labor Day. The DSCC notified Miller that the total cost of the air time that the DSCC purchased on Miller's behalf was $19,753,000 above the coordinated party expenditure limit. Although the New Franklin State Democratic Committee could also spend above the ordinarily-applicable $1,781,136 coordinated party spending limit, Miller was told they planned to make no coordinated party expenditures on her behalf.

On August 1, 2004, Arlene Miller received a telephone call from Rex Duncan, an old college friend. Duncan said that he knew Miller was running against a self-financed candidate and he wanted to send her a contribution but he wasn't sure how much he was allowed to give. Duncan explained that, since Election Day 2002, he had made a number of contributions to other Federal candidates. As of August 1, 2004, the aggregate amount of Duncan's contributions was $35,500, just $2,000 shy of the aggregate 2-year limit of $37,500 for individual contributions to Federal candidate committees under 2 U.S.C. 441a(a)(3)(A). He asked Miller how much he would be allowed to contribute to her campaign. Miller informed Duncan that only the first $2,000 of his contribution to any one Federal candidate counted against his 2-year aggregate limit, pursuant to 11 CFR 400.42. Any amount above the applicable limit given to candidates running against self-financing candidates was excluded from the calculation.

Nevertheless, Miller suspected that Duncan could not send her $12,000, however, because she knew that her campaign was getting close to a crucial limit of its own under the proportionality provision. Miller told Duncan that she would have to call him back after she figured out how much of his money her campaign could legally accept. Miller calculated the aggregate amount of contributions already received and coordinated party expenditures already made under the increased limits, as follows: $2,300,000 (contributions) + $19,753,000 (coordinated expenditures) = $22,053,000.

After performing these calculations, Miller realized that she could only accept $2,000 from Duncan above the applicable limit of $2,000. This meant that her campaign could accept a check from Duncan in the amount of $4,000 because, although the first $2,000 of his contribution *would* count against his 2-year aggregate limit of $37,500, it *would not* count against the Miller campaign's proportionality provision limit of $22,055,000. Miller called Duncan back and asked him to send her a check for $4,000.

Realizing that, under 11 CFR 400.31(d)(1)(ii), Miller or her authorized committee was required to notify the national and State committees of her political party and the Commission within 24 hours of the time her campaign reached the proportionality provision limit, Miller immediately sent electronic mail messages to the DSCC, the New Franklin Democratic Federal Campaign Committee, and the Commission. Both committees were now on notice that they could no longer make coordinated expenditures on behalf of Miller's general election campaign in excess of the coordinated expenditure limitation in 11 CFR 109.32(b).

Miller realized that, unless Rockford spent more of his personal funds on behalf of his campaign, from that point forward, her campaign could only accept contributions up to the applicable limit ($2,000 per individual). In addition, the national party committee would be prohibited from making any more coordinated expenditures on behalf of the Miller campaign, although it could still contribute up to $35,000 directly to her principal campaign committee.

On August 3, 2004, Rockford reluctantly used his personal funds to purchase $30 million worth of air time between Labor Day and Election Day. Disappointed that he was again using personal funds, Rockford deemed $20 million a contribution and $10 million a personal loan. As required, Rockford filed his original FEC Form 10 with the Secretary of the Senate and faxed copies of the form to the Commission and the Miller campaign. Miller scrambled to recalculate the new opposition personal funds amount and increased contribution and coordinated party expenditure limits.

Calculating the New Opposition Personal Funds Amount for the Miller Campaign

Given that the date of computation (August 4, 2004) was on or after February 1 of the year in which the general election was to be held, the applicable formula was the one outlined in 11 CFR 400.10(a)(3) (a − b − ((e − f) ÷ 2)), where:

(a) Represented the greatest aggregate amount of expenditures from personal funds made by Rockford in the general election ($51 million);

(b) Represented the greatest amount of expenditures from personal funds made by Miller in the general election ($0);

(e) Represented the aggregate amount of gross receipts of Miller's authorized committee ($2 million), minus any contributions by Miller from personal funds ($0), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003; and

(f) Represented the aggregate amount of gross receipts of Rockford's authorized committee ($1.1 million), minus any contributions by Rockford from personal funds ($1 million), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003.

Miller determined the value of each variable as follows:

(a) = $51,000,000

(b) = $0

(e) = $2,000,000 ($2,000,000 − $0)

(f) = $100,000 ($1,100,000 − $1,000,000)

Plugging these values into the applicable formula, Miller determined that the opposition personal funds amount was $45,750,000, calculated as follows:

$51,000,000 − $0 − (($2,000,000 − $100,000) ÷ 2) = $50,050,000

Miller notified her national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the New Increased Contribution and Coordinated Party Expenditure Limits for the Miller Campaign

Having determined that the opposition personal funds amount was $50,050,000, Miller determined that, because the opposition personal funds amount was more than $11,420,000 ($0.40 × 24,800,000 (VAP of New Franklin) + $1,500,000), the following increased contribution and coordinated party expenditure limits applied to her campaign, under 11 CFR 400.40:

Increased contribution limit—Miller campaign

$12,000 (6 × $2,000 (applicable limit))

Coordinated party expenditure limit—Miller campaign

Unlimited

Calculating the New Proportionality Provision Amount for the Miller Campaign

Miller next calculated the aggregate amount of contributions her authorized committee would be able to receive before being in danger of exceeding 110 percent of the opposition personal funds amount ($45,750,000), under 11 CFR 400.31:

1.10 × $50,050,000 = $55,055,000

As of August 4, 2004, the aggregate amount of contributions received under the increased limits (including Duncan's $2,000) and coordinated party expenditures made under the increased limits equaled $22,055,000. Accordingly, Miller's campaign could now receive an additional $33,000,000 ($55,055,000 − $22,055,000) in contributions and/or coordinated party expenditures. Miller immediately called her old friend Rex Duncan and told him that he could now send her campaign an additional $8,000 if he still wished to support her. Miller then received a call from a multicandidate political committee (PAC) wanting to know how much it could contribute to her campaign. She told the PAC's treasurer that she could accept up to $5,000, as the PAC's contribution limits had not been raised.

Prohibition on Redesignation of Contributions Received Above the Applicable Limit to Another Election Cycle

When the election was over, Miller's authorized committee had $50,000 in contributions accepted under the increased limit left in its campaign account. Looking ahead to the 2010 primary and general elections, Miller wondered whether it would be possible to redesignate the $50,000 to a future race, in the manner prescribed under 11 CFR 110.1(b)(5). Miller quickly determined, however, that redesignation of contributions received under the increased limits was strictly prohibited, under 11 CFR 400.52.

Disposal of Excess Contributions Received Above the Applicable Limit

Miller was puzzled about what her authorized committee was supposed to do with the extra $50,000 in contributions her committee had received during the general election cycle. Under 11 CFR 400.51, Miller's authorized committee was required to refund the excess contributions within 50 days of the general election. Miller's committee refunded the $50,000 in excess contributions to those individuals who had made increased contributions during the general election cycle, being careful to make sure that no individual contributor received a refund that exceeded the aggregate amount of their contributions to the Miller campaign, pursuant to 11 CFR 400.53.

Miller's committee was required to notify the Commission about the disposition of these excess contributions under 11 CFR 400.54. Information about the source and amount of these excess contributions and the manner in which the committee used the funds had to be included in the first report that was due more than 50 days after the general election. According to the regulation, the report had to be submitted with Miller's FEC Form 3. Miller noted that the first report due more than 50 days after the November 8, 2004, general election was not the post-general report, which was due on December 8, 2004, but the year-end report, due on January 31, 2005.

Repayment of Rockford's Personal Loan

Rockford's authorized committee spent every available dollar on the general election campaign and, after the election was over, had no funds remaining to repay Rockford's $10 million personal loan. Rockford wondered whether his authorized committee could use funds raised after the date of the election to repay the loan. He quickly realized, however, that BCRA set a limit on the amount of personal loans that may be repaid with funds raised after the end of an election cycle. The Commission's regulation at 11 CFR 116.11, implementing the new statutory limit, prohibited Rockford from using more than $250,000 in contributions received after the date of the election to pay off his $10 million personal loan. *See* 2 U.S.C. 441a(j). This meant, of course, that Rockford would never be able to recover the remaining $9,750,000 ($10,000,000 personal loan − $250,000 limit) he lent his authorized committee during the general election cycle.

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

The attached interim final rules will not have a significant economic impact on a substantial number of small entities. Although the interim final rules add new substantive provisions to the current regulations, those provisions, which are mandated by BCRA, generally represent a relaxation of current limitations on contributions to candidates for Federal office in certain, specified circumstances. Therefore, the attached interim final rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 101

Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 104

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

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

11 CFR Part 400

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

11 CFR Part 9035

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the Explanation and Justification, the Commission amends Subchapters A, C, and E of Chapter I of Title 11 of the Code of Federal Regulations as follows:

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

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

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

2. In § 100.19, paragraph (b) is revised, and paragraph (g) is added to read as follows:

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

* * * * *

(b) *Timely filed.* A document, other than those addressed in paragraphs (c) through (g) of this section, is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the filing date, except that pre-election reports so mailed must be postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the fifteenth day before the date of the election. Documents sent by first class mail must be received by the close of business on the prescribed filing date to be timely filed.

* * * * *

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

3. Section 100.33 is added to read as follows:

§ 100.33 Personal funds.

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

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

(1) Legal and rightful title; or

(2) An equitable interest;

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

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

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

(3) Bequests to the candidate;

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

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

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

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

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

(1) The portion of assets that is equal to the candidate's share of the asset under the instrument of conveyance or ownership; provided, however,

(2) If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property.

PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

4. The authority for part 101 continues to read as follows:

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

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

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

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

* * * * *

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

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

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

7. In § 102.2, paragraph (a)(1) is amended by:

a. Removing the ''and'' at the end of paragraph (a)(1)(vi);

b. Removing the ''.'' at the end of paragraph (a)(1)(vii) and replacing it with ''; and''; and

c. Adding new paragraph (a)(1)(viii) to read as follows:

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

* * * * *

(a) * * * (1) * * *

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

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

8. The authority citation for part 104 is revised to read as follows:

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

9. Section 104.19 is revised to read as follows:

§ 104.19 Special reporting requirements for principal campaign committees of candidates for election to the United States Senate or United States House of Representatives.

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

(b) *Timing and contents of reports.*

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

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

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

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

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

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

(vi) The aggregate amount described in paragraph (b)(1)(ii) of this section minus the aggregate amount described in paragraph (b)(1)(iv) of this section.

(2) By January 31 of the year in which the general election for the office sought is held, each principal campaign committee shall file a report that includes the following information:

(i) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the primary election as determined as of December 31 of the year preceding the year in which that general election is held including contributions to the candidate or any of the candidate's authorized committees received by December 31 of the year preceding the year in which that general election is held that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or redesignated for the primary election under 11 CFR 110.1(b)(5);

(ii) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the general election as determined as of December 31 of the year preceding the year in which that general election is held including contributions to the candidate or any of the candidate's authorized committees received by December 31 of the year preceding the year in which that general election is held that have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

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

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

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

(vi) The aggregate amount described in paragraph (b)(2)(ii) of this section minus the aggregate amount described in paragraph (b)(2)(iv) of this section.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

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

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

11. In § 110.1, paragraph (b)(3)(ii) is amended by:

a. Removing the ''and'' at the end of paragraph (b)(3)(ii)(A);

b. Removing the ''.'' at the end of paragraph (b)(3)(ii)(B) and replacing it with ''; and''; and

c. Adding new paragraph (b)(3)(ii)(C) to read as follows:

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

* * * * *

(b) * * *

(3) * * *

(ii) * * *

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

* * * * *

12. Section 110.10 is revised to read as follows:

§ 110.10 Expenditures by candidates.

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

PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

13. The authority citation for part 116 continues to read as follows:

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

14. Part 116 is amended by adding new §§ 116.11 and 116.12 to read as follows:

§ 116.11 Restriction on an authorized committee's repayment of personal loans exceeding $250,000 made by the candidate to the authorized committee.

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

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

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

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

(3) Must not repay, directly or indirectly, the aggregate amount of the

personal loans that exceeds $250,000, from contributions to the candidate or the candidate's authorized committee if those contributions were made after the date of the election.

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

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

(2) Within 20 days of the election date, the authorized committee must treat the portion of the aggregate outstanding balance of the personal loans that exceeds $250,000 minus the amount of cash on hand as of the day after the election used to repay the loan as a contribution by the candidate.

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

(d) This section applies separately to each election.

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

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

(b) This section applies separately to each election.

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

15. Subchapter C is amended by adding part 400 to read as follows:

PART 400—INCREASED LIMITS FOR CANDIDATES OPPOSING SELF-FINANCED CANDIDATES

Subpart A—Scope and Definitions

Sec.

400.1 Scope and effective date.
400.2 Election cycle.
400.3 Opposing candidate.
400.4 Expenditure from personal funds.
400.5 Applicable limit.
400.6 Increased limit.
400.7 Contribution that exceeds the applicable limit.
400.8 Gross receipts.
400.9 Threshold amount.
400.10 Opposition personal funds amount.

Subpart B—Notification and Reporting Requirements

400.20 Declaration of intent.
400.21 Initial notification of expenditures from personal funds.
400.22 Additional notification of expenditures from personal funds.
400.23 Contents of notifications of expenditures from personal funds.
400.24 Methods of filing notifications.
400.25 Reporting obligations of candidates and candidates' principal campaign committees.

Subpart C—Determining When the Increased Limits Apply

400.30 Receipt of notification of opposing candidate's expenditures from personal funds.
400.31 Preventing disproportionate advantage resulting from increased contribution and coordinated party expenditure limits.
400.32 Effect of the withdrawal of an opposing candidate.

Subpart D—Calculation of Increased Limits for Senate and House of Representatives Candidates

400.40 Calculating the increased limits for Senate elections.
400.41 Calculating the increased limits for House of Representatives elections.
400.42 Effect of increased limits on the aggregate contribution limitations for individuals.

Subpart E—Disposal of Excess Contributions

400.50 Definition of Excess contributions.
400.51 Relation of excess contributions to the election in which they are made.
400.52 Prohibition against redesignation of excess contributions.
400.53 Disposal of excess contributions.
400.54 Notification of disposal of excess contributions.

Authority: 2 U.S.C. 431, 434(a)(6), 438(a)(8), 441a(i), 441a(j), 441a–1.

Subpart A—Scope and Definitions

§ 400.1 Scope and effective date.

(a) *Introduction.* This part applies to elections to the office of United States Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress, in which a candidate is permitted increased limits to allow response to certain expenditures from personal funds by an opposing candidate. This part does not apply to elections to the Office of President or Vice President of United States.

(b) *Effective dates.* Except as otherwise specifically provided in this part, this part shall take effect on February 26, 2003.

§ 400.2 Election cycle.

(a) For purposes of this part, *election cycle* means the period beginning on the day after the date of the most recent election for the specific office or seat that a candidate is seeking and ending on the date of the next election for that office or seat.

(b) For purposes of paragraph (a) of this section, a primary election and a general election are considered to be separate election cycles.

(c) For purposes of this part, a run-off election is considered to be part of the election cycle of the election necessitating the run-off election.

§ 400.3 Opposing candidate.

(a) For purposes of a primary election, *opposing candidate* means another candidate seeking the nomination of the same political party for election to the office of Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress, that the candidate is seeking. A candidate in a primary election may have more than one opposing candidate.

(b) For purposes of a general election, *opposing candidate* means another candidate seeking election to the same office of Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress, that the candidate is seeking. A candidate in a general election may have more than one opposing candidate.

§ 400.4 Expenditure from personal funds.

(a) *Expenditure from personal funds* means the aggregation of all the following:

(1) An expenditure made by a candidate, using the candidate's personal funds, for the purpose of influencing the election in which he or she is a candidate;

(2) A contribution or loan made by a candidate to the candidate's authorized committee, using the candidate's personal funds (*see* 11 CFR 100.33 for definition of *personal funds*);

(3) A loan by any person to the candidate's authorized committee that is secured using the candidate's personal funds. (*see* 11 CFR 100.33 for definition of *personal funds*); and

(4) Any obligation to make an expenditure from personal funds that is legally enforceable against the candidate.

(b) An expenditure from personal funds shall be considered to be made on the date the funds are deposited into the account designated by the candidate's authorized committee as the campaign depository, under 11 CFR 103.1 and 11 CFR 103.2, on the date the instrument transferring the funds is signed, or on

the date the contract obligating the personal funds is executed, whichever is earlier.

§ 400.5 Applicable limit.

Applicable limit means the contribution amount limitation set forth in 11 CFR 110.1(b)(1).

§ 400.6 Increased limit.

Increased limit means a contribution amount limitation that applies to a person other than a multicandidate political committee that, pursuant to this part, exceeds the applicable limit specified in 11 CFR 110.1 in order to allow response to expenditures from an opposing candidate's personal funds. *Increased limit* also means, where applicable, a suspension, pursuant to this part, of the limitations on expenditures by a national or State political party committee in connection with the general election campaign of a candidate for the Senate or the House of Representatives under 11 CFR 109.32(b).

§ 400.7 Contribution that exceeds the applicable limit.

Amount of contribution above the applicable limit means the difference between the amount of a contribution accepted under this part and the applicable limit.

§ 400.8 Gross receipts.

Gross receipts means the sum of all receipts of the candidate's authorized committee described in 11 CFR 104.3(a)(3) (i) through (x).

§ 400.9 Threshold amount.

(a) *Senate.* For an election to the office of United States Senator, *threshold amount* means the sum of $150,000 plus an amount equal to the voting age population of the State multiplied by $0.04. As used in this paragraph, voting age population means the voting age population of the State of the candidate as certified under 11 CFR 110.18.

(b) *House of Representatives.* For an election to the office of Representative in, or Delegate or Resident Commission to, the Congress, *threshold amount* means $350,000.

§ 400.10 Opposition personal funds amount.

(a) To compute the *opposition personal funds amount*, one of the following formulas must be used, depending on the date of the computation. The variables used in the formulas are defined in paragraph (b) of this section.

(1) To compute the opposition personal funds amount prior to July 16 of the year preceding the year in which the general election is held, the following formula must be used:

opposition personal funds amount = $a - b$.

(2) To compute the opposition personal funds amount from July 16 of the year preceding the year in which the general election is held to January 31 of the year in which the general election is held, one of the following formulas must be used:

(i) If $c>d$, opposition personal funds amount = $a - b - ((c - d) \div 2)$.

(ii) If $c \leq d$, opposition personal funds amount = $a - b$.

(3) To compute the opposition personal funds amount from February 1 of the year in which the general election is held to the day of the general election, one of the following formulas must be used:

(i) If $e>f$, opposition personal funds amount = $a - b - ((e - f) \div 2)$.

(ii) If $e \leq f$, opposition personal funds amount = $a - b$.

(b) *Variables.* The variables used in the formulas set out in paragraph (a) of this section are defined as follows:

a = Greatest aggregate amount of expenditures from personal funds made by the opposing candidate in the same election.

b = Greatest aggregate amount of expenditures from personal funds made by the candidate in the same election.

c = Aggregate amount of the gross receipts of the candidate's authorized committee minus any contributions by the candidate from personal funds as reported under 11 CFR 104.19(b)(1)(v) or (vi), during any election cycle that may be expended in connection with the election for the nomination for election, or election, to Federal office sought, as determined on June 30 of the year preceding the year in which the general election is held.

d = Aggregate amount of the gross receipts of the opposing candidate's authorized committee minus any contributions by that opposing candidate from personal funds as reported under 11 CFR 104.19(b)(1)(v) or (vi), during any election cycle that may be expended in connection with the election for the nomination for election, or election, to Federal office sought, as determined on June 30 of the year preceding the year in which the general election is held.

e = Aggregate amount of the gross receipts of the candidate's authorized committee minus any contributions by the candidate from personal funds as reported under 11 CFR 104.19(b)(2)(v) or (vi), during any election cycle that may be expended in connection with the election for the nomination for election, or election, to Federal office sought, as determined on December 31 of the year preceding the year in which the general election is held.

f = Aggregate amount of the gross receipts of the opposing candidate's authorized committee minus any contributions by that opposing candidate from personal funds as reported under 11 CFR 104.19(b)(2)(v) or (vi), during any election cycle that may be expended in connection with the election for the nomination for election, or election, to Federal office sought, as determined on December 31 of the year preceding the year in which the general election is held.

Subpart B—Notification and Reporting Requirements

§ 400.20 Declaration of intent.

(a) *Senate and House of Representatives.*

(1) *When and where filed.* Within 15 days of becoming candidate, the candidate must file a Declaration of Intent with the Commission and with each opposing candidate.

(2) *Contents of declaration.* The Declaration of Intent must state the total amount of expenditures from personal funds that the candidate intends to make with respect to the election that will exceed the threshold amount as defined in 11 CFR 400.9. A candidate who does not intend to make expenditures from personal funds that will exceed the threshold amount as defined in 11 CFR 400.9 may state the amount as $0.

(b) *Methods of filing.*

(1) *Senate.* Declarations of Intent must be noted on the candidate's Statement of Candidacy, FEC Form 2. (*See* 11 CFR 101.1.) The candidate must send a copy of his or her Statement of Candidacy to the Commission using a facsimile machine or electronic mail in addition to filing his or her official copy of the Statement of Candidacy on paper with the Secretary of the Senate. The candidate must send by facsimile machine or electronically mail his or her FEC Form 2 or the information required therein by 11 CFR 101.1, including the amount by which the candidate intends to exceed the threshold amount, to each opposing candidate.

(2) *House of Representatives.* Declarations of Intent must be noted on the candidate's Statement of Candidacy, FEC Form 2. (*See* 11 CFR 101.1.) FEC Form 2 must be filed electronically in accordance with 11 CFR 104.18 if the candidate intends to exceed the threshold amount defined in 11 CFR 400.9(b). Candidates must send by facsimile machine or electronically mail his or her FEC Form 2 or the information required therein by 11 CFR 101.1, including the amount by which he or she intends to exceed the threshold amount, to each opposing candidate.

§ 400.21 Initial notification of expenditures from personal funds.

(a) *Senate.* A candidate's principal campaign committee must notify the Secretary of the Senate, the Commission, and each opposing candidate when the candidate makes an expenditure from personal funds with respect to the election that causes the candidate's aggregate expenditures from personal funds to exceed two times the threshold amount as defined in 11 CFR 400.9. Such notification must be received by the Secretary of the Senate, the Commission, and each opposing candidate within 24 hours of the time such expenditure is made.

(b) *House of Representatives.* A candidate's principal campaign committee must notify the Commission, each opposing candidate, and the national party of each opposing candidate when the candidate makes an expenditure from personal funds with respect to the election that causes the candidate's aggregate expenditures from personal funds to exceed the $350,000 threshold amount (*see* 11 CFR 400.9). Such notification must be received by the Commission, each opposing candidate, and the national party of each opposing candidate within 24 hours of the time such expenditure is made.

§ 400.22 Additional notification of expenditures from personal funds.

(a) *Senate.* After filing the initial notification of expenditures from personal funds under 11 CFR 400.21, a candidate's principal campaign committee must notify the Secretary of the Senate, the Commission, and each opposing candidate when the candidate makes expenditures from personal funds in connection with the election exceeding $10,000. Such notification must be received by the Secretary of the Senate, the Commission, and each opposing candidate within 24 hours of the time such expenditures are made.

(b) *House of Representatives.* After filing the initial notification of expenditures from personal funds under 11 CFR 400.21, a candidate's principal campaign committee must notify the Commission, each opposing candidate, and the national party of each opposing candidate when the candidate makes expenditures from personal funds in connection with the election exceeding $10,000. Such notification must be received by the Commission, each opposing candidate, and the national party of each opposing candidate within 24 hours of the time such expenditures are made.

§ 400.23 Contents of notifications of expenditures from personal funds.

Each notification filed under 11 CFR 400.21 and 400.22 must contain the following information:

(a) The name of the candidate making the expenditures from personal funds.

(b) The office sought by the candidate making the expenditures from personal funds, including the State and, for candidates for the House of Representatives, the District.

(c) The date and amount of each expenditure from personal funds made since the last notification filed pursuant to 11 CFR 400.21 or 400.22.

(d) The total amount of expenditures from personal funds the candidate has made (as defined in 11 CFR 400.4(e)) in connection with the election from the beginning of the election cycle to the date of the expenditure that is the reason for the notification.

§ 400.24 Methods of filing notifications.

(a) *Senate.* Each notification required to be filed by the candidate's principal campaign committee under 11 CFR 400.21(a) and 400.22 must be filed with the Secretary of the Senate on FEC Form 10. The candidate's principal campaign committee must send a copy of its FEC Form 10 by facsimile machine, as an attachment to an electronic mail, or as an electronic mail containing the information required in 11 CFR 400.23 to the Commission and to each opposing candidate.

(b) *House of Representatives.* Each notification required to be filed by the candidate's principal campaign committee under 11 CFR 400.21(b) and 400.22 must be filed with the Commission electronically on FEC Form 10. The candidate's principal campaign committee must send a copy of its FEC Form 10 to each opposing candidate and to the national party committee of each opposing candidate by facsimile machine, as an attachment to an electronic mail, or as an electronic mail containing the information required by 11 CFR 400.23.

§ 400.25 Reporting obligations of candidates and candidates' principal campaign committees.

Candidates must ensure that their principal campaign committees file all reports required under this part in a timely manner.

Subpart C—Determining When the Increased Limits Apply

§ 400.30 Receipt of notification of opposing candidate's expenditures from personal funds.

(a) *Applicable to Senate and to House of Representatives elections.* This section applies to elections to the office of United States Senator, and to the office of Representative in, or Delegate or Resident Commission to, the Congress.

(b) *Candidates and authorized committees.*

(1) The candidate and the candidate's authorized committee must not accept, pursuant to this part, any contribution that exceeds the applicable limit, as defined in 11 CFR 400.7, until the candidate has received actual or constructive notification of an opposing candidate's expenditures from personal funds under subpart B of this part. The candidate and the candidate's authorized committee must calculate the opposition personal funds amount each time they receive an opposing candidate's notification of expenditures from personal funds under 11 CFR 400.21 or 400.22.

(2) Upon calculating the opposition personal funds amount, if the candidate or the candidate's authorized committee determines that such amount exceeds the appropriate threshold under 11 CFR 400.40 or 400.41 that permits national and State committees of political parties to make coordinated party expenditures that exceed the limitations set forth in 11 CFR 109.32, the candidate or the candidate's authorized committee must inform the Commission and the national and State committee of their political party of such opposition personal funds amount by facsimile machine or electronic mail within 24 hours of receipt of an opposing candidate's initial or additional notification of expenditure from personal funds.

(c) *Political party committees.* (1) A national or State committee of a political party (including a national Congressional campaign committee) must not make, pursuant to this part, coordinated party expenditures in connection with the general election campaign of a candidate in excess of the limits set forth in 11 CFR 109.32(b) until

the political party committee has received actual or constructive notification under subpart B of this part and the opposition personal funds amount under paragraph (b) of this section indicating that the opposing candidate's expenditures from personal funds exceeds the applicable threshold amount set forth in 11 CFR 400.40 or 400.41.

(2) If the national or State committee of a political party makes coordinated party expenditures in excess of the limitations set forth in 11 CFR 109.32 pursuant to this part, the national or State committee of a political party must inform the Commission and the candidate on whose behalf such expenditure is made, or the candidate's authorized committee, of the amount of such expenditures by facsimile machine or electronic mail within 24 hours of making such expenditures.

(d) *Constructive notification.* For purposes of this section, *constructive notification* means that the candidate, the candidate's authorized committee, or the national or State committee of the political party obtains a copy of the FEC Form 10 received by the Commission.

§ 400.31 Preventing disproportionate advantage resulting from increased contribution and coordinated party expenditure limits.

(a) *Applicability.* This section applies to elections to the office of United States Senator, and to the office of Representative in, or Delegate or Resident Commission to, the Congress.

(b) *Persons with responsibilities under this section.* A candidate and the candidate's authorized committee that accepts contributions under the increased limits pursuant to this part, and any national or State political party committee (including a national Congressional campaign committee) that makes coordinated party expenditures on behalf of the candidate under the increased expenditure limits pursuant to this part, must comply with this section.

(c) *Information to be monitored.* Any person described in paragraph (b) of this section must monitor all of the following amounts while accepting contributions, or making coordinated party expenditures, respectively, under the increased limits:

(1) The aggregate amount of contributions previously accepted by the candidate and the candidate's authorized committee under the increased limits.

(2) The aggregate amount of coordinated party expenditures in connection with the general election campaign of the candidate previously made by any political party committee under the increased limits.

(3) The opposition personal funds amount related to each opposing candidate.

(d) *Senate elections*— (1) *Responsibilities of candidates and their authorized committees.* (i) A candidate and the candidate's authorized committee must not accept that amount of any contribution above the applicable limit if the sum of that amount of the contribution above the applicable limit plus the aggregate amounts described in paragraphs (c)(1) of this section and the aggregate amounts described in paragraph (c)(2) of this section is greater than 110% of the opposition personal funds amount.

(ii) When the aggregate amounts described in paragraph (c)(1) of this section plus the aggregate amounts described in paragraph (c)(2) of this section exceed 110% of the opposition personal funds amount, the candidate or the candidate's authorized committee must inform the national and State committees of their political party and the Commission, by facsimile or electronic mail, of this information within 24 hours of reaching 110% of the opposition personal funds amount.

(2) *Responsibilities of the national and State committees of the political party.* A national or State political party committee must not make, pursuant to this part, a coordinated party expenditure in connection with a candidate's general election campaign in excess of the expenditure limitations under 11 CFR 109.32(b) if the sum of the amount of that expenditure plus the aggregate amounts described in paragraph (c)(1) of this section and the aggregate amounts described in paragraph (c)(2) of this section with regard to that candidate is greater than 110% of the opposition personal funds amount.

(e) *House of Representatives elections*—(1) *Responsibilities of candidates and their authorized committees.* (i) A candidate and the candidate's authorized committee must not accept that amount of any contribution above the applicable limit if the sum of that amount of the contribution above the applicable limit plus the aggregate amounts described in paragraphs (c)(1) of this section and the aggregate amounts described in paragraph (c)(2) of this section is greater than 100% of the opposition personal funds amount.

(ii) When the aggregate amounts described in paragraph (c)(1) of this section plus the aggregate amounts described in paragraph (c)(2) of this section exceed 100% of the opposition personal funds amount, the candidate or the candidate's authorized committee must inform the national and State committees of their political party and the Commission, by facsimile machine or electronic mail, of this information within 24 hours of reaching 100% of the opposition personal funds amount.

(2) *Responsibilities of the national and State committees of the political party.* A national or State political party committee must not make, pursuant to this part, a coordinated party expenditure in connection with a candidate's general election campaign in excess of the expenditure limitations under 11 CFR 109.32(b) if the sum of the amount of that expenditure plus the aggregate amounts described in paragraph (c)(1) of this section and the aggregate amounts described in paragraph (c)(2) of this section with regard to that candidate is greater than 100% of the opposition personal funds amount.

§ 400.32 Effect of the withdrawal of an opposing candidate.

(a) *Applicability.* (1) This section applies to all elections covered by this part.

(2) This section applies when an opposing candidate, whose expenditures from personal funds allowed another candidate the benefit of increased limits pursuant to this part, ceases to be a candidate. For purposes of this section, an opposing candidate ceases to be a candidate as of the earlier of the following dates:

(i) The date on which the opposing candidate publicly announces that he or she will no longer be a candidate in that election for that office and ceases to conduct campaign activities with respect to that election; or,

(ii) The date on which the opposing candidate is, or becomes, ineligible for nomination or election to that office by operation of law.

(b) *Candidates.* A candidate and a candidate's authorized committee must not accept any contribution under the increased limits, pursuant to this part, to the extent that such increased limit is attributable to the opposing candidate who has ceased to be a candidate.

(c) *Party committees.* The national and State political party committees must not make any coordinated party expenditure in excess of the limits in 11 CFR 109.32(b), pursuant to this part, to the extent that such increased limit is attributable to an opposing candidate who has ceased to be a candidate.

Subpart D—Calculation of Increased Limits for Senate and House of Representatives Candidates

§ 400.40 Calculating the increased limits for Senate elections.

(a) *Applicability.* This section applies to candidates for election to the office of United States Senator.

(b) *Procedure.* To calculate the increased limits:

(1) Determine the opposition personal funds amount, as defined in 11 CFR 400.10.

(2) Determine the voting age population (VAP) of the State of the candidate, as defined in 11 CFR 110.18.

(3) Based on the opposition personal funds amount and the VAP, use the following table to determine the increased limits:

If the opposition personal funds amount is more than—	But less than or equal to—	The increased limit for contributions by individuals is—	The amount limitation on coordinated party committee expenditures is—
(i)($0.08 × VAP) + $300,000	($0.16 × VAP) + $600,000	3 × applicable limit	The limitation set forth in 11 CFR 109.32(b).
(ii)($0.16 × VAP) + $600,000	($0.40 × VAP) + $1,500,000	6 × applicable limit	The limitation set forth in 11 CFR 109.32(b).
(iii)($0.40 × VAP) + $1,500,000		6 × applicable limit	The limitation set forth in 11 CFR 109.32 (b) does not apply subject to the provisions of 11 CFR 400.31(d).

§ 400.41 Calculating the increased limits for House of Representatives elections.

(a) *Applicability.* This section applies to candidates for election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress.

(b) *Increased limits.* Subject to subpart C of this part, if the opposition personal funds amount exceeds the threshold amount, $350,000, the following will apply:

(1) The increased limit for contributions by individuals is three times the applicable limit.

(2) The national and State party committee expenditure limitation under 11 CFR 109.32(b) on behalf of the candidate will not apply subject to the provisions of 11 CFR 400.31(e).

§ 400.42 Effect of increased limits on the aggregate contribution limitations for individuals.

(a) This section shall apply to all elections covered by this part.

(b) The portions of contributions made under the increased limits pursuant to this part that, when aggregated with previous contributions made by the same individual to the candidate or the candidate's authorized committee in the same election cycle, exceed the contribution limits in 11 CFR 110.1 shall not be aggregated with other contributions made by that same individual for purposes of applying the aggregate contribution limitations for individuals under 11 CFR 110.5. This paragraph (b) applies only to such contributions that are accepted during the period in which the candidate may accept contributions under the increased limits.

(c) Individual contributors who have reached their aggregate bi-annual contribution limitations to candidates and authorized committees of candidates under 11 CFR 110.5(b)(1)(i) may make contributions under this part if:

(1) The candidate who accepts the contribution may accept contributions that exceed the applicable limit under this part; and

(2) The amount of the contribution, when aggregated with other contributions made under this paragraph (c), does not exceed the amount that the candidate described in paragraph (c)(1) of this section may accept under this part *minus* the applicable limit.

Subpart E—Disposal of Excess Contributions

§ 400.50 Definition of excess contributions.

For purposes of this subpart, excess contributions mean contributions that are made under the increased limit, as defined in 11 CFR 400.6 in subpart B of this part, but not expended in connection with the election to which they relate.

§ 400.51 Relation of excess contributions to the election in which they are made.

(a) *Primary elections.* If the excess contributions were received during the primary election cycle, the candidate's authorized committee must refund the excess contributions within 50 days of the primary election in accordance with 11 CFR 400.53.

(b) *General elections.* If the excess contributions were received during the general election cycle, the candidate's authorized committee must refund the excess contributions within 50 days of the general election in accordance with 11 CFR 400.53.

(c) *Run-off elections.* For purposes of this section only, when a primary or general election results in a run-off election, the run-off election is considered part of the respective primary or general election. Notwithstanding paragraphs (a) and (b) of this section, the candidate's authorized committee must refund the excess contributions within 50 days of the run-off election in accordance with 11 CFR 400.53.

§ 400.52 Prohibition against redesignation of excess contributions.

(a) The candidate's authorized committee shall not redesignate or seek redesignation of excess contributions under 11 CFR 110.1(b)(5).

(b) Once an individual has made a contribution under the increased limits, the individual must not redesignate the contribution for another election.

§ 400.53 Disposal of excess contributions.

(a) The candidate's authorized committee must refund the excess contributions to individuals who made contributions to the candidate or the candidate's authorized committee under this part. The refund to each individual must not exceed that individual's aggregate contributions to the candidate or the candidate's authorized committee for the relevant election cycle.

(b) The amount of any refund checks, made under paragraph (a) of this section that are not cashed, deposited, or otherwise negotiated within 6 months of the date of the refund check must be disgorged to the United States Treasury. The candidate's authorized committee must disgorge this amount to the United States Treasury within nine months of the election.

§ 400.54 Notification of disposal of excess contributions.

The candidate's principal campaign committee shall submit to the Commission information indicating the source and amount of any excess contributions (*see* 11 CFR 400.50) and the manner in which the candidate, the candidate's principal campaign committee, or the candidate's authorized committee refunded such funds. This information shall be included in the first report that the principal campaign committee is required to file, under 11 CFR 104.5, the date of which falls more than 50 days after the election for which a candidate seeks nomination for election to, or election to, Federal office. Such report must be submitted with the candidate's FEC Form 3.

PART 9035—EXPENDITURE LIMITATIONS

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

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

17. In section 9035.2, paragraph (c) is revised to read as follows:

§ 9035.2 Limitation on expenditures from personal or family funds.

* * * * *

(c) For purposes of this section, *personal funds* has the same meaning as specified in 11 CFR 9003.2.

Dated: January 17, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

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