

SUBCHAPTER E—PRESIDENTIAL ELECTION CAMPAIGN FUND: GENERAL ELECTION FINANCING

PART 9001—SCOPE

AUTHORITY: 26 U.S.C. 9009(b).

§ 9001.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Election Campaign Fund under 26 U.S.C. 9001 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of title 2, United States Code, and regulations prescribed thereunder (11 CFR parts 100 through 400). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431–455 of title 2, United States Code, or regulations prescribed thereunder (11 CFR parts 100 through 400).

[56 FR 35911, July 29, 1991, as amended at 68 FR 47414, Aug. 8, 2003]

EFFECTIVE DATE NOTE: At 73 FR 79602, Dec. 30, 2008, §9001.1 is amended by removing the number “400” and adding in its place the number “300” in both instances in which “400” appears.

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AUTHORITY: 26 U.S.C. 9002 and 9009(b).

SOURCE: 56 FR 35911, July 29, 1991, unless otherwise noted.

§ 9002.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, *authorized committee* means with respect to a candidate (as defined at 11 CFR 9002.2) of a political party for President and Vice President, any political committee that is authorized by a candidate to incur expenses on behalf of such candidate. The term “authorized committee” includes the candidate’s principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate pursuant to 11 CFR 100.3(a)(3). If a party has nominated a Presidential and a Vice Presidential candidate, all political committees authorized by that party’s Presidential candidate shall also be authorized committees of the Vice Presidential candidate and all political committees authorized by the Vice Presidential candidate shall also be authorized committees of the Presidential candidate.

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) Any candidate nominated by a political party may designate the national committee of that political party as that candidate’s authorized committee in accordance with 11 CFR 102.12(c).

(d) For purposes of this subchapter, references to the “candidate” and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate’s authorized committee(s).

§ 9002.2 Candidate.

(a) For the purposes of this subchapter, *candidate* means with respect to any presidential election, an individual who—

(1) Has been nominated by a major party for election to the office of President of the United States or the office of Vice President of the United States; or

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(2) Has qualified or consented to have his or her name appear on the general election ballot (or to have the names of electors pledged to him or her on such ballot) as the candidate of a political party for election to either such office in 10 or more States. For the purposes of this section, *political party* shall be defined in accordance with 11 CFR 9002.15.

(b) An individual who is no longer actively conducting campaigns in more than one State pursuant to 11 CFR 9004.8 shall cease to be a candidate for the purpose of this subchapter.

§ 9002.3 Commission.

Commission means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

§ 9002.4 Eligible candidates.

Eligible candidates means those Presidential and Vice Presidential candidates who have met all applicable conditions for eligibility to receive payments from the Fund under 11 CFR part 9003.

§ 9002.5 Fund.

Fund means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

§ 9002.6 Major party.

Major party means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.6, *candidate* means, with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.7 Minor party.

Minor party means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.7, *candidate* means with respect to any preceding Presidential

election, an individual who received popular votes for the office of President in such election.

§ 9002.8 New party.

New party means a political party which is neither a major party nor a minor party.

§ 9002.9 Political committee.

For purposes of this subchapter, *political committee* means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the election of any candidate to the office of President or Vice President of the United States.

§ 9002.10 Presidential election.

Presidential election means the election of Presidential and Vice Presidential electors.

§ 9002.11 Qualified campaign expense.

(a) *Qualified campaign expense* means any expenditure, including a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred to further a candidate's campaign for election to the office of President or Vice President of the United States;

(2) Incurred within the expenditure report period, as defined under 11 CFR 9002.12, or incurred before the beginning of such period in accordance with 11 CFR 9003.4 to the extent such expenditure is for property, services or facilities to be used during such period; and

(3) Neither the incurrence nor the payment of such expenditure constitutes a violation of any law of the United States, any law of the State in which such expense is incurred or paid, or any regulation prescribed under such Federal or State law, except that any State law which has been preempted by the Federal Election Campaign Act of 1971, as amended, shall not be considered a State law for purposes of this subchapter. An expenditure which constitutes such a violation shall nevertheless count against the candidate's expenditure limitation if

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the expenditure meets the conditions set forth at 11 CFR 9002.11(a) (1) and (2).

(b)(1) An expenditure is made to further a Presidential or Vice Presidential candidate's campaign if it is incurred by or on behalf of such candidate or his or her authorized committee. For purposes of 11 CFR 9002.11(b)(1), any expenditure incurred by or on behalf of a Presidential candidate of a political party will also be considered an expenditure to further the campaign of the Vice Presidential candidate of that party. Any expenditure incurred by or on behalf of the Vice Presidential candidate will also be considered an expenditure to further the campaign of the Presidential candidate of that party.

(2) An expenditure is made on behalf of a candidate if it is made by—

(i) Any authorized committee or any other agent of the candidate for the purpose of making an expenditure; or

(ii) Any person authorized or requested by the candidate, by the candidate's authorized committee(s), or by an agent of the candidate or his or her authorized committee(s) to make an expenditure; or

(iii) A committee which has been requested by the candidate, the candidate's authorized committee(s), or an agent thereof to make the expenditure, even though such committee is not authorized in writing.

(3) Expenditures that further the election of other candidates for any public office shall be allocated in accordance with 11 CFR 106.1(a) and will be considered qualified campaign expenses only to the extent that they specifically further the election of the candidate for President or Vice President. A candidate may make expenditures under this section in conjunction with other candidates for any public office, but each candidate shall pay his or her proportionate share of the cost in accordance with 11 CFR 106.1(a).

(4) Expenditures by a candidate's authorized committee(s) pursuant to 11 CFR 9004.6 for the travel and related ground service costs of media shall be qualified campaign expenses. Any reimbursement for travel and related services costs received by a candidate's authorized committee shall be subject to the provisions of 11 CFR 9004.6.

(5) Legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* or 26 U.S.C. 9001, *et seq.* shall be qualified campaign expenses which may be paid from payments received from the Fund. If federal funds are used to pay for such services, the payments will count against the candidate's expenditure limitation. Payments for such services may also be made from an account established in accordance with 11 CFR 9003.3 or may be provided to the committee in accordance with 11 CFR 100.86 and 100.146. If payments for such services are made from an account established in accordance with 11 CFR 9003.3, the payments do not count against the candidate's expenditure limitation. If payments for such services are made by a minor or new party candidate from an account containing private contributions, the payments do not count against that candidate's expenditure limitation. The amount paid by the committee shall be reported in accordance with 11 CFR part 9006. Amounts paid by the regular employer of the person providing such services pursuant to 11 CFR 100.86 and 100.146 shall be reported by the recipient committee in accordance with 11 CFR 104.3(h).

(c) Except as provided in 11 CFR 9034.4(e), expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a). Expenditures described under 11 CFR 9004.4(b) will not be considered qualified campaign expenses.

[56 FR 35911, July 29, 1991, as amended at 60 FR 31872, June 16, 1995; 67 FR 78682, Dec. 26, 2002]

§ 9002.12 Expenditure report period.

Expenditure report period means, with respect to any Presidential election, the period of time described in either paragraph (a) or (b) of this section, as appropriate.

(a) In the case of a major party, the expenditure report period begins on September 1 before the election or on the date on which the major party's

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presidential nominee is chosen, whichever is earlier; and the period ends 30 days after the Presidential election.

(b) In the case of a minor or new party, the period will be the same as that of the major party with the shortest expenditure report period for that Presidential election as determined under paragraph (a) of this section.

§ 9002.13 Contribution.

Contribution has the same meaning given the term under 2 U.S.C. 431(8), 441b and 441c, and under 11 CFR part 100, subparts B and C, and 11 CFR parts 114 and 115.

[56 FR 35911, July 29, 1991, as amended at 67 FR 78682, Dec. 26, 2002]

§ 9002.14 Secretary.

Secretary means the Secretary of the Treasury.

§ 9002.15 Political party.

Political party means an association, committee, or organization which nominates or selects an individual for election to any Federal office, including the office of President or Vice President of the United States, whose name appears on the general election ballot as the candidate of such association, committee, or organization.

PART 9003—ELIGIBILITY FOR PAYMENTS

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

SOURCE: 56 FR 35913, July 29, 1991, unless otherwise noted.

§ 9003.1 Candidate and committee agreements.

(a) *General.* (1) To become eligible to receive payments under 11 CFR part 9005, the Presidential and Vice Presidential candidates of a political party

shall agree in a letter signed by the candidates to the Commission that they and their authorized committee(s) shall comply with the conditions set forth in 11 CFR 9003.1(b).

(2) Major party candidates shall sign and submit such letter to the Commission within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more states pursuant to 11 CFR 9002.2(a)(2). The Commission, on written request by a minor or new party candidate, at any time prior to the date of the general election, may extend the deadline for filing such letter except that the deadline shall be a date prior to the date of the general election.

(b) *Conditions.* The candidates shall:

(1) Agree that they have the burden of proving that disbursements made by them or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11.

(2) Agree that they and their authorized committee(s) shall comply with the documentation requirements set forth at 11 CFR 9003.5.

(3) Agree that they and their authorized committee(s) shall provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidates or the authorized committee(s) of the candidates and the campaign if requested by the Commission.

(4) Agree that they and their authorized committee(s) will keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter (including those required to be maintained under 11 CFR 9003.5), and other information that the Commission may request. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9003.6(a), the committee will provide computerized magnetic media, such as

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magnetic tapes or magnetic diskettes, containing the computerized information that meets the requirements of 11 CFR 9003.6(b) at the times specified in 11 CFR 9007.1(b)(1). Upon request, documentation explaining the computer system's software capabilities shall be provided, and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee shall also be made available.

(5) Agree that they and their authorized committee(s) shall obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on the candidate's behalf by other political committees and organizations associated with the candidate.

(6) Agree that they and their authorized committee(s) shall permit an audit and examination pursuant to 11 CFR part 9007 of all receipts and disbursements including those made by the candidate, all authorized committees and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR part 9007.

(7) Submit the name and mailing address of the person who is entitled to receive payments from the Fund on behalf of the candidates; the name and address of the depository designated by the candidates as required by 11 CFR part 103 and 11 CFR 9005.2; and the name under which each account is held at the depository at which the payments from the Fund are to be deposited.

(8) Agree that they and their authorized committee(s) shall comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9001 *et seq.*, and the Commission's regulations at 11 CFR parts 100-400, and 9001-9012.

(9) Agree that they and their authorized committee(s) shall pay any civil penalties included in a conciliation agreement or otherwise imposed under

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2 U.S.C. 437g against the candidates, any authorized committees of the candidates or any agent thereof.

(10) Agree that any television commercial prepared or distributed by the candidate or the candidate's authorized committee(s) will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.

[56 FR 35913, July 29, 1991, as amended at 60 FR 31872, June 16, 1995; 63 FR 45680, Aug. 27, 1998; 65 FR 38424, June 21, 2000; 68 FR 47414, Aug. 8, 2003]

EFFECTIVE DATE NOTE: At 73 FR 79602, Dec. 30, 2008, in § 9003.1, paragraph (b)(8) is amended by removing the number "400" and adding in its place the number "300".

§ 9003.2 Candidate certifications.

(a) *Major party candidates.* To be eligible to receive payments under 11 CFR part 9005, each Presidential and Vice Presidential candidate of a major party shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under 11 CFR part 9004.

(2) That no contributions have been or will be accepted by the candidate or his or her authorized committee(s); except as contributions specifically solicited for, and deposited to, the candidate's legal and accounting compliance fund established under 11 CFR 9003.3(a); or except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Minor and new party candidates.* To be eligible to receive any payments under 11 CFR part 9005, each Presidential and Vice Presidential candidate of a minor or new party shall, under penalty of perjury, certify to the Commission:

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(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1.

(2) That no contributions to defray qualified campaign expenses have been or will be accepted by the candidate or his or her authorized committee(s) except to the extent that the qualified campaign expenses incurred exceed the aggregate payments received by such candidate from the Fund under 11 CFR 9004.2.

(c) *All candidates.* To be eligible to receive any payment under 11 CFR 9004.2, the Presidential candidate of each major, minor or new party shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his or her personal funds, or the personal funds of his or her immediate family, in connection with his or her campaign for the office of President in excess of \$50,000 in the aggregate.

(1) For purposes of this section, the term *immediate family* means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(2) Expenditures from personal funds made under this paragraph shall not apply against the expenditure limitations.

(3) For purposes of this section, the terms *personal funds* and *personal funds of his or her immediate family* mean:

(i) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

- (A) Legal and rightful title, or
- (B) An equitable interest.

(ii) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been custom-

arily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

(iii) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by any instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

(4) For purposes of this section, expenditures from personal funds made by a candidate of a political party for the office of Vice President shall be considered to be expenditures made by the candidate of such party for the office of President.

(5) Contributions made by members of a candidate's family from funds which do not meet the definition of personal funds under 11 CFR 9003.2(c)(3) shall not count against such candidate's \$50,000 expenditure limitation under 11 CFR 9003.2(c).

(6) Personal funds expended pursuant to this section shall be first deposited in an account established in accordance with 11 CFR 9003.3 (b) or (c).

(7) The provisions of this section shall not operate to limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR part 9007. If the candidate or his or her committee knowingly incurs expenditures in excess of the limitations of 11 CFR 110.8(a), the Commission may seek civil penalties under 11 CFR part 111 in addition to any repayment determinations made on the basis of such excessive expenditures.

(8) Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. For purposes of this section, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff

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date for determining which charges are included on that billing statement.

(d) *Form.* Major party candidates shall submit the certifications required under 11 CFR 9003.2 in a letter which shall be signed and submitted within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more States pursuant to 11 CFR 9002.2(a)(2). The Commission, upon written request by a minor or new party candidate made at any time prior to the date of the general election, may extend the deadline for filing such letter, except that the deadline shall be a date prior to the day of the general election.

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

(a) *Legal and accounting compliance fund—major party candidates—(1) Sources.* (i) A major party candidate, or an individual who is seeking the nomination of a major party, may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A general election legal and accounting compliance fund ("GELAC") may be established by such individual prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States. Before April 1 of the calendar year in which a Presidential general election is held, contributions may only be deposited in the GELAC if they are made for the primary and exceed the contributor's contribution limits for the primary and are lawfully redesignated for the GELAC pursuant to 11 CFR 110.1.

(A) All solicitations for contributions to the GELAC shall clearly state that Federal law prohibits private contributions from being used for the candidate's election and that contributions will be used solely for legal and accounting services to ensure compliance with Federal law, and shall clearly state how contribution checks should be made payable. Contributions

shall not be solicited for the GELAC before April 1 of the calendar year in which a Presidential general election is held. If the candidate does not become the nominee, all contributions accepted for the GELAC, including redesignated contributions, shall be refunded within sixty (60) days after the candidate's date of ineligibility.

(B) Contributions to the GELAC shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114, and 115.

(C) Contributions shall be deposited in the GELAC only if they are designated in writing for the GELAC, or transferred pursuant to paragraph (a)(1) (ii), (iii), (iv) or (v) of this section. Any contribution which otherwise could be matched pursuant to 11 CFR 9034.2 shall not be considered designated in writing for the GELAC unless the contributor specifically redesignates it for the GELAC or unless it is accompanied by a proper designation for the GELAC. Any contribution that is designated in writing or redesignated for the GELAC shall not be matched pursuant to 11 CFR 9034.2.

(ii)(A) Contributions made during the matching payment period that do not exceed the contributor's limit for the primary election may be redesignated for the GELAC and subsequently transferred to the GELAC before the nomination only if—

(1) The contributions represent funds in excess of any amount needed to pay remaining primary expenses;

(2) The contributions have not been submitted for matching;

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

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

(B) All contributions redesignated and deposited pursuant to paragraph (a)(1)(ii)(A) of this section shall be subject to the contribution limitations applicable for the general election pursuant to 11 CFR 110.1(b)(2)(i).

(iii) Funds received during the matching payment period that are remaining in a candidate's primary election account after the nomination may be transferred to the GELAC without regard to the contribution limitations

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of 11 CFR part 110 and used for any purpose permitted under this section, only if the funds are in excess of any amount needed to pay remaining net outstanding campaign obligations under 11 CFR 9034.1(b) and any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2. The excess funds so transferred may include contributions made before the beginning of the expenditure report period, which contributions do not exceed the contributor's limit for the primary election. Such contributions need not be redesignated by the contributors for the GELAC.

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

(A) The funds are in excess of any amount needed to pay remaining net outstanding campaign obligations under 11 CFR 9034.1(b) and any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2;

(B) The contributions have not been submitted for matching; and

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

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

(vi) For purposes of this section, a contribution shall be considered to be designated in writing for the GELAC if—

(A) The contribution is made by check, money order, or other negotiable instrument which clearly indicates that it is made with respect to the GELAC; or

(B) The contribution is accompanied by a writing, signed by the contributor,

which clearly indicates that it is made with respect to the GELAC.

(2) *Uses.* (i) Contributions to the GELAC shall be used only for the following purposes:

(A) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* in accordance with paragraph (a)(2)(ii) of this section;

(B) To defray in accordance with paragraph (a)(2)(ii)(A) of this section, that portion of expenditures for payroll, overhead, and computer services related to ensuring compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(C) To defray any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26 U.S.C. 9012;

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

(E) To defray the cost of soliciting contributions to the GELAC;

(F) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software;

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

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

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

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(ii)(A) Expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with Title 2 of the United States Code and Chapter 95 of Title 26 of the United States Code, shall be initially paid from the candidate's Federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. For purposes of paragraph (a)(2)(i)(B) of this section, a candidate may use contributions to the GELAC to reimburse his or her Federal fund account an amount equal to 10% of the payroll and overhead expenditures of his or her national campaign headquarters and state offices.

(B) Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(C) If the candidate wishes to claim a larger compliance exemption for payroll or overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered necessary to ensure compliance with title 2 of the United States Code or chapter 95 of title 26 of the United States Code. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity.

(D) In addition, a candidate may use contributions to the GELAC to reimburse his or her Federal fund account an amount equal to 50% of the costs (other than payroll) associated with computer services. Such costs include but are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(E) If the candidate wishes to claim a larger compliance exemption for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance

with 2 U.S.C. 431 *et seq.*, and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by persons other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(F) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs.

(G) Reimbursement from the GELAC may be made to the separate account maintained for federal funds under 11 CFR 9005.2 for legal and accounting compliance services disbursements that are initially paid from the separate federal funds account. Such reimbursement must be made prior to any repayment determination by the Commission pursuant to 11 CFR 9007.2. Any amounts so reimbursed to the Federal funds account may not subsequently be transferred back to the GELAC.

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

(iv) Contributions to and funds deposited in the GELAC may not be used to retire debts remaining from the presidential primaries, except that, after payment of all expenses set out in paragraph (a)(2)(i) of this section, and the completion of the audit and repayment process, including the making of all repayments owed to the United States Treasury by both the candidate's primary and general election committees, funds remaining in the

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GELAC may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts, which shall remain subject to the primary expenditure limit under 11 CFR 9035.1.

(3) *Deposit and disclosure.* (i) Amounts received pursuant to paragraph (a)(1) of this section shall be deposited and maintained in a GELAC account separate from the account described in 11 CFR 9005.2 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.2.

(ii) The receipts to and disbursements from the GELAC account shall be reported in a separate report in accordance with 11 CFR 9006.1(b)(2). All contributions made to the GELAC account shall be recorded in accordance with 11 CFR 102.9. Disbursements made from the GELAC account shall be documented in the same manner provided in 11 CFR 9003.5.

(b) *Contributions to defray qualified campaign expenses—major party candidates.* (1) A major party candidate or his or her authorized committee(s) may solicit contributions to defray qualified campaign expenses to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(2) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only to defray qualified campaign expenses and to defray the cost of soliciting contributions to such account. All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR 9006.1.

(3) A candidate may make transfers to this account from his or her GELAC, or from the candidate's primary election account in accordance with paragraph (a)(1)(iii) of this section.

(4) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114 and 115 and shall be aggregated with all contributions made by the same persons to the candidate's GELAC under paragraph (a) of this sec-

tion for the purposes of such limitations.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR part 104 and 11 CFR 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs. The candidate may claim a larger fundraising exemption by establishing allocation percentages for employees using the method described in paragraph (a)(2)(i)(C) of this section.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. A candidate may exclude from the expenditure limitation the amounts described in paragraphs (a)(2)(ii) (A) and (D) of this section for payroll, overhead or computer costs or a larger amount under paragraphs (a)(2)(ii) (C) and (E) of this section.

(7) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

(c) *Contributions to defray qualified campaign expenses—minor and new party candidates.* (1) A minor or new party candidate may solicit contributions to defray qualified campaign expenses which exceed the amount received by such candidate from the Fund, subject to the limits of 11 CFR 9003.2(b).

(2) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114 and 115.

(3) Such contributions may be deposited in a separate account or may be

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deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only for the following purposes:

(i) To defray qualified campaign expenses;

(ii) To make repayments under 11 CFR 9007.2;

(iii) To defray the cost of soliciting contributions to such account;

(iv) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(v) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software.

(4) All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR part 104 and § 9006.1. The candidate shall keep and maintain a separate record of disbursements made to defray exempt legal and accounting costs under paragraphs (c) (6) and (7) of this section and shall report such disbursements in accordance with 11 CFR part 104 and 11 CFR 9006.1.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR part 104 and 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation the amount of payroll costs described in paragraph (b)(5) of this section.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. A candidate may exclude from the expenditure limitation the amounts described in paragraphs (a)(2)(ii) (A) and (D) of this section for payroll, overhead or computer costs or a larger amount under paragraphs (a)(2)(ii) (C) and (E) of this section.

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(7) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

[60 FR 31872, June 16, 1995, as amended at 60 FR 57537, Nov. 16, 1995; 64 FR 49362, Sept. 13, 1999; 67 FR 78682, Dec. 26, 2002; 68 FR 47414, Aug. 8, 2003]

§ 9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.

(a) *Permissible expenditures.* (1) A candidate may incur expenditures before the beginning of the expenditure report period, as defined at 11 CFR 9002.12, if such expenditures are for property, services or facilities which are to be used in connection with his or her general election campaign and which are for use during the expenditure report period. Such expenditures will be considered qualified campaign expenses. Examples of such expenditures include but are not limited to: Expenditures for establishing financial accounting systems and expenditures for organizational planning. Expenditures for polling that are incurred before the start of the expenditure report period are attributed as provided in 11 CFR 9034.4(e)(2).

(2) A candidate may incur qualified campaign expenses prior to receiving payments under 11 CFR part 9005.

(b) *Sources.* (1) A candidate may obtain a loan which meets the requirements of 11 CFR 100.82 for loans in the ordinary course of business to defray permissible expenditures described in 11 CFR 9003.4(a). A candidate receiving payments equal to the expenditure limitation in 11 CFR 110.8 shall make full repayment of principal and interest on such loans from payments received by the candidate under 11 CFR part 9005 within 15 days of receiving such payments.

(2) A major party candidate may borrow from his or her legal and accounting compliance fund for the purposes of defraying permissible expenditures described in 11 CFR 9003.4(a). All amounts

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borrowed from the legal and accounting compliance fund must be restored to such fund after the beginning of the expenditure report period either from federal funds received under 11 CFR part 9005 or private contributions received under 11 CFR 9003.3(b). For candidates receiving federal funds, restoration shall be made within 15 days after receipt of such funds.

(3) A minor or new party candidate may defray such expenditures from contributions received in accordance with 11 CFR 9003.3(c).

(4)(i) A candidate who has received federal funding under 11 CFR part 9031 *et seq.*, may borrow from his or her primary election committee(s) an amount not to exceed the residual balance projected to remain in the candidate's primary account(s) on the basis of the formula set forth at 11 CFR 9038.3(c). A major party candidate receiving payments equal to the expenditure limitation shall reimburse amounts borrowed from his or her primary committee(s) from payments received by the candidate under 11 CFR part 9005 within 15 days of such receipt.

(ii) A candidate who has not received federal funding during the primary campaign may borrow at any time from his or her primary account(s) to defray such expenditures, provided that a major party candidate receiving payments equal to the expenditure limitation shall reimburse all amounts borrowed from his or her primary committee(s) from payments received by the candidate under 11 CFR part 9005 within 15 days of such receipt.

(5) A candidate may use personal funds in accordance with 11 CFR 9003.2(c), up to his or her \$50,000 limit, to defray such expenditures.

(c) *Deposit and disclosure.* Amounts received or borrowed by a candidate under 11 CFR 9003.4(b) to defray expenditures permitted under 11 CFR 9003.4(a) shall be deposited in a separate account to be used only for such expenditures. All receipts and disbursements from such account shall be reported pursuant to 11 CFR 9006.1(a) and documented in accordance with 11 CFR 9003.5

[56 FR 35913, July 29, 1991, as amended at 60 FR 31874, June 16, 1995; 67 FR 78682, Dec. 26, 2002]

§ 9003.5 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9002.11. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in paragraph (b) of this section.

(b) *Documentation required.* (1) For disbursements in excess of \$200 to a payee, the candidate shall present a canceled check negotiated by the payee and either:

(i) A receipted bill from the payee that states that purpose of the disbursement; or

(ii) If such a receipt is not available,

(A) One of the following documents generated by the payee: a bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in paragraph (b)(1)(ii)(A) of this section are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) Where the supporting documentation required in paragraphs (b)(1)(i) or (ii) of this section is not available, the candidate or committee may present collateral evidence to document the qualified campaign expense. Such collateral evidence may include, but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office; or

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a dairy travel expense policy.

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(iv) If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check negotiated by the payee.

(2) For all other disbursements, the candidate shall present:

(i) A record disclosing the full name and mailing address of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A canceled check negotiated by the payee that states the full name and mailing address of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) *Payee* means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives \$1000 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased. Examples of acceptable and unacceptable descriptions of goods and services purchased are listed at 11 CFR 104.3(b)(3)(i)(B).

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

(c) *Retention of records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets*—(1) *Capital assets* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded \$2000 when acquired by the campaign. The list shall include a brief description of each capital asset, the pur-

chase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, “capital asset” shall be defined in accordance with 11 CFR 9004.9(d)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds \$5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9004.9(d)(2).

[60 FR 31874, June 16, 1995, as amended at 64 FR 49362, Sept. 13, 1999; 68 FR 47415, Aug. 8, 2003]

§ 9003.6 Production of computer information.

(a) *Categories of computerized information to be provided.* If the candidate or the candidate’s authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9007.1(b)(1):

(1) Information required by law to be maintained regarding the committee’s receipts or disbursements;

(2) Receipts by and disbursements from a legal and accounting compliance fund under 11 CFR 9003.3(a), including the allocation of payroll and overhead expenditures;

(3) Receipts and disbursements under 11 CFR 9003.3 (b) or (c) to defray the costs of soliciting contributions or to defray the costs of legal and accounting services, including the allocation of payroll and overhead expenditures;

(4) Records relating to the costs of producing broadcast communications and purchasing airtime;

(5) Records used to prepare statements of net outstanding qualified campaign expenses;

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(6) Records used to reconcile bank statements;

(7) Disbursements made and reimbursements received for the cost of transportation, ground services and facilities made available to media personnel, including records relating to how costs charged to media personnel were determined;

(8) Records relating to the acquisition, use and disposition of capital assets or other assets; and

(9) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, bank reconciliations or statements of net outstanding qualified campaign expenses.

(b) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

Sec.

9004.1 Major parties.

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9004.9 Net outstanding qualified campaign expenses.

9004.10 Sale of assets acquired for fund-raising purposes.

9004.11 Winding down costs.

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

SOURCE: 56 FR 35919, July 29, 1991, unless otherwise noted.

§ 9004.1 Major parties.

The eligible candidates of each major party in a Presidential election shall be entitled to equal payments under 11 CFR part 9005 in an amount which, in the aggregate, shall not exceed \$20,000,000 as adjusted by the Consumer Price Index in the manner described in 11 CFR 110.17(a).

[56 FR 35919, July 29, 1991, as amended at 67 FR 78683, Dec. 26, 2002]

§ 9004.2 Pre-election payments for minor and new party candidates.

(a) *Candidate of a minor party in the preceding election.* An eligible candidate of a minor party is entitled to pre-election payments:

(1) If he or she received at least 5% of the total popular vote as the candidate of a minor party in the preceding election whether or not he or she is the same minor party's candidate in this election.

(2) In an amount which is equal, in the aggregate, to a proportionate share of the amount to which major party candidates are entitled under 11 CFR 9004.1.

The aggregate amount received by a minor party candidate shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor party Presidential candidate in the preceding Presidential election bears to the average number of popular votes received by all major party candidates in that election.

(b) *Candidate of a minor party in the current election.* The eligible candidate

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of a minor party whose candidate for the office of President in the preceding election received at least 5% but less than 25% of the total popular vote is eligible to receive pre-election payments. The amount which a minor party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the minor party's candidate in the preceding Presidential election; however, the amount to which the minor party candidate is entitled under this section shall be reduced by the amount to which the minor party's Presidential candidate in this election is entitled under 11 CFR 9004.2(a), if any.

(c) *New party candidate.* A candidate of a new party who was a candidate for the office of President in at least 10 States in the preceding election may be eligible to receive pre-election payments if he or she received at least 5% but less than 25% of the total popular vote in the preceding election. The amount which a new party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the new party candidate in the preceding election. If a new party candidate is entitled to payments under this section, the amount of the entitlement shall be reduced by the amount to which the candidate is entitled under 11 CFR 9004.2(a), if any.

§ 9004.3 Post-election payments.

(a) *Minor and new party candidates.* Eligible candidates of a minor party or of a new party who, as candidates, receive 5 percent or more of the total number of popular votes cast for the office of President in the election shall be entitled to payments under 11 CFR part 9005 equal, in the aggregate, to a proportionate share of the amount allowed for major party candidates under 11 CFR 9004.1. The amount to which a minor or new party candidate is entitled shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor or new party candidate in the Presidential election bears to the average number of popular votes received by the major

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party candidates for President in that election.

(b) *Amount of entitlement.* The aggregate payments to which an eligible candidate shall be entitled shall not exceed an amount equal to the lower of:

(1) The amount of qualified campaign expenses incurred by such eligible candidate and his or her authorized committee(s), reduced by the amount of contributions which are received to defray qualified campaign expenses by such eligible candidate and such committee(s); or

(2) The aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1, reduced by the amount of contributions received by such eligible candidates and their authorized committees to defray qualified campaign expenses in the case of a deficiency in the Fund.

(c) *Amount of entitlement limited by pre-election payment.* If an eligible candidate is entitled to payment under 11 CFR 9004.2, the amount allowable to that candidate under this section shall also be limited to the amount, if any, by which the entitlement under 11 CFR 9004.3(a) exceeds the amount of the entitlement under 11 CFR 9004.2.

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

(a) *Qualified campaign expenses.* An eligible candidate shall use payments received under 11 CFR part 9005 only for the following purposes:

(1) To defray qualified campaign expenses;

(2) To repay loans that meet the requirements of 11 CFR 100.52(b) or 100.82 or to otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3 (b) or (c) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses;

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

(4) To defray winding down costs pursuant to 11 CFR 9004.11;

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

(6) Monetary bonuses paid after the date of the election and gifts shall be considered qualified campaign expenses, provided that:

(i) All monetary bonuses paid after the date of the election for committee employees and consultants in recognition of campaign-related activities or services:

(A) Are provided for pursuant to a written contract made prior to the date of the election; and

(B) Are paid during the expenditure report period; and

(ii) Gifts for committee employees, consultants and volunteers in recognition of campaign-related activities or services do not exceed \$150 total per individual and the total of all gifts does not exceed \$20,000.

(b) *Non-qualified campaign expenses*—
(1) *General*. The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive expenditures*. An expenditure which is in excess of any of the limitations under 11 CFR 9003.2 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to these limitations using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were later settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

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

as defined in 11 CFR 9002.12, are not qualified campaign expenses.

(4) *Civil or criminal penalties*. Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR part 9005. Penalties may be paid from contributions in the candidate's legal and accounting compliance fund, in accordance with 11 CFR 9003.3(a)(2)(i)(C). Additional amounts may be received and expended to pay such penalties, if necessary. These funds shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR part 104.

(5) *Solicitation expenses*. Any expenses incurred by a major party candidate to solicit contributions to a legal and accounting compliance fund established pursuant to 11 CFR 9003.3(a) are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR part 9005.

(6) *Payments to candidate*. Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.

(7) *Payments to other authorized committees*. Payments, including transfers, contributions and loans, to other committees authorized by the same candidate for a different election are not qualified campaign expenses.

(8) *Lost, misplaced, or stolen items*. The cost of lost, misplaced, or stolen items may be considered a nonqualified campaign expense. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved;

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and the number and value of items that were lost.

[56 FR 35919, July 29, 1991, as amended at 60 FR 31875, June 16, 1995; 64 FR 49362, Sept. 13, 1999; 67 FR 78683, Dec. 26, 2002; 68 FR 47415, Aug. 8, 2003]

§ 9004.5 Investment of public funds; other uses resulting in income.

Investment of public funds or any other use of public funds that results in income is permissible, provided that an amount equal to all net income derived from such a use, less Federal, State and local taxes paid on such income, shall be paid to the Secretary. Any net loss from an investment or other use of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such loss shall be repaid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

[60 FR 31876, June 16, 1995]

§ 9004.6 Expenditures for transportation and services made available to media personnel; reimbursements.

(a) *General.* (1) Expenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters, and computers) provided to media personnel, Secret Service personnel or national security staff will be considered qualified campaign expenses, and, except for costs relating to Secret Service personnel or national security staff, will be subject to the overall expenditure limitations of 11 CFR 9003.2(a)(1) and (b)(1).

(2) Subject to the limitations in paragraphs (b) and (c) of this section, committees may seek reimbursement from the media for the expenses described in paragraph (a)(3) of this section, and may deduct reimbursements received from media representatives from the amount of expenditures subject to the overall expenditure limitation of 11 CFR § 9003.2(a)(1) and (b)(1). Expenses for which the committee receives no reimbursement will be considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and na-

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tional security staff, will be subject to the overall expenditure limitation.

(3) Committees may seek reimbursement from the media only for the billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office.

(b) *Reimbursement limits; billing.* (1) The amount of reimbursement sought from a media representative under paragraph (a)(2) of this section shall not exceed 110% of the media representative's pro rata share (or a reasonable estimate of the media representative's pro rata share) of the actual cost of the transportation and services made available. Any reimbursement received in excess of this amount shall be disposed of in accordance with paragraph (d)(1) of this section.

(2) For the purposes of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 9004.7(b)(5)(i), the total number of individuals shall not include national security staff.

(3) No later than sixty (60) days of the campaign trip or event, the committee shall provide each media representative attending the event with an itemized bill that specifies the amounts charged for air and ground transportation for each segment of the trip, housing, meals, telephone service, and other billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office. Payments shall be due sixty (60) days from the date of the bill, unless the media representative disputes the charges.

(c) *Deduction of reimbursements from expenditures subject to the overall expenditure limitation.* (1) The committee

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may deduct from the amount of expenditures subject to the overall expenditure limitation:

(i) The amount of reimbursements received from media representatives in payment for the transportation and services described in paragraph (a) of this section, up to the actual cost of the transportation and services provided to media representatives; and

(ii) An additional amount of the reimbursements received from media representatives, representing the administrative costs incurred by the committee in providing these services to the media representative and seeking reimbursement for them, equal to:

(A) Three percent of the actual cost of transportation and services provided to the media representatives under this section; or

(B) An amount in excess of 3% representing the administrative costs actually incurred by the committee in providing services to the media representatives, provided that the committee is able to document the total amount of administrative costs actually incurred.

(2) For the purpose of this paragraph, “administrative costs” includes all costs incurred by the committee in making travel arrangements and seeking reimbursement, whether these services are performed by committee staff or by independent contractors.

(d) *Disposal of excess reimbursements.* If the committee receives reimbursements in excess of the amount deductible under paragraph (c) of this section, it shall dispose of the excess amount in the following manner:

(1) Any reimbursement received in excess of 110% of the actual pro rata cost of the transportation and services made available to a media representative shall be returned to the media representative.

(2) Any amount in excess of the amount deductible under paragraph (c) of this section that is not required to be returned to the media representative under paragraph (d)(1) of this section shall be paid to the Treasury.

(e) *Reporting.* The total amount paid by an authorized committee for the services and facilities described in paragraph (a)(1) of this section, plus the administrative costs incurred by

the committee in providing these services and facilities and seeking reimbursement for them, shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee under paragraph (b)(1) of this section shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

[60 FR 31876, June 16, 1995, as amended at 64 FR 42583, Aug. 5, 1999; 68 FR 69595, Dec. 15, 2003]

§ 9004.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR 106.3, expenditures for travel relating to a Presidential or Vice Presidential candidate’s campaign by any individual, including a candidate, shall, pursuant to the provisions of paragraph (b) of this section, be qualified campaign expenses and be reported by the candidate’s authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from the stop through each subsequent campaign-related stop to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related. Campaign activity includes soliciting, making, or accepting contributions, and expressly advocating the election or defeat of the candidate. Other factors, including the setting, timing and statements or expressions of the purpose of an event, and the substance of the remarks or speech made, will also be considered in determining whether a stop is campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available by the committee for Commission inspection. The itinerary

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shall show the time of arrival and departure and the type of events held.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection. When required to be created, a copy of the government's or charter company's official manifest shall also be maintained and made available by the committee.

(5)(i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the applicable rate set forth in 11 CFR 100.93(e).

(ii) [Reserved]

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the amount required under 11 CFR 100.93(d).

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted airfare as required by 11 CFR 100.93(i)(1) or (2) in addition to any other documentation required in this section. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate as required by 11 CFR 100.93(i)(3) in addition to any other documentation required in this section.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members

conduct campaign-related activities, their travel expenses shall be qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, who are traveling for campaign purposes shall be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

(8) Travel on airplanes not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135, government conveyances, and other means of transportation not operated for commercial passenger service is governed by 11 CFR 100.93.

[60 FR 31876, June 16, 1995, as amended at 68 FR 69595, Dec. 15, 2003]

§ 9004.8 Withdrawal by candidate.

(a) Any individual who is not actively conducting campaigns in more than one State for the office of President or Vice President shall cease to be a candidate under 11 CFR 9002.2.

(b) An individual who ceases to be a candidate under this section shall:

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(1) No longer be eligible to receive any payments under 11 CFR 9005.2 except to defray qualified campaign expenses as provided in 11 CFR 9004.4.

(2) Submit a statement, within 30 calendar days after he or she ceases to be a candidate, setting forth the information required under 11 CFR 9004.9(c).

§ 9004.9 Net outstanding qualified campaign expenses.

(a) *Candidates receiving post-election funding.* A candidate who is eligible to receive post-election payments under 11 CFR 9004.3 shall file, no later than 20 calendar days after the date of the election, a preliminary statement of that candidate's net outstanding qualified campaign expenses. The candidate's net outstanding qualified campaign expenses under this section equal the difference between 11 CFR 9004.9(a)(1) and (2).

(1) The total of:

(i) All outstanding obligations for qualified campaign expenses as of the date of the election; plus

(ii) An estimate of the amount of qualified campaign expenses that will be incurred by the end of the expenditure report period; plus

(iii) An estimate of the necessary winding down costs, as defined under 11 CFR 9004.4(a)(4), submitted in the format required by paragraph (a)(4) of this section; less

(2) The total of:

(i) Cash on hand as of the close of business on the day of the election, including: All contributions dated on or before that date; currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value;

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the candidate's authorized committee(s) in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(3) The amount submitted as the total of outstanding campaign obliga-

tions under paragraph (a)(1) of this section shall not include any accounts payable for non-qualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR part 9007 or any amounts paid to secure a surety bond under 11 CFR 9007.5(c).

(4) The amount submitted as an estimate of necessary winding down costs under paragraph (a)(1)(iii) of this section shall be broken down by expense category and quarterly or monthly time period. This breakdown shall include estimated costs for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing and storage. The breakdown shall estimate the costs that will be incurred in each category from the time the statement is submitted until the expected termination of the committee's political activity.

(b) *All candidates.* Each candidate, except for individuals who have withdrawn pursuant to 11 CFR 9004.8, shall submit a statement of net outstanding qualified campaign expenses no later than 30 calendar days after the end of the expenditure report period. The statement shall contain the information required by 11 CFR 9004.9(a)(1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the last day of the expenditure report period.

(c) *Candidates who withdraw.* An individual who ceases to be a candidate pursuant to 11 CFR 9004.8 shall file a statement of net outstanding qualified campaign expenses no later than 30 calendar days after he or she ceases to be a candidate. The statement shall contain the information required under 11 CFR 9004.9(a)(1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the day on which the individual ceased to be a candidate.

(d)(1) *Capital assets and assets purchased from the primary election committee.* (i) For purposes of this section,

the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded \$2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under paragraph (d)(2) of this section. Capital assets include items such as computer systems and telecommunications systems, if the equipment is used together and if the total cost of all components that are used together exceeds \$2000. A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(1). The fair market value of capital assets shall be considered to be 60% of the total original cost of such items when acquired, except that items received after the end of the expenditure report period must be valued at their fair market value on the date acquired. A candidate may claim a lower fair market value for a capital asset by listing that capital asset on the statement separately and demonstrating, through documentation, the lower fair market value.

(ii) If capital assets are obtained from the candidate's primary election committee, the purchase price shall be considered to be 60% of the original cost of such assets to the candidate's primary election committee. For purposes of the statement of net outstanding qualified campaign expenses filed after the end of the expenditure report period, the fair market value of capital assets obtained from the candidate's primary election committee shall be considered to be 20% of the original cost of such assets to the candidate's primary election committee.

(iii) Items purchased from the primary election committee that are not capital assets, and also are not other assets under paragraph (d)(2) of this section, shall be listed on an inventory that states their valuation.

(2) *Other assets.* The term *other assets* means any property acquired by the committee for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the

candidate's statement of net outstanding qualified campaign expenses if the aggregate value of such assets exceeds \$5000. The value of "other assets" shall be determined by the fair market value of each item on the last day of the expenditure report period or the day on which the individual ceased to be a candidate, whichever is earlier, unless the item is acquired after these dates, in which case the item shall be valued on the date it is acquired. A list of other assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(2).

(e) *Collectibility of accounts receivable.* If the committee determines that an account receivable of \$500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full write-off was determined.

(f) *Review of candidate statement—(1) General.* The Commission will review the statement filed by each candidate under this section. The Commission may request further information with respect to statements filed pursuant to 11 CFR 9004.9(b) during the audit of that candidate's authorized committee(s) under 11 CFR part 9007.

(2) *Candidate eligible for post-election funding.* (i) If, in reviewing the preliminary statement of a candidate eligible to receive post-election funding, the Commission receives information indicating that substantial assets of that candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding qualified campaign expenses has been otherwise overstated in relation to committee assets, the Commission may decide to temporarily postpone its certification of funds to that candidate pending a final determination of whether the candidate is entitled to all or a portion of the funds for which he or she is eligible based on

the percentage of votes the candidate received in the general election.

(ii) *Initial determination.* In making a determination under 11 CFR 9004.9(f)(2)(i), the Commission will notify the candidate within 10 business days after its receipt of the statement of its initial determination that the candidate is not entitled to receive the full amount for which the candidate may be eligible. The notice will give the legal and factual reasons for the initial determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given the opportunity to revise the statement or to submit, within 10 business days, written legal or factual materials to demonstrate that the candidate has net outstanding qualified campaign expenses that entitle the candidate to post-election funds. Such materials may be submitted by counsel if the candidate so desires.

(iii) *Final determination.* The Commission will consider any written legal or factual materials submitted by the candidate before making its final determination. A final determination that the candidate is entitled to receive only a portion or no post-election funding will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(iv) If the candidate demonstrates that the amount of outstanding qualified campaign expenses still exceeds committee assets, the Commission will certify the payment of post-election funds to which the candidate is entitled.

(v) *Petitions for rehearing.* The candidate may file a petition for rehearing of a final determination under this section in accordance with 11 CFR 9007.5(a).

[56 FR 35919, July 29, 1991, as amended at 60 FR 31877, June 16, 1995; 64 FR 49363, Sept. 13, 1999]

§ 9004.10 Sale of assets acquired for fundraising purposes.

(a) *General.* A minor or new party candidate may sell assets donated to the candidate's authorized committee(s) or otherwise acquired for fundraising purposes subject to the limitations and prohibitions of 11 CFR 9003.2, title 2, United States Code, and 11 CFR parts 110 and 114. This section will only apply to major party candidates to the extent that they sell assets acquired either for fundraising purposes in connection with his or her legal and accounting compliance fund or when it is necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Sale after end of expenditure report period.* A minor or new party candidate, or a major party candidate in the event of a deficiency in the payments received from the Fund due to the application of 11 CFR 9005.2(b), whose outstanding debts exceed the cash on hand after the end of the expenditure report period as determined under 11 CFR 9002.12, may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of title 2, United States Code and 11 CFR parts 110 and 114.

§ 9004.11 Winding down costs.

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

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

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

(2) 2.5% of the total of:

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

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

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

(c) *Allocation of primary and general election winding down costs.* A candidate who runs in both the primary and general election may divide winding down expenses between his or her primary and general election committees using any reasonable allocation method. An allocation method is reasonable if it divides the total winding down costs between the primary and general election committees and results in no less than one third of total winding down costs allocated to each committee. A candidate may demonstrate that an allocation method is reasonable even if either the primary or the general election committee is allocated less than one third of total winding down costs.

[68 FR 47416, Aug. 8, 2003]

PART 9005—CERTIFICATION BY COMMISSION

Sec.

9005.1 Certification of payments for candidates.

9005.2 Payments to eligible candidates from the Fund.

AUTHORITY: 26 U.S.C. 9005, 9006 and 9009(b).

SOURCE: 56 FR 35923, July 29, 1991, unless otherwise noted.

§ 9005.1 Certification of payments for candidates.

(a) *Certification of payments for major party candidates.* Not later than 10 days after the Commission determines that the Presidential and Vice Presidential candidates of a major party have met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1 and 9003.2, the Commission shall certify to the Secretary that payment in full of the amounts to which such candidates are entitled under 11 CFR

part 9004 should be made pursuant to 11 CFR 9005.2.

(b) *Certification of pre-election payments for minor and new party candidates.* (1) Not later than 10 days after a minor or new party candidate has met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1, 9003.2 and 9004.2, the Commission will make an initial determination of the amount, if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each State. In notifying the candidate, the Commission will give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based.

(2) The candidate may submit, within 15 days after the Commission's initial determination, written legal or factual materials to demonstrate that a re-determination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(c) *Certification of minor and new party candidates for post-election payments.* (1) Not later than 30 days after the general election, the Commission will determine whether a minor or new party candidate is eligible for post-election payments.

(2) The Commission's determination of eligibility will be based on the following factors:

(i) The candidate has received at least 5% or more of the total popular vote based on unofficial vote results in each State;

(ii) The candidate has filed a preliminary statement of his or her net outstanding qualified campaign expenses pursuant to 11 CFR 9004.9(a); and

(iii) The candidate has met all applicable conditions for eligibility under 11 CFR 9003.1 and 9003.2.

(3) The Commission will notify the candidate of its initial determination of the amount, if any, to which the candidate is entitled, give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based. The Commission will also notify the candidate that it will deduct a percentage of the amount to which the candidate is entitled based on the unofficial vote results when the Commission certifies an amount for payment to the Secretary. This deduction will be based on the average percentage differential between the unofficial and official vote results for all candidates who received public funds in the preceding Presidential general election.

(4) The candidate may submit within 15 days after the Commission's initial determination written legal or factual materials to demonstrate that a re-determination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(5) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(d) All certifications made by the Commission pursuant to this section shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under 11 CFR part 9007 and judicial review under 26 U.S.C. 9011.

[56 FR 35923, July 29, 1991; 56 FR 55972, Oct. 30, 1991]

§ 9005.2 Payments to eligible candidates from the Fund.

(a) Upon receipt of a certification from the Commission under 11 CFR 9005.1 for payment to the eligible Presidential and Vice Presidential candidates of a political party, the Sec-

retary shall pay to such candidates out of the Fund the amount certified by the Commission. Amounts paid to a candidate shall be under the control of that candidate.

(b)(1) If at the time of a certification from the Commission under 11 CFR 9005.1, the Secretary determines that the monies in the Fund are not, or may not be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he or she shall withhold an amount which is determined to be necessary to assure that the eligible candidates of each political party will receive their pro rata share.

(2) Amounts withheld under 11 CFR 9005.2(b)(1) shall be paid when the Secretary determines that there are sufficient monies in the Fund to pay such amounts, or pro rata portions thereof, to all eligible candidates from whom amounts have been withheld.

(c) Payments received from the Fund by a major party candidate shall be deposited in a separate account maintained by his or her authorized committee, unless there is a deficiency in the Fund as provided under 11 CFR 9005.2(b)(1). In the case of a deficiency, the candidate may establish a separate account for payments from the Fund or may deposit such payments with contributions received pursuant to 11 CFR 9003.3(b). The account(s) shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation.

(d) No funds other than the payments received from the Treasury, reimbursements, or income generated through use of public funds in accordance with 11 CFR 9004.5, shall be deposited in the account described in 11 CFR 9005.2(c). "Reimbursements" shall include, but are not limited to, refunds of deposits, vendor refunds, reimbursements for travel expenses under 11 CFR 9004.6 and 9004.7 and reimbursements for legal and accounting costs under 11 CFR 9003.3(a)(2)(ii)(B).

PART 9006—REPORTS AND RECORDKEEPING

Sec.
9006.1 Separate reports.

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9006.2 Filing dates.
9006.3 Alphabetized schedules.

AUTHORITY: 2 U.S.C. 434 and 26 U.S.C. 9009(b).

SOURCE: 56 FR 35924, July 29, 1991, unless otherwise noted.

§ 9006.1 Separate reports.

(a) The authorized committee(s) of a candidate shall report all expenditures to further the candidate's general election campaign in reports separate from reports of any other expenditures made by such committee(s) with respect to other elections. Such reports shall be filed pursuant to the requirements of 11 CFR part 104.

(b) The authorized committee(s) of a candidate shall file separate reports as follows:

(1) One report shall be filed which lists all receipts and disbursements of:

(i) Contributions and loans received by a major party candidate pursuant to 11 CFR part 9003 to make up deficiencies in Fund payments due to the application of 11 CFR part 9005;

(ii) Contributions and loans received pursuant to 11 CFR 9003.2(b)(2) by a minor, or new party for use in the general election;

(iii) Receipts for expenses incurred before the beginning of the expenditure report period pursuant to 11 CFR 9003.4;

(iv) Personal funds expended in accordance with 11 CFR 9003.2(c); and

(v) Payments received from the Fund.

(2) A second report shall be filed which lists all receipts of and disbursements from, contributions received for the candidate's legal and accounting compliance fund in accordance with 11 CFR 9003.3(a).

§ 9006.2 Filing dates.

The reports required to be filed under 11 CFR 9006.1 shall be filed during an election year on a monthly or quarterly basis as prescribed at 11 CFR 104.5(b)(1). During a non-election year, the candidate's principal campaign committee may elect to file reports either on a monthly or quarterly basis in accordance with 11 CFR 104.5(b)(2).

§ 9006.3 Alphabetized schedules.

If the authorized committee(s) of a candidate file a schedule of itemized

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receipts, disbursements, or debts and obligations pursuant to 11 CFR 104.3 that was generated directly or indirectly from computerized files or records, the schedule shall list in alphabetical order the sources of the receipts, the payees or the creditors, as appropriate. In the case of individuals, such schedule shall list all contributors, payees, and creditors in alphabetical order by surname.

[60 FR 31877, June 16, 1995]

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

Sec.

9007.1 Audits.
9007.2 Repayments.
9007.3 Extensions of time.
9007.4 Additional audits.
9007.5 Petitions for rehearing; stays of repayment determinations.
9007.6 Stale-dated committee checks.
9007.7 Administrative record.

AUTHORITY: 26 U.S.C. 9007 and 9009(b).

SOURCE: 56 FR 35924, July 29, 1991, unless otherwise noted.

§ 9007.1 Audits.

(a) *General.* (1) After each Presidential election, the Commission will conduct a thorough examination and audit of the receipts, disbursements, debts and obligations of each candidate, his or her authorized committee(s), and agents of such candidates or committees. Such examination and audit will include, but will not be limited to, expenditures pursuant to 11 CFR 9003.4 prior to the beginning of the expenditure report period, contributions to and expenditures made from the legal and accounting compliance fund established under 11 CFR 9003.3(a), contributions received to supplement any payments received from the Fund, and qualified campaign expenses.

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9007.1(a) (1) and (2) may be used by the Commission as the

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basis, or partial basis, for its repayment determinations under 11 CFR 9007.2.

(b) *Conduct of fieldwork.* (1) If the candidate or the candidate's authorized committee does not maintain or use any computerized information containing the data listed in 11 CFR 9003.6, the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the data listed in 11 CFR 9003.6, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. Upon receipt of the computerized information requested and compliance with the technical specifications of 11 CFR 9003.6(b), the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided, and which may be used for purposes including, but not limited to, updating a statement of net outstanding qualified campaign expenses. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

(i) *Office space and records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall pro-

vide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9003.1(b)(6).

(ii) *Availability of committee personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to provide staff, records or office space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9010(c) to enforce the candidate and committee agreement made under 11 CFR 9003.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have ten (10) calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreements.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within 10 days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(v) If the candidate or his or her authorized committee fails to produce particular records, materials, evidence or other information requested by the Commission, the Commission may issue an order pursuant to 2 U.S.C. 437d(a)(1) or a subpoena or subpoena duces tecum pursuant to 2 U.S.C. 437d(a)(3). The procedures set forth in

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11 CFR 111.11 through 111.15, as appropriate, shall apply to the production of such records, materials, evidence or other information as specified in the order, subpoena or subpoena duces tecum.

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations that the staff anticipates it will present to the Commission for approval. Commission staff will advise committee representatives at this conference of the committee's opportunity to respond to these preliminary findings; the projected timetables regarding the issuance of the Preliminary Audit Report, the Audit Report, and any repayment determination; the committee's opportunity for an administrative review of any repayment determination; and the procedures involved in Commission repayment determinations under 11 CFR 9007.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee response to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9007.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9007.1(b) (1) and (2) will apply to any additional fieldwork conducted.

(c) *Preliminary Audit Report: Issuance by Commission and committee response.* (1) Commission staff will prepare a written Preliminary Audit Report, which will be provided to the committee after it is approved by an affirmative vote of four (4) members of the Commission. The Preliminary Audit Report may include—

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, the Presidential Election Campaign Fund Act and Commission regulations;

(ii) The accuracy of statements and reports filed with the Commission by the candidate and committee; and

(iii) Preliminary calculations regarding future repayments to the United States Treasury.

(2) The candidate and his or her authorized committee may submit in writing within 60 calendar days after receipt of the Preliminary Audit Report, legal and factual materials disputing or commenting on the proposed findings contained in the Preliminary Audit Report. In addition, the committee shall submit any additional documentation requested by the Commission. Such materials may be submitted by counsel if the candidate so desires.

(d) *Approval and issuance of the audit report.* (1) Before voting on whether to

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approve and issue an audit report, the Commission will consider any written legal and factual materials timely submitted by the candidate or his or her authorized committee in accordance with paragraph (c) of this section. The Commission-approved audit report may address issues other than those contained in the Preliminary Audit Report. In addition, this report will contain a repayment determination made by the Commission pursuant to 11 CFR 9007.2(c)(1).

(2) The audit report may contain issues that warrant referral to the Office of General Counsel for possible enforcement proceedings under 2 U.S.C. 437g and 11 CFR part 111.

(3) Addenda to the audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted under paragraph (b)(3) of this section, and/or information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. The procedures set forth in paragraphs (c) and (d) (1) and (2) of this section will be followed in preparing such addenda. The addenda will be placed on the public record as set forth in paragraph (e) of this section. Such addenda may also include additional repayment determination(s).

(e) *Public release of audit report.* (1) The Commission will consider the audit report in an open session agenda document. The Commission will provide the candidate and the committee with copies of any agenda document to be considered in an open session 24 hours prior to releasing the agenda document to the public.

(2) Following Commission approval of the audit report, the report will be forwarded to the committee and released to the public. The Commission will provide the candidate and committee with copies of the audit report approved by the Commission 24 hours before releasing the report to the public.

(f)(1) *Sampling.* In conducting an audit of contributions pursuant to this section, the Commission may utilize generally accepted statistical sampling techniques to quantify, in whole or in

part, the dollar value of related audit findings. A projection of the total amount of violations based on apparent violations identified in such a sample may become the basis, in whole or in part, of any audit finding.

(2) A committee in responding to a sample-based finding shall respond only to the specific sample items used to make the projection. If the committee demonstrates that any apparent errors found among the sample items were not errors, the Commission shall make a new projection based on the reduced number of errors in the sample.

(3) Within 30 days of service of the Final Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited contributions not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR 103.3(b) (1), (2) or (3); or take any other action required by the Commission with respect to sample-based findings.

[56 FR 35924, July 29, 1991; 56 FR 42380, Aug. 27, 1991; 60 FR 31878, June 16, 1995; 64 FR 61780, Nov. 15, 1999]

§ 9007.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the Fund under 11 CFR part 9005 shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9007.1 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the day of the presidential election. The Commission's issuance of the audit report to the candidate under 11 CFR 9007.1(d) will constitute notification for purposes of this section.

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(3) Once the candidate receives notice of the Commission's repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(4) Repayments may be made only from the following sources: personal funds of the candidate (without regard to the limitations of 11 CFR 9003.2(c)), contributions and federal funds in the committee's account(s), and any additional funds raised subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended.

(b) *Bases for repayment.* The Commission may determine that an eligible candidate of a political party who has received payments from the Fund must repay the United States Treasury under any of the circumstances described below.

(1) *Payments in excess of candidate's entitlement.* If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the United States Treasury an amount equal to such portion.

(2) *Use of funds for non-qualified campaign expenses.* (i) If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than those described in paragraphs (b)(2)(i) (A) through (C) of this section, it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

(A) To defray qualified campaign expenses;

(B) To repay loans, the proceeds of which were used to defray qualified campaign expenses; and

(C) To restore funds (other than contributions which were received and expended by minor or new party candidates to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR

9007.2(b)(2) include, but are not limited to the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agent(s) have incurred expenses in excess of the aggregate payments to which an eligible major party candidate is entitled;

(B) Determinations that amounts spent by a candidate, a candidate's authorized committee(s) or agent(s) from the Fund were not documented in accordance with 11 CFR 9003.5;

(C) Determinations that any portion of the payments made to a candidate from the Fund was expended in violation of State or Federal law; and

(D) Determinations that any portion of the payments made to a candidate from the Fund was used to defray expenses resulting from a violation of State or Federal law, such as the payment of fines or penalties.

(iii) In the case of a candidate who has received contributions pursuant to 11 CFR 9003.3 (b) or (c), the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of payments certified to the candidate from the Fund bears to the total deposits, as of December 31 of the Presidential election year. For purposes of this section, total deposits means all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts.

(3) *Surplus.* If the Commission determines that a portion of payments from the Fund remains unspent after all qualified campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the United States Treasury that portion of surplus funds.

(4) *Income on investment or other use of payments from the Fund.* If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the fund pursuant to 11 CFR 9004.5, it shall so notify the candidate, and such candidate shall pay to the United States Treasury an amount equal to the amount determined to be

income, less any Federal, State or local taxes on such income.

(5) *Unlawful acceptance of contributions by an eligible candidate of a major party.* If the Commission determines that an eligible candidate of a major party, the candidate's authorized committee(s) or agent(s) accepted contributions to defray qualified campaign expenses (other than contributions to make up deficiencies in payments from the Fund, or to defray expenses incurred for legal and accounting services in accordance with 11 CFR 9003.3(a)), it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the United States Treasury an amount equal to such amount.

(c) *Repayment determination procedures.* The Commission's repayment determination will be made in accordance with the procedures set forth at paragraphs (c)(1) through (c)(4) of this section.

(1) *Repayment determination.* The Commission will provide the candidate with a written notice of its repayment determination(s). This notice will be included in the Commission's audit report prepared pursuant to 11 CFR 9007.1(d) and will set forth the legal and factual reasons for such determination(s), as well as the evidence upon which any such determination is based. The candidate shall repay to the United States Treasury in accordance with paragraph (d) of this section, the amount which the Commission has determined to be repayable.

(2) *Administrative review of repayment determination.* If a candidate disputes the Commission's repayment determination(s), he or she may request an administrative review of the determination(s) as set forth in paragraph (c)(2)(i) of this section.

(i) *Submission of written materials.* A candidate who disputes the Commission's repayment determination(s) shall submit in writing, within 60 calendar days after service of the Commission's notice, legal and factual materials demonstrating that no repayment, or a lesser repayment, is required. Such materials may be submitted by counsel if the candidate so desires. The candidate's failure to timely raise an issue in written mate-

rials presented pursuant to this paragraph will be deemed a waiver of the candidate's right to raise the issue at any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a).

(ii) *Oral hearing.* A candidate who submits written materials pursuant to paragraph (c)(2)(i) of this section may at the same time request in writing that the Commission provide such candidate with an opportunity to address the Commission in open session to demonstrate that no repayment, or a lesser repayment, is required. The candidate should identify in this request the repayment issues he or she wants to address at the oral hearing. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral hearing. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under paragraph (c)(2)(ii) of this section. The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(3) *Repayment determination upon review.* In deciding whether to revise any repayment determination(s) following an administrative review pursuant to paragraph (c)(2) of this section, the Commission will consider any submission made under paragraph (c)(2)(i) of this section and any oral hearing conducted under paragraph (c)(2)(ii) of this section, and may also consider any new or additional information from other sources. A determination following an administrative review that a candidate must repay a certain amount will be accompanied by a written statement of reasons supporting the Commission's determination(s). This statement will explain the legal and factual reasons underlying the Commission's determination(s) and will summarize the results of any investigation(s) upon which the determination(s) are based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of

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the Commission's repayment determination(s), the candidate shall repay to the United States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate requests an administrative review of the Commission's repayment determination(s) under paragraph (c)(2) of this section, the time for repayment will be suspended until the Commission has concluded its administrative review of the repayment determination(s). Within 30 calendar days after service of the notice of the Commission's post-administrative review repayment determination(s), the candidate shall repay to the United States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(3) Interest shall be assessed on all repayments made after the initial 90-day repayment period established at paragraph (d)(1) of this section or the 30-day repayment period established at paragraph (d)(2) of this section. The amount of interest due shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside or to be repaid under this section.

(e) *Computation of time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9007.2(b) after it has made a repayment determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding qualified campaign expenses submitted pursuant to 11 CFR 9004.9, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding qualified campaign expenses. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9007.2(f).

(h) *Limit on repayment.* No repayment shall be required from the eligible candidates of a political party under 11 CFR 9007.2 to the extent that such repayment, when added to other repayments required from such candidates under 11 CFR 9007.2, exceeds the amount of payments received by such candidates under 11 CFR 9005.2.

(i) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a repayment determination in accordance with 11 CFR 9007.5(a). The candidate may request a stay of a repayment determination in accordance with 11 CFR 9007.5(c) pending the candidate's appeal of that repayment determination.

[56 FR 35924, July 29, 1991, as amended at 60 FR 31878, June 16, 1995]

§ 9007.3 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR part 9007 will not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR part 9007 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar

days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder shall be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application. If a candidate seeks an extension of any 60-day response period under 11 CFR part 9007, the Commission may grant no more than one extension to that candidate, which extension shall not exceed 15 days.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR part 9007, the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR part 9007.

[56 FR 35924, July 29, 1991, as amended at 60 FR 31880, June 16, 1995]

§ 9007.4 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission, pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

§ 9007.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's repayment determination or a final determination that a candidate is not entitled to all or a portion of post-election funding under 11 CFR 9004.9(f), the candidate may file a petition for rehearing setting forth the relief desired and the

legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days following service of the Commission's repayment determination or final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's repayment determination or final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the original determination process.

(2) If a candidate files a timely petition under this section challenging a Commission repayment determination, the time for repayment will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9007.2(d) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the original determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's original determination.

(c) *Stay of repayment determination pending appeal.* (1)(i) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9007.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9011(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) of this section or, if no petition for rehearing is filed, within 30 calendar days after

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service of the Commission's repayment determination under 11 CFR 9007.2(c).

(2) The Commission's approval of a stay request will be conditioned upon the candidate's presentation of evidence in the stay request that he or she:

(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal and that withdrawals from the account may only be made with the joint signatures of the candidate or his or her agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(iii) Has met the following criteria:

(A) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(B) He or she has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interest; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's repayment determination under 11 CFR 9007.2(c)(4) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

[56 FR 35924, July 29, 1991, as amended at 60 FR 31880, June 16, 1995]

§ 9007.6 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission.

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The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

§ 9007.7 Administrative record.

(a) The Commission's administrative record for final determinations under 11 CFR 9004.9 and 9005.1, and for repayment determinations under 11 CFR 9007.2, consists of all documents and materials submitted to the Commission for its consideration in making those determinations. The administrative record will include the certification of the Commission's vote(s), the audit report that is sent to the committee (for repayment determinations), the statement(s) of reasons, and the candidate agreement. The committee may include documents or materials in the administrative record by submitting them within the time periods set forth at 11 CFR 9004.9(f)(2)(ii), 9005.1(b)(2), 9005.1(c)(4), 9007.1(c) and 9007.2(c)(2), as appropriate.

(b) The Commission's administrative record for determinations under 11 CFR 9004.9, 9005.1 and 9007.2 does not include:

(1) Documents and materials in the files of individual Commissioners or employees of the Commission that do not constitute a basis for the Commission's decisions because they were not circulated to the Commission and were not referenced in documents that were circulated to the Commission;

(2) Transcripts or audio tapes of Commission discussions other than transcripts or audio tapes of oral hearings pursuant to 11 CFR 9007.2(c)(2), although such transcripts or tapes may be made available under 11 CFR parts 4 or 5; or

(3) Documents properly subject to privileges such as an attorney-client privilege, or items constituting attorney work product.

(c) The administrative record identified in paragraph (a) of this section is the exclusive record for the Commission's determinations under 11 CFR 9004.9, 9005.1 and 9007.2

[60 FR 31880, June 16, 1995]

**PART 9008—FEDERAL FINANCING
OF PRESIDENTIAL NOMINATING
CONVENTIONS**

**Subpart A—Expenditures by National
Committees and Convention Committees**

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9008.55 Funding for convention committees, host committees and municipal funds.

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

SOURCE: 59 FR 33616, June 29, 1994, unless otherwise noted.

Subpart A—Expenditures by National Committees and Convention Committees

§ 9008.1 Scope.

(a) This part interprets 2 U.S.C. 437 and 26 U.S.C. 9008. Under 26 U.S.C. 9008(b), the national committees of both major and minor parties are entitled to public funds to defray expenses incurred with respect to a Presidential Nominating convention. Under 26 U.S.C. 9008(d), expenditures with regard

to such a convention by a national committee receiving public funds are limited to \$4,000,000, as adjusted by the Consumer Price Index. New parties are not entitled to receive any public funds to defray convention expenses.

(b) Under 2 U.S.C. 437, each committee or organization which represents a national party in making arrangements for that party's presidential nominating convention is required to file disclosure reports. This reporting obligation extends to all such committees or organizations, regardless of whether or not public funds are used or available to defray convention expenses.

§ 9008.2 Definitions.

(a) *Commission* means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(b) *Fund* means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

(c) *Major party* means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.

(d) *Minor party* means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office.

(e) *National committee* means the organization which, by virtue of the by-laws of the political party, is responsible for the day to day operation of that party at the national level.

(f) *New party* means, with respect to any presidential election, a political party which is neither a major party nor a minor party.

(g) *Nominating convention* means a convention, caucus or other meeting which is held by a political party at the national level and which chooses the presidential nominee of the party through selection by delegates to that convention or through other similar means.

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(h) *Secretary* means the Secretary of the Treasury of the United States.

§ 9008.3 Eligibility for payments; registration and reporting.

(a) *Eligibility requirements.* (1) To qualify for entitlement under 11 CFR 9008.4 and 9008.5, the national committee of a major or minor political party shall establish a convention committee pursuant to paragraph (a)(2) of this section and shall file an application statement pursuant to paragraph (a)(3) of this section. The convention committee, in conjunction with the national committee, shall file an agreement to comply with the conditions set forth at paragraph (a)(4) of this section.

(2) The national committee shall establish a convention committee which shall be responsible for conducting the day to day arrangements and operations of that party's presidential nominating convention. The convention committee shall register with the Commission as a political committee pursuant to 11 CFR part 102. The convention committee shall receive all public funds to which the national committee is entitled under 11 CFR 9008.4 and 9008.5 and all private contributions made for the purpose of defraying convention expenses. All expenditures on behalf of the national committee for convention expenses shall be made by the convention committee.

(3) The national committee shall file with the Commission an application statement. Any changes in the information provided in the application statement must be reported to the Commission within 10 days following the change. The application statement shall include:

(i) The name and address of the national committee;

(ii) The name and address of the convention committee and of the officers of that committee;

(iii) The name of the city where the convention is to be held and the approximate dates;

(iv) The name, address, and position of the convention committee officers designated by the national committee to sign requests for payments; and

(v) The name and address of the depository of the convention committee.

(4) The convention committee shall, by letter to the Commission, agree to the conditions set forth in paragraph (a)(4) (i) through (viii) of this section. This agreement shall also be binding upon the national committee.

(i) The convention committee shall agree to comply with the applicable expenditure limitation set forth at 11 CFR 9008.8.

(ii) The convention committee shall agree to file convention reports as required under 2 U.S.C. 437 and 11 CFR 9008.3(b).

(iii) The convention committee shall agree to establish one or more accounts into which all public funds received under 11 CFR 9008.4 and 9008.5 must be deposited and from which all expenditures for convention expenses must be made. Such account(s) shall contain only public funds except as provided in 11 CFR 9008.6(a)(3).

(iv) The convention committee shall agree to keep and furnish to the Commission all documentation of convention disbursements made by the committee as required under 11 CFR 9008.10. The convention committee has the burden of proving that disbursements by the convention committee were for purposes of defraying convention expenses as set forth at 11 CFR 9008.7(a)(4).

(v) The convention committee shall agree to furnish to the Commission any books, records (including bank records for all accounts), a copy of any contract which the national committee enters into with a host committee or convention city or vendor, a copy of documentation provided by commercial vendors in accordance with 11 CFR 9008.9(b), and any other information that the Commission may request. If the convention committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9008.10(h)(1) (i) through (iv), the convention committee will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9008.10(h)(2) that meet the requirements of 11 CFR 102.9 and 9008.10 (a) and (b). Upon request, documentation explaining the computer system's software capabilities shall be provided, and

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such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the convention committee shall also be made available.

(vi) The convention committee shall agree to permit an audit and examination pursuant to 26 U.S.C. 9008(g) and 11 CFR 9008.11 of all convention expenses; to facilitate such audit by making available office space, records, and such personnel as is necessary to the conduct of the audit and examination; and to pay any amounts required to be paid under 26 U.S.C. 9008(h) and 11 CFR 9008.12.

(vii) The convention committee shall agree to comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9008, and the Commission's regulations at 11 CFR parts 100-116 and 9008.

(viii) The convention committee shall pay any civil penalties included in a conciliation agreement or imposed under 2 U.S.C. 437g.

(5) The application statement and agreement may be filed at any time after June 1 of the calendar year preceding the year in which a Presidential nominating convention of the political party is held, but no later than the first day of the convention.

(b) *Registration and reports by political parties*—(1) *Registration.* (i) Each convention committee established by a national committee under paragraph (a)(2) of this section shall register with the Commission on FEC Form 1 as a political committee pursuant to 11 CFR part 102 and shall file reports with the Commission as required at paragraph (b)(2) of this section. Each report filed by the committee shall contain the information required by 11 CFR part 104.

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

with the report covering the reporting period in which the contract or agreement or modification is executed.

(iii) A State party committee or a subordinate committee of a State party committee which only assists delegates and alternates to the convention from that State with travel expenses and arrangements, or which sponsors caucuses, receptions, and similar activities at the convention site, need not register or report under this section.

(2) *Quarterly and post convention reports; content and time of filing.* Each committee required to register under paragraph (b)(1) of this section shall file reports as follows:

(i) The first quarterly report shall be filed on FEC Form 4 no later than 15 days following the end of the calendar quarter in which the committee either receives payment under 11 CFR 9008.6, or for parties which do not accept public funds, no later than 15 days after the calendar quarter in which the committee receives contributions or makes expenditures to defray convention expenses. The committee shall continue to file reports on a quarterly basis no later than the 15th day following the close of each calendar quarter, except that the report for the final calendar quarter of the year shall be filed on January 31 of the following calendar year. Quarterly reports shall be completed as of the close of the quarter and shall continue to be filed until the committee ceases activity in connection with that party's presidential nominating convention.

(ii) Any quarterly report due within 20 days before or after the convention shall be suspended and the committee shall in lieu of such quarterly report file a post convention report. The post convention report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. The post convention report shall be complete as of 15 days prior to the date on which the report must be filed.

(c) *Cessation of activity.* A convention committee which has received payments under 11 CFR 9008.6 shall cease activity no later than 24 months after the convention, unless the committee

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has been granted an extension of time. The Commission may grant any extension of time it deems appropriate upon request of the committee at least 30 days prior to the close of the 24 month period.

[59 FR 33616, June 29, 1994, as amended at 68 FR 47416, Aug. 8, 2003]

§ 9008.4 Entitlement to payments from the fund.

(a) *Major parties.* Subject to the provisions of this part, the national committee of a major party shall be entitled to receive payments under 11 CFR 9008.6 with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed \$4 million, as adjusted by the Consumer Price Index under 11 CFR 9008.5(a).

(b) *Minor parties.* Subject to the provisions of this part, the national committee of a minor party shall be entitled to payments under 11 CFR 9008.6 with respect to any presidential nominating convention in amounts which, in the aggregate, shall not exceed an amount which bears the same ratio to the amount which the national committee of a major party is entitled to receive under 11 CFR 9008.5 as the number of popular votes received in the preceding presidential election by that minor party's presidential candidate bears to the average number of popular votes received in the preceding presidential election by all of the major party presidential candidates.

(c) *Limitation on payments.* Payments to the national committee of a major party or a minor party under 11 CFR 9008.6 from the account designated for such committee shall be limited to the amounts in such account at the time of payment.

§ 9008.5 Adjustment of entitlement.

(a) The entitlements established by 11 CFR 9008.4 shall be adjusted on the basis of the Consumer Price Index pursuant to the provisions of 2 U.S.C. 441a(c).

(b) The entitlements established by 11 CFR 9008.4 shall be adjusted so as not to exceed the difference between the expenditure limitations of 11 CFR 9008.8(a) and the amount of private contributions received under 11 CFR

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9008.6(a) by the national committee of a political party. Except as provided in 11 CFR 9008.12(b)(7), in calculating these adjustments, amounts expended by Government agencies and municipal corporations in accordance with 11 CFR 9008.53; in-kind donations by businesses to the national committee or convention committee in accordance with 11 CFR 9008.9; expenditures by host committees in accordance with 11 CFR 9008.52; expenditures to participate in or attend the convention under 11 CFR 9008.8(b)(2); and legal and accounting services rendered in accordance with 11 CFR 9008.8(b)(4) will not be considered private contributions or expenditures counting against the limitation.

§ 9008.6 Payment and certification procedures.

(a) *Optional payments; private contributions.* (1) The national committee of a major or minor party may elect to receive all, part, or none of the amounts to which it is entitled under 11 CFR 9008.4 and 9008.5.

(2) If a national committee of a major or minor party elects to receive part of the amounts to which it is entitled under 11 CFR 9008.4 and 9008.5, or if the Secretary determines there is a deficiency in the Fund under 26 U.S.C. 9008(b)(4), the national committee may receive and use private contributions, so long as the sum of the contributions which are used to defray convention expenses and the amount of entitlements elected to be received does not exceed the total expenditure limitation under 11 CFR 9008.8.

(3) All private contributions received by the national committee to defray convention expenses shall be subject to all reporting requirements, limitations and prohibitions of Title 2, United States Code. The convention committee may establish a separate account for private contributions or may deposit such contributions with payments received from the Fund pursuant to paragraph (d) of this section. The account(s) shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation.

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(b) *Increase in certified amount.* If the application statement is filed before it is possible to determine the cost of living increase for the year preceding the convention, that amount determined by the increase shall be paid to the national committee promptly after the increase has been determined.

(c) *Availability of payments.* The national committee of a major or minor party may receive payments under this section beginning on July 1 of the calendar year immediately preceding the calendar year in which a Presidential nominating convention of the political party involved is held.

(d) *Certification of payment.* After a national committee has properly submitted its application statement and agreement as required under 11 CFR 9008.3(a) (3) and (4), and upon receipt of a written request, payment of the committee's entitlement will be certified by the Commission to the Secretary of the Treasury.

§ 9008.7 Use of funds.

(a) *Permissible uses.* Any payment made under 11 CFR 9008.6 shall be used only for the following purposes:

(1) Such payment may be used to defray convention expenses (including the payment of deposits) incurred by or on behalf of the national committee receiving such payments; or

(2) Such payment may be used to repay the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses; or

(3) Such payment may be used to restore funds (including advances from the national committee to the convention committee), other than contributions to the committee for the purpose of defraying convention expenses, where such funds were used to defray convention expenses.

(4) "Convention expenses" include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities. Such expenses include, but are not limited to:

(i) Expenses for preparing, maintaining, and dismantling the physical site of the convention, including rental of

the hall, platforms and seating, decorations, telephones, security, convention hall utilities, and other related costs;

(ii) Salaries and expenses of convention committee employees, volunteers and similar personnel, whose responsibilities involve planning, management or otherwise conducting the convention;

(iii) Salary or portion of the salary of any national committee employee for any period of time during which, as a major responsibility, that employee performs services related to the convention;

(iv) Expenses of national committee employees, volunteers or other similar personnel if those expenses were incurred in the performance of services for the convention in addition to the services normally rendered to the national committee by such personnel;

(v) Expenses for conducting meetings of or related to committees dealing with the conduct and operation of the convention, such as rules, credentials, platform, site, contests, call, arrangements and permanent organization committees, including printing materials and rental costs for meeting space.

(vi) Expenses incurred in securing a convention city and facility;

(vii) Expenses incurred in providing a transportation system in the convention city for use by delegates and other persons attending or otherwise connected with the convention;

(viii) Expenses for entertainment activities which are part of the official convention activity sponsored by the national committee, including but not limited to dinners, concerts, and receptions; except that expenses for the following activities are excluded:

(A) Entertainment activities sponsored by or on behalf of candidates for nomination to the office of President or Vice President, or State delegations;

(B) Entertainment activities sponsored by the national committee if the purpose of the activity is primarily for national committee business, such as fund-raising events, or selection of new national committee officers;

(C) Entertainment activities sponsored by persons other than the national committee; and

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(D) Entertainment activities prohibited by law;

(ix) Expenses for printing convention programs, a journal of proceedings, agendas, tickets, badges, passes, and other similar publications;

(x) Administrative and office expenses for conducting the convention, including stationery, office supplies, office machines, and telephone charges; but excluded from these expenses are the cost of any services supplied by the national committee at its headquarters or principal office if such services are incidental to the convention and not utilized primarily for the convention;

(xi) Payment of the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses;

(xii) Expenses for monetary bonuses paid after the last date of the convention or gifts for national committee or convention committee employees, consultants, volunteers and convention officials in recognition of convention-related activities or services, provided that:

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

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

(xiii) Expenses for producing biographical films, or similar materials, for use at the convention, about candidates for nomination or election to the office of President or Vice President, but any other political committee(s) that use part or all of the biographical films or materials shall pay the convention committee for the reasonably allocated cost of the biographical films or materials used.

(5) Any investment of public funds or any other use of public funds to generate income is permissible only if the

income so generated is used to defray convention expenses. Such income, less any tax paid on it, shall be repaid to the United States Treasury as provided under 11 CFR 9008.12(b)(6).

(b) *Prohibited uses.* (1) No part of any payment made under 11 CFR 9008.6 shall be used to defray the expenses of any candidate, delegate, or alternate delegate who is participating in any presidential nominating convention except that the expenses of a person participating in the convention as official personnel of the national party may be defrayed with public funds even though that person is simultaneously participating as a delegate or candidate to the convention. This part shall not prohibit candidates, delegates or alternate delegates who are participating in a presidential nominating convention from attending official party convention activities including but not limited to dinners, concerts and receptions, where such activities are paid for with public funds.

(2) Public funds shall not be used to defray any expense the incurring or payment of which violates any law of the United States or any law of the State in which such expense is incurred or paid, or any regulation prescribed under federal or State laws.

(3) Public funds shall not be used to pay civil or criminal penalties required or agreed to be paid pursuant to 2 U.S.C. 437g. Any amounts received or expended by the national committee or convention committee of a political party to pay such penalties shall not be considered contributions or expenditures, except that such amounts shall be reported in accordance with 11 CFR part 104 and shall be subject to the prohibitions of 11 CFR 110.4, 110.19(b)(2), and 110.20 and parts 114 and 115.

(c) *Lost, misplaced, or stolen items.* The cost of lost, misplaced, or stolen items may not be defrayed with public funds under certain circumstances. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment

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involved; and the number and value of items that were lost.

[59 FR 33616, June 29, 1994 as amended at 64 FR 49363, Sept. 13, 1999; 67 FR 78683, Dec. 26, 2002; 68 FR 47416, Aug. 8, 2003]

§ 9008.8 Limitation of expenditures.

(a) *National party limitations*—(1) *Major parties.* Except as provided by paragraph (a)(3) of this section, the national committee of a major party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which such committee is entitled under 11 CFR 9008.4 and 9008.5.

(2) *Minor parties.* Except as provided by paragraph (a)(3) of this section, the national committee of a minor party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which the national committee of a major party is entitled under 11 CFR 9008.4 and 9008.5.

(3) *Authorization to exceed limitation.* The Commission may authorize the national committee of a major party or minor party to make expenditures for convention expenses, which expenditures exceed the limitation established by paragraph (a) (1) or (2) of this section. This authorization shall be based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, the expenditures are necessary to assure the effective operation of the Presidential nominating convention by the committee. Examples of “extraordinary and unforeseen circumstances” include, but are not limited to, a natural disaster or a catastrophic occurrence at the convention site. In no case, however, will such authorization entitle a national committee to receive public funds greater than the entitlement specified under 11 CFR 9008.4 and 9008.5. All private contributions received to defray expenditures under this paragraph shall be subject to all reporting requirements, limitations (except for limitations imposed by paragraphs (a) (1) and (2) of this section) and prohibitions of the Federal Election Campaign Act (2 U.S.C. 431 et seq.).

(b) *Payments not subject to limit*—(1) *Host committee expenditures.* Expendi-

tures made by the host committee shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section provided the funds are spent in accordance with 11 CFR 9008.52.

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

(3) *Expenditures to participate in or attend convention.* Expenditures made by presidential candidates from campaign accounts, by delegates, or by any other individual from his or her personal funds for the purpose of attending or participating in the convention or convention related activities, including, but not limited to the costs of transportation, lodging and meals, or by State or local committees of a political party on behalf of such delegates or individuals shall not be considered expenditures made by or on behalf of the national party, and shall therefore not be subject to the overall expenditure limitations of this section.

(4) *Legal and accounting services.* (i) The payment of compensation to an individual by his or her regular employer for legal and accounting services rendered to or on behalf of the national committee shall not be considered an expenditure and shall not count against the expenditure limitations of this section.

(ii) The payment by the national committee of compensation to any individual for legal and accounting services rendered to or on behalf of the national committee in connection with the presidential nominating convention or convention-related activities shall not be considered an expenditure and shall not count against the expenditure limitations of this section provided that:

(A) The legal and accounting services relate solely to compliance with the Federal Election Campaign Act (2 U.S.C. 431, et seq.) and the Presidential

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Election Campaign Fund Act (26 U.S.C. Chapter 95); and

(B) The contributions raised to pay for the legal and accounting services comply with the limitations and prohibitions of 11 CFR parts 110, 114 and 115. These contributions, when aggregated with other contributions from the same contributor to the political committees established and maintained by the national political party, shall not exceed the amounts permitted under 11 CFR 110.1(c) and 110.2(c), as applicable.

(iii) The convention committee shall report contributions received to pay for legal and accounting services on a separate Schedule A, and shall report payments for legal and accounting services on a separate Schedule B, attached to its reports.

(5) *Computerized information.* Payments to defray the costs of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9008.10(h), and explaining the operation of the computer system's software, shall not be considered expenditures and shall not count against the expenditure limitations of this section, provided that the contributions raised to pay these expenses comply with the limitations and prohibitions of 11 CFR parts 110, 114 and 115.

[59 FR 33616, June 29, 1994, as amended at 68 FR 47416, Aug. 8, 2003]

§ 9008.9 Receipt of goods and services from commercial vendors.

Commercial vendors may sell, lease, rent or provide their goods or services to the national committee with respect to a presidential nominating convention at reduced or discounted rates, or at no charge, provided that the requirements of either paragraph (a), paragraph (b), or paragraph (c) of this section are met. For purposes of this section, *commercial vendor* shall have the same meaning as provided in 11 CFR 116.1(c).

(a) *Standard reductions or discounts.* A commercial vendor may provide reductions or discounts in the ordinary course of business. A reduction or discount shall be considered in the ordinary course of business if the commercial vendor has an established practice of providing the same reductions or

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discounts for the same amount of its goods or services to non-political clients, or if the reduction or discount is consistent with established practice in the commercial vendor's trade or industry. Examples of reductions or discounts made in the ordinary course of business include standard volume discounts and reduced rates for corporate, governmental or preferred customers. Reductions or discounts provided under paragraph (a) of this section need not be reported.

(b) *Items provided for promotional consideration.* (1) A commercial vendor may provide goods or services in exchange for promotional consideration provided that doing so is in the ordinary course of business.

(2) The provision of goods or services shall be considered in the ordinary course of business under this paragraph:

(i) If the commercial vendor has an established practice of providing goods or services on a similar scale and on similar terms to non-political clients, or

(ii) If the terms and conditions under which the goods or services are provided are consistent with established practice in the commercial vendor's trade or industry in similar circumstances.

(3) In all cases, the value of the goods or services provided shall not exceed the commercial benefit reasonably expected to be derived from the unique promotional opportunity presented by the national nominating convention.

(4) The convention committee shall maintain documentation showing: the goods or services provided; the date(s) on which the goods or services were provided, the terms and conditions of the arrangement; and what promotional consideration was provided. In addition, the convention committee shall disclose in its report covering the period the goods or services are received, in a memo entry, a description of the goods or services provided for promotional consideration, the name and address of the commercial vendor, and the dates on which the goods or services were provided (e.g., "Generic Motor Co., Detroit, Michigan—ten automobiles for use 7/15-7/20, received on 7/14", or "Workers Inc., New York,

New York—five temporary secretarial assistants for use 8/1-8/30, received on 8/1”).

(c) *Items of de minimis value.* Commercial vendors (including banks) may sell at nominal cost, or provide at no charge, items of *de minimis* value, such as samples, discount coupons, maps, pens, pencils, or other items included in tote bags for those attending the convention. The items of *de minimis* value may be distributed by or with the help of persons employed by the commercial vendor, or employed by or volunteering for the national party or a host committee. The value of the items of *de minimis* value provided under this paragraph need not be reported.

(d) *Expenditure Limits.* The value of goods or services provided pursuant to this section will not count toward the national party’s expenditure limitation under 11 CFR 9008.8(a).

§ 9008.10 Documentation of disbursements; net outstanding convention expenses.

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

(a) For disbursements in excess of \$200 to a payee, either:

(1) A receipted bill from the payee that states the purpose of the disbursement; or

(2) If such a receipted bill is not available, the following documents;

(i) A canceled check negotiated by the payee; plus

(ii) One of the following documents generated by the payee—a bill, invoice, voucher or contemporaneous memorandum that states the purpose of the disbursement;

(iii) Where the documents specified at paragraph (a)(2)(ii) of this section are not available, a voucher or contemporaneous memorandum from the committee that states the purpose of the disbursement;

(3) If neither a receipted bill nor the supporting documentation specified in paragraph (a)(2) (i) or (ii) of this section is available, a canceled check negotiated by the payee that states the purpose of the disbursement.

(4) Where the supporting documentation required above is not available, the committee may present a canceled check and collateral evidence to document the convention expense. Such collateral evidence may include but is not limited to:

(i) Evidence demonstrating that the disbursement is part of an identifiable program or project which is otherwise sufficiently documented, such as a disbursement which is one of a number of documented disbursements relating to the operation of a committee office;

(ii) Evidence that the disbursement is covered by a preestablished written committee policy, such as a daily travel expense policy.

(b) For all other disbursements:

(1) If from the petty cash fund, a record that states the full name and mailing address of the payee and the amount, date and purpose of the disbursement; or

(2) A canceled check which has been negotiated by the payee and states the identification of the payee, and the amount and date of the disbursement.

(c) For purposes of this section, *payee* means the person who provides the goods or services to the committee in return for the disbursement, except that an individual will be considered a payee under this section if he or she receives \$2,000 or less advanced for travel and/or subsistence and if he or she is the recipient of the goods or services purchased.

(d) For purposes of this section, the term *purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(e) Upon the request of the Commission the convention committee shall supply an explanation of the connection between the disbursement and the convention.

(f) The committee shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related material documenting campaign receipts and disbursements, for a period of three years

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pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(g) *Net outstanding convention expenses.* A convention committee that is eligible to receive payments under 11 CFR 9008.3 shall file, no later than sixty days after the last day of the convention, a statement of that committee's net outstanding convention expenses. The convention committee shall file a revised statement of net outstanding convention expenses which shall reflect the financial position of the convention committee as of the end of the ninth month following the last day of the convention. The revised statement shall be filed no later than 30 calendar days after the end of the ninth month following the last day of the convention, and shall be accompanied by the interim repayment, if required under 11 CFR 9008.12(b)(5)(ii). The committee's net outstanding convention expenses under this section equal the difference between paragraphs (g) (1) and (2) of this section:

(1) The total of:

(i) All outstanding obligations for convention expenses as of 45 days after the last day of the convention; plus

(ii) An estimate of the amount of convention expenses that will be incurred after the 45th day and before the end of the ninth month following the last day of the convention; plus

(iii) An estimate of necessary winding down costs; less

(2) The total of:

(i) Cash on hand as of 45 days after the last day of the convention, including: all receipts dated on or before that date; currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value;

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the committee in the form of credits, refunds of deposits, returns, receivables, or rebates of convention expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(3) The amount submitted as the total of outstanding convention obligations under paragraph (g)(1) of this section shall not include any accounts payable for non-convention expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR 9008.12 or any amounts paid to secure a surety bond under 11 CFR 9008.14(c).

(4) *Capital assets.* For purposes of this section, the term *capital asset* means any property used in the operation of the convention whose purchase price exceeded \$2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the convention, but does not include property defined as "other assets" under 11 CFR 9008.10(g)(5). A list of all capital assets shall be maintained by the committee, which shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation. If the committee wishes to claim a higher depreciation percentage for an item, it must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(5) *Other assets.* The term *other assets* means any property acquired by the committee for use in raising funds or as collateral for loans. "Other assets" must be included on the committee's statement of net outstanding convention expenses if the aggregate value of such assets exceeds \$5000. The value of "other assets" shall be determined by the fair market value of each item as of 45 days after the last day of the convention, unless the item is acquired after this date, in which case the item shall be valued on the date it is acquired. A list of other assets shall be maintained by the committee, which shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition.

(6) *Collectibility of accounts receivable.* If the committee determines that an account receivable of \$500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full write-off was determined.

(7) *Winding down costs.* The term *winding down costs* means:

(i) Costs associated with the termination of the convention such as complying with the post-convention requirements of the Act and other necessary administrative costs associated with winding down the convention, including office space rental, staff salaries and office supplies; and

(ii) Costs incurred by the convention committee prior to 45 days after the last day of the convention for which written arrangements or commitment was made on or before that date.

(8) *Review of convention committee statement.* The Commission will review the statement filed by each convention committee under this section. The Commission may request further information with respect to statements filed pursuant to 11 CFR 9008.10 during the audit of that committee under 11 CFR 9008.11.

(h) *Production of computer information—(1) Categories of computerized information to be provided.* If the convention committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (h)(1)(i) through (h)(1)(iv) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in paragraph (h)(2) of this section:

(i) Information required by law to be maintained regarding the committee's receipts or disbursements;

(ii) Records used to reconcile bank statements;

(iii) Records relating to the acquisition, use and disposition of capital assets; and

(iv) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, or bank reconciliations.

(2) *Time for Production.* If the committee maintains or uses computerized information containing any of the data listed in paragraph (h)(1) of this section, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

(3) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(4) *Additional materials and assistance.* Upon request, the committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information request. Upon request,

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the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

[59 FR 33616, June 29, 1994, as amended at 68 FR 47416, Aug. 8, 2003]

§ 9008.11 Examinations and audits.

The Commission shall conduct an examination and audit of the convention committee no later than December 31 of the calendar year of the convention and may at any time conduct other examinations and audits as it deems necessary. The Commission will follow the same procedures during the audit, and will afford the committee the same right to respond, as are provided for audits of publicly funded candidates under 11 CFR 9007.1 and 9038.1.

§ 9008.12 Repayments.

(a) *General.* (1) A national committee that has received payments from the Fund under 11 CFR part 9008 shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9008.11 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the committee of any repayment determinations made under this section as soon as possible, but not later than 3 years after the last day of the Presidential nominating convention. The Commission's issuance of an audit report to the committee will constitute notification for purposes of the three year period.

(3) Once the committee receives notice of the Commission's final repayment determination under this section, the committee should give preference to the repayment over all other outstanding obligations of the committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment.* The Commission may determine that the national committee of a political party that has

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received payments from the Fund must repay the United States Treasury under any of the circumstances described below.

(1) *Excess payments.* If the Commission determines that any portion of the payments to the national committee or convention committee under 11 CFR 9008.6(b) was in excess of the aggregate payments to which the national committee was entitled under 11 CFR 9008.4 and 9008.5, it shall so notify the national committee, and the national committee shall pay to the Secretary an amount equal to such portion.

(2) *Excessive expenditures.* If the Commission determines that the national committee or convention committee incurred convention expenses in excess of the limitations under 11 CFR 9008.8(a), it shall notify the national committee of the amount of such excessive expenditures, and the national committee shall pay to the Secretary an amount equal to the amount specified.

(3) *Excessive contributions.* If the Commission determines that the national committee accepted contributions to defray convention expenses which, when added to the amount of payments received, exceeds the expenditure limitation of such party, it shall notify the national committee of the amount of the contributions so accepted, and the national committee shall pay to the Secretary an amount equal to the amount specified.

(4) *Improper usage or documentation.* If the Commission determines that any amount of any payment to the national committee or convention committee under 11 CFR 9008.6(b) was used for any purposes other than the purposes authorized at 11 CFR 9008.7 or was not documented in accordance with 11 CFR 9008.10, it shall notify the national committee of the amount improperly used or documented and the national committee shall pay to the Secretary an amount equal to the amount specified.

(5) *Unspent funds.* (i) If any portion of the payment under 11 CFR 9008.4 remains unspent after all convention expenses have been paid, that portion shall be returned to the Secretary of the Treasury.

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(ii) The national committee or convention committee shall make an interim repayment of unspent funds based on the financial position of the committee as of the end of the ninth month following the last day of the convention, allowing for a reasonable amount as determined by the Commission to be withheld for unanticipated contingencies. The interim repayment shall be made no later than 30 calendar days after the end of the ninth month following the last day of the convention. If, after written request by the national committee or convention committee, the Commission determines, upon review of evidence presented by either committee, that amounts previously refunded are needed to defray convention expenses, the Commission shall certify such amount for payment.

(iii) All unspent funds shall be repaid to the U.S. Treasury no later than 24 months after the last day of the convention, unless the national committee has been granted an extension of time. The Commission may grant any extension of time it deems appropriate upon request of the national committee.

(6) *Income on investments of payments from the Fund.* If the Commission determines that the national committee or the convention committee received any income as a result of investment or other use of payments from the Fund pursuant to 11 CFR 9008.7(a)(5), it shall so notify the committee and the committee shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

(7) The Commission may seek repayment, or may initiate an enforcement action, if the convention committee knowingly helps, assists or participates in the making of a convention expenditure by the host committee, government agency or municipal fund that is not in accordance with 11 CFR 9008.52 or 9008.53, or the acceptance of a contribution by the host committee or government agency or municipal fund from an impermissible source.

(c) *Repayment determination procedures.* The Commission will follow the same repayment determination procedures, and the committee has the same

rights and obligations as are provided for repayment determinations involving publicly funded candidates under 11 CFR 9007.2 (c) through (h).

[59 FR 33616, June 29, 1994, as amended at 60 FR 31880, June 16, 1995; 68 FR 47417, Aug. 8, 2003]

§ 9008.13 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission, pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

§ 9008.14 Petitions for rehearing; stays of repayment determinations.

Petitions for rehearing following the Commission's repayment determination and requests for stays of repayment determinations will be governed by the procedures set forth at 11 CFR 9007.5 and 9038.5. The Commission will afford convention committees the same rights as are provided to publicly funded candidates under 11 CFR 9007.5 and 9038.5.

[64 FR 49363, Sept. 13, 1999]

§ 9008.15 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR part 9008 will not be routinely granted.

(b) Whenever a committee has a right or is required to take action within a period of time prescribed by 11 CFR part 9008 or by notice given thereunder, the committee may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The committee shall demonstrate in the application for extension that good cause exists for its request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a committee that has applied for such extension in a timely

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manner. The length of time of any extension granted hereunder shall be decided by the Commission and may be less than the amount of time sought by the committee in its application.

(d) If a committee fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR part 9008, the Commission may, on the committee’s showing of excusable neglect:

(1) Permit such committee to exercise its right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR part 9008.

§ 9008.16 Stale-dated committee checks.

If the committee has checks outstanding that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

Subpart B—Host Committees and Municipal Funds Representing a Convention City

§ 9008.50 Scope and definitions.

(a) *Scope.* This subpart B governs registration and reporting by host committees and municipal funds representing convention cities. Unsuccessful efforts to attract a convention need not be reported by any city, committee or other organization. Subpart B also describes permissible sources of funds and other permissible donations to host committees and municipal funds. In addition, subpart B describes permissible disbursements by host committees and municipal funds to defray convention expenses and to promote the convention city and its commerce.

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

(1) It is not organized for profit;

(2) Its net earnings do not inure to the benefit of any private shareholder or individual; and

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

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

[68 FR 47417, Aug. 8, 2003]

§ 9008.51 Registration and reports.

(a) *Registration by host committees and municipal funds.* (1) Each host committee and municipal fund shall register with the Commission by filing a *Statement of Organization* on FEC Form 1 within 10 days of the date on which such party chooses the convention city, or within 10 days after the formation of the host committee or municipal fund, whichever is later. In addition to the information already required to be provided on FEC Form 1, the following information shall be disclosed by the registering entity on FEC Form 1: The name and address; the name and address of its officers; and a list of the activities that the registering entity plans to undertake in connection with the convention.

(2) Any such committee, organization or group which is unsuccessful in its efforts to attract the convention to a city need not register under this section.

(3) Each host committee and municipal fund required to register with the Commission under paragraph (a) of this section, shall submit to the Commission a copy of any and all written contracts or agreements that it has entered into with the city, county, or

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State hosting the convention, a host committee, a municipal fund, or a convention committee, including subsequent written modifications to previous contracts or agreements, unless such contracts, agreements or modifications have already been submitted to the Commission by the convention committee. Each such contract or agreement or modification shall be filed with the first report due under paragraph (b) of this section after the contract or agreement or modification is executed.

(b) *Post-convention and quarterly reports by host committees and municipal funds; content and time of filing.* (1) Each host committee or municipal fund required to register with the Commission pursuant to paragraph (a) of this section shall file a post convention report on FEC Form 4. The report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. This report shall be complete as of 15 days prior to the date on which the report must be filed and shall disclose all the information required by 11 CFR part 104 with respect to all activities related to a presidential nominating convention.

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

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

(c) *Post-convention statements by State and local government agencies.* Each government agency of a State, municipality, or other political subdivision that provides facilities or services re-

lated to a Presidential nominating convention shall file, by letter, a statement with the Commission reporting the total amount spent to provide facilities and services for the convention under 11 CFR 9008.52(b), a list of the categories of facilities and services the government agency provided for the convention, the total amount spent for each category of facilities and services provided, and the total amount defrayed from general revenues. This statement shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. Categories of facilities and services may include construction, security, communications, transportation, utilities, clean up, meeting rooms and accommodations. This paragraph (c) does not apply to any activities of a State or local government agency through a municipal fund that are reported pursuant to paragraph (b) of this section.

[59 FR 33616, June 29, 1994, as amended at 68 FR 47417, Aug. 8, 2003]

§ 9008.52 Receipts and disbursements of host committees.

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

(b) *Receipt of donations from businesses, organizations, and individuals.* Businesses (including banks), labor organizations, and other organizations or individuals may donate funds or make in-kind donations to a host committee to be used for the following purposes:

(1) To defray those expenses incurred for the purpose of promoting the suitability of the city as a convention site;

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

(3) To defray those expenses incurred in facilitating commerce, such as providing the convention and attendees with shopping and entertainment guides and distributing the samples

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and promotional material specified in 11 CFR 9008.9(c);

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

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

(6) To defray the costs of various local transportation services, including the provision of buses and automobiles;

(7) To defray the costs of law enforcement services necessary to assure orderly conventions;

(8) To defray the cost of using convention bureau personnel to provide central housing and reservation services;

(9) To provide hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention;

(10) To provide accommodations and hospitality for committees of the parties responsible for choosing the sites of the conventions; and

(11) To provide other similar convention-related facilities and services.

[68 FR 47418, Aug. 8, 2003]

§ 9008.53 Receipts and disbursements of municipal funds.

(a) *Receipt of goods and services provided by commercial vendors.* Municipal funds may accept goods or services from commercial vendors for convention uses under the same terms and conditions (including reporting requirements) set forth at 11 CFR 9008.9 for convention committees.

(b) *Receipt and use of donations to a municipal fund.* Businesses (including banks), labor organizations, and other organizations and individuals may donate funds or make in-kind donations to a municipal fund to pay for expenses listed in 11 CFR 9008.52(b).

[68 FR 47418, Aug. 8, 2003]

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§ 9008.54 Examinations and audits.

The Commission shall conduct an examination and audit of each host committee registered under 11 CFR 9008.51. The Commission will follow the same procedures during the audit, and will afford the committee the same right to respond, as are provided for audits of publicly funded candidates under 11 CFR 9007.1 and 9038.1, except that the Commission will not make any repayment calculations under this section.

§ 9008.55 Funding for convention committees, host committees and municipal funds.

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

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

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

(d) In accordance with 2 U.S.C. 441i(e)(4)(A), a person described in 11 CFR 300.60 may make a general solicitation of funds, without regard to source or amount limitation, for or on behalf of any host committee or municipal fund that is described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a) (or has submitted an application for determination of tax exempt status under such section) where such solicitation does not specify how the funds will or should be spent.

[68 FR 47418, Aug. 8, 2003]

PARTS 9009–9011 [RESERVED]

PART 9012—UNAUTHORIZED EXPENDITURES AND CONTRIBUTIONS

Sec.

9012.1 Excessive expenses.

9012.2 Unauthorized acceptance of contributions.

9012.3 Unlawful use of payments received from the Fund.

9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.

9012.5 Kickbacks and illegal payments.

AUTHORITY: 26 U.S.C. 9012.

SOURCE: 56 FR 35928, July 29, 1991, unless otherwise noted.

§ 9012.1 Excessive expenses.

(a) It shall be unlawful for an eligible candidate of a political party for Presidential election or the candidate's authorized committee(s) knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR part 9004 with respect to such election.

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to incur expenses with respect to a presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under 11 CFR part 9008, unless the incurring of such expenses is authorized by the Commission under 11 CFR 9008.7(a)(3).

§ 9012.2 Unauthorized acceptance of contributions.

(a) It shall be unlawful for an eligible candidate of a major party in a Presidential election or any of his or her authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b), or to defray expenses which would be qualified campaign expenses but for 11 CFR 9002.11(a)(3).

(b) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a Presidential

election or any of his or her authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred in that election by that eligible candidate or his or her authorized committee(s).

§ 9012.3 Unlawful use of payments received from the Fund.

(a) It shall be unlawful for any person who receives any payment under 11 CFR part 9005, or to whom any portion of any payment so received is transferred, knowingly and willfully to use, or authorize the use of, such payment or any portion thereof for any purpose other than—

(1) To defray the qualified campaign expenses with respect to which such payment was made; or

(2) To repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(b) It shall be unlawful for the national committee of a major or minor party which receives any payment under 11 CFR part 9008 to use, or authorize the use of, such payment for any purpose other than a purpose authorized by 11 CFR 9008.6.

§ 9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.

It shall be unlawful for any person knowingly and willfully—

(a) To furnish any false, fictitious, or fraudulent evidence, books or information to the Commission under 11 CFR parts 9001-9008, or to include in any evidence, books or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books or information relevant to a certification by the Commission or any examination and audit by the Commission under 11 CFR parts 9001 *et seq.*; or

(b) To fail to furnish to the Commission any records, books or information

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requested by the Commission for purposes of 11 CFR parts 9001 *et seq.*

§ 9012.5 Kickbacks and illegal payments.

(a) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expenses of any eligible can-

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didate or his or her authorized committee(s).

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a Presidential nominating convention.