

## Federal Election Commission

## § 9004.2

(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

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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

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; 81 FR 34864, June 1, 2016]

### § 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 aircraft 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 aircraft, 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 aircraft, the committee shall maintain documentation as required by 11 CFR 100.93(j)(1) 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(j)(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) Non-commercial travel, as defined in 11 CFR 100.93(a)(3)(v), on aircraft, and travel on 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; 74 FR 63967, Dec. 7, 2009]

### § 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:

(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.

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(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 obligations 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 as-

sets" 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 52, 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 52, United States Code and 11 CFR parts 110 and 114.

[56 FR 35919, July 29, 1991, as amended at 79 FR 77851, Dec. 29, 2014]

#### § 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