

proposed rulemaking for any proposed rule.” Because this rule is being issued as a final rule, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA.

DHS has considered the impact of this rule on small entities and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The individual aliens to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). Accordingly, there is no change expected in any process as a result of this rule that would have a direct effect, either positive or negative, on a small entity.

#### C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### D. Executive Order 12866

This amendment does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

#### E. Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### F. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### List of Subjects in 8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

#### Amendments to the Regulations

■ For the reasons stated in the preamble, DHS amends part 217 of title 8 of the Code of Federal Regulations (8 CFR part 217), as set forth below.

### PART 217—VISA WAIVER PROGRAM

■ 1. The general authority citation for part 217 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1187; 8 CFR part 2.

■ 2. In § 217.2 the definition of the term “Designated country” in paragraph (a) is revised to read as follows:

#### § 217.2 Eligibility.

(a) \* \* \*

Designated country refers to Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories’ citizens, or citizens of British Commonwealth countries. After May 15, 2003, citizens of Belgium must present a machine-readable passport in order to be granted admission under the Visa Waiver Program.

\* \* \* \* \*

**Paul A. Schneider,**

*Deputy Secretary.*

[FR Doc. E8–30818 Filed 12–29–08; 8:45 am]

**BILLING CODE 4410–10–P**

### FEDERAL ELECTION COMMISSION

**11 CFR Parts 100, 101, 102, 104, 110, 113, 400, 9001, 9003, 9031, 9033**

#### **Notice 2008–14; Repeal of Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates**

**AGENCY:** Federal Election Commission.

**ACTION:** Final rules.

**SUMMARY:** The Federal Election Commission (“Commission”) is removing its rules on increased contribution limits and coordinated party expenditure limits for Senate and House of Representatives candidates facing self-financed opponents. These rules were promulgated to implement sections 304 and 319 of the Bipartisan Campaign Reform Act of 2002, known as the “Millionaires’ Amendment.” In

*Davis v. Federal Election Commission*, the Supreme Court held that sections 319(a) and (b), regarding House of Representatives elections, were unconstitutional. The Court’s analysis also applies to the contribution and spending limits in section 304 regarding Senate elections. The Commission, therefore, is removing its rules that implement the Millionaires’ Amendment. However, the Commission is retaining certain other rules that were not affected by the *Davis* decision. Further information is provided in the supplementary information that follows.

**DATES:** *Effective Date:* February 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General Counsel, or Mr. Neven F. Stipanovic, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Commission is revising its regulations to reflect the Supreme Court’s decision in *Davis v. Federal Election Commission*, 128 S. Ct. 2759 (2008). The Commission is deleting rules that implemented the Millionaires’ Amendment at 11 CFR 100.19(g), 104.19, 110.5(b)(2), and Part 400. It is making technical and conforming changes to its rules at 11 CFR 100.33, 101.153, 101.1, 102.2(a)(1)(viii), 113.1(g)(6)(ii), 9001.1, 9003.1(b)(8), 9031.1, and 9033.1(b)(10). It is retaining unchanged its rules at 11 CFR 110.1(b)(3)(ii)(C), 116.11, 116.12, and 9035.2(c).

The Commission published a Notice of Proposed Rulemaking (“NPRM”) on October 20, 2008, in which it sought public comment on the proposed rule implementing the *Davis* decision. See *Notice of Proposed Rulemaking on Increased Contribution and Expenditure Limits for Candidates Opposing Self-Financed Candidates*, 73 FR 62224 (Oct. 20, 2008). In addition, the Commission sought public comment on its proposal to retain 11 CFR 116.11 and 116.12, which concern the repayment of candidate’s personal loans. *Id.* at 62226. The comment period ended on November 21, 2008.

The Commission received four comments on the proposed rule, including a comment from the Internal Revenue Service (“IRS”) stating that the proposed rules did not conflict with the Internal Revenue Code or IRS regulations.

For the reasons explained below, the Commission has decided to delete its rules that implemented the Millionaires’ Amendment, and to retain and revise certain other rules that were not invalidated by the *Davis* decision. The

Commission's final rules are identical to the proposed rules in the NPRM.

Under the Administrative Procedure Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on December 19, 2008.

### Explanation and Justification

The Millionaires' Amendment<sup>1</sup> of the Bipartisan Campaign Reform Act of 2002, Public Law No. 107-155 ("BCRA"), increased certain contribution limits and coordinated party expenditure limits for Senate and House of Representatives candidates facing opponents who spent significant amounts of personal funds. When a self-financed opponent spent personal funds above a certain threshold amount, the Millionaires' Amendment permitted a candidate to accept individual contributions under increased contribution limits. 2 U.S.C. 441a(i) and 441a-1(a). When certain other threshold amounts were reached, the Millionaires' Amendment also allowed national and state political party committees to make unlimited coordinated party expenditures on behalf of the candidate in the general election. *Id.*

On June 26, 2008, the Supreme Court invalidated the Millionaires' Amendment. In *Davis*, the Supreme Court reviewed a challenge by a self-financed candidate who triggered the Millionaires' Amendment in the 2004 and 2006 elections for the House of Representatives. 128 S. Ct. 2759. The Supreme Court held that the House of Representatives provision of the Millionaires' Amendment was unconstitutional because it violated the plaintiff's First Amendment rights. *Id.* at 2775. The Supreme Court invalidated the entire BCRA section 319 relating to House elections, including the increased contribution limits in section 319(a) and its companion disclosure requirements in section 319(b). The Court reasoned that the Millionaires' Amendment imposed a substantial burden on the plaintiff's exercise of his First Amendment right to use personal funds for campaign speech, and that the burden was not justified by any governmental interest in eliminating

corruption or the perception of corruption. *Id.* at 2772-73.

The Commission's interim rules implementing the Millionaires' Amendment were approved on December 19, 2002, and have been in effect during the 2004 and 2006 election cycles, and the beginning of the 2008 election cycle. See *Interim Final Rules on Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates* ("Interim Final Rules"), 68 FR 3970 (Jan. 27, 2003).

On July 25, 2008, the Commission issued a Public Statement that, in light of the *Davis* decision, it would no longer enforce the Millionaires' Amendment. See Press Release, Public Statement on the Supreme Court's Decision in *Davis v. FEC*, July 25, 2008, <http://www.fec.gov/press/press2008/220080725millionaire.shtml>. As of June 26, 2008, the increased contribution limits and reporting requirements were no longer in effect, and political party committees were no longer permitted to make increased coordinated party expenditures on behalf of self-financed candidates. *Id.*

#### A. Removal of 11 CFR Part 400—Increased Limits for Candidates Opposing Self-Financed Candidates

The Commission is deleting 11 CFR Part 400 in its entirety because the statutory foundation of Part 400 was invalidated by the Supreme Court's decision in *Davis*.

The Commission's rules at 11 CFR Part 400 had implemented the Millionaires' Amendment. See *Interim Final Rules* at 3975. Specifically, the rules at Part 400: (1) Provided the notification and reporting requirements for Senate and House of Representatives candidates (subpart B); (2) explained when the increased contribution limits apply (subpart C); (3) explained how to calculate the increased contribution limits (subpart D); and (4) explained how candidates' authorized committees must dispose of excess contributions (subpart E). In *Davis*, the Supreme Court decided that increased contribution limits and disclosure requirements for House of Representatives candidates in BCRA sections 319(a) and (b) were unconstitutional. Thus, the Commission's rules at 11 CFR Part 400 that implemented BCRA sections 319(a) and (b) are no longer valid.

The Supreme Court in *Davis* struck down only BCRA sections 319(a) and (b) governing House of Representatives elections. The Commission, however, has concluded that the Supreme Court's analysis in *Davis* also precludes enforcement of the Commission's rules

implementing BCRA sections 304(a) and (b), which provide increased contribution limits and disclosure requirements for Senate elections. In *Davis*, the Court concluded that increased contribution limits for a House of Representatives candidate facing a self-financed candidate impermissibly burdened the First Amendment right of the self-financed candidates to spend their own money for campaign speech. 128 S. Ct. at 2771. There is no basis to conclude that the constitutional implications would be different for similarly situated candidates in Senate elections, governed by BCRA sections 304(a) and (b), than in the respective House of Representatives elections, governed by BCRA sections 319(a) and (b).

Two commenters agreed with the Commission that Part 400 is unenforceable in both Senate and House of Representatives elections. These commenters explained that the Supreme Court's rationale for rejecting section 319(a)'s contribution limits for House of Representatives candidates applied equally to Senate candidates, and they urged the Commission to remove Part 400 entirely from its regulations. Another commenter urged the Commission to retain these rules because the commenter disagreed with the Supreme Court's holding in *Davis*.

The Commission's rules at Part 400 implemented the Millionaires' Amendment provisions for both House and Senate elections. The Commission, therefore, is deleting 11 CFR Part 400 in its entirety.

#### B. Amendments to Other Provisions

##### 1. Part 100—Definitions

###### a. 11 CFR 100.19(g)—File, Filed, or Filing.

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

As explained above, the Commission is deleting 11 CFR Part 400 in its entirety because the Supreme Court invalidated the Millionaires'

<sup>1</sup> Section 304 of BCRA added a new subsection (i) to 2 U.S.C. 441a, which addressed Senate elections. Section 319 of BCRA added a new section 441a-1 to the Act, which addressed elections for the House Representatives. The Senate provisions also added new notification and reporting requirements in 2 U.S.C. 434.

Amendment. The Commission is deleting paragraph (g) from section 100.19 because the candidate's notifications under 11 CFR 400.21 and 400.22 are no longer required.

*b. 11 CFR 100.33—Personal Funds.*

The Commission is revising the definition of "personal funds" in 11 CFR 100.33 by deleting the cross-reference to section 400.2, which the Commission is removing through this rulemaking. The Commission is retaining the remainder of section 100.33 because the definition of "personal funds" in section 100.33 applies generally to other Title 2 rules that use the term "personal funds."<sup>2</sup> See *Interim Final Rules*, 68 FR at 3972. The Commission also notes that the definition of "personal funds" at 11 CFR 9003.2(c)(3), which applies to Title 26 of the United States Code, remains unchanged. See 73 FR at 62227.

**2. 11 CFR 101.1—Candidate Designations**

The Commission is deleting the sentence in paragraph (a) of 11 CFR 101.1 that required Senate and House of Representatives candidates to state, on their Statements of Candidacy on FEC Form 2 (or, if the candidates are not required to file electronically, on their letters containing the same information), the amount by which the candidates intended to exceed the threshold amount as defined in 11 CFR 400.9. The *Davis* decision invalidated the statutory foundation for this requirement.

**3. 11 CFR 102.2—Statement of Organization: Forms and Committee Identification Number**

The Commission is retaining and revising 11 CFR 102.2(a)(1)(viii), which had required principal campaign committees to provide both their electronic mail addresses and their facsimile numbers on FEC Form 1. Paragraph (viii) was promulgated by the *Interim Final Rules* to facilitate the notification of expenditures from personal funds under Part 400. See *Interim Final Rules*, 68 FR at 3972. Although the notifications under Part 400 are no longer required, the electronic mail addresses provided by committees facilitates the exchange of information between committees and the Commission for other purposes under the Federal Election Campaign Act of 1971, as amended ("FECA"). Continuing to require committees' electronic mail addresses, therefore, will continue to benefit the committees as well as the Commission. Consistent

with its delegated authority to require political committees to provide an "address" when filing a statement of organization under 2 U.S.C. 433(b)(1), the Commission is retaining the requirement that committees report their electronic mail addresses on FEC Form 1. The Commission, however, is deleting the requirement that committees provide their facsimile numbers because it does not routinely communicate with committees via facsimile machine.

**4. 11 CFR 104.19—Special Reporting Requirements for Principal Campaign Committees of Candidates for Election to the United States Senate or United States House of Representatives**

The Commission is removing and reserving 11 CFR 104.19 because the statutory foundation of this section was invalidated by the Supreme Court's decision in *Davis*. Section 104.19 had required principal campaign committees of Senate and House of Representatives candidates to report information necessary to calculate their "gross receipts advantage," which is defined at 2 U.S.C. 441a(i)(1)(E) (Senate) and 441a-1(a)(2)(B) (House of Representatives). This reporting requirement was promulgated to ensure that the candidates in the same House or Senate election had sufficient and timely information to calculate the "opposition personal funds amount" under 11 CFR 400.10. See *Interim Final Rules*, 68 FR at 3972.

**5. 11 CFR 110.1(b)(3)(ii)(C)—Net Debts Outstanding**

The Commission is retaining 11 CFR 110.1(b)(3), which restricts the ability of candidates and their authorized committees to accept contributions after the election. Together with sections 116.11 and 116.12, paragraph (b)(3) of section 110.1 implements 2 U.S.C. 441a(j), the statutory provision added by BCRA that restricts the repayment of candidate's personal loans after the election. See Explanation and Justification, below, for 11 CFR 116.11 and 116.12.

Candidates and their authorized committees cannot accept contributions for an election after the election is over unless the candidate still has net debts outstanding from that election. 11 CFR 110.1(b)(3)(i). This rule was promulgated long before BCRA added the loan repayment restriction in 2 U.S.C. 441a(j). After the election is over, candidates and their authorized committees may accept contributions up to the amount of their "net debts outstanding," as defined in 11 CFR 110.1(b)(3)(ii). To conform with the

fundraising restrictions in 11 CFR 116.11, the Commission added paragraph (C) to section 110.1(b)(3)(ii), which excludes the amount of personal loans that exceed \$250,000 from the definition of "net debt outstanding." See *Interim Final Rules*, 68 FR at 3973. The Commission is retaining the rule at 11 CFR 110.1(b)(3)(ii)(C) for the same reasons it is retaining the current rules at 11 CFR 116.11 and 116.12, as explained below.

**6. 11 CFR 110.5—Biennial Contribution Limitations**

The Commission is deleting paragraph (b)(2) of section 110.5 because the statutory foundation for this provision has been invalidated by the Supreme Court's decision in *Davis*. Paragraph (b)(2) stated the circumstances under which the biennial limits on contributions by individuals do not apply to contributions made under 11 CFR Part 400. As explained above, the Commission is removing 11 CFR Part 400 because the *Davis* decision invalidated the Millionaires' Amendment. Accordingly, the exception to the individual contribution limits under section 110.5(b)(2) is no longer valid. The Commission, therefore, is deleting 11 CFR 110.5(b)(2).

The Commission is also amending 11 CFR 110.5 paragraphs (b), (d), and (e), by revising the spelling of the word "bi-annual" to "biennial." This change makes the spelling consistent with the title of section 110.5, which uses the word "biennial."

**7. 11 CFR 116.11 and 116.12—Repayment of Candidate Loans**

The Commission is retaining sections 116.11 and 116.12 of the regulations that concern the repayment of candidates' personal loans made to their campaign committees. The Commission sought public comment on retaining these provisions in light of the Supreme Court's decision in *Davis*. No comments were received.

BCRA added a new provision prohibiting candidates and their authorized committees from using contributions made after the election to repay loans from the candidates to their own authorized committees to the extent the contributions total over \$250,000. See 2 U.S.C. 441a(j). These loans are referred to as "personal loans." The Commission's current rules at 11 CFR 116.11 and 116.12 implement 2 U.S.C. 441a(j). Section 116.11 prohibits an authorized committee from using contributions made after an election to repay any personal loan by a candidate that exceeds \$250,000. Section 116.12 addresses the repayment

<sup>2</sup> See e.g., 11 CFR 100.83(c), 106.3(b)(1), and 110.10.

of candidate's personal loans that, in the aggregate, are equal to or less than \$250,000.

The Commission concludes that the *Davis* decision did not invalidate the personal loan provision in BCRA and, thus, it is retaining the rules that implement that provision. The Commission does not have authority, on its own, to declare a duly enacted law to be unconstitutional.

The Court in *Davis* did not address the validity of the personal loan provision, and the plaintiff did not challenge that provision of BCRA. 128 S. Ct. 2759. Although that provision is in the same statutory subsection of BCRA (section 304(a)) as other provisions that the Supreme Court in *Davis* held to be unconstitutional, the personal loan provision is placed in a separate subsection within 2 U.S.C. 441a. This statutory provision has a wider application than other provisions of the Millionaires' Amendment. It applies equally to all candidates and regardless of whether the Millionaires' Amendment provisions also apply to those candidates. Most notably, while other provisions of the Millionaires' Amendment apply only to Senate and House of Representatives candidates, the loan repayment provision applies to candidates for all Federal offices, including presidential candidates. Because this statutory provision has wider application than the Millionaires' Amendment, the Commission implemented it by adding new sections 116.11 and 116.12, rather than by including these rules in 11 CFR Part 400 with the Millionaires' Amendment regulations. See *Interim Final Rules* at 3973.

The Commission's decision to retain sections 116.11 and 116.12 is consistent with its approach in a recent advisory opinion, which was requested after the Supreme Court invalidated the Millionaires' Amendment in *Davis*. See Advisory Opinion 2008–09 (Lautenberg).<sup>3</sup> Senator Lautenberg loaned money to his principal campaign committee in connection with his primary election. The Senator asked the Commission whether the personal loan provision applied to his personal loan in light of the *Davis* decision. The Commission concluded that it did apply because the *Davis* decision did not address the constitutionality of the personal loan provision. 128 S. Ct. 2759. The Commission explained that, unlike the BCRA provisions found to be unconstitutional in *Davis*, the personal loan provision applies equally to all

candidates, regardless of whether they or their opponents have triggered the Millionaires' Amendment.

The Commission also concluded in Advisory Opinion 2008–09 that the personal loan provision was severable from the Millionaires' Amendment. As the Commission explained there, BCRA section 401 provides that the invalidation of one provision of BCRA will not affect the validity of any other provisions of BCRA, nor the application of such provisions to other persons and circumstances. 2 U.S.C. 454. It is a well-settled principle of statutory construction that “[u]nless it is evident that the legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law.” *Buckley v. Valeo*, 424 U.S. 1, 108–109 (1976) (quoting *Champlin Refining Co. v. Corporation Commission*, 286 U.S. 210, 234 (1932)). In *Buckley*, the Supreme Court struck down certain provisions of FECA's section 202, but expressly upheld other provisions within the same subsection of the statute.

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

The Commission, therefore, is retaining the rules at 11 CFR 116.11 and 116.12 that restrict the repayment of personal loans made by candidates to their authorized committees.

### C. Technical and Conforming Amendments to Other Regulations

1. 11 CFR 100.153—Routine Living Expenses; 11 CFR 113.1(g)(6)(ii)—Personal Use.

The Commission is amending 11 CFR 100.153 and 113.1(g)(6)(ii) by revising the cross-references to the definition of “personal funds” from 11 CFR 110.10(b) to current 11 CFR 100.33. The Commission deleted 11 CFR 110.10(b) in the *Interim Final Rules*, 68 FR at 3973. The change reflects the Commission's prior removal of the “personal funds” definition from section 110.1(b) to section 100.33.

2. 11 CFR 9001.1—Scope; 11 CFR 9003.1—Candidate and Committee Agreements; 11 CFR 9031.1—Scope; 11 CFR 9033.1—Candidate and Committee Agreements

The Commission is making technical amendments to these sections that update references to its other regulations to reflect the elimination of Part 400.

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

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

The final rule also does not add any new substantive provisions to the current regulations, but rather it removes or retains existing regulations. Therefore, the attached final rule will not have a significant impact on a substantial number of small entities.

<sup>3</sup> Advisory Opinion 2008–09 (Lautenberg) is available at <http://saos.nictusa.com/saos/searchao>.

**List of Subjects**

**11 CFR Part 100**

Elections.

**11 CFR Part 101**

Political candidates, Reporting and recordkeeping requirements.

**11 CFR Part 102**

Political committees and parties, Reporting and recordkeeping requirements.

**11 CFR Part 104**

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

**11 CFR Part 110**

Campaign funds, Political committees and parties.

**11 CFR Part 113**

Campaign funds.

**11 CFR Part 400**

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

**11 CFR Part 9001**

Campaign funds.

**11 CFR Part 9003**

Campaign funds, Reporting and recordkeeping requirements.

**11 CFR Part 9031**

Campaign funds.

**11 CFR Part 9033**

Campaign funds, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Commission is amending Subchapters A, C, E, and F of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

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

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

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

**§ 100.19 [Amended]**

■ 2. In § 100.19, paragraph (b) is amended by removing the reference to “(g)” and adding in its place “(f)” in paragraph (b) introductory text and (b)(2), and by removing paragraph (g).

■ 3. Section 100.33 is revised to read as follows:

**§ 100.33 Personal funds.**

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

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

- (1) Legal and rightful title; or
- (2) An equitable interest;

(b) *Income.* Income received during the current election cycle, of the candidate, including:

- (1) A salary and other earned income that the candidate earns from bona fide employment;
- (2) Income from the candidate’s stocks or other investments including interest, dividends, or proceeds from the sale or liquidation of such stocks or investments;
- (3) Bequests to the candidate;
- (4) Income from trusts established before the beginning of the election cycle;
- (5) Income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;
- (6) Gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and
- (7) Proceeds from lotteries and similar legal games of chance; and

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

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

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

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

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

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

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

**§ 100.153 [Amended]**

■ 4. Section 100.153 is amended by removing the reference to “11 CFR 110.10(b)” and adding in its place “11 CFR 100.33”.

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

■ 5. The authority citation for part 101 continues to read as follows:

**Authority:** 2 U.S.C. 432(e), 434(a)(11), 438(a)(8).

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

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

(a) *Principal Campaign Committee.* Within 15 days after becoming a candidate under 11 CFR 100.3, each candidate, other than a nominee for the office of Vice President, shall designate

in writing, a principal campaign committee in accordance with 11 CFR 102.12. A candidate shall designate his or her principal campaign committee by filing a Statement of Candidacy on FEC Form 2, or, if the candidate is not required to file electronically under 11 CFR 104.18, by filing a letter containing the same information (that is, the individual’s name and address, party affiliation, and office sought, the District and State in which Federal office is sought, and the name and address of his or her principal campaign committee at the place of filing specified at 11 CFR part 105). Each principal campaign committee shall register, designate a depository, and report in accordance with 11 CFR parts 102, 103, and 104.

\* \* \* \* \*

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

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

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

■ 8. In § 102.2, paragraph (a)(1)(viii) is revised to read as follows:

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

(a) \* \* \*

(1) \* \* \*

(viii) If the committee is a principal campaign committee of a candidate for the Senate or the House of Representatives, the principal campaign committee’s electronic mail address.

\* \* \* \* \*

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

■ 9. The authority citation for part 104 continues to read as follows:

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

**§ 104.19 [Removed and Reserved]**

■ 10. Section 104.19 is removed and reserved.

**PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS**

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

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

■ 12. In § 110.5, paragraphs (b)(1), (d), and (e) are revised, and paragraph (b)(2) is removed and reserved to read as follows:

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

(d) *Independent expenditures.* The biennial limitation on contributions in this section applies to contributions made to persons, including political committees, making independent expenditures under 11 CFR part 109.

(e) *Contributions to delegates and delegate committees.* The biennial limitation on contributions in this section applies to contributions to delegate and delegate committees under 11 CFR 110.14.

**PART 113—USE OF CAMPAIGN ACCOUNTS FOR NON-CAMPAIGN PURPOSES**

■ 13. The authority citation for part 113 continues to read as follows:

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

**§ 113.1 [Amended]**

■ 14. Section 113.1(g)(6)(ii) is amended by removing the reference to “11 CFR 110.10(b)” and adding in its place “11 CFR 100.33”.

**PART 400—[REMOVED]**

■ 15. Under the authority of 2 U.S.C. 437d(a)(8), part 400 is removed.

**PART 9001—SCOPE**

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

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

**§ 9001.1 [Amended]**

■ 17. Section 9001.1 is amended by removing the number “400” and adding in its place the number “300” in both instances in which “400” appears.

**PART 9003—ELIGIBILITY FOR PAYMENTS**

■ 18. The authority citation for part 9003 continues to read as follows:

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

**§ 9003.1 [Amended]**

■ 19. In § 9003.1, paragraph (b)(8) is amended by removing the number “400” and adding in its place the number “300”.

**PART 9031—SCOPE**

■ 20. The authority citation for part 9031 continues to read as follows:

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

**§ 9031.1 [Amended]**

■ 21. Section 9031.1 is amended by removing the number “400” and adding in its place the number “300” in both instances in which “400” appears.

**PART 9033—ELIGIBILITY FOR PAYMENTS**

■ 22. The authority citation for part 9033 continues to read as follows:

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

**§ 9033.1 [Amended]**

■ 23. In § 9033.1, paragraph (b)(10) is revised by removing the number “400” and adding in its place the number “300”.

Dated: December 23, 2008.

On behalf of the Commission,

**Donald F. McGahn, II,**

*Chairman, Federal Election Commission.*

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**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 3**

[Docket ID OCC-2008-0025]

RIN 1557-AD13

**FEDERAL RESERVE SYSTEM**

**12 CFR Parts 208 and 225**

[Regulations H and Y; Docket No. R-1329]

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 325**

RIN 3064-AD32

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Part 567**

[Docket No. OTS-2008-0019]

RIN 1550-AC22

**Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital Deduction of Goodwill Net of Associated Deferred Tax Liability**

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are amending their regulatory capital rules to permit banks, bank holding companies, and savings associations (collectively, banking organizations) to reduce the amount of goodwill that a banking organization must deduct from tier 1 capital by the amount of any deferred tax liability associated with that goodwill. For a banking organization that elects to apply this final rule, the amount of goodwill the banking organization must deduct from tier 1 capital would reflect the maximum exposure to loss in the event that such goodwill is impaired or derecognized for financial reporting purposes.