

**FEDERAL ELECTION COMMISSION****11 CFR Parts 104, 107, 110, 9003, 9004, 9008, 9032 through 9036, and 9038****[Notice 2003–8]****Public Financing of Presidential Candidates and Nominating Conventions****AGENCY:** Federal Election Commission.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission requests comments on proposed changes to its rules governing publicly financed presidential candidates, in both the primary and general elections, and national nominating conventions. These regulations implement the provisions of the Presidential Election Campaign Fund Act and the Presidential Matching Payment Account Act, which establish eligibility requirements for presidential candidates and convention committees seeking public financing and indicate how funds received under the public financing system may be spent. They also require the Commission to audit publicly financed committees and seek repayment where appropriate. The proposed rules implement the Bipartisan Campaign Reform Act of 2002, as it applies particularly to the Presidential Election Campaign Fund Act and the Presidential Matching Payment Account Act. The proposed rules also reflect the Commission's experience in administering this program during the 2000 election cycle and seek to anticipate some questions that may arise during the 2004 presidential election cycle. No final decisions have been made by the Commission on any of the proposed revisions in this document. Further information is provided in the supplementary information that follows.

**DATES:** Comments must be received on or before May 9, 2003. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on May 19, 2003, at 10 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

**ADDRESSES:** All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to [pubfund2004@fec.gov](mailto:pubfund2004@fec.gov) and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and

postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

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

**SUPPLEMENTARY INFORMATION:** The Commission is considering revising parts of its regulations governing the public financing of presidential campaigns, 11 CFR parts 9001 through 9039, to more effectively administer the public financing program during the 2004 election cycle. These rules implement the provisions of the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 to 9013 ["Fund Act"], and the Presidential Matching Payment Account Act, 26 U.S.C. 9031 to 9042 ["Matching Payment Act"]. In addition, the Commission is considering how the Bipartisan Campaign Reform Act of 2002 ["BCRA"], Public Law 107–155, 116 Stat. 81 (Mar. 27, 2002), in its amendments to the Federal Election Campaign Act of 1971, 2 U.S.C. 431 to 455 ["FECA"], along with the Commission's implementing regulations related to BCRA, may affect the public funding rules. The Commission publishes this Notice of Proposed Rulemaking ["NPRM"] to invite comments on the proposed amendments.

Please note that the proposed revisions would affect primary elections, general elections, and national nominating conventions. The Commission plans to seek comment at a later date on issues that affect only minor and new party candidates. The Commission also plans a separate rulemaking on selected issues related to all Federal candidates, which may include issues related to publicly

funded candidates, including questions concerning candidate travel, mailing lists (including list exchanges and list rentals), and allocation of expenses between candidates.

**Presidential Candidates****I. Winding Down Costs**

The Commission is considering several changes to its rules governing winding down costs for both primary and general election candidates. Many issues that have arisen in the Commission's audits of publicly funded presidential candidates have involved winding down costs.

**A. Restrictions on Winding Down Costs**

The Commission is revisiting the issue of limiting winding down expenses. The current regulations at 11 CFR 9034.4(a)(3) permit primary candidates to make disbursements for winding down costs, and to receive and use matching funds to make those disbursements, over an indefinite period of time after the candidate's Date of Ineligibility ["DOI"]. Similarly, under 11 CFR 9004.4(a)(4), general election candidates may use public funds after the end of the expenditure report period to pay for the costs of winding down the general election campaign. The rules treat both primary and general election winding down costs as qualified campaign expenses.

The Commission has permitted publicly financed candidates to use Federal funds to pay for certain winding down expenses since 1976. See Informational Letter Re: Advisory Opinion Request 1976–54. In 1979, the Commission stated that winding down costs "although perhaps incurred after a candidate's date of ineligibility may nevertheless be considered qualified campaign expenses if they are associated with the termination of the candidate's campaign." *Explanation and Justification for the Rules Governing Presidential Election Campaign Fund and Presidential Primary Matching Fund*, 44 FR 20336, 20340 (Apr. 4, 1979). In 1983, the Commission considered a time limitation for winding down costs, but ultimately did not include it in the final rules because of concerns raised by comments opposing the change. *Explanation and Justification for the Rules Governing Presidential Primary Matching Fund*, 48 FR 5224, 5228 (Feb. 4, 1983).

The Commission again contemplated restrictions on the amount of winding down costs in 1995. *Explanation and Justification for the Rules Governing Public Financing of Presidential Primary*