

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

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

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

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

Candidate X's authorized committee may use contributions received before, during, or after the primary election to repay Candidate X's \$500,000 outstanding personal loan balance, \$250,000 for the primary election loan and \$250,000 for the general election loan.

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

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

### **Scope and Definitions**

#### *1. 11 CFR 400.1 Scope and Effective Date*

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

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

The Commission seeks comment on whether it should adopt a provision, in 11 CFR 400.1, whereby candidates and national and State committees of political parties would be permitted to affirmatively "opt-out" of the Millionaires' Amendment's benefits and obligations, in cases where all of the following conditions were met: (1) The candidate has no intention of making expenditures from personal funds in excess of the relevant threshold amount in 11 CFR 400.9; (2) the candidate and the candidate's authorized committee have no intention of accepting contributions under the increased limits; and (3) the national and State

committees of the candidate's political party have no intention of making coordinated expenditures on behalf of the candidate's election. By "opting-out," the candidate would be prohibited from accepting contributions under the increased limits and the national and State committees of the candidate's political party would be prohibited from making coordinated expenditures on behalf of the candidate's election in excess of the usual coordinated expenditure limits in 11 CFR 109.32(b). In return, the candidate and the national and State committees of the candidate's political party would be exempt from all the notification and reporting obligations under 11 CFR part 400.

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

#### *2. 11 CFR 400.2 Definition of "Election Cycle"*

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

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

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