

held to determine the winner, the Commission will consider the run-off election to be part of the primary election cycle, for purposes of the Millionaires' Amendment.

3. 11 CFR 400.3 *Definition of "Opposing Candidate"*

The operative provisions of the Millionaires' Amendment are triggered by expenditures of personal funds by "an opposing candidate." See 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a-1(a)(2) (House of Representatives). New 11 CFR 400.3 defines "opposing candidate." Paragraph (a) applies to primary elections. It establishes that "opposing candidate" means another candidate seeking the nomination of the same party as the candidate who may benefit from increased contribution limits and the lifting of the coordinated party expenditure limits. The final sentence of this paragraph clarifies that a candidate may have more than one "opposing candidate" in a primary.

The Commission seeks comment as to whether "opposing candidate" should be expanded to include candidates seeking another political party's nomination for the same office. Under such an expanded definition, for example, a self-financed candidate seeking the nomination of political party ABC would be an "opposing candidate" where his or her personal funds are intended to influence the primary of political party XYZ by working to defeat whichever candidate of political party XYZ is judged to be the strongest opponent of the self-financed candidate in the general election.

Paragraph (b) of 11 CFR 400.3 applies to general elections, and establishes that "opposing candidate" means another candidate seeking election to the same office as the candidate who may benefit from increased contribution limits. Again, the final sentence states that a candidate may have more than one "opposing candidate" in the general election.

4. 11 CFR 400.4 *Definition of "Expenditure From Personal Funds"*

The amount of "expenditures from personal funds" by an opposing candidate is an important factor in determining whether the increased contribution limits and unlimited coordinated party expenditures are permitted under the Millionaires' Amendment. 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a-1(a)(2) (House of Representatives). This term is defined in both the Senate and the House of Representatives versions of the Millionaires' Amendment as "an

expenditure made by a candidate using personal funds," as "a contribution or loan made by a candidate using personal funds," and as "a loan secured using such funds to candidate's authorized committee." 2 U.S.C. 434(a)(6)(B)(i) (Senate); 2 U.S.C. 441a-1(b)(1)(A) (House of Representatives).

New 11 CFR 400.4 implements this statutory definition and includes cross-references to 11 CFR 100.33, which defines "personal funds." The introductory wording of 11 CFR 400.4(a) states that all of the items described in paragraphs (a)(1) through (a)(4) are aggregated to determine expenditures from personal funds.

Paragraph (a)(1) follows the definition of "expenditure" in 11 CFR part 100, subparts D and E. It includes payments made directly by the candidate for purposes of influencing the election in which he or she is a candidate. Paragraph (a)(2) includes in the definition contributions and loans made by the candidate to his or her authorized committee using personal funds. 2 U.S.C. 434(a)(6)(B)(i)(II). Paragraph (a)(3) includes in the definition a loan made by any person to the candidate's authorized committee if that loan is secured or guaranteed by the candidate's personal funds. BCRA requires that obligations to make expenditures from personal funds be included when aggregating such expenditures. 2 U.S.C. 434(a)(6)(B)(ii) (Senate); 2 U.S.C. 441a-1(b)(1)(A)(ii) (House of Representatives). Thus, 11 CFR 400.4(a)(4) states that any obligation to make an expenditure from personal funds that is legally enforceable against the candidate falls within the definition of "expenditure from personal funds."

BCRA does not define when an expenditure from personal funds is considered to be made. The Commission, in 11 CFR 400.4(b), defines when an expenditure from personal funds will be considered made for purposes of 11 CFR part 400. Paragraph (b) states that an expenditure is considered made on the date the funds are deposited into the bank account designated by the candidate's authorized committee as the campaign depository, on the date the instrument transferring the funds is signed, or on the date the contract obligating the personal funds is executed, whichever date is earlier. Accordingly, contributions or loans made by the candidate to his or her authorized committee or loans made by any person but secured or guaranteed with the candidate's personal funds will be considered made on the date the loaned funds are deposited into the authorized

committee's bank account or, in the case of a loan from a third party secured by the candidate's personal funds, the date the contract obligating the candidate's personal funds was signed, whichever date is earlier. In the situation where a candidate makes direct expenditures on behalf of his or her authorized committee, the expenditure will be considered to have been made on the date he or she signed the check or other instrument conveying the funds or signed a contract obligating his or her personal funds in connection with the direct expenditure. Evidence of expenditures will be receipts, cancelled checks, and signed contracts and such documents must be maintained under the recordkeeping provisions of 11 CFR 102.9.

5. 11 CFR 400.5 *Definition of "Applicable Limit"*

The Senate provisions of the Millionaires' Amendment use the term "applicable limit." 2 U.S.C. 441a(i)(1)(A). This means the amount limitation on contributions to candidates by persons other than multicandidate committees in 2 U.S.C. 441a(a)(1)(A) that is modified by the operation of the Millionaires' Amendment. Although the House of Representatives version does not use the term "applicable limit," it also operates to increase the 2 U.S.C. 441a(a)(1)(A) limits for individuals. 2 U.S.C. 441a-1(a)(1)(A). Accordingly, new 11 CFR 400.5 defines "applicable limit" by linking the term to the contribution limitation in 11 CFR 110.1(b)(1), which implements 2 U.S.C. 441a(a)(1)(A). The Commission notes this applicable limit will most likely change every two years due to the indexing of the applicable limit for inflation under 2 U.S.C. 441a(c) and 11 CFR 110.1(b)(1). See 11 CFR 110.17(b).

6. 11 CFR 400.6 *Definition of "Increased Limit"*

The Millionaires' Amendment, under certain circumstances, allows a candidate certain advantages to respond to expenditures from personal funds by an opposing candidate. One of these advantages is an increase in the amount limitation on contributions to the candidate by individuals. The other advantage is a suspension of the usual limits on coordinated expenditures by national and State political party committees in connection with the general election campaign of the candidate (see 11 CFR 109.32(b)). 2 U.S.C. 441a(i)(1)(C) (Senate); 2 U.S.C. 441a-1(a)(1) (House of Representatives). This suspension of the coordinated expenditure limits applies to any