

coordinated spending authority either of these party committees may assign to another party committee, such as a Congressional campaign committee or a district or local party committee, under 11 CFR 109.33.

New 11 CFR 400.6 defines “increased limit” to mean an amount limitation on contributions from individuals that exceed the applicable limit (*see* Explanation and Justification for new 11 CFR 400.5, above) in 11 CFR 110.1(b). It is important to note that under the Millionaires’ Amendment the amount limitations for contributions from persons other than individuals (political committees, multicandidate political committees (PACs), partnerships, limited liability corporations, Indian tribes, etc.) to candidates do not increase.

New 11 CFR 400.6 also includes within the definition of “increased limit” the suspension of party expenditure limits, where applicable. The Commission notes that nothing in the Millionaires’ Amendment changes the restrictions on coordinated party expenditures in 11 CFR 109.35.

7. 11 CFR 400.7 Definition of “Contribution That Exceeds the Applicable Limit”

The Millionaires’ Amendment provides that, in certain circumstances, an individual may contribute more to a candidate than otherwise allowed under 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(b). The limits in 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(b) are defined as the “applicable limit” in new 11 CFR part 400. *See* Explanation and Justification for new 11 CFR 400.5, above. New 11 CFR 400.7 defines “contribution that exceeds the applicable limit” as the difference between the contribution amount and the applicable limit.

Example: A contributor delivered a check for \$6,000 to a Senate candidate who had been accepting contributions up to that amount under the increased limits. *See* 2 U.S.C. 441a(i)(1)(C)(i)(I). Because the current applicable limit under 11 CFR 110.1(b)(1) is \$2,000, the “amount of the contribution above the applicable limit” is \$4,000.

8. 11 CFR 400.8 Definition of “Gross Receipts”

Both the Senate and House of Representatives provisions of the Millionaires’ Amendment take into account any overall fundraising advantage that a candidate may have over his or her opposing candidate before allowing the opposing candidate’s expenditures from personal funds to trigger increased limits on contributions to the candidate and

unlimited coordinated party expenditures on behalf of the candidate. The candidate’s fundraising advantage, if any, is called the “gross receipts advantage” in both versions of the Millionaires’ Amendment. 2 U.S.C. 441a(i)(1)(E) (Senate); 2 U.S.C. 441a–1(2)(B) (House of Representatives). If the candidate’s gross receipts advantage offsets the advantage the opposing candidate derives from the expenditure of his or her personal funds, then the increased contribution limits do not come into play. The Commission’s regulations do not define the term “gross receipts advantage.” Instead, the Commission has incorporated the calculation of “gross receipts advantage” into the formulas for determining the opposition personal funds amount in 11 CFR 400.10 (*see* Explanation and Justification for new 11 CFR 400.10, below).

“Gross receipts” is not defined in BCRA. New 11 CFR 400.8 defines “gross receipts” by reference to an existing reporting regulation already applicable to authorized committees in other contexts, 11 CFR 104.3(a)(3). Section 104.3(a)(3) enumerates the types of receipts that make up the “total amount of receipts” and that must be reported by a candidate’s principal campaign committee on behalf of all the candidate’s authorized committees.⁵ This approach has the benefit of relying on rules and concepts already familiar to candidates and authorized committees to implement this part of BCRA.

9. 11 CFR 400.9 Definition of “Threshold Amount”

Both the Senate and House of Representatives provisions of the Millionaires’ Amendment define a “threshold amount.” If the opposing candidate’s expenditures from personal funds, adjusted for the candidate’s expenditures from personal funds and the candidate’s gross receipts advantage (*see* Explanation and Justification for new 11 CFR 400.10, below), exceed this threshold amount, or specified multiples of this threshold amount, and other conditions are met, the candidate receives the advantage of increased contribution limits and the lifting of the coordinated party spending limits.

⁵ Note that certain amounts that qualify as “expenditures from personal funds” are reported under 11 CFR 104.3(a)(3), e.g., contributions from candidates under 11 CFR 104.3(a)(3)(ii). However, expenditures from personal funds are expressly excluded from BCRA’s definition of “gross receipts advantage.” 2 U.S.C. 441a(i)(8)(E) (Senate); 2 U.S.C. 441a–1(a)(2)(B)(ii) (House of Representatives). The Commission has accounted for this in the computation of “opposition personal funds amount” in 11 CFR 400.10, below.

In the Senate provisions, the threshold amount varies from State to State according to a statutory formula called “State-by-State Competitive and Fair Campaign Formula.” 2 U.S.C. 441a(i)(1)(B)(i). The formula is the sum of \$150,000 plus the product of the “voting age population” of the State and \$0.04. *Id.*

The interim final rules define “threshold amount” in new 11 CFR 400.9. Paragraph (a) applies to Senate elections. It defines threshold amount by restating the “State-by-State Competitive and Fair Campaign Formula” from 2 U.S.C. 441a(i)(1)(B)(i). Paragraph (a) also defines “voting age population” by reference to new 11 CFR 110.18, which is entitled “voting age population.” *See also* former 11 CFR 110.9(d). New 11 CFR 110.18 provides that the term means “resident population, 18 years of age or older.” That section also provides that the Commission will assure that this data is published annually in the **Federal Register**. The Commission will also post this data on its website.

Paragraph (b) applies to House of Representatives elections. Because the threshold amount in House of Representatives elections is statutorily fixed at \$350,000, paragraph (b) simply restates that amount. 2 U.S.C. 441a–1(a)(1).

10. 11 CFR 400.10 Definition of “Opposition Personal Funds Amount”

The purpose of the Millionaires’ Amendment is to allow a candidate to respond to very large expenditures of personal funds by an opposing candidate. However, the operative provisions of the Millionaires’ Amendment are not triggered directly by the opposing candidate’s expenditures from personal funds. Instead, the opposing candidate’s expenditure of personal funds is measured relative to the candidate’s own expenditures from personal funds. For both Senate and House of Representatives elections, the “opposition personal funds amount” is the difference between the opponents’ expenditures from personal funds and the candidate’s own expenditures from personal funds. 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). This provision precludes the operation of the Amendment in a situation where a candidate’s own expenditures from personal funds offsets the opponent’s expenditures from personal funds.

The opposition personal funds amount is subject to one other factor, called the “gross receipts advantage.” 2 U.S.C. 441a(i)(1)(E) (Senate); 2 U.S.C.