

441a-1(a)(2)(B) (House of Representatives). As explained in more detail above, if the candidate's overall fundraising advantage, called the "gross receipts advantage," offsets an opposing candidate's expenditures from personal funds, the increased contribution and coordinated party expenditure limits will not be triggered. Given that gross receipts advantage must be taken into account in determining the opposition personal funds amount, the Commission has decided to imbed the factors necessary for calculating gross receipts advantage into the formulas in the regulations for determining the opposition personal funds amount, as explained below.

Accordingly, 11 CFR 400.10 defines "opposition personal funds amount" by setting out three mutually exclusive formulas. Only one of the formulas will apply at a given time, depending on the date of the computation. The date of computation is important because Congress, in BCRA, specified two benchmark dates for making the determination of gross receipts advantage: June 30 and December 31 of the year preceding the year in which the general election is held. Before June 30 of the year preceding the year in which the general election is held, gross receipts advantage does not seem to be given effect by the statute. 2 U.S.C. 441a(i)(1)(D)(ii) (Senate); 2 U.S.C. 441a-1(a)(2)(B) (House of Representatives). On or after June 30 of the year preceding the year in which the general election is held, however, gross receipts advantage must be taken into account in determining the opposition personal funds amount.

The Commission notes that, although the statute uses the benchmark dates of June 30 and December 31 of the year preceding the year in which the general election is held for determining gross receipts advantage, the formulas in the Commission's rule for calculating opposition personal funds amount (new 11 CFR 400.10), are framed in terms of the later dates of July 16 of the year preceding the year in which the general election is held and February 1 of the year in which the general election is held, respectively. The reason for this discrepancy is that the disclosure reports containing the necessary information for determining gross receipts advantage as of June 30 and December 31 of the year preceding the year in which the general election is held, the Second Quarterly Report, the Year End Report, and the supplement reports required under new 11 CFR 104.19, are not due until July 15 of the year preceding the year in which the general election is held and January 31

of the year in which the general election is held, respectively. Furthermore, it will not actually be possible to make the necessary calculations until the day after each of those reports is due.

Accordingly, the formulas for calculating the opposition personal funds amount revolve around two important dates: July 16 of the year preceding the year in which the general election is held (the day after the Second Quarterly Report is due) and February 1 of the year in which the general election is held (the day after the Year End Report is due).

The formulas and their respective effective dates are set out in paragraph (a) of new 11 CFR 400.10 using variables that are defined in paragraph (b). The first term is the same in each of the formulas: The difference between the expenditures of personal funds by the candidate and the opposing candidates. This is expressed as a formula, " $a - b$," where " a " is the amount of expenditures from personal funds by the opposing candidate and " b " is the amount of expenditures from personal funds by the candidate seeking to accept contributions under the increased limits. The difference between the three sets of formulas is how gross receipts advantage is computed. In the formula that applies prior to July 16 of the year before the general election year (paragraph (a)(1)), gross receipts advantage is *not* factored into the formula, as explained above. Thus, during this timeframe, the opposition personal funds amount is simply the difference between the expenditures from personal funds by the candidate and each opposing candidate.

The first of the benchmark dates set by Congress for computing gross receipts advantage is June 30 of the year before the general election year. As explained above, the information necessary for calculating gross receipts advantage as of that date will not be available to the public until July 16 of the year before the general election year. Accordingly, July 16, rather than June 30 of the year before the general election year, marks the beginning date for applicability of the second formula (paragraph (a)(2)).

Paragraph (a)(2) sets out two different formulas (using the terminology of the formula, " $a - b - ((c - d) \div 2)$ " or " $a - b$ "). Variable " c " is the aggregate amount of the gross receipts of the candidate's authorized committees, minus any contributions by the candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on June 30 of the year preceding the year in which the general

election is held. Variable " d " is the aggregate amount of the gross receipts of the opposing candidate's authorized committee, minus any contributions by that opposing candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on June 30 of the year preceding the year in which the general election is held.

If the amount for variable " c " is greater than the amount for variable " d ," then the first of these formulas must be used to determine the opposition personal funds amount ($a - b - ((c - d) \div 2)$). If the reverse is true, however, then the gross receipts advantage is considered to be equal to \$0 because BCRA states that the gross receipts advantage is taken into consideration only if the candidate's authorized committee's gross receipts exceed the opposing candidate's authorized committee's gross receipts. 2 U.S.C. 441a(i)(1)(E)(ii) (Senate); 2 U.S.C. 441a-1(a)(2)(B)(ii) (House of Representatives) ("* * * the term 'gross receipts advantage' means the excess, *if any* * * *") (emphasis added). Thus, the opposition personal funds amount simply equals the difference between the greatest aggregate amount of expenditures from personal funds made by the opposing candidate and the candidate opposing the opposing candidate in the same election (using the terminology of the formulas, " $a - b$ "). The computation of gross receipts advantage then remains constant until the next statutory benchmark date occurs. It is important to note, however, that the opposition personal funds amount is still subject to change during this time period, depending on changes in the amounts of expenditures from personal funds of the candidates in the same election.

The second of the benchmark dates set by Congress for computing gross receipts advantage is December 31 of the year before the general election year. As explained above, the information necessary for calculating gross receipts advantage as of that date will not be available to the public until February 1 of the general election year. Accordingly, February 1 of the general election year, rather than December 31 of the year before the general election year, marks the beginning date for applicability of the third set of formulas (paragraph (a)(3)).

Like paragraph (a)(2), paragraph (a)(3) sets out two formulas (using the terminology of the formula, " $a - b - ((e - f) \div 2)$ " or " $a - b$ "). Variable " e " is the aggregate amount of the gross receipts of the candidate's authorized committees, minus any contributions by