

the candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on December 31 of the year preceding the year in which the general election is held. Variable “f” 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 December 31 of the year preceding the year in which the general election is held.

If the amount for variable “e” is greater than the amount for variable “f,” then the first of these formulas must be used to determine the opposition personal funds amount $(a - b - ((e - f) \div 2))$. If the reverse is true, however, then the gross receipts advantage is not taken into consideration, for the same reason stated in the Explanation and Justification for paragraph (a)(2), above, and consequently is equal to \$0. 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 day of the general election. Once again, however, it is important to note 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.

Notification and Reporting Requirements

1. 11 CFR 400.20 Declaration of Intent

Both the Senate and the House of Representatives versions of the Millionaires’ Amendment (2 U.S.C. 434(a)(6)(B)(ii) (Senate) and 441a–1(b)(1)(B) (House of Representatives)) require candidates to file a “declaration of intent” within 15 days of becoming a candidate. This declaration must state the amount by which the candidate intends to exceed the threshold amount (see Explanation and Justification for new 11 CFR 400.9, above). New 11 CFR 400.20 implements these statutory requirements.

Paragraph (a) sets forth the basic requirements for filing Declarations of Intent, including the 15 day filing deadline. See 11 CFR 100.3 for the

definition of “candidate.” The declaration must be filed with the Commission and with each “opposing candidate” as described in 11 CFR 400.3.

Paragraph (b) sets forth the methods of filing for the Senate in paragraph (b)(1) and for the House of Representatives in paragraph (b)(2). Because Senate candidates are exempt from the FECA’s electronic filing requirements at 2 U.S.C. 434(a)(11), under paragraph (b)(1), Senate candidates must send a *copy* of their Statement of Candidacy with the declaration to the Commission, *in addition* to their paper filing with the Secretary of the Senate. Candidates will be required to send the copy of their filing to the Commission using either a facsimile machine or as an attachment to an electronic mail message to ensure that it is received within the statutorily required time frame. Additionally, Senate candidates will be required to fax or electronically mail either their FEC Form 2 as an attachment, or the information required in FEC Form 2 by 11 CFR 101.1(a), including the amount by which they expect to exceed the threshold amount to each opposing candidate.

Under paragraph (b)(2), candidates for the House of Representatives will also be required to include the Declaration of Intent information on their Statement of Candidacy, FEC Form 2. Currently, political committees that exceed, or that have reason to expect to exceed, \$50,000 in contributions or expenditures must file electronically. Paragraph (b)(2) requires candidates for the House of Representatives who state on FEC Form 2 that they intend to exceed the threshold amount, as defined in 11 CFR 400.9, to file electronically. This is because the electronic filing threshold in 11 CFR 104.18 (\$50,000) is lower than the \$350,000 threshold for part 400. By declaring his or her intention to exceed \$350,000 in expenditures from personal funds, a House of Representatives candidate is stating that he or she anticipates spending more than seven times the \$50,000 electronic filing threshold. Additionally, House of Representatives candidates are required to fax or electronically mail their FEC Form 2 as an attachment, or the information required therein by 11 CFR 101.1(a), including the amount by which they intend to exceed the threshold amount, to each opposing candidate.

With these required methods of filing, the Commission seeks to facilitate the making and receiving of the Declaration of Intent by all candidates. As explained in the discussion of revised § 101.1

above, due to the availability of computers in public libraries and the availability of free electronic mail on several Web sites, the Commission does not believe that requiring the use of electronic mail will pose an undue burden on candidates, especially when weighed against the fact that electronic mail will provide the most rapid manner of notification possible.

2. 11 CFR 400.21 Initial Notification of Expenditures From Personal Funds

BCRA (2 U.S.C. 434(a)(6)(B)(iii) (Senate) and 441a–1(b)(1)(C) (House of Representatives)) requires the filing of an “initial notification” of expenditures from personal funds within 24 hours of the time certain threshold amounts of expenditures from candidates’ personal funds are exceeded. For Senate candidates, that amount is two times the threshold amount defined in 11 CFR 400.9(a). For House of Representatives candidates, that amount is the threshold amount as defined in 11 CFR 400.9(b). New 11 CFR 400.21 largely tracks the wording of the statute at 2 U.S.C. 434(a)(6)(B)(iii) (Senate) and 441a–1(b)(1)(C) (House of Representatives), with two modifications. First, as discussed in greater detail below (see Explanation and Justification for new 11 CFR 400.25), while BCRA seems to require candidates themselves to file initial notifications of expenditures from personal funds, the Commission interprets this to mean that the candidates’ principal campaign committees are primarily responsible for these notifications, consistent with their other reporting obligations. Second, as explained in more detail below (see Explanation and Justification for new 11 CFR 400.24), FECA requires all original documents filed by Senate candidates’ principal campaign committees to be filed with the Secretary of the Senate. Accordingly, paragraph (a) of new 11 CFR 400.21 requires Senate candidates’ principal campaign committees to file their original notifications with the Secretary of the Senate and to file copies with other required recipients, including the Commission.

New 11 CFR 400.21 addresses the requirements for the principal campaign committees of Senate candidates in paragraph (a). Paragraph (a) states that Senate candidates’ principal campaign committees must notify the Secretary of the Senate, the Commission, and each opposing candidate when making expenditures from personal funds in connection with the election exceeding two times the threshold amount, as defined in 11 CFR 400.9. Paragraph (a) makes clear that such notifications must be received by each required recipient