

principal campaign committees to file their initial and additional notifications of expenditures from personal funds with the Secretary of the Senate on FEC Form 10. Paragraph (a) also requires Senate candidates' principal campaign committees to send a copy of FEC Form 10 by either facsimile machine or electronic mail or to send an electronic mail containing the information required by 11 CFR 400.23 to the Commission and to each opposing candidate. Although Senate candidates are exempt from the FECA's electronic filing requirements, the Commission is requiring their principal campaign committees to send this time-sensitive information regarding their expenditures from personal funds by facsimile machine or electronic mail in order to provide the most rapid notification possible.

Paragraph (b) of 11 CFR 400.24 requires certain methods of filing for House of Representatives candidates. As noted above, House of Representatives candidates are subject to the electronic filing requirements of 2 U.S.C. 434(a)(11). Therefore, whereas Senate candidates' principal campaign committees must send their notifications to the Commission by facsimile machine or by electronic mail, House of Representatives candidates' principal campaign committees must electronically file FEC Form 10 as they would any other report using the Commission's electronic filing system. This is because House of Representatives candidates who exceed the threshold amount in 11 CFR 400.10(b) will be well over the \$50,000 electronic filing threshold. Additionally, House of Representatives candidates' principal campaign committees will be required to send their FEC Form 10 via facsimile or as an attachment to an electronic mail message, or to send an electronic mail message containing the information required in new 11 CFR 400.23 to each opposing candidate as well as to the national party committees of each opposing candidate.

Although 11 CFR 400.21 and 400.22 require candidates to file the initial notification of expenditures from personal funds and additional notification of expenditures from personal funds with their opposing candidates, they may not be able to do so because they are unable to obtain the phone number of the facsimile machine or the electronic mail address of one or more of their opposing candidates' principal campaign committees. This may be because the opposing candidate's principal campaign committee failed to supply that information in its Statement of

Organization. The Commission seeks comment on whether it should waive these notification to opposing candidates requirements where the opposing candidate's authorized committee does not report the phone number for its facsimile machine or its electronic mail address on FEC Form 1, the Statement of Organization.

6. 11 CFR 400.25 Reporting Obligations of Candidates and Candidates' Principal Campaign Committees

The Commission notes that BCRA states that *candidates* are required to file various notifications under the Millionaires' Amendments. For example, BCRA requires candidates to file initial notifications of expenditures from personal funds (2 U.S.C. 434(a)(6)(B)(iii) and 441a-1(b)(1)(C)) and additional notifications of expenditures from personal funds (2 U.S.C. 434(a)(6)(B)(iv) and 441a-1(b)(1)(D)). In the case of notifications of the disposal of excess contributions (2 U.S.C. 441a(i)(3) and 441a-1(a)(4)), either the candidates or their authorized committees must file the notifications. These reporting obligations are similar in nature and extent to other reporting requirements in FECA. Accordingly, the Commission has decided to implement these new reporting requirements in a manner consistent with the way in which other reporting requirements operate under 2 U.S.C. 434 and 11 CFR part 104.

Under FECA, political committees, including candidates' authorized political committees and principal campaign committees, are required to file regularly scheduled reports of receipts and disbursements. *See* 11 CFR 104.3. Although the obligation to file the reports rests with political committees, it is the committees' treasurers who are liable if their committees fail to file the required reports. *See* 11 CFR 104.1(a). Consequently, the Commission is taking a similar approach to the reporting requirements under the Millionaires' Amendment. While the Commission's regulations implementing the new reporting provisions state that candidates' principal campaign committees are required to file the required reports and notifications (*see* 11 CFR 400.21, 400.22, 400.24, and 400.54, below), candidates are responsible for ensuring that their principal campaign committees meet these new disclosure obligations under new 11 CFR 400.25. The Commission seeks comment on whether holding candidates personally liable for violations of the reporting requirements

under subpart B of part 400 is consistent with Congressional intent.

Determining When the Increased Limits Apply

The Millionaires' Amendment prescribes rules for calculating the amounts of the increased limits to allow response to expenditures from personal funds by an opposing candidate, and also for determining when these increased limits do and do not apply. New 11 CFR part 400, subpart C implements the Millionaires' Amendment provisions concerning when a candidate may and must not accept contributions from individuals under the increased limits and when a national or State political party political party committee may and must not make coordinated party expenditures exceeding the limits in 2 U.S.C. 441a(d). New subpart D of part 400 covers the procedures for calculating the increased limits.

1. 11 CFR 400.30 Receipt of Notification of Opposing Candidate's Expenditures From Personal Funds

Paragraph (a) of new 11 CFR 400.30 clarifies that the section applies to both Senate races and House of Representatives races.

Paragraph (b) sets the conditions under which a candidate may accept contributions above the applicable limit, while paragraph (c) sets the conditions under which certain political party committees may make unlimited coordinated party expenditures on behalf of the candidate. There are several conditions that must be satisfied before a candidate may accept contributions above the applicable limit (*see* 11 CFR 400.5) pursuant to the increased contribution limits (*see* 11 CFR 400.6), and before a national or State political party committee may make unlimited coordinated party expenditures on behalf of the candidate in the general election. The first of these conditions is that the candidate must receive certain notification from the opposing candidate. 2 U.S.C. 441a(i)(2)(A)(i) (Senate); 2 U.S.C. 441a-1(a)(3)(A)(i) (House of Representatives). This condition is implemented in new 11 CFR 400.30.

There seems to be an inconsistency in the statute between the notification that the opposing candidate must give, and the notification that the candidate must receive. In both the Senate and the House of Representatives versions, the opposing candidate must give notifications in terms of his or her "expenditures from personal funds." 2 U.S.C. 434(a)(6)(B)(ii) through (v) (Senate); 2 U.S.C. 441a-1(b)(1)(B)