

through (E) (House of Representatives). The candidate must, however, receive notification of the "opposition personal funds amount." 2 U.S.C. 441a(i)(2)(A)(i) (Senate); 2 U.S.C. 441a-1(a)(3)(A)(i) (House of Representatives). The terms "expenditure from personal funds" and "opposition personal funds amount" mean different things in the Millionaires' Amendment. See 11 CFR 400.4 and 400.10, respectively.

New 11 CFR 400.30 reconciles these provisions by interpreting the reference to "opposition personal funds amount" in 2 U.S.C. 441a(i)(2)(A)(i) (Senate) and 2 U.S.C. 441a-1(a)(3)(A)(i) (House of Representatives) to mean "expenditure from personal funds." Thus, paragraph (b) of new 11 CFR 400.30 provides that a candidate must not accept, pursuant to this part, any contribution above the applicable limits (see 11 CFR 400.5) until the candidate has received the initial notification of an opposing candidate's expenditures from personal funds, as defined in new 11 CFR 400.4.

Although this regulatory interpretation diverges to some extent from the wording of 2 U.S.C. 441a(i)(2)(A)(i) (Senate) and 441a-1(a)(3)(A)(i) (House of Representatives), this interpretation harmonizes the statutory scheme by reconciling the nature of the notification that the opposing candidate must give with the nature of notification that the candidate must receive. This interpretation also makes sense when one considers that the self-financed candidate is not able to calculate the opposition personal funds amount in order to give notification of this amount to the candidate in the initial notification. To calculate the opposition personal funds amount, one must have data from both candidates (i.e., about expenditures from personal funds by both candidates). See 11 CFR 400.10. The purpose of the notification requirements in the statute seems to be to provide the candidate with all the data necessary to calculate the opposition personal funds amount. The regulatory interpretation in paragraph (b) of new 11 CFR 400.30 thus accomplishes the apparent purpose of the statute.

Under the Millionaires' Amendment, one of the advantages that may be granted to a candidate to allow response to expenditures from personal funds by the opposing candidate is unlimited coordinated party expenditures on the candidate's behalf. See 2 U.S.C. 441a(i)(1)(C)(iii)(III) (Senate); 2 U.S.C. 441a-1(a)(1)(C) (House of Representatives). Paragraph (c) of new 11 CFR 400.30 applies to national and State committees of a political party (including Congressional campaign

committees), and makes it clear that such party committees may not make unlimited coordinated party expenditures on behalf of a candidate until that candidate has received the initial notification.

The Commission is aware that, under some circumstances, candidates, authorized committees, and party committees may not actually receive initial and additional notifications sent by opposing candidates in a timely manner due to technological difficulties, faulty equipment, or other reasons. To enable candidates and authorized committees to accept contributions and party committees to make coordinated expenditures under the increased limits as soon as possible once expenditures from personal funds above the threshold amount have been made, the Commission is adding the concept of "constructive notification" to paragraphs (b) and (c) of 11 CFR 400.30. Under paragraph (d), a candidate, authorized committee, or party committee is considered to have received constructive notice of the filing of an opposing candidate's initial or addition notification of expenditures from personal funds when they obtain a copy of such notification that is received by the Commission.

#### *2. 11 CFR 400.31 Preventing Disproportionate Advantage Resulting From Increased Contribution and Coordinated Party Expenditure Limits*

Congress placed several checks on the operation of the Millionaires' Amendment. Among these checks is the so-called "proportionality provision." 147 Cong. Rec. S2538 (daily ed. March 20, 2001) (Sen. DeWine). The proportionality provision ensures that the advantages of the increased contribution and coordinated party spending limits allowed to the candidate facing a self-financed opponent do not tip the scales disproportionately in favor of the candidate enjoying the increased limits. 2 U.S.C. 441a(i)(2)(A)(ii) (Senate); 2 U.S.C. 441a-1(a)(3)(A)(ii) (House of Representatives). New 11 CFR 400.31 implements the statutory proportionality provision.

The proportionality provision requires a candidate and his or her authorized committee that accepts contributions under the increased limits, and a political party committee that makes coordinated party expenditures on behalf of the candidate under the increased limits, to monitor a certain proportion. The numerator of the proportion is the running total of contributions previously accepted and coordinated party expenditures

previously made under the increased limits. The denominator of the proportion is the opposition personal funds amount. 2 U.S.C. 441a(i)(2)(A)(ii) (Senate); 2 U.S.C. 441a-1(a)(3)(A)(ii) (House of Representatives).

In the Senate version of the proportionality provision, a candidate and his or her authorized committee must not accept a contribution "to the extent" the contribution causes the proportion to exceed 110 percent. Similarly, a national or State political party committee must not make a coordinated party expenditure on behalf of the candidate "to the extent" that the expenditure causes the proportion to exceed 110 percent. 2 U.S.C. 441a(i)(2)(A)(ii). The House of Representatives version operates in an almost identical manner. The only difference in the House of Representatives version is that the proportion must not exceed 100 percent. 2 U.S.C. 441a-1(a)(3)(A)(ii).

Thus, the effect of the proportionality provision on the increased individual contribution limits is to cause the contribution limits to revert to the applicable limit in 11 CFR 110.1(b)(1) from the increased limits specified by the Millionaires' Amendment once the advantages of the increased limits reach a specified level that is disproportionate to the opposing candidate's expenditures from personal funds. Similarly, the effect of the proportionality provision on the suspension of coordinated party expenditure limits is to reintroduce the limit on national and State coordinated party expenditures in 11 CFR 109.32(b) when the advantages of the increased coordinated spending limits also become disproportionate.

Paragraph (a) of new 11 CFR 400.31 clarifies that the proportionality provision applies to both Senate and House of Representatives elections. Paragraph (b) identifies those who have responsibilities under the proportionality provision: Any candidate and his or her authorized committee that accepts contributions under the increased limits, and any party committee that makes coordinated party expenditures on behalf of such a candidate under the increased limits. The Commission seeks comment on whether holding candidates personally liable for violations of 11 CFR 400.31 is consistent with Congressional intent.

Paragraph (c) sets out the information that must be monitored by the candidates and authorized committees that accept contributions from individuals under the increased coordinated spending limits, and the party committees that make coordinated