

party expenditures on behalf of candidates under the increased limits. This information consists of the three elements necessary to compute the proportion required by the statute: (1) The aggregate amount of contributions previously accepted by the candidate under the increased limits (paragraph (c)(1)); (2) the aggregate amount of coordinated party expenditures in connection with the general election campaign of the candidate previously made by any political party committee under the increased limits (paragraph (c)(2)); and (3) the opposition personal funds amount (paragraph (c)(3)).

Paragraph (d) of 11 CFR 400.31 applies to Senate elections. Paragraph (d)(1)(i) provides that a candidate must not accept that part of a contribution that exceeds the applicable limit (*see* 11 CFR 400.7) if the contribution would cause the proportion to exceed 110%. Note that, under this circumstance, the candidate would be able to accept that part of the contribution up to the applicable limit. This would be so because, even if the increased limits do not apply because of the proportionality provision, contributions up to the applicable limit are still permitted under 11 CFR 110.1(b).

Example: A contributor who had made no prior contributions 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). The candidate determines that accepting the entire amount of the contribution would cause the proportion of the sum of the contributions previously accepted under the increased individual limits, plus coordinated party expenditures previously made under the increased limits, to the opposition personal funds amount to exceed 110%. Therefore, the candidate may accept the first \$2,000 of the contribution, but not the amount above that.

Paragraph (d)(1)(ii) states that the candidate or the candidate's authorized committee has an affirmative duty to notify the national and State committees of their political party and the Commission, by facsimile machine or electronic mail, within 24 hours of when the aggregate amounts described in 11 CFR 400.31(c)(1) plus the aggregate amounts described in 11 CFR 400.31(c)(2) equals 110 percent of the opposition personal funds amount. The purpose of this requirement is to ensure that national and State committees of the candidate's political party and the Commission are put on notice that the committees may no longer make coordinated party expenditures in connection with the candidate's general election campaign that exceed the

ordinary expenditure limitations in 11 CFR 109.32(b).

Paragraph (d)(2) prohibits national and State committees of political parties from making coordinated party expenditures in excess of the expenditure limits in 11 CFR 109.32(b) in connection with a candidate's general election campaign when the sum of the aggregate amounts described in 11 CFR 400.31(c)(1) and the aggregate amounts described in 11 CFR 400.31(c)(2) reach the proportionality provision threshold. Again, as provided in the statute, the obligation is on the party committee not to make any coordinated party expenditures pursuant to the increased limits if the amount of that expenditure would cause the proportion of the sum of the contributions previously accepted under the increased limits, plus coordinated party expenditures previously made under the increased limits, to the opposition personal funds amount to exceed 110%.

Paragraphs (e)(1) and (e)(2) operate analogously to paragraphs (d)(1) and (d)(2), respectively, in the context of House of Representatives elections. It is important to note that, like their Senate counterparts, candidates for the House of Representatives or their authorized committees have an affirmative duty, under 11 CFR 400.31(e)(2)(B), to notify the national and State committees of their political party and the Commission, by facsimile machine or electronic mail, within 24 hours of when the aggregate amounts described in 11 CFR 400.31(c)(1) plus the aggregate amounts described in 11 CFR 400.31(c)(2) reach the proportionality provision threshold. In House of Representatives elections, however, the proportionality provision threshold is 100 percent of the opposition personal funds amount, not 110 percent, as in Senate elections.

3. 11 CFR 400.32 *Effect of the Withdrawal of an Opposing Candidate*

One of the checks placed on the operation of the Millionaires' Amendment by Congress comes into play when a candidate, whose expenditures of personal funds has triggered increased limits for another candidate, ceases to be a candidate. 2 U.S.C. 441a(i)(2)(B) (Senate); 2 U.S.C. 441a-1(a)(3)(B) (House of Representatives). 11 CFR 400.32 implements these provisions of the Millionaires' Amendment.

Paragraph (a)(1) clarifies that this new rule applies to both Senate and House of Representatives elections. Paragraph (a)(2) sets out the conditions under which the section operates. It is critical to determine when a candidate "ceases

to be a candidate" within the meaning of the statute. To this end, paragraph (a)(2) of new 11 CFR 400.32 follows the approach of existing 11 CFR 110.3(c)(4)(iv), which defines when a candidate ceases to be a candidate for purposes of certain other contribution limits in the Act. This may occur, for example, when a candidate publicly withdraws from the race, or fails to file by the filing date specified in State law, or fails to qualify for a run-off election under State law.

Paragraph (b) of 11 CFR 400.32 applies to candidates and their authorized committees. It provides that candidates must not accept contributions under the increased individual contribution limits after the opposing candidate, whose expenditures from personal funds triggered the increased limits, ceases to be a candidate. Paragraph (c) applies to national and State political party committees. It provides that such committees must not make any coordinated party expenditures under the increased spending limits after the opposing candidate, whose expenditures from personal funds triggered the increased limits, ceases to be a candidate. Given that the events triggering the end of both the increased contribution limits and unrestricted coordinated party expenditures are matters of public knowledge, the opposing candidate need not provide notification of these events to any candidate or political party committee, as all candidates and party committees will be deemed to have constructive knowledge of these events.

4. *Additional Reporting Issue*

The Commission seeks comment on whether candidates and authorized committees that are entitled to accept contributions under the increased limits pursuant to 11 CFR part 400 should be required, at regular intervals (such as daily or weekly), to notify the Commission, of the opposition personal funds amount, the aggregate amount of contributions received to date under the increased limits, and the aggregate coordinated party expenditures made to date in connection with their campaign for election.

5. *Additional Issue Regarding Repayment of Outstanding Debts to Vendors*

The Commission seeks comments on the following issue. An authorized committee of a candidate that is opposing a self-financed candidate incurs debts to vendors in anticipation of being able to raise contributions above the applicable limit under 11 CFR