

FEDERAL ELECTION COMMISSION

11 CFR Parts 104, 107, 110, 9001, 9003, 9004, 9008, 9031, 9032, 9033, 9034, 9035, 9036, and 9038

[Notice 2003–12]

Public Financing of Presidential Candidates and Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising several portions of its regulations governing the public financing of Presidential candidates, in both primary and general election campaigns, and Presidential nominating conventions. These regulations implement the provisions of the Presidential Election Campaign Fund Act (“Fund Act”) and the Presidential Matching Payment Account Act (“Matching Payment Act”), which establish eligibility requirements for Presidential candidates and convention committees seeking public financing and indicate how funds received under the public financing system may be spent. The revised rules also implement the Bipartisan Campaign Reform Act of 2002, as it applies particularly to the Fund Act and the Matching Payment Act. The revised rules reflect the Commission’s experience in administering these programs, particularly during the 2000 election cycle, and anticipate some questions that may arise during the 2004 Presidential election cycle. Further information is contained in the Supplementary Information that follows.

EFFECTIVE DATE: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9009(c).

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Acting Associate General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, Mr. Robert M. Knop, or Ms. Delanie DeWitt Painter, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations governing the public financing of Presidential campaigns, 11 CFR parts 9001 through 9039, to more effectively administer the public financing program

during the 2004 election cycle. These rules implement 26 U.S.C. 9001–13 and 26 U.S.C. 9031–42. The revised rules apply certain provisions of the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (2002) (“BCRA”), to Presidential nominating convention financing. The revised rules also: (1) Limit the use of public funds for winding down costs for both primary and general election Presidential candidates; (2) clarify rules concerning the attribution of expenses to the expenditure limitations for Presidential primary candidates and repayments based on expenditures in excess of those limitations; (3) modify several aspects of General Election Legal and Accounting Compliance Funds; (4) require Presidential committees to notify the Commission prior to changing their non-election year reporting schedules; (5) create a new “shortfall bridge loan exemption” from a primary candidate’s overall expenditure limitation; (6) define “municipal funds” to eliminate the former distinction between permissible host committee activity that was impermissible for municipal funds; (7) subject municipal funds to the same disclosure rules as host committees; (8) delete the requirements that only “local” individuals and “local” entities may donate to host committees and municipal funds; and (9) make technical changes.

The Commission published a Notice of Proposed Rulemaking on April 15, 2003, 68 FR 18484. Written comments were due by May 23, 2003. The names of commenters and their comments are available at <http://www.fec.gov/register.htm> under “Public Financing of Presidential Candidates and Nominating Conventions.” The Commission held a public hearing on June 6, 2003 at which it heard testimony from 12 witnesses. Transcripts of the hearing are available at the Web site identified above. Please note that, for purposes of this document, the terms “commenter” and “comment” apply to both written comments and oral testimony at the public hearing.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. In addition, 26 U.S.C. 9009(c) requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Fund Act be transmitted to the Speaker of the House of Representatives and the President of

the Senate 30 legislative days before they are finally promulgated. The final rules that follow were transmitted to Congress on July 31, 2003.

Explanation and Justification

11 CFR Part 104—Reports by Political Committees

11 CFR 104.5(b)(1)—Election Year Reports

The regulation at 11 CFR 104.5(b)(1) establishes the filing dates for reports by principal campaign committees (“PCC”s) of Presidential candidates, during election years in accordance with 2 U.S.C. 434(a)(3)(A). This rule is being revised to correct several citations to reflect changes to 11 CFR 104.5(a) promulgated when the Commission implemented BCRA’s new reporting requirements. The new citations refer to the same pre- and post-election reports so the reporting requirements are not changed. Specifically, the reference in 11 CFR 104.5(b)(1)(i)(C) is being changed from 11 CFR 104.5(a)(1)(i) to “paragraph (a)(2)(i) of this section” and the reference to 11 CFR 104.5(a)(1)(ii) is being changed to “paragraph (a)(2)(ii) of this section.” In 11 CFR 104.5(b)(1)(ii), the reference to 11 CFR 104.5(a)(1) is being changed to “paragraphs (a)(1) and (2) of this section.”

Section 104.5(b)(1)(ii) operates with two other provisions, § 104.5(b)(1)(i) and (iii), to specify the circumstances under which a Presidential PCC is not required to file monthly reports during the Presidential election year. A Presidential PCC must report monthly during an election year if contribution receipts or expenditures exceed or are anticipated to exceed \$100,000. 11 CFR 104.5(b)(1)(i) and (iii). In order for the three provisions to work harmoniously, all four conditions listed in § 104.5(b)(1)(ii) must be satisfied before a PCC is relieved of the monthly filing requirement. Therefore, section 104.5(b)(1)(ii) is being revised to replace the disjunctions “or” with the conjunctions “and” in three instances.

11 CFR 104.5(b)(2)—Non-Election Year Reports: Quarterly and Monthly Reporting Requirements

Section 104.5(b)(2) provides that principal campaign committees of Presidential candidates may file campaign reports in non-election years on either a monthly or a quarterly basis. The previous rules did not explain how PCCs may change their reporting frequency during a non-election year from monthly to quarterly or *vice versa*.

The Commission is revising § 104.5(b)(2) to set forth requirements for PCCs of Presidential candidates