

costs of bridge loans that are a direct result of a shortfall in matching funds and other loan expenses because a shortfall in public funds may be only one of several reasons a candidate needs to obtain a bridge loan. The new rule also requires that the candidate must provide documentation demonstrating the amount of interest charged on all loans guaranteed or secured by matching funds.

Finally, the Commission is not creating a similar exemption for general election candidates because payments of public funds to general election candidates and conventions receive priority over matching funds payments. While there has been a shortfall in matching fund payments in previous election cycles, there has never been a shortfall in payments to general election candidates.

#### **11 CFR Part 9036—Review of Matching Fund Submissions and Certification of Payments by Commission**

##### *11 CFR 9036.1—Matching Fund Submission*

In 2000, the Commission revised its rules at 11 CFR 104.3 to require authorized committees to aggregate, itemize, and report all receipts and disbursements on an election-cycle basis rather than on a calendar-year-to-date basis. See *Explanation and Justification for the Rules Governing Election Cycle Reporting by Authorized Committees*, 65 FR 42619 (July 11, 2000). The new rules, which reflect a 1999 amendment to 2 U.S.C. 434(b), apply to reporting periods beginning on or after January 1, 2001. See Pub. L. 106–58, section 641, 113 Stat. 430, 477 (1999); *Announcement of Effective Date for the Rules Governing Election Cycle Reporting by Authorized Committees*, 65 FR 70644 (Nov. 27, 2000). Under 11 CFR 100.3(b), an election cycle begins on the first day after the date of the previous general election for the office the candidate seeks or on the date an individual becomes a candidate and ends on the date of the next general election for that office. The election cycle is thus four years or less for Presidential candidates.

The Commission's rules regarding threshold submissions for matching funds in 11 CFR 9036.1(b)(1)(ii) previously required candidates to submit a contributor list including occupation and name of employer information for contributions from individuals aggregating in excess of \$200 per calendar year. Section 9036.1(b)(1)(ii) is being revised to specify that the matching fund submission and recordkeeping

requirements include occupation and employer information for those individuals who contribute more than \$200 in an election cycle, rather than in a calendar year, to reflect the statutory change. One commenter noted that these changes are not controversial and aim to reconcile the statute and regulations.

##### *11 CFR 9036.2—Additional Submissions for Matching Fund Payments*

The changes to the rules on additional submissions for matching funds at 11 CFR 9036.2(b)(1)(v) follow the changes made to 11 CFR 9036.1 regarding threshold submissions.

#### **11 CFR Part 9038—Examination and Audits**

##### *11 CFR 9038.2(b)(4)—Technical Correction*

Under 11 CFR 9038.2(b)(4), the Commission may determine that the net income derived from an investment or other use of surplus public funds after a candidate's DOI, less Federal, State and local taxes paid on that income, shall be paid to the Federal Treasury. However, the word "taxes" was inadvertently dropped from that paragraph in the previous regulations. This word is being restored in the final rule.

#### **Other Candidate Issues**

##### *A. Candidate Salary*

The Commission recently revised its rules governing personal use of campaign funds at 11 CFR part 113 to implement BCRA's changes to 2 U.S.C. 439a. In that rulemaking, the Commission decided to allow certain campaign funds to be used for candidate salaries, including privately funded Presidential candidates, under certain conditions delineated at 11 CFR 113.1(g)(1)(i)(I). See *Explanation and Justification for the Rules Governing Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds*, 67 FR 76962, 76971–73 (Dec. 13, 2002). The Explanation and Justification for 11 CFR 113.1(g) indicated that a salary payment to a candidate from campaign funds is personal use if the salary payment is "in excess of the salary paid to a Federal officeholder—U.S. House, U.S. Senate, or the Presidency." 67 FR at 76972. The Commission noted that a candidate's salary does not constitute a qualified campaign expense under 11 CFR 9002.11 and 9032.9. *Id.*

Sections 9004.4(b)(6) and 9034.4(b)(5) state that payments made to a publicly funded candidate by the candidate's

general election or primary campaign committee, other than to reimburse funds advanced by the candidate, are non-qualified campaign expenses. In promulgating these rules in 1987, the Commission explained that "no payments may be made to the candidate from accounts containing public funds" except for reimbursements, and candidates "may not receive a salary for services performed for the campaign nor may a candidate receive compensation for lost income while campaigning." See *Explanation and Justification for the Rules on Public Financing of Presidential Primary and General Election Candidates*, 52 FR 20864, 20866 and 20870 (June 3, 1987).

The NPRM for these Final Rules indicated that the Commission was considering whether to revise 11 CFR 9004.4 and 9034.4 to allow publicly funded primary and general election Presidential candidates to receive salaries paid, in whole or part, with Federal funds, and to treat salary payments to candidates as qualified campaign expenses under similar conditions as those for salary payments to other Federal candidates at 11 CFR 113.1(g)(1)(i)(I).

There was no consensus among the commenters on this issue. One commenter cautioned that this is a policy issue best left to Congress, and it could have an adverse effect on the public financing system by depressing public participation in the tax check-off system. In addition, this commenter observed that it may not be logical to allow public funds to be used to pay for candidate salary but not for household expenses, mortgages and tuition for the candidate's family. Conversely, other commenters agreed with the proposal, noting that currently, incumbent Members of Congress, Presidents and Vice Presidents maintain their salaries while they are Presidential candidates, but some challengers might be unable to do so. Some commenters believed the proposal had sufficient safeguards and disclosure to prevent Presidential candidates from receiving a windfall from a campaign, while others saw a potential for abuse.

The Commission has decided to maintain its longstanding rule that payments out of public funds to a Presidential candidate, except for campaign expense reimbursements, are not qualified campaign expenses. Because public funds are involved, the Commission believes that this issue is a policy question that is best addressed by Congress. Therefore, the rules in 11 CFR 9004.4(b) and 9034.4(b) will continue to treat salaries paid out of public funds to