

FEDERAL ELECTION COMMISSION

[Notice 1995-9]

11 CFR Parts 106, 9002, 9003, 9004, 9006, 9007, 9008, 9032, 9033, 9034, 9036, 9037, 9038, and 9039

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations governing public financing of presidential primary and general election candidates. These regulations implement provisions of the Presidential Election Campaign Fund Act ["Fund Act"] and the Presidential Primary Matching Payment Account Act ["Matching Payment Act"]. The revised rules reflect the Commission's experience in administering these programs during the 1992 election cycle, and are intended to anticipate questions that may arise during the 1996 presidential election cycle.

DATES: Further action, including the publication of a document in the **Federal Register** announcing the effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9009(c) and 9039(c).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR Parts 106, 9002, 9003, 9004, 9006, 9007, 9008, 9032, 9033, 9034, 9036, 9037, 9038 and 9039 governing public financing of presidential campaigns. On October 6, 1994, the Commission issued a Notice of Proposed Rulemaking ["NPRM"] in which it sought comments on proposed revisions to the public financing regulations. 59 FR 51006 (October 6, 1994). Subsequently, the Commission extended the comment period to provide the regulated community with additional time to comment on the proposed rules. 59 FR 64351 (December 14, 1994). The Commission received written comments from Hervey W. Herron, Common Cause, the Center for Responsive Politics, Public Citizen, the White House Counsel's office, the Republican National Committee, Huckaby and Associates, the Democratic

National Committee and Lyn Utrecht of Oldaker, Ryan & Leonard in response to the Notice. The Commission held a public hearing on February 15, 1995, at which four witnesses presented testimony on the issues raised in the NPRM.

The Commission also received two Petitions for Rulemaking that addressed related issues. See Notice of Availability on Petition for Rulemaking filed by the Center for Responsive Politics ["CRP"], 59 FR 14795 (March 30, 1994); Notice of Availability on Petition for Rulemaking filed by Anthony F. Essaye and William Josephson, 59 FR 63274 (December 8, 1994). In addition to the comments noted above, the Commission received comments from the Internal Revenue Service, Public Citizen, Common Cause and a joint comment from the Republican National Committee and the Democratic National Committee in response to the CRP Rulemaking Petition. The Commission received comments from the Internal Revenue Service and the Republican National Committee in response to the Essaye/Josephson Petition.

The CRP Petition for Rulemaking sought the abolishment of the general election legal and accounting compliance fund ["GELAC"] and is discussed in connection with 11 CFR 9003.3, below. The Essaye/Josephson petition asked the Commission whether expenses incurred in connection with the meeting of the Electoral College are covered by the Fund Act or the Federal Election Campaign Act ["FECA"], 2 U.S.C. 431 *et seq.* This is a complex question that the Commission believes deserves further consideration. Therefore, the issue has been dropped from this rulemaking and will be addressed in a separate rulemaking document.

Sections 9009(c) and 9039(c) of Title 26, United States Code, and 2 U.S.C. 438(d) require that any rules or regulations prescribed by the Commission to carry out the provisions of Title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on June 12, 1995.

Explanation and Justification

The Commission has revised several aspects of its regulations governing publicly-financed presidential primary and general election candidates. A detailed, section by section analysis of these changes appears below. The document then discusses some additional proposals that were

considered in the course of this rulemaking that were not ultimately incorporated into the final rules.

Part 106—Allocations of Candidate and Committee Activities

Section 106.2 State Allocation of Expenditures Incurred by Authorized Committees of Presidential Primary Candidates Receiving Matching Funds

The Commission is adding a sentence to paragraph (a)(1) of this section to reflect the new attribution of certain expenditures between the primary and the general election limits. See discussion of 11 CFR 9034.4(e), below. The new sentence states that expenditures required to be allocated to the primary election under these new requirements shall also be allocated to particular states in accordance with 11 CFR 106.2.

Part 9002—Definitions

Section 9002.11 Qualified Campaign Expense

The Commission is adding a conforming amendment to paragraph (c) of this section to reflect the new attribution of certain expenditures between the primary and the general election limits. The amendment notes that certain expenditures formerly covered by this paragraph will now be attributed under these new guidelines. See discussion of 11 CFR 9034.4(e), below.

Part 9003—Eligibility for Payments

Section 9003.1 Candidate and Committee Agreements

The new rules contain a number of changes in section 9003.1. In the interests of clarity, the Commission is adding a comma in the last sentence of paragraph (b)(4), which relates to candidate and committee agreements to furnish certain documentation to the Commission. The rules also slightly reword paragraph (b)(9) to more clearly indicate that candidates must agree to pay any civil penalties arising from violations of the FECA, whether provided for in a conciliation agreement or imposed in a judicial proceeding.

Paragraph (b)(10) has been added to require that, as a precondition of their receiving public funds, presidential candidates agree that they will prepare all of their television commercials with closed captioning or so that they are otherwise capable of being viewed by deaf and hearing impaired individuals. Congress added this requirement to 26 U.S.C. § 9003(e) when it enacted section 354 of the Legislative Branch