Appropriations Act of 1992, Pub. L. No. 102–393, 106 Stat. 1764 (1992).

One commenter requested that committees be allowed to pay the costs of closed captioning with funds from their general election legal and accounting compliance fund. However, the Commission views this not as a compliance cost, but rather as a means for committees to get their message out to those who otherwise would not hear it. Thus it is a qualified campaign expense.

## Section 9003.3 Allowable Contributions

On March 1, 1994, the Commission received a Petition for Rulemaking from the Center for Responsive Politics requesting that the Commission repeal its rules providing for the use of privately-financed general election legal and accounting compliance funds in presidential campaigns. Specifically, the petitioner sought repeal of 11 CFR 100.8(b)(15) (last two sentences), 106.2(b)(2)(iii)(last sentence), 9002.11(b)(5), 9003.3(a), and 9035.1(c)(1).

The Commission published a Notice of Availability on March 30, 1994, seeking statements in support of or in opposition to the Petition. 59 FR 14794 (March 30, 1994). The Commission received four comments in response to the Petition. Two comments were supportive, while one opposed the reversal of the Commission's longstanding policies regarding legal and accounting costs. The Commission subsequently incorporated the Petition into this rulemaking, and sought further comment on a number of options. The Commission received seven additional comments on the issues raised in the Petition.

The petitioner argued that the Commission's rules allowing private contributions of up to \$1,000 for the GELAC undermine the ability of the public financing laws to achieve the objective of eliminating the corrupting influence of large contributions in presidential elections. The Commission's reasons for establishing the GELAC are explained below and in the 1980 Explanation and Justification, 45 FR 43371 (June 27, 1980). The decision to allow the GELAC to accept contributions up to \$1,000 is based on the structure of the FECA. As the Supreme Court recognized in *Buckley* v. Valeo, 424 U.S. 1, 58 (1976), Congress created contribution limits to combat the reality or appearance of improper influence. Nevertheless, through the NPRM, the Commission sought evidence either supporting or refuting the petitioner's claim that the privatelyfunded GELAC undermines the public financing regime by allowing the actuality and the appearance of improper influence in presidential elections. No evidence was presented.

As explained more fully below, the Commission has decided not to eliminate the GELAC. The Commission agrees with the commenters who felt that the separate fund for compliance has worked well since the GELAC rules were promulgated in 1980. To repeal them would force presidential campaigns to devote some of their public funds for compliance expenses, instead of using public monies for campaign expenses. One commenter noted that in the absence of a GELAC, committees would face extraordinary pressure to minimize the amount spent on compliance so as to devote as much money as possible to campaigning. Reducing compliance funds may very well reduce committees' abilities to keep good records, thereby increasing the difficulty and duration of postelection audits. Section 431(9)(B)(vii) of the FECA recognizes an exception for the cost of certain legal and accounting compliance services that is not recognized for other types of costs. The elimination of monetary contributions of \$1,000 or less for compliance purposes could force some committees to turn to much larger in-kind donations of legal and accounting services to ensure that their compliance obligations are satisfied. See 2. U.S.C. § 431 (8)(B)(ix) and (9)(B)(vii). The GELAC is also used to make repayments, which would still need to be funded from private sources if the campaign had no public funds remaining to pay those amounts.

The Petition for Rulemaking also charged that these regulations permit evasion of the prohibition on accepting contributions to defray qualified campaign expenses established by the Fund Act. 26 U.S.C. § 9003(b). Furthermore, the Petition claims that the Commission's regulations violate the spending limits established by the FECA. 2 U.S.C. § 441a.

The Commission is not persuaded that the creation and operation of the GELAC is beyond its statutory authority or inconsistent with the public funding regime established by the Fund Act and the FECA. The regulations first establishing a separate GELAC were duly promulgated pursuant to 2 U.S.C. § 437d(a)(8) and 26 U.S.C. § 9009(b) for the practical reasons explained above. They were transmitted to Congress on June 13, 1980, together with the Explanation and Justification, for the required legislative review period. They became effective on September 5, 1980,

after neither House of Congress disapproved them under 26 U.S.C.  $\S 9009(c)(2)$ . This is, as the Supreme Court has noted, an "indication that Congress does not look unfavorably' upon the Commission's construction of the Act. FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 34 (1981). See also, e.g., Sibbach v. Wilson, 312 U.S. 1, 16 (1941) ("That no adverse action was taken by Congress indicates, at least, that no transgression of legislative policy was found"). Subsequently, in legislative recommendations to Congress, the Commission has identified funding for compliance activities as an area Congress may wish to clarify, but Congress has not done so to date.

Consequently, the revised rules follow the previous provisions by retaining sections 100.8(b)(15) (last two sentences), 106.2(b)(2)(iii) (last sentence), 9002.11(b)(5), 9003.3, and 9035.1(c)(1). For the reasons set forth, the Petition for Rulemaking filed by the Center for Responsive Politics is denied.

Comments were also requested on several alternative revisions to the GELAC. For example, the NPRM raised the possibility of limiting the amount raised and spent for compliance to a fixed percentage of the general election spending limit. Although one commenter supported limiting the GELAC to 10% of the general election spending limit, or less, several others believed a limit would be artificial, unworkable and unfair, particularly since several factors make compliance costs unpredictable. Hence, to some extent, these costs cannot be controlled by the committee or known in advance. Other commenters opposed limiting the GELAC because they believed limits would not overcome fundamental defects in the current GELAC rules, and that the rules should be repealed.

The Commission agrees that compliance costs can be unpredictable, and therefore concludes that limiting the amount or percentage of the GELAC is not advisable.

The NPRM also expressed concern that fundraising activities for the GELAC could be used to generate electoral support for the candidate's campaign. Accordingly, the NPRM sought comments on whether to continue to permit the GELAC to pay the entire amount of these costs, or whether a fixed percentage of GELAC fundraising costs should be paid by the general election campaign committee.

In response, the petitioner and two commenters questioned the appropriateness of allowing fundraising costs for the GELAC to be paid for by the GELAC on the grounds these