

Finally, two citations contained in 11 CFR 9003.3(a)(2)(iii) are being revised. The first sentence of this paragraph referred to paragraphs 9003.3(a)(2)(i) (A) through (E). This is being updated to read, "11 CFR 9003.3(a)(2)(i) (A) through (F) and (H)." Also, the previous citation to paragraph 9003.3(a)(2)(i)(F) in the second sentence has been changed to refer to paragraph 9003.3(a)(2)(i)(G). Portions of paragraphs (b) and (c) of section 9003.3 have been replaced with language indicating that certain provisions in paragraph (a) apply to minor party candidates and situations where major party candidates do not receive full public funding.

Finally, the Commission is deleting the reference to final repayment determinations contained in former paragraph (a)(2)(ii)(B), now paragraph (a)(2)(ii)(G), as that term does not appear in the revised repayment process. See discussion of 11 CFR 9007.2, below.

#### *Section 9003.4 Expenses Incurred Prior to the Beginning of the Expenditure Report Period or Prior to Receipt of Federal Funds*

Former paragraph (a) of this section stated that certain expenditures for polling could be considered qualified campaign expenses for the general election, regardless of when the results of the polling were received. However, the Commission has now decided that polling expenditures should be attributed to the primary or the general election limits based on when the results are received. See discussion of 11 CFR 9034.4(e)(2), above.

The reference to polling in this paragraph has therefore been deleted. The Commission is adding new language referring readers to the new provisions at 11 CFR 9034.4(e)(2), to better alert them to this change.

#### *Section 9003.5 Documentation of Disbursements*

Section 9003.5(b)(1)(i) sets forth the documentation required for disbursements in excess of \$200. Under the previous rules, a canceled check, negotiated by the payee, was required in most situations, but not when the committee presented a receipted bill from the payee stating the purpose of the disbursement. The revised rules in this section require committees to provide canceled checks negotiated by the payees for all disbursements over \$200. One witness opposed these changes, and urged more flexibility in the requirements for documentation. However, this change will assist the Commission's audit staff in verifying that public funds are spent on qualified

campaign expenses. Committees should already have canceled checks in their possession, so production would not be burdensome. New paragraph (b)(1)(iv) indicates that the purpose of the disbursement must be noted on the check if it is not included in the accompanying documentation. Please note that, as in the past, the revised rules require that documentation in addition to the committee's check be provided for disbursements exceeding \$200.

Paragraph (b)(3) of this section has also been changed to include individuals who are advanced \$1000 or less for travel and subsistence in the definition of payee. The \$500 limit in the previous rules was raised to reflect current prices.

#### **Part 9004—Entitlement of Eligible Candidates to Payments; Use of Payments**

##### *Section 9004.4 Use of Payments*

##### *Winding Down Costs; Gifts and Bonuses*

New paragraph (a)(5) of section 9004.4 addresses the use of public funds to pay for gifts and bonuses for campaign staff and consultants. It generally follows new language in section 9034.4, which is discussed below. New language is being added to section 9004.4(a) to allow the GELAC to pay 100% of salary and overhead expenses incurred after the end of the expenditure report period. These expenses are presumed to be solely to ensure compliance with the FECA and the Fund Act.

One commenter questioned why computer expenses were not included in the proposed language when they were included in the corresponding primary regulations. The rules have been revised to recognize that the GELAC may pay 100% of computer expenses incurred after the end of the expenditure report period.

##### *Responsibility for Lost or Damaged Equipment*

Accounting procedures employed by the Commission make allowance for reasonable loss and normal damage of equipment leased or purchased by a campaign. However, the Commission has at times encountered incidents involving lost or damaged equipment that do not fall into these categories. The Notice of Proposed Rulemaking therefore sought to clarify how such situations should be handled in the audit process.

The Commission first sought comment on whether, as a precondition for the receipt of public funds, the candidate should agree to meet certain

standards in handling public monies as well as in overseeing the use of and accounting for public funds. Such standards would have been specified at 11 CFR 9003.1(b). However, the Commission now believes the question of liability for lost or damaged equipment is best handled by amending 11 CFR 9004.4(b) to clarify that the cost of lost or misplaced items may be considered a nonqualified campaign expense for purposes of these rules.

The Commission recognizes that there are varying degrees of responsibility in this area. The new rules therefore state that certain factors should be considered prior to any determination that a repayment is required. In particular, whether the committee demonstrates that it made careful efforts to safeguard the missing equipment would be of primary importance in this regard. Whether the committee sought or obtained insurance, the type of equipment involved and the number and value of items that were lost will also be among the factors considered in making this determination. However, the Commission has dropped as a stated factor the value of the lost equipment as a percentage of the total value of the equipment leased or owned by the committee, as the loss of even a small percentage of a committee's equipment can involve a sizeable amount of public funding.

One commenter argued that the phrase "used for any purpose other than \* \* \* to defray [ ] qualified campaign expenses" in 26 U.S.C. §§ 9007(b)(4) and 9038(b)(2), stating the reasons for which the Commission can require a repayment, connotes intentional conduct, so the Commission is barred from ever requiring a repayment for lost or misplaced items. While the word "purpose" can connote "intent," the Commission does not believe the two are synonymous in this context.

The Commission routinely determines that funds have been "used for the purpose" of nonqualified campaign expenses, regardless of the specific intent behind particular disbursements. Barring the Commission from inquiring into such situations would run counter to its long-standing practice in this area, and would also be inconsistent with the responsibility to ensure that public funds are properly used.

One commenter proposed a number of safeguards a committee could adopt to help ensure that losses are kept to a minimum. These include (1) maintaining a written inventory of equipment, (2) establishing and disseminating written procedures for handling of equipment by the staff, (3) maintaining and implementing security