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Thursday  
July 25, 1991

11  
CFR  
Part  
9036

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**Part VI**

**Federal Election  
Commission**

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11 CFR Parts 9034, 9036, and 9037  
Matching Fund Submission and  
Certification Procedures for Presidential  
Primary Candidates; Final Rule

**FEDERAL ELECTION COMMISSION**

(NOTICE 1991-13)

**11 CFR PARTS 9034, 9036, and 9037****Matching Fund Submission and Certification Procedures for Presidential Primary Candidates****AGENCY:** Federal Election Commission.**ACTION:** Final rule and transmittal of regulations to Congress.

**SUMMARY:** The Commission has revised its regulations setting forth procedures for matching fund submissions by Presidential primary candidates. 11 CFR 9034.1, 9034.5, 9036.2, 9036.4, 9036.5, 9036.6, 9037.1 and 9037.2. The changes are necessitated by the Department of the Treasury's recent promulgation of new rules regarding payments to candidates, which were adopted to address the possible shortage in the Presidential Election Campaign Fund. See 26 CFR parts 701 and 702, 56 FR 21596 (May 10, 1991). The principal changes to the Commission's rules involve monthly submission and certification dates for all candidates, as well as the elimination of letter requests and holdback procedures. Further information on these revisions is provided in the supplementary information which follows.

**DATES:** Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9039(c). A document announcing the effective date will be published in the *Federal Register*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing today the final text of revisions to its regulations at 11 CFR 9034.1, 9034.5, 9036.2, 9036.4, 9036.5, 9036.6, 9037.1 and 9037.2 regarding matching fund submission and certification procedures for publicly-funded Presidential primary candidates. On June 26, 1991, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to three regulations. 56 FR 29372. One written comment was received from the Internal Revenue Service.

Section 9039(c) of title 26, United States Code, requires 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 July 19, 1991.

**Explanation and Justification**

In response to a projected shortfall in the amount of federal funds in the Presidential Election Campaign Fund for the 1992 presidential election cycle, the Department of the Treasury has recently issued new rules regarding payments from the Fund. See 26 CFR parts 701 and 702, 56 FR 21596 (May 10, 1991). The priorities established by the public financing statutes indicate that a shortfall will affect the availability of matching funds for primary candidates before it affects the financing of general election candidates or nominating conventions. See 26 U.S.C. 9006(c), 9006(a) and 9037. Accordingly, the new Treasury Department rules set aside funds for the nominating conventions and general election candidates prior to depositing funds in the Presidential Primary Matching Payment Account. 26 CFR 701.9006-1 and 701.9037-1. If a shortage of primary funds occurs in a particular month, the Treasury Department regulations set forth a formula for determining the amount each candidate will receive as partial payment and the amount that will be treated as certified for the next month. 26 CFR 702.9037-2. In addition, the new Treasury Department rules change the dates on which federal payments will be made to primary election candidates. For 1992 Presidential primaries, candidates will receive federal payments on a once-a-month basis. 28 CFR 702.9037-2. All candidates will be paid on the same day each month. In previous election cycles, payments were made several times each month.

The changes in the timing of matching fund payments have necessitated corresponding changes to the Commission's certification procedures so that all certifications are made on the same date each month after the beginning of the matching payment period. Given the need for adequate time to review matching fund submissions prior to certification, the Commission expects to set monthly deadlines for receipt of all matching fund submissions near the beginning of each month. In addition, the Commission has recently decided, during limited periods of time, to reject matching fund submissions where the initial sampling indicates a projected dollar value of nonmatchable contributions of more than 15% of the

amount requested. These changes are explained in more detail below.

In the event that the projected shortfall does not occur, the Commission sought clarification of whether the Treasury Department intended to return to its previous practice of making payments throughout the month as matching fund certifications are received. The Commission also sought comment as to whether it would be feasible for the Commission and campaign committees to return to the former matching fund submission and certification procedures, either before or during the matching payment period. The Internal Revenue Service's position, as stated in the comment, is that even if there is no shortfall, the new Treasury regulations specify the procedures that will be followed. Thus, the Internal Revenue Service found no conflict between the Commission's proposed rules and the Internal Revenue Code and the regulations thereunder. Consequently, the Commission has decided to adopt the proposed changes to its matching fund submission and certification procedures.

**1. Submission Procedures**

In previous election cycles, the Commission scheduled candidates to make matching fund submissions on the second and fourth Monday of each month after the beginning of the matching payment period. Resubmissions were scheduled for the first and third Monday. The Commission is now changing the submission schedule so that all candidates will make once-a-month submissions and resubmissions on the same date. On the last two submission dates in the year before the election year and on each submission date after the beginning of the matching payment period, the candidate will be limited to making one submission, and either one resubmission under § 9036.5 or one corrected submission under § 9036.2(c) or (d)(2). The Commission will publish the list of the monthly submission dates and notify the candidates once the Treasury Department has established the payment schedule. Please note that the new monthly submission dates will not affect threshold submissions, which candidates may still make at any time. The monthly submission dates also will not apply to resubmissions made within the five day period for correcting a submission that either failed to meet the good order requirements or that had a high rate of nonmatchable contributions. See revised 11 CFR 9036.4(a), as discussed below.

One consequence of establishing a single submission date each month is that all submissions will need to be full submissions. Thus, 11 CFR 9036.2(b)(2) is being revised to delete the current letter request procedures. In the event of a shortage, this will help to ensure that candidates are paid only the amount to which they are entitled. In addition, 11 CFR 9036.6 is being revised to indicate that the last date for first-time submissions for all candidates is the first Monday in March of the year following the election year. In the past, a candidate's last submission date was either the last Monday in February or the second Monday in March, depending on the candidate's submission schedule.

#### *2. Certification Procedures and Holdback Procedures*

The revised rules which follow also change the timing of the Commission's certification of additional payments. Under the previous rules set forth at 11 CFR 9036.2(c)(1), during the Presidential election year, the Commission certified an amount within 5 business days using a holdback procedure. Any additional amount was then certified in either 20 or 25 business days, depending upon the projected dollar value of nonmatchable contributions. These provisions are being revised by eliminating the 5, 20, and 25 day periods, and also by eliminating the use of holdback procedures to determine the amount to be certified to the Secretary of the Treasury. See Federal Election Commission's Guideline for Presentation In Good Order. If a shortfall occurs, the elimination of the holdback procedures is necessary to ensure that the amount certified does not exceed the candidate's entitlement, as determined under the Commission's review procedures. Please note that the order of paragraphs (c) and (d) in § 9036.2 is also being reversed to follow a more logical chronological format.

Under renumbered § 9036.2(d)(1), certifications based on additional submissions after the beginning of the matching payment period will be made at least once a month on the same day for all candidates. Revised § 9036.2(d)(2) indicates that the once-a-month certification dates also apply to submissions after the candidate's date of ineligibility. Section 9036.5(d) is also being amended to provide that certifications of all resubmitted contributions will be made on the same monthly certification dates. In the past, the Commission had certified resubmitted contributions within 15 business days. However, these changes do not affect the timing of certifications of additional submissions that are filed

in the year before the Presidential election year. See renumbered 11 CFR 9036.2(c).

#### *3. Commission Review of Submissions*

The attached rules at 11 CFR 9036.4 contemplate the continuation of the Commission's previous procedures for reviewing matching fund submissions, with the following modifications. First, committees will be granted five business days, instead of three, to correct submissions that have been rejected from review because they failed to meet the Commission's good order requirements. Section 9036.4(a) is also being revised to indicate that if the matching fund submission is corrected in the five day time period, it will be processed before the next regularly scheduled submission date, and the Commission's certification will be made on the certification date for the original submission. However, if a corrected submission is made after the five day period, it will be reviewed as if received on the next regularly scheduled submission date after it is submitted.

#### *4. High Error Rates*

Recently, the Commission decided that during limited periods of time, it will use a new procedure of rejecting matching fund submissions from review in cases where the projected dollar value of the nonmatchable contributions exceeded 15% of the amount requested. Please note, however, that the new rejection policy does not apply to submissions made on the last submission date in the year preceding the Presidential election year, or to submissions made during the Presidential election year before the candidate's date of ineligibility. At other times when the new policy is in operation, the entire submission will be returned to the committee for corrective action before any amount is certified for payment. If the committee is able to correct the submission and resubmit it within five business days, it will be reviewed before the next regularly scheduled submission date and an amount will be certified on the certification date for the original submission. However, if the resubmission is made after the five day period, it will be reviewed after the next regularly scheduled submission date, and an amount will be certified on the next regularly scheduled certification date. Corrected submissions may not contain new or additional contributions that were not previously submitted for matching. Similarly, under 11 CFR 9036.5(c)(5), resubmissions may not contain new or additional contributions that were not previously submitted.

Submissions are not considered to be corrected until the projected dollar value of nonmatchable contributions has been reduced to 15% of the amount requested or less. The new policy is reflected in 11 CFR 9036.2 (c) and (d), and 9036.4(a) which follow.

#### *5. Treasury Department Regulations*

The final rules which follow add to §§ 9034.1(a), 9037.1 and 9037.2 cross-references to the new Treasury Department regulations. The added language alerts the reader to the possibility that a matching fund certification may not result in full payment by the Treasury Department in the event of a shortage of funds in the Presidential Primary Matching Payment Account. The Treasury Department has established a formula to determine the amount each candidate will receive as a partial payment and the amount that will be treated as certified for payment in the following month.

#### *6. Revised Certifications*

The revised rules address another new issue presented by the potential shortfall in the matching payment account. In the event of a shortage of public funds, one consequence of the new Treasury Department regulations could be over a month's delay between certification and payment of all certified matching funds. After a candidate's date of ineligibility, the current regulations require the candidate to have net outstanding campaign obligations as of the date of payment. 11 CFR 9034.1(b). The 1983 Explanation and Justification of this provision indicates that if "the candidate's financial position changed between the date of his or her submission for matching funds and the date of payment, reducing the candidate's net outstanding campaign obligations, that candidate's entitlement would be reduced accordingly." Explanation and Justification of Presidential Primary Matching Fund Rules, 48 FR 5227 (Feb. 4, 1983). In a shortfall situation where there is a longer time period between submission date and payment date, the financial status of a candidate's committee may change significantly. For example, the candidate may wish to raise additional private contributions to pay the debts listed on the NOCO statement more promptly, thereby reducing or possibly eliminating the amount of qualified debt remaining. Consequently, the Commission is adding language at 11 CFR 9034.5(f) that requires all candidates who have not been paid the full amount certified after their dates of ineligibility to submit updated NOCO

statements shortly before the next payment date so that the Commission may revise the previous certifications, when necessary. The candidates and the Secretary of the Treasury will be promptly notified of any revised certifications under 11 CFR 9036.4(c)(2).

**Certification of no Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities are affected by these rules.

**List of Subjects**

**11 CFR Part 9034**

Campaign funds, Elections, Political candidates.

**11 CFR Part 9036**

Administrative practice and procedure, Campaign funds, Political candidates.

**11 CFR Part 9037**

Campaign funds, Political candidates.

For the reasons set out in the preamble, subchapter F, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

**PART 9034—ENTITLEMENTS**

1. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

2. 11 CFR part 9034 is amended by revising paragraph (a) of § 9034.1 to read as follows:

**§ 9034.1 Candidate entitlements.**

(a) A candidate who has been notified by the Commission under 11 CFR 9036.1 that he or she has successfully satisfied eligibility and certification requirements is entitled to receive payments under 26 U.S.C. 9037 and 11 CFR part 9037 in an amount equal to the amount of each matchable campaign contribution received by the candidate, except that a candidate who has become ineligible under 11 CFR 9033.5 may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations as defined in 11 CFR 9034.5. See also 26 CFR parts 701 and 702 regarding payments by the Department of the Treasury.

3. 11 CFR part 9034 is amended by revising paragraph (f) of § 9034.5 to read as follows:

**§ 9034.5 Net outstanding campaign obligations.**

(f)(1) The candidate shall submit a revised statement of net outstanding campaign obligations with each submission for matching fund payments filed after the candidate's date of ineligibility. The revised statement shall reflect the financial status of the campaign as of the close of business on the last business day preceding the date of submission for matching funds. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(2) After the candidate's date of ineligibility, if the candidate does not receive the entire amount of matching funds on a regularly scheduled payment date due to a shortfall in the matching payment account, the candidate shall also submit a revised statement of net outstanding campaign obligations. The revised statement shall be filed on a date to be determined and published by the Commission which will be before the next regularly scheduled payment date.

**PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION**

4. The authority citation for part 9036 continues to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

5. 11 CFR part 9036 is amended by revising § 9036.2 to read as follows:

**§ 9036.2 Additional submissions for matching fund payments.**

(a) *Time for submission of additional submissions.* The candidate may submit additional submissions for payments to the Commission on dates to be determined and published by the Commission. On the last two submission dates in the year prior to the election year and on each submission date after the beginning of the matching payment period, the candidate may not make more than one additional submission, and either one resubmission under 11 CFR 9036.5 or one corrected submission under 11 CFR 9036.2(c) or (d)(2), as appropriate.

(b) *Format for additional submissions.* The candidate may obtain additional matching fund payments subsequent to the Commission's threshold certification and payment of primary matching funds to the candidate by filing an additional

submission for payment. All additional submissions for payments filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(1) The first submission for matching funds following the candidate's threshold submission shall contain all the matchable contributions included in the threshold submission and any additional contributions to be submitted for matching in that submission. This submission shall contain all the information required for the threshold submission except that:

(i) The candidate is not required to resubmit the candidate agreement and certifications of 11 CFR 9033.1 and 9033.2;

(ii) The candidate is required to submit an alphabetical list of contributors, but not segregated by State as required in the threshold submission;

(iii) The candidate is required to submit a listing, alphabetical by contributor, of all checks returned unpaid, but not segregated by State as required in the threshold submission;

(iv) The candidate is required to submit a listing, in alphabetical order by contributor, of all contributions refunded to the contributor but not segregated by State as required in the threshold submission.

(v) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed \$200 in the calendar year, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

(vi) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list.

(2) Following the first submission under 11 CFR 9036.2(b)(1), candidates may request additional matching funds on dates prescribed by the Commission by making a full submission as required under 11 CFR 9036.2(b)(1). The amount requested for matching may include contributions received up to the last business day preceding the date of the request.

(c) *Additional submissions submitted in non-Presidential election year.* The

candidate may submit additional contributions for review during the year preceding the presidential election year; however, the amount of each submission made during this period must exceed \$50,000. Additional submissions filed by a candidate in a non-Presidential election year will not result in payment of matching funds to the candidate until after January 1 of the Presidential election year. If the projected dollar value of the nonmatchable contributions exceeds 15% of the amount requested, the procedures described in 11 CFR 9036.2(d)(2) shall apply, unless the submission was made on the last submission date in December of the year before the Presidential election year.

(d) *Certification of additional payments by Commission.* (1) When a candidate who is eligible under 11 CFR 9033.4 submits an additional submission for payment in the Presidential election year, and before the candidate's date of ineligibility, the Commission will review the additional submission and will certify to the Secretary at least once a month on dates to be determined and published by the Commission, an amount to which the candidate is entitled in accordance with 11 CFR 9034.1(b). See 11 CFR 9036.4 for Commission procedures for certification of additional payments.

(2) After a candidate's date of ineligibility, the Commission will review each additional submission and resubmission, and will certify to the Secretary, at least once a month on dates to be determined and published by the Commission, and amount to which the ineligible candidate is entitled in accordance with 11 CFR 9034.1(b), unless the projected dollar value of the nonmatchable contributions contained in the submission or resubmission exceeds 15% of the amount requested. In the latter case, the Commission will return the additional submission or resubmission to the candidate and request that it be corrected, unless the resubmission was made on the last date for resubmissions in September of the year following the Presidential election year. Corrected submissions and resubmissions will be reviewed by the Commission in accordance with 11 CFR 9036.4 and 9036.5. Submissions and resubmissions will not be considered to be corrected unless the projected dollar value of nonmatchable contributions has been reduced to no more than 15% of the amount requested.

6. 11 CFR Part 9036 is amended by revising § 9036.4 to read as follows:

**§ 9036.4 Commission review of submissions.**

(a) *Non-acceptance of submission for review of matchability.* (1) The Commission will make an initial review of each submission made under 11 CFR Part 9036 to determine if it substantially meets the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order. If the Commission determines that a submission does not substantially meet these requirements, it will not review the matchability of the contributions contained therein.

(2) For submissions made in the year before the Presidential election year (other than submissions made on the last submission date in that year), and submissions made after the candidate's date of ineligibility, the Commission will stop reviewing the submission once the projected dollar value of nonmatchable contributions exceeds 15% of the amount requested, as provided in 11 CFR 9036.2 (c) or (d), as applicable.

(3) Under either paragraphs (a)(1) or (a)(2) of this section, the Commission will return the submission to the candidate and request that it be corrected in accordance with the applicable requirements. If the candidate makes a corrected submission within 5 business days after the Commission's return of the original, the Commission will review the corrected submission prior to the next regularly scheduled submission date, and will certify to the Secretary the amount to which the candidate is entitled on the regularly scheduled certification date for the original submission. Corrected submissions made after this five-day period will be reviewed subsequent to the next regularly scheduled submission date, and the Commission will certify to the Secretary the amount to which the candidate is entitled on the next regularly scheduled certification date. Each corrected submission shall only contain contributions previously submitted for matching in the returned submission and no new or additional contributions.

(b) *Acceptance of submission for review of matchability.* If the Commission determines that a submission made under 11 CFR part 9036 satisfies the requirements of 11 CFR 9036.1(b) and 9036.2 (b), (c) and (d), and the Federal Election Commission's Guideline for Presentation in Good Order, it will review the matchability of the contributions contained therein. The Commission, in conducting its review, may utilize statistical sampling techniques. Based on the results of its

review, the Commission may calculate a matchable amount for the submission which is less than the amount requested by the candidate. If the Commission certifies for payment to the Secretary an amount that is less than the amount requested by the candidate in a particular submission, or reduces the amount of a subsequent certification to the Secretary by adjusting a previous certification made under 11 CFR 9036.2(c)(1), the Commission will notify the candidate in writing of the following:

(1) The amount of the difference between the amount requested and the amount to be certified by the Commission;

(2) The amount of each contribution and the corresponding contributor's name for each contribution that the Commission has rejected as nonmatchable and the reason that it is not matchable; or if statistical sampling is used, the estimated amount of contributions by type and the reason for rejection;

(3) The amount of contributions that have been determined to be matchable and that the Commission will certify to the Secretary for payment; and

(4) A statement that the candidate may supply the Commission with additional documentation or other information in the resubmission of any rejected contribution under 11 CFR 9036.5 in order to show that a rejected contribution is matchable under 11 CFR 9034.2.

(c) *Adjustment of amount to be certified by Commission.* (1) The candidate shall notify the Commission as soon as possible if the candidate or the candidate's authorized committee(s) has knowledge that a contribution submitted for matching does not qualify under 11 CFR 9034.2 as a matchable contribution, such as a check returned to the committee for insufficient funds or a contribution that has been refunded, so that the Commission may properly adjust the amount to be certified for payment.

(2) After the candidate's date of ineligibility, if the candidate does not receive the entire amount of matching funds on a regularly scheduled payment date due to a shortfall in the matching payment account, prior to each subsequent payment date on which the candidate receives payments from any previous certification, the Commission may revise the amount previously certified for payment pursuant to 11 CFR 9034.5(f). The Commission will promptly notify the Secretary and the candidate of any revision to the amount certified.

(d) *Commission audit of submissions.* The Commission may determine, for the

reasons stated in 11 CFR Part 9039, that an audit and examination of contributions submitted for matching payment is warranted. The audit and examination shall be conducted in accordance with the procedures of 11 CFR part 9039.

7. 11 CFR part 9036 is amended by revising paragraph (d) of § 9036.5 to read as follows:

**§ 9036.5 Resubmissions.**

(d) *Certification of resubmitted contributions.* Contributions that the Commission determines to be matchable will be certified to the Secretary at least once a month on dates to be determined and published by the Commission. If the candidate chooses to request the specific contributions rejected for matching pursuant to 11 CFR 9036.5(a)(2), the amount certified shall equal only the matchable amount of the particular contribution that meets the standards on resubmission, rather than the amount projected as being nonmatchable based on that contribution due to the sampling techniques used in reviewing the original submission.

8. 11 CFR part 9036 is amended by revising § 9036.6 to read as follows:

**§ 9036.6 Continuation of certification.**

Candidates who have received matching funds and who are eligible to continue to receive such funds may continue to submit additional submissions for payment to the Commission on dates specified in the Federal Election Commission's Guideline for Presentation in Good Order. The last date for first-time submissions will be the first Monday in March of the year following the election. No contribution will be matched if it is submitted after the last submission date, regardless of the date the contribution was deposited.

**PART 9037—PAYMENTS**

9. The authority citation for part 9037 continues to read as follows:

Authority: 26 U.S.C. 9037 and 9039(b).

10. 11 CFR part 9037 is amended by revising section 9037.1 to read as follows:

**§ 9037.1 Payments of Presidential primary matching funds.**

Upon receipt of a written certification from the Commission, but not before the

beginning of the matching payment period, the Secretary will promptly transfer the amount certified from the matching payment account to the candidate. A matching fund certification may not result in full payment by the Secretary in the case of a shortfall in the matching payment account. See 26 CFR 702.9037-1 and 702.9037-2.

11. 11 CFR part 9037 is amended by revising § 9037.2 to read as follows:

**§ 9037.2 Equitable distribution of funds.**

In making such transfers to candidates of the same political party, the Secretary will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary will take into account, in seeking to achieve an equitable distribution of funds available in the matching payment account, the sequence in which such certifications are received. See 26 CFR 702.9037-2(c) regarding partial payments to candidates in the case of a shortfall in the matching payment account.

Dated: July 19, 1991.

John Warren McGarry,

Chairman, Federal Election Committee.

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