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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM:

AGENDA ITEM
For Meeting of: 4-13-00

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Robert J. Costa
Assistant Staff Director
Audit Division

Rick Halter
Dep. Asst. Staff Director

Marty Kuest
Lead Auditor

SUBJECT: Financial Control and Compliance Manual for Presidential Primary
Candidates Receiving Public Financing – Proposed 2000 Edition

Attached for your review and consideration is the Proposed 2000 Edition of the Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing (the Compliance Manual). Also attached are three memoranda received from the Office of General Counsel containing that Office's comments: March 2, 2000 for Chapters I-III, March 14, 2000 for Chapter IV and the Introduction, and March 15, 2000 for Chapters V-X. The Audit Division has included additional language or revised language as suggested by OGC.

In part, the revisions to the Compliance Manual are dependent on the changes to the regulations. It appears likely that the Compliance Manual for primary candidates will not be available until April, 2000 about 4½ months after the publication of the last significant changes to the regulations. For the 1996 cycle, the Compliance Manual was dated January, 1996, approximately 7 months after the final rules were published in the Federal Register [6-16-95]. For the 2000 cycle, the proposed changes to the Title 26 primary regulations were done in sections and resulted in several different publications in the Federal Register; in the case of final rules which modified the audit process, addressed the "bright line" provisions between primary and general election expenses, and the formation of Vice Presidential committees prior to nomination, the publication date in the Federal Register was November 15, 1999.

Although it is clear that due to the late date of the completion of the revisions to the regulations and the early primary season, it will be of little benefit to the primary candidates, however, this Compliance Manual will serve as the foundation for the General Election Supplement to the Financial Control and Compliance Manual, as was the case in the 1996 cycle. Therefore, even though it may appear to be too late in the season to issue the Compliance Manual, it will be useful to the general election candidates. We hope to be a position to issue the General Election Supplement with a May or June, 2000 date; in 1996 the supplement was dated July, 1996.

The Office of General Counsel, in its comments, recommended that several issues be raised in this memorandum.

IN-KIND CONTRIBUTIONS [OGC Comments, dated 3-2-2000 at page 3]

The treatment of in-kind contributions in the repayment ratio is discussed in the Compliance Manual at pages 64 and 68, while the inclusion of in-kind contributions in a state or the overall expenditure limit may be found at page 7. The topical discussions are consistent with those included in the 1996 manual, as well as with Commission-approved audit programs and thresholds used in 1996; revisions to these documents should be forwarded for Commission consideration next month.

Should the Commission disagree with the approach taken in the Compliance Manual regarding in-kind contributions, revisions as necessary will be made.

REPAYMENTS FOR EXCEEDING EXPENDITURE LIMITATIONS [OGC Comments, dated 3-2-2000 at page 10]

The subject of repayments for exceeding expenditure limitations is discussed in the Compliance Manual at page 63. In light of the Commission's recent decision to forego a rulemaking concerning this issue, the discussion in the manual is consistent with that included in the 1996 manual; the regulation in effect is cited.

Should the Commission disagree with the approach taken in the Compliance Manual regarding this repayment issue, revisions as necessary will be made.

This matter is being circulated on a 72 hour tally vote basis. Should an objection be received, it is recommended that this matter be placed on the next available open session agenda.

If you have any questions, please contact Marty Kuest or Rick Halter at 694-1200.

FINANCIAL CONTROL AND COMPLIANCE MANUAL
FOR PRESIDENTIAL PRIMARY CANDIDATES RECEIVING
PUBLIC FINANCING

Prepared By
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

July 1979

Revised February 1983
Revised April 1987
Revised January 1992
Revised January 1996
Revised April 2000

Attachments:

Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing – Proposed 2000 Edition

Comments Received from the Office of General Counsel, dated 3-2-2000,3-14-2000, and 3 -15-2000

FINANCIAL CONTROL AND COMPLIANCE MANUAL
FOR PRESIDENTIAL PRIMARY CANDIDATES RECEIVING PUBLIC FINANCING

JULY 1979

REVISED FEBRUARY, 1983

April, 1987

January, 1992

January, 1996

April, 2000

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PREFACE

Attached is the "Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing".

It should be noted that this manual merely suggests one approach to managing the campaign's accounting, reporting, and recordkeeping. This is not a required system, but may be used if the candidate so wishes.

When reviewing the manual there are a number of factors which the reader should keep in mind.

1. The manual is based on the Federal Election Campaign Act of 1971, as amended (Act), the related regulations, and the Guideline For Presentation In Good Order ("Guideline").
2. It is assumed that the reader has some familiarity with accounting, financial management, or a related field.
3. The system outlined in the manual is for a campaign consisting of only one committee (principal campaign committee-PCC) with offices in various states with no authorized committees.

At the time that this manual was prepared, rulemaking projects were in progress concerning disgorgement of funds from campaigns* and Internet campaign issues.

Reliance Upon Advisory Opinions — An explicit statutory limitation inherent to the advisory opinion process has been observed to exist by Commissioners Elliott, Wold and Mason. They have noted that "...general statements of tests and standards (other than those included in the FECA and our regulations) are inappropriate to the advisory opinion process because (1) this process is limited to specific events or transactions and (2) the Commission may enunciate rules of law which bind the regulated community only through regulations, not through advisory opinions." Thus, the regulated community is advised that applicability of advisory opinions is limited to the specific facts and circumstances delineated in the request.

NEW FOR 2000

The Commission has revised its regulations in a number of areas since the 1996 election and there have been changes in the way some topics are presented in the Compliance Manual. A listing of the major changes is presented here to assist the reader in finding the new provisions.

- **** The Post Primary Audit** - Some of the steps in the post primary audit process have been revised for 2000. The Commission staff will hold an exit conference at the

* A recent court decision may affect whether the Commission will require disgorgement of illegal contributions where the donor can be identified. *See Firman v. United States*, 44 Fed. Cl. 528 (1999).

** These regulations have been submitted to Congress, but are subject to the 30 day legislative review period at 26 U.S.C. §9039(c) before they may be promulgated as final regulations.

close of fieldwork at which it will disclose to the committee the findings it anticipates will be presented to the Commission. The staff will then prepare a "Preliminary Audit Report" which will be considered by the Commission by a tally vote or, in a closed session meeting. Upon approval by at least four Commissioners, the Preliminary Audit Report will be transmitted to the committee. The Audit Report will be based on the Preliminary Audit Report and the campaign's response thereto. Repayment considerations will be included in both the Preliminary Audit Report and the Audit Report. Subsequent appeal processes will provide the candidate an opportunity to convince the Commission to revise that determination. A full description can be found in Chapter X, Section D.

- **Matching Funds** - Two significant changes have been made to the matching fund process. The Commission's regulations were revised to allow credit card and debit card contributions to be submitted for matching. These contributions may be received over the Internet, via telephone, or in person. In recognition of the regulation revision concerning credit cards and debit cards, the Commission, in Advisory Opinion 1999-36, also approved a plan which specifically outlined provisions, if met, which would allow campaigns to receive "electronic check" contributions over the Internet which could also be submitted for matching. See Chapter I, Section D.1.
- **Required Electronic Filing of Periodic FEC Reports** - The regulations have been revised to require Presidential candidates and their committees, as a condition of receiving matching funds, to file all reports with the Commission electronically provided that they maintain or use computerized information on receipts or disbursements. A discussion of this requirement is found in Chapter I, sections D.1. and D.4 and Chapter IV, Sections C.3. and D.11. b.7.
- **** Primary vs. General Election Expenses** - In response to problems observed in the presidential audits in 1996 with respect to the allocation of expenses between the primary and general election campaigns the Commission modified the relevant regulations and "exclusively" was removed from the language at 11 CFR 9034.8(e)(1). This was done to add flexibility to campaign funding in the primary period between June 1 of the Presidential election year and the date a candidate is nominated. During this period, salary and overhead, not to exceed 15% of the limitation on primary election expenditures, may be attributed to the general election rather than the primary. The Manual addresses this topic in Chapter I, Section C.1.c. Additionally, the Commission has revised the wording at 11 CFR §9034.4(e) to make clear that the regulation applies to candidates who accept federal funds for either the primary or general election or both.
- **** Contributions to and Expenditures by Vice Presidential Candidates** - The Commission has revised its regulations concerning contributions to and expenditures made by the authorized committee of a Vice Presidential candidate. The revisions arose out of concern that such a committee might make expenditures on behalf of a limit strapped primary candidate for president, and in so doing, allow the presidential

** These regulations have been submitted to Congress, but are subject to the 30 day legislative review period at 26 U.S.C. §9039(c) before they may be promulgated as final regulations.

primary candidate and his authorized committee a means to exceed the spending limitations. For purposes of limitations on contributions and expenditures for a federally funded primary Presidential candidate, all contributions and disbursements of an authorized committee of a Vice Presidential candidate made on or after the date that (1) either the Presidential or Vice Presidential candidates publicly indicates their intention to run on the same ticket; or (2) the candidate for the office of Vice President accepts an offer by the publicly funded primary candidate for the office of President, or by the Presidential candidate's agent(s), to run on the same ticket; or (3) the Presidential and Vice Presidential committees become affiliated pursuant to 11 CFR §100.5(g)(4)(i) and (ii); will be aggregated with the publicly funded Presidential candidate's contributions and expenditures. Exceptions to this rule include contributions and expenditures made by a Vice President's authorized committee for the purpose of the attendance by the candidate and his family at the national convention, the cost of legal and accounting services associated with background checks during the Vice Presidential selection process and the cost of raising funds for the two exceptions listed above. (11 CFR §9035.3).

- **Spending by Party Committees Prior to Candidate's Nomination** - Party committees may make coordinated expenditures in connection with the general election campaign before their candidates have been nominated. All pre nomination coordinated spending will be subject to the limitation for such expenditures.
- **Documentation of Disbursements** - The Commission revised its regulations concerning disbursement documentation. If the purpose is not stated on accompanying documentation, it must be indicated on the canceled check which must be negotiated by the payee.
- **Reimbursements for Travel and Services by Media Representatives** - The Commission has written new regulations which specify that committees may seek reimbursement from the media only for the billable items specified in the "White House Press Corps Travel Policies and Procedures", a negotiated agreement between the White House Correspondence Association and the White House Travel Office. See Chapter V, Section D.
- **Capital Assets and Valuation** - As a result of issues raised by the 1996 audits of candidates, the Commission has clarified its regulations regarding capital assets and their valuation. On the statement of Net Outstanding Campaign Obligations, committees will generally be required to list the residual value of capital assets at 60% of cost. Provision, however, is made for the separate listing of capital assets whose fair market value is demonstrably less than the prescribed residual value of 60%. This exception is available only to candidates that do not receive their Party's nomination.

The definition of a capital asset is clarified to include components of a system such as a computer or telecommunication system when the aggregate cost of the system exceeds \$2000.

The Commission has added language to its regulations concerning lost and misplaced items. As a general matter, costs of lost or misplaced items may not be defrayed with public funds. The Commission has added to this regulation stolen items and included among the conditions of the committee's demonstration that it made conscientious

efforts to safeguard assets, and whether, in the case of stolen items, a police report was filed.

- **Winding Down Period** - During the 1996 election cycle, confusion resulted from the Commission's adoption in 1995 of the "bright line" rules for the committees of federally funded primary candidates who went on to receive federal funds for the general election. The "bright line" rules dictated that expenditures generally were primary expenditures when made prior to the candidate's date of nomination and general expenditures when made in the period after the nomination. The rules made no allowance for winding down costs related to the primary committee during the expenditure report period. The Commission has revised its regulations at 11 CFR §9034.4 to specifically state that for these candidates, their primary committees may not begin to charge costs to exempt compliance for the purpose of winding down the primary activity until after the end of the expenditure report period. At that time, all expenditures for salary, overhead and computer expenses related to the primary committee's winding down may be treated as exempt legal and accounting compliance expenses. Salary and overhead expenses incurred between the date of nomination and the end of the expenditure report period are still attributable to the general election campaign.
- **Primary Campaign Compliance Expense** - The Commission, wishing not to discourage compliance spending, has rewritten the regulations to allow for a compliance exemption equal to 15% of the overall spending limit. This change is intended to decrease the time it takes for the Commission to verify compliance costs during the audit process and should also reduce the resources campaign committees must devote to tracking compliance costs. The 15% allowance may be used whenever the campaign desires and no demonstration of the compliance nature of any expenditure will be required.
- **States Defined** - The Panama Canal Zone was removed from and American Samoa was added to the list of regions defined by the regulations as a state.
- **The Internet** - Internet activity by political campaigns has increased dramatically as the role of the Internet has evolved and become a major forum for communication and commerce. Numerous questions have been raised regarding the use of the web by political committees, volunteers, volunteer web sites, vendors, polls conducted on the Internet and the republication of committee campaign materials. These questions center on whether a committee may have received something of value and, if so, how is it to be valued, when must they be reported, and what are the responsibilities of the committees for identifying other sources of potential contributions. Such issues have been addressed for the most part by the Commission through Advisory Opinions. As has been previously noted, credit card and debit card contributions received over the Internet were addressed initially in Advisory Opinion 1999-09, and retroactively, in the regulations at 11 CFR §9034.2. See Chapter 1 Section F for a discussion of the Internet issues.

Should you have any questions while reviewing the manual, please do not hesitate to contact the lead auditor assigned to your campaign. If none is assigned, please feel free to contact the Audit Division at (202) 694-1200 or toll free (800) 424-9530.