

Amendments to the Agenda Doc. 02-97

1. On page 8, lines 18, 22, and 23, delete "general".
2. On page 9, line 1, insert "48-hour and" before "24-hour".
3. On page 9, line 12, replace "candidate's" with "candidates".
4. On page 13, line 14, delete "of".
5. On page 14, line 22, delete "on" before "December 31".
6. On page 16, line 2, replace "fundraise" with "raise funds".
7. On page 17, line 10: replace "fundraise" with "raise".
8. On page 18, line 8, add "within this definition of "personal loans"" after "specify."
9. On page 18, line 9, delete "as well".
10. On page 21, add the following on line 3:

BCRA specifically states that 2 U.S.C. 441a(j) applies only to personal loans that are made after November 6, 2002. Thus, the limitations on repayment of personal loans from contributions made after the respective election do not apply to personal loans made before this date. Consequently, any outstanding loan balances of candidate loans that were made before November 6, 2002, may be repaid with contributions made after this date subject to the provisions concerning net debts outstanding in 11 CFR 110.1(b)(3).
11. On page 22, line 9: replace "fundraise" with "raise funds".
12. On page 23, line 15, replace "the" with "more than one".
13. On page 24, line 18, replace "to allow" with "in".

- 1 14. On page 25, line 16, delete “neither” and replace “nor” with “and”.
- 2 15. On page 25, line 17, add “be” before “exempt”.
- 3 16. On page 29, line 16, add “of” before “his”.
- 4 17. On page 31, line 8, add “partnerships, limited liability corporations, Indian tribes”  
5 after “(PACs),”.
- 6 18. On page 34, line 8, add the following new sentence after “Federal Register.”  
7 “The Commission will also post this data on its website.”
- 8 19. On page 44, lines 15 and 23, add “additional” before “expenditures”.
- 9 20. On page 48, line 11, add “via facsimile or” before “as”.
- 10 21. On page 48, line 11, delete “a facsimile or”.
- 11 22. On page 50, line 4, insert at end: “The Commission seeks comment on whether  
12 holding candidates personally liable for violations of the reporting requirements  
13 under subpart B of part 400 is consistent with Congressional intent.”
- 14 23. On page 55, line 10, insert at end: “The Commission seeks comment on whether  
15 holding candidates personally liable for violations of 11 CFR 400.31 is consistent  
16 with Congressional intent.”
- 17 24. On page 56, line 5, add “who had made no prior contributions” before  
18 “delivered”.
- 19 25. On page 59, line 18, replace “441a (Senate)” with “441a(i) (Senate)”.
- 20 26. On page 61, line 2, replace “441(a)(1)(A)” with “441a(a)(1)(A)”.
- 21 27. On page 62, line 19, replace “441a(i)(a)(1)(C)(i)(II)” with “441a(i)(1)(C)(i)(II)”.
- 22 28. On page 62, line 19, replace “441a(i)(a)(1)(C)(ii)(II)” with “441a(i)(1)(C)(ii)(II)”.
- 23 29. On page 63, line 4, replace “441a(i)(a)(1)(C)(i)(II)” with “441a(i)(1)(C)(i)(II)”.

- 1 30. On page 63, line 5, replace "441a(i)(a)(1)(C)(ii)(II)" with "441a(i)(1)(C)(ii)(II)".
- 2 31. On page 63, line 23, replace "441a(i)(a)(1)(C)(i)(II)" with "441a(i)(1)(C)(i)(II)".
- 3 32. On page 69, line 8, replace "track" with "tracks".
- 4 33. On page 70, line 7, replace "occurring" with "due".
- 5 34. On page 107, line 12, delete "; General rule".
- 6 35. On page 107, line 17, delete "day of the".
- 7 36. On page 112, line 7, add ", as defined in 11 CFR 400.8," after "gross receipts".
- 8 37. On page 112, line 15, add ", as defined in 11 CFR 400.8," after "gross receipts".
- 9 38. On page 113, line 18, add ", as defined in 11 CFR 400.8," after "gross receipts".
- 10 39. On page 114, line 4, add ", as defined in 11 CFR 400.8," after "gross receipts".
- 11 40. On page 116, line 4, insert "per election" after "\$250,000".
- 12 41. On page 119, line 1, replace "transaction" with "transactions".
- 13 42. On page 124, line 17, replace "that must be reported pursuant to" with "described
- 14 in".
- 15 43. On page 124, line 17, replace "104.3(a)(3)" with "104.3(a)(3)(i) through (x)".
- 16 44. On page 125, line 17, replace "<" with "≤".
- 17 45. On page 125, line 22, replace "<" with "≤".
- 18 46. On page 126, line 6, delete the comma after "committee".
- 19 47. On page 126, line 6, add " as reported under 11 CFR 104.19(b)(1)(v) or (vi),"
- 20 after "funds,".
- 21 48. On page 126, lines 8, 15, and 20, and on page 127, line 5, add "sought" after
- 22 "Federal election".
- 23 49. On page 126, line 12, delete the comma after "committee".

- 1 50. On page 126, line 13, add “ as reported under 11 CFR 104.19(b)(1)(v) or (vi),”  
2 after “funds,”.
- 3 51. On page 126, line 18, delete the comma after “committee”.
- 4 52. On page 126, line 18, add “ as reported under 11 CFR 104.19(b)(2)(v) or (vi),”  
5 after “funds,”.
- 6 53. On page 127, line 2, delete the comma after “committee”.
- 7 54. On page 127, line 3, add “ as reported under 11 CFR 104.19(b)(2)(v) or (vi),”  
8 after “funds,”.
- 9 55. On page 127, line 17, add “that will exceed the threshold amount as defined in 11  
10 CFR 400.9” after “personal funds”.
- 11 56. On page 128, line 11: Add "or she" after "he".
- 12 57. On page 131, line 10, delete “(3)” and replace with “(1)”.
- 13 58. On page 131, line 18, delete “(4)” and replace with “(2)”.
- 14 59. On page 132, lines 13-14, remove “ten times” and add “applicable” before  
15 “threshold”.
- 16 60. On page 139, line 17, add “if” after “part”.
- 17 61. On page 140, lines 5-6, delete “candidate’s”, add “which they relate” after  
18 “election to”, and delete “the office of Senator, or the office of Representative in,  
19 or Delegate or Resident Commissioner to, the Congress”.
- 20 62. Replace pages 72 – 105 with the following:  
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22  
23

1 Current 11 CFR 9003.2 includes a definition of “personal funds” that is nearly  
2 identical to the definition in former 11 CFR 110.10. Because that definition remains  
3 appropriate in the context of the Title 26 regulations, the Commission is adopting the  
4 definition of “personal funds” in 11 CFR 9003.2 for purposes of 11 CFR 9035.2.  
5 Accordingly, rather than changing the cross-reference in 11 CFR 9035.2(c) from former  
6 11 CFR 110.10 to new 11 CFR 100.33, the Commission is changing the cross-reference  
7 to the existing Title 26 definition of “personal funds” in 11 CFR 9003.2.

#### 8 9 **Millionaires’ Amendment Hypothetical**

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11 In an effort to provide a better understanding of the manner in which the various  
12 provisions of the Millionaires’ Amendment would operate in the context of a primary and  
13 general election, the Commission presents the following hypothetical example. All  
14 candidates in the following example are fictional and any similarities to past or present  
15 candidates or elections for Federal office are purely coincidental. The contribution and  
16 coordinated party expenditure limits in the example will probably be different in  
17 subsequent years due to indexing for inflation.

#### 18 Statement of Candidacy

19 For months, local newspapers had been speculating about the possibility that  
20 Frank Rogers, an independently wealthy investment banker from New Franklin was  
21 planning to enter the race for the Democratic Party’s nomination for the U.S. Senate.  
22 Some of Rogers’s most ardent supporters had already formed a committee, called the  
23 “Draft Frank Rogers Committee” and had been soliciting contributions on behalf of his

1 potential candidacy. By February 1, 2003, the Draft Frank Rogers Committee  
2 (“Committee”) had received contributions aggregating in excess of \$5,000. On February  
3 15, 2003, Rogers received a letter from the Federal Election Commission (“FEC” or  
4 “Commission”) notifying him of the Committee’s efforts on his behalf and informing  
5 Rogers that, unless he disavowed the Committee’s activities within 30 days of receiving  
6 the Commission’s notification, the Commission would consider Frank Rogers to be a  
7 candidate, under 11 CFR 100.3(a).

8 On March 3, 2003, Frank Rogers filed a Statement of Candidacy on FEC Form 2  
9 and designated a principal campaign committee by filing a Statement of Organization on  
10 FEC Form 1, pursuant to 11 CFR 102.12 and 102.2, respectively. Because Rogers was  
11 running for the Senate, he was required to file the original FEC Form 2 and FEC Form 1  
12 with the Secretary of the United States Senate, under 11 CFR 105.2. Rogers noticed that  
13 he was also required to send a copy of FEC Form 2 (but not FEC Form 1) to the  
14 Commission and to each opposing candidate in the same election, under 11 CFR 400.20.

15 When he began to fill out the forms, Rogers noticed that they had changed since  
16 the last time he had seen them, a year earlier, when he considered but decided against a  
17 race for Federal office. In addition to the information Form 2 used to require (name,  
18 address, party affiliation, office sought, etc.), he was now also required to state a dollar  
19 figure representing the amount of his personal funds that he intended to spend on behalf  
20 of his campaign in excess of a certain “threshold amount,” as defined in 11 CFR 400.9.  
21 In addition, the new Form 1 required Rogers’ principal campaign committee to provide  
22 either its electronic mail address or its facsimile number. Rogers completed Form 1 first  
23 and then turned his attention to FEC Form 2.

1           Rogers retrieved his copy of the Code of Federal Regulations and determined that,  
2 for Senate candidates like him, the threshold amount was equal to the sum of \$150,000  
3 plus the product of the voting age population of his State (as certified under 11 CFR  
4 110.18) multiplied by \$0.04. After looking at 11 CFR 110.18, Rogers realized that, in  
5 order to determine the voting age population of New Franklin, he needed to search the  
6 Federal Register for the most recent voting age population estimate published annually by  
7 the Department of Commerce. Considering that the voting age population of New  
8 Franklin was listed as 24,800,000, he calculated the threshold amount, as follows:  
9  $\$150,000 + (24,800,000 \times \$0.04) = \$1,142,000$ .

10           Rogers's personal fortune was estimated to be at least \$500 million. His wife,  
11 Cynthia, was opposed to his spending anything close to this amount. Frank Rogers had  
12 determined that his campaign would need an initial infusion of \$7.5 million of his  
13 personal funds. Rogers sincerely hoped he would not have to spend any more of his  
14 personal funds but he was willing to spend more if necessary. Thus, on FEC Form 2,  
15 Rogers stated his intention to exceed the threshold amount by \$6,358,000 (\$7,500,000 -  
16 \$1,142,000 threshold amount). In addition to filing the original FEC Form 2 and FEC  
17 Form 1 with the Secretary of the Senate, Rogers faxed a copy of FEC Form 2 to the  
18 Commission as required by 11 CFR 400.20. Considering that Rogers was the only  
19 candidate in the race at that point, he was not required to fax or e-mail a copy of FEC  
20 Form 2 to any opposing candidates.

21           On March 31, 2003, Arlene Miller announced her intention to oppose Frank  
22 Rogers for the Democratic Party's nomination for the U.S. Senate. Although Miller was  
23 not nearly as wealthy as Frank Rogers, she stated on her FEC Form 2 that she intended to

1 exceed the threshold amount (\$1,142,000) by \$1,858,000. This meant that Miller  
2 intended to make expenditures from personal funds totaling \$3,000,000 (\$1,858,000 +  
3 \$1,142,000 threshold amount). Miller also designated a principal campaign committee  
4 on FEC Form 1. Miller filed her original FEC Form 2 and FEC Form 1 with the  
5 Secretary of the Senate, faxed a copy of FEC Form 2 to the Commission, and sent an  
6 electronic copy of FEC Form 2 to opposing candidate Frank Rogers as an attachment to  
7 an e-mail message.

8 On April 3, 2003, Jim Hyer entered the Democratic primary race. Given his  
9 position as Chairman of the New Franklin Democratic Party, Hyer had high name  
10 recognition among party activists but almost no money. He was counting on his  
11 popularity with the state's Democratic Party activists to carry him to victory in the June  
12 1, 2004, primary election. Within 15 days of becoming a candidate, Hyer filed his  
13 original FEC Form 2 and FEC Form 1 with the Secretary of the Senate, and faxed copies  
14 of FEC Form 2 to the Commission and to the Rogers and Miller campaigns. On FEC  
15 Form 2, Hyer indicated that he did not intend to spend any of his personal funds on the  
16 race.

17 On April 15, 2003, James Rockford, a venture capitalist, announced his intention  
18 to seek the Republican Party's nomination for the U.S. Senate. Rockford had made a  
19 fortune in the technology boom of the late 1990s (he was worth an estimated \$20 billion)  
20 and was extremely well known throughout the state for his support of a popular statewide  
21 referendum, Proposition 895. At the time that Rockford announced his candidacy, he  
22 was the only candidate seeking the Republican Party's nomination. Within 15 days of  
23 becoming a candidate, Rockford filed his original FEC Form 2 and FEC Form 1 with the

1 Secretary of the Senate. On FEC Form 2, Rockford stated that he intended to exceed the  
2 threshold amount (\$1,142,000) by \$148,858,000. This meant that Rockford intended to  
3 spend \$150 million of his personal funds on the race (\$148,858,000 = \$150,000,000 -  
4 \$1,142,000 threshold amount). The same day, Rockford deposited \$50 million in his  
5 authorized committee's account and filed an initial notification of expenditures from  
6 personal funds on FEC Form 10 with the Secretary of the Senate. Given that there were  
7 no opposing candidates vying for the Republican nomination, Rockford satisfied his  
8 remaining reporting obligations by faxing copies of his FEC Form 2 and FEC Form 10 to  
9 the Commission.

10

11 Initial notification of expenditure from personal funds

12 On April 4, 2003, the day after Hyer entered the race, Rogers immediately  
13 pumped \$7.5 million of his personal funds into his authorized committee's account.  
14 Because \$7.5 million was more than two times the threshold amount of \$1,142,000,  
15 within 24 hours of depositing the funds, Rogers filed an initial notification of  
16 expenditures from personal funds on FEC Form 10 with the Secretary of the Senate and  
17 faxed a copy of the form to the FEC and to the Miller and Hyer campaigns, as required  
18 by 11 CFR 400.21, 400.23, and 400.24.

19 Miller's campaign received Rogers's notification on April 5, 2003. Miller  
20 responded by contributing to her authorized committee \$3,000,000. Because a  
21 contribution from a candidate to the candidate's authorized committee was considered an  
22 expenditure of personal funds under 11 CFR 400.4 and because the total contribution  
23 amount (\$3,000,000) exceeded two times the threshold amount (2 x \$1,142,000 =

1 \$2,284,000), within 24 hours of making the loan, Miller was required to file a notification  
2 of expenditures from personal funds on FEC Form 10. On April 6, 2003, Miller filed her  
3 original FEC Form 10 with the Secretary of the Senate and faxed copies of the form to  
4 the Commission and to the Rogers and Hyer campaigns.

5 Miller was aware that once she received Rogers's initial notification, it was  
6 possible for her authorized committee to begin receiving contributions from individuals  
7 in excess of the usual \$2,000 limit. She scrambled to do the necessary calculations to  
8 determine the increased limit. According to the procedure outlined in 11 CFR 400.40,  
9 Miller first needed to determine the "opposition personal funds amount," the computation  
10 of which is explained at 11 CFR 400.10.

11

#### 12 Calculating the opposition personal funds amount for the Miller campaign

13 Miller quickly noticed that there were three different formulas for calculating the  
14 opposition personal funds amount and that the appropriate formula depended on the date  
15 of calculation. Glancing at her watch, she determined that the date was April 7, 2003.  
16 She determined that the first formula was the correct one to use because April 7, 2003,  
17 was prior to July 16 of the year preceding the year in which the general election was to be  
18 held. (The general election was scheduled to be held on November 8, 2004.)

19 According to the formula, the opposition personal funds amount on April 6, 2003  
20 was equal to the greatest aggregate amount of expenditures from personal funds made by  
21 her opposing candidate (Rogers) minus the greatest aggregate amount of expenditures  
22 from personal funds made by her. Thus, as of April 7, 2003, the opposition personal  
23 funds amount was \$7,500,000 minus \$3,000,000, or \$4,500,000. Miller notified her

1 national and State party committees and the Commission of this calculation, as required  
2 by 11 CFR 400.30(b).

3

4 Calculating the increased contribution and coordinated party expenditure limits for the  
5 Miller campaign

6 Miller returned to the table in 11 CFR 400.10 to continue calculating the  
7 increased limit. According to the table, if the opposition personal funds amount  
8 (\$4,500,000) was greater than the sum of the product of \$0.08 times the voting age  
9 population of New Franklin (24,800,000) plus \$300,000 but less than or equal to the sum  
10 of the product of \$0.16 times the voting age population of New Franklin (24,800,000)  
11 plus \$600,000, then her authorized committee may accept three times the ordinary  
12 contribution limit of \$2,000, or \$6,000.

13 Miller made the following calculations:

14  $(\$0.08 \times 24,800,000) + \$300,000 = \$2,284,000$

15  $(\$0.16 \times 24,800,000) + \$600,000 = \$4,568,000.$

16 Because the opposition personal funds amount (\$4,500,000) was between  
17 \$2,284,000 and \$4,568,000, the increased limit for individual contributions to Miller's  
18 authorized committee was \$6,000 (three times the ordinary limit). According to the table,  
19 Miller's national party committee was also able to make coordinated expenditures on  
20 behalf of her campaign in connection with the general election. Miller located a copy of  
21 the March 2002 FEC Record, which contained a table showing the coordinated party  
22 expenditure limits for 2002 Senate nominees. Miller found the amount for New Franklin,  
23 \$1,781,136, which represented \$0.02 times the voting age population of New Franklin

1 (24,800,000), indexed for inflation. Given that her national and State party committees  
2 have a policy of not making coordinated expenditures before the primary election when  
3 there are multiple candidates vying for the Democratic Party's nomination, Miller knew  
4 that she could not count on any assistance from either committee until the general  
5 election.

6  
7 Calculating the proportionality provision amount for the Miller campaign

8 Miller was all set to call her closest supporters to begin soliciting \$6,000 checks  
9 when she suddenly realized that she and her authorized committee were required, under  
10 11 CFR 400.31 to constantly monitor a certain proportion to make sure that the aggregate  
11 amount of contributions made under the increased limit never exceeded 110 percent of  
12 the opposition personal funds amount (\$4,500,000). Miller made the calculation as  
13 follows:  $1.10 \times \$4,500,000 = \$4,950,000$ . She immediately started making calls,  
14 realizing that she could accept contributions under the increased limits only until the  
15 aggregate amount of such contributions to her campaign equaled \$4,950,000.

16  
17 Calculating the opposition personal funds amount for the Hyer campaign

18 Having received Rogers's initial notification of expenditure from personal funds  
19 on April 5, 2003, and Miller's initial notification on April 6, 2003, Hyer set out to  
20 determine the increased contribution and coordinated party expenditure limits applicable  
21 to his campaign. In order to perform the necessary calculations, Hyer first needed to  
22 determine the opposition personal funds amount as of April 5, 2003.

1 Under 11 CFR 400.10, the opposition personal funds amount prior to June 30 of  
2 the year preceding the year in which the general election is held is the difference between  
3 the greatest aggregate amount of expenditures from personal funds made by the opposing  
4 candidate and the candidate himself in the same election. Hyer considered for a minute  
5 which of the three announced Senate candidates, Rogers, Miller, or Rockford, was his  
6 "opposing candidate," for purposes of the formula. He quickly ruled out Rockford  
7 because he realized that in the primary election cycle, he and Rockford were not seeking  
8 the nomination of the same political party.

9 Of the two remaining candidates, Hyer concluded that the contribution and  
10 coordinated expenditure limits would be much higher if Rogers were the opposing  
11 candidate. As of April 6, 2003, the aggregate amount of Rogers's expenditures from  
12 personal funds was \$7.5 million while the aggregate amount of Miller's expenditures  
13 from personal funds was \$3 million. Unlike Arlene Miller, Hyer had not yet made any  
14 expenditures from personal funds, so the aggregate amount of his expenditures was  
15 \$0.00. Plugging these numbers into the formula, Hyer calculated the possible opposition  
16 personal funds amounts as follows:

17 Opposing candidate Rogers:  $\$7,500,000 - \$0.00 = \$7,500,000$

18 Opposing candidate Miller:  $\$3,000,000 - \$0.00 = \$3,000,000$

19 Thus, Hyer concluded that it would be to his advantage to consider Rogers to be his  
20 "opposing candidate" for purposes of determining the opposition personal funds amount.  
21 According to his calculations, the applicable opposition personal funds amount as of  
22 April 6, 2003, was \$7.5 million. Hyer notified his national and State party committees  
23 and the Commission of this calculation, as required by 11 CFR 400.30(b).

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Calculating the increased contribution and coordinated party expenditure limits for the Hyer campaign

Hyer proceeded to calculate the increased contribution and coordinated party expenditure limits pursuant to the formulas in 11 CFR 400.40. Doing the necessary calculations according to the formulas in the table (illustrated below), Hyer determined that because the opposition personal funds amount (\$7,500,000) was between \$4,568,000 and \$11,420,000, the increased limit for individual contributions to his campaign was \$12,000 (six times the applicable limit (\$2,000)).

$$(\$0.16 \times 24,800,000 \text{ (VAP of New Franklin)}) + \$600,000 = \$4,568,000$$

$$(\$0.40 \times 24,800,000 \text{ (VAP of New Franklin)}) + \$1,500,000 = \$11,420,000$$

Hyer also determined that the increased coordinated party expenditure limit applicable to his campaign was \$1,781,136 (the greater of \$20,000 or \$0.02 times the voting age population of the State of New Franklin (24,800,000), as adjusted for inflation). Like Miller, Hyer was well aware of his party committees' policy of not making coordinated expenditures prior to the date of nomination when there was a contested primary.

Calculating the proportionality provision amount for the Hyer campaign

Before soliciting \$12,000 checks, however, Hyer decided it would be wise to figure out the aggregate amount of contributions his committee could accept under the increased limit before it would become necessary, under 11 CFR 400.31, to refuse that portion of contributions made under the increased limit that exceeded the ordinary limit

1 of \$2,000. Given that the opposition personal funds amount as of April 6, 2003, was  
2 \$7,500,000, Hyer made the following calculation:  $1.10 \times \$7,500,000 = \$8,250,000$ .  
3 Hyer began fundraising at once, knowing that he could accept contributions under the  
4 increased limits only until the aggregate amount of all contributions to his campaign  
5 equaled \$8,250,000.

6

7 Additional notification of expenditure from personal funds

8         Meanwhile, Frank Rogers was starting to flounder. His campaign had already  
9 spent the \$7.5 million he had deposited on April 4<sup>th</sup> plus an additional \$1,000,000 in  
10 contributions his authorized committee had received to date. He decided that, in order to  
11 remain competitive with Miller and Hyer, he had no choice but to commit more of his  
12 personal funds to the race. So, on June 30, 2003, Rogers deposited an additional  
13 \$2,500,000 into his authorized committee's account. Because this expenditure from  
14 personal funds exceeded \$10,000, within 24 hours of depositing the funds, Rogers was  
15 required to file an additional notification of expenditure from personal funds on FEC  
16 Form 10, under 11 CFR 400.22. As he did with the initial notification, Rogers filed the  
17 original form with the Secretary of the Senate, and faxed copies of the form to the FEC  
18 and the Miller and Hyer campaigns. Although this amount was in excess of the amount  
19 stated on Roger's FEC Form 2, he was not required to amend that form.

20

1 Calculating the new opposition personal funds amount for the Miller and Hyer campaigns

2 The Miller and Hyer campaigns received Rogers's additional notification of  
3 expenditures from personal funds on July 1, 2003. The Miller and Hyer campaigns  
4 endeavored to determine how Rogers's increase in spending from personal funds might  
5 affect their increased contribution limits. Before figuring out their new limits, however,  
6 each campaign first had to recalculate the opposition personal funds amount.

7 Turning to the formulas in 11 CFR 400.10, each candidate realized that as soon as  
8 July 16 the applicable formula would no longer be the one that applied prior to July 16,  
9 2003. With vacations taking many staffers and potential contributors away, both  
10 committees elected to wait until the new formulas were in effect before accepting any  
11 contributions. Once it was July 16, 2003, which was between July 16 of the year  
12 preceding the year in which the general election would be held and February 1 of the year  
13 in which the general election would be held, the formula required that the gross receipts  
14 advantage be taken into account.

15  
16 Opposition personal funds amount - Miller campaign

17 To calculate the opposition personal funds amounts for the Miller campaign as of  
18 July 16, 2003, the following formula had to be used:  $a - b - ((c - d) \div 2)$ , where:

19 (a) represented the greatest amount of expenditures from personal funds made by  
20 the opposing candidate (Rogers) in the same election;

21 (b) represented the greatest amount of expenditures from personal funds made by  
22 Miller in the same election;

1 (c) represented the aggregate amount of the gross receipts of Miller's authorized  
2 committee, minus any contributions by Miller from personal funds, during any  
3 election cycle that may be expended in connection with the primary election,  
4 as determined on June 30 of the year (2003) preceding the year in which the  
5 general election was to be held (2004); and

6 (d) represented the aggregate amount of the gross receipts of Rogers's authorized  
7 committee, minus any contributions by Rogers from personal funds, during  
8 any election cycle that may be expended in connection with the primary  
9 election, as determined on June 30, 2003.

10  
11 Variable (a) – Miller campaign

12 Considering each variable in turn, as of June 30, 2003, Rogers had made aggregate  
13 expenditures from personal funds in the amount of \$10 million. So, as of that date,  
14 variable (a) in the formula for the Miller campaign equaled \$10,000,000.

15  
16 Variable (b) – Miller campaign

17 As of June 30, 2003, Miller had made aggregate expenditures from personal funds in the  
18 amount of \$3,000,000. Thus, as of that date, variable (b) in the formula for Miller's  
19 campaign equaled \$3,000,000.

20  
21 Variable (c) – Miller campaign

22 As of June 30, 2003, Miller's authorized committee had contributions that may be  
23 expended in connection with the primary election totaling \$4,000,000 and Miller's

1 aggregate contributions from personal funds totaled \$3,000,000. Accordingly, as of June  
2 30, 2003, variable (c) in the formula for the Miller campaign equaled \$4,000,000 -  
3 \$3,000,000, or \$1,000,000.

4

5 Variable (d) – Miller campaign

6 As of June 30, 2003, Rogers's authorized committee had contributions that may be  
7 expended in connection with the primary election totaling \$11,000,000 and Rogers's  
8 aggregate contributions from personal funds totaled \$10,000,000. Accordingly, as of  
9 June 30, 2002, variable (d) in the formula for the Miller campaign equaled \$11,000,000 -  
10 \$10,000,000, or \$1,000,000.

11 Plugging the above numbers into the applicable formula ( $a - b - ((c - d) \div 2)$ ), the  
12 opposition personal funds amount for the Miller campaign as of June 30, 2003, was  
13 \$7,000,000, calculated as follows:

14  $\$10,000,000 - \$3,000,000 - ((\$1,000,000 - \$1,000,000) \div 2) = \$7,000,000.$

15

16 Opposition personal funds amount - Hyer campaign

17 To calculate the opposition personal funds amounts for the Hyer campaign as of  
18 July 16, 2003, the following formula had to be used:  $a - b - ((c - d) \div 2)$ , where:

19 (a) represented the greatest amount of expenditures from personal funds made by  
20 the opposing candidate (Rogers) in the same election;

21 (b) represented the greatest amount of expenditures from personal funds made by  
22 Hyer in the same election;

1 (c) represented the aggregate amount of the gross receipts of Hyer's authorized  
2 committee, minus any contributions by Hyer from personal funds, during any  
3 election cycle that may be expended in connection with the primary election,  
4 as determined on June 30 of the year (2003) preceding the year in which the  
5 general election was to be held (2004); and

6 (d) represented the aggregate amount of the gross receipts of Rogers's authorized  
7 committee, minus any contributions by Rogers from personal funds, during  
8 any election cycle that may be expended in connection with the primary  
9 election, as determined on June 30, 2003.

10  
11 Variable (a) – Hyer campaign

12 Considering each variable in turn, as of June 30, 2003, Rogers had made aggregate  
13 expenditures from personal funds in the amount of \$10 million. So, as of that date,  
14 variable (a) in the formula for the Hyer campaign equaled \$10,000,000.

15  
16 Variable (b) – Hyer campaign

17 As of June 30, 2003, Hyer had not made any expenditures from personal funds.  
18 Accordingly, as of that date, variable (b) in the formula for Hyer's campaign equaled  
19 \$0.00.

1 Variable (c) – Hyer campaign

2 As of June 30, 2003, Hyer's authorized committee had contributions that may be  
3 expended in connection with the primary election totaling \$1,000,000 and Hyer's  
4 aggregate contributions from personal funds totaled \$0. Accordingly, as of June 30,  
5 2003, variable (c) in the formula for the Hyer campaign equaled \$1,000,000 - \$0, or  
6 \$1,000,000.

7  
8 Variable (d) – Hyer campaign

9 As of June 30, 2003, Rogers's authorized committee had contributions that may be  
10 expended in connection with the primary election totaling \$11,000,000 and Rogers's  
11 aggregate contributions from personal funds totaled \$10,000,000. Accordingly, as of  
12 June 30, 2002, variable (d) in the formula for the Hyer campaign equaled \$11,000,000 -  
13 \$10,000,000, or \$1,000,000.

14 Plugging the above numbers into the applicable formula  $(a - b - ((c - d) \div 2))$ , the  
15 opposition personal funds amount for the Hyer campaign as of June 30, 2003, was  
16 \$10,000,000, calculated as follows:

17 
$$\$10,000,000 - \$0 - ((\$1,000,000 - \$1,000,000 \div 2) = \$10,000,000.$$

18 Both Miller and Hyer notified their national and state party committees and the  
19 Commission of their calculations, as required by 11 CFR 400.30(b).

20 Calculating the new contribution limits for the Miller and Hyer campaigns

21 After calculating the new opposition personal funds amount, the Miller and Hyer  
22 campaigns recalculated the new individual contribution limits as follows:

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Contribution limit - Miller campaign

Because the opposition personal funds amount of \$7,000,000 was greater than:

$$\$4,568,000 = (\$0.16 \times 24,800,000 \text{ (VAP of New Franklin)}) + \$600,000$$

but less than or equal to:

$$\$11,420,000 = (\$0.40 \times 24,800,000 \text{ (VAP of New Franklin)}) + \$1,500,000$$

Miller determined that the new increased contribution limit for the Miller campaign was:

$$\$12,000 = 6 \times \$2,000 \text{ (the applicable limit).}$$

Contribution limit - Hyer campaign

Because the opposition personal funds amount of \$10,000,000 was greater than:

$$\$4,568,000 = (\$0.16 \times 24,800,000 \text{ (VAP of New Franklin)}) + \$600,000$$

but less than or equal to:

$$\$11,420,000 = (\$0.40 \times 24,800,000 \text{ (VAP of New Franklin)}) + \$1,500,000$$

Hyer determined that the new increased contribution limit for the Hyer campaign was the

same as the old increased contribution limit:

$$\$12,000 = 6 \times \$2,000 \text{ (the applicable limit).}$$

Calculating the new proportionality provision amount for the Miller and Hyer campaigns

Before calling to solicit contributions under the new increased limits, however, both the Miller and Hyer campaigns sought to determine the maximum amount they could accept before being in danger of exceeding 110 percent of the new opposition personal funds amount in violation of the proportionality provision (11 CFR 400.31).

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Proportionality provision amount – Miller campaign

Taking into account the new opposition personal funds amount (\$7,000,000), the Miller campaign determined that the new proportionality provision amount was \$7,700,000, calculated as follows:

$$1.10 \times \$7,000,000 = \$7,700,000$$

As of July 16, 2003, the Miller campaign had received \$4,500,000 in contributions, \$1,500,000 from contributors plus the \$3,000,000 contribution from Miller’s personal funds. Of the \$1,500,000, the Miller Committee received \$500,000 under the increased limits. Only this \$500,000 of her committee’s gross receipts counted towards the proportionality provision limit. Accordingly, the Miller campaign determined that it could receive another \$7,200,000 (\$7,700,000 limit - \$500,000 already received) in contributions under the increased limit without violating the proportionality provision.

Proportionality provision amount – Hyer campaign

As of July 16, 2003, the Hyer campaign had received \$1,000,000 in contributions, \$400,000 of which was received under the increased limits, well short of the old \$5,500,000 maximum proportionality provision amount. Taking into account the new opposition personal funds amount (\$10,000,000), the Hyer campaign determined that the new proportionality provision amount was \$11,000,000, calculated as follows:

$$1.10 \times \$10,000,000 = \$11,000,000$$

1 Accordingly, the Hyer campaign determined that it could receive another \$10,600,000  
2 (\$11,000,000 limit - \$400,000 already received) in contributions under the increased limit  
3 without violating the proportionality provision.  
4

5 Withdrawal of opposing candidate

6 As summer turned into fall and fall faded into winter, the polls consistently  
7 showed Miller with a double-digit lead over Rogers. The Hyer campaign polled in the  
8 single digits.

9 Rogers had already spent \$10 million of his personal funds and, although willing  
10 to spend more, he did not want to do so unless there was a real chance that he might make  
11 some headway against Miller. Rogers figured that he could not gain ground against  
12 Miller. So, on December 20, 2003, Rogers held a press conference and announced his  
13 decision to quit the race.

14 Once the initial shock of Rogers's withdrawal from the race wore off, both Miller  
15 and Hyer realized that his departure might have a significant impact on their ability to  
16 raise funds for the last seven months of the primary campaign. Under 11 CFR 400.32,  
17 Rogers ceased to be a candidate on December 20, 2003, the date he publicly announced  
18 his withdrawal from the race. From that day forward, Miller was prohibited from  
19 accepting that portion of contributions made under the increased limits that exceeded the  
20 applicable limit (\$2,000 per person) because it was Rogers's expenditures from personal  
21 funds that had allowed her to receive contributions above the applicable limit in the first  
22 place. While her campaign was permitted to continue accepting contributions up to the  
23 applicable limit (\$2,000 per individual), it would have to refuse any portion of any

1 contribution above the applicable limit. Any amount above the applicable limit would  
2 have to be refunded to the contributor.

3  
4 Calculating the new opposition personal funds amount for the Hyer campaign

5 Rogers's withdrawal from the race affected the Hyer campaign differently than  
6 the Miller campaign. With Rogers out of the race, Hyer must now consider Miller to be  
7 his "opposing candidate" for purposes of calculating the opposition personal funds  
8 amount and the increased contribution limits. To determine the new opposition personal  
9 funds amount as of December 20, 2003, Hyer used the same formula he had used on July  
10 16, 2003 ( $a - b - ((c - d) \div 2)$ ), substituting Miller for Rogers, where:

- 11 (a) represented the greatest amount of expenditures from personal funds made by  
12 the opposing candidate (Miller) in the same election;
- 13 (b) represented the greatest amount of expenditures from personal funds made by  
14 Hyer in the same election;
- 15 (c) represented the aggregate amount of the gross receipts of Hyer's authorized  
16 committee, minus any contributions by Hyer from personal funds, during any  
17 election cycle that may be expended in connection with the primary election,  
18 as determined on June 30 of the year (2003) preceding the year in which the  
19 general election was to be held (2004); and
- 20 (d) represented the aggregate amount of the gross receipts of Miller's authorized  
21 committee, minus any contributions by Miller from personal funds, during any  
22 election cycle that may be expended in connection with the primary election,  
23 as determined on June 30, 2003.

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Variable (a) – Hyer campaign

Considering each variable in turn, as of June 30, 2003, Miller had made aggregate expenditures from personal funds in the amount of \$3,000,000. So, as of that date, variable (a) in the formula for the Hyer campaign equaled \$3,000,000.

Variable (b) – Hyer campaign

As of June 30, 2003, Hyer had not made any expenditures from personal funds. Accordingly, as of that date, variable (b) in the formula for Hyer’s campaign equaled \$0.

Variable (c) – Hyer campaign

As of June 30, 2003, Hyer’s authorized committee had contributions that may be expended in connection with the primary election totaling \$1,000,000 and Hyer’s aggregate contributions from personal funds totaled \$0. Accordingly, as of June 30, 2003, variable (c) in the formula for the Hyer campaign equaled \$1,000,000 - \$0, or \$1,000,000.

Variable (d) – Hyer campaign

As of June 30, 2003, Miller’s authorized committee had contributions that may be expended in connection with the primary election totaling \$4,000,000 and Miller’s aggregate contributions from personal funds totaled \$3,000,000. Accordingly, as of June

1 30, 2003, variable (d) in the formula for the Hyer campaign equaled \$4,000,000 -  
2 \$3,000,000, or \$1,000,000.

3 Inserting the above numbers into the applicable formula  $(a - b - ((c - d) \div 2))$ , the  
4 opposition personal funds amount for the Hyer campaign as of December 20, 2003, was  
5 \$3,000,000, calculated as follows:

$$6 \quad \$3,000,000 - \$0 - ((\$1,000,000 - \$1,000,000) \div 2) = \$3,000,000$$

7 Hyer notified his national and State party committees and the Commission of this  
8 calculation, as required by 11 CFR 400.30(b).

9 Calculating the new increased contribution limit for the Hyer campaign

10 Hyer was optimistic that he would still be able receive contributions above the  
11 applicable limit. Hyer performed the following calculations and determined that with the  
12 new opposition personal funds amount of \$3,000,000, the new contribution limit  
13 applicable to his campaign was three times the applicable limit, or \$6,000:

14 Opposition personal funds amount of \$3,000,000 was more than . . .

$$15 \quad \$2,284,000 = (\$0.08 \times 24,800,000 \text{ (VAP of New Franklin)}) + \$300,000$$

16 but less than or equal to . . .

$$17 \quad \$4,568,000 = (\$0.16 \times 24,800,000 \text{ (VAP of New Franklin)}) + \$600,000$$

18

19 Calculating the new proportionality provision amount for the Hyer campaign

20 Before calling to solicit contributions under the new increased limit, however, the  
21 Hyer campaign sought to determine the maximum amount he could accept before being

1 in danger of exceeding 110 percent of the new opposition personal funds amount in  
2 violation of the proportionality provision (11 CFR 400.31).

3 As of December 20, 2003, the Hyer campaign had received \$1,200,000 in  
4 contributions, \$750,000 of which was received under the increased limits. Taking into  
5 account the new opposition personal funds amount (\$3,000,000), the Hyer campaign  
6 determined that the new proportionality provision amount was \$3,300,000, calculated as  
7 follows:

$$8 \quad 1.10 \times \$3,000,000 = \$3,300,000$$

9 Accordingly, the Hyer campaign determined that it could receive \$2,550,000 (\$3,300,000  
10 limit - \$750,000 already received) in contributions under the increased limit without  
11 violating the proportionality provision.

12 The remaining months of the primary campaign were brutal. As the primary  
13 election day neared, polls showed Miller and Hyer in a statistical dead heat. On June 1,  
14 2004, Miller received 47% of the vote, Hyer received 43% of the vote, and, despite the  
15 fact that he withdrew from the race more than five months before the primary election,  
16 10% of New Franklin's Democratic primary voters wrote in Frank Rogers name.

17 Because neither Miller nor Hyer received 50% or more of the vote, New Franklin law  
18 required that a run-off election be held.

19 The run-off election was scheduled for July 1, 2004. Neither campaign had much  
20 money left at this point because both had spent nearly every available dollar on a last-  
21 minute advertising blitz. The Miller campaign, however, was in a slightly better position  
22 than the Hyer campaign. Whereas Hyer's authorized committee had only \$25,000 cash  
23 on hand, Miller's authorized committee had \$75,000. Both candidates wondered whether

1 they were permitted to use any of these funds for the run-off election, though, considering  
2 that they were raised in the primary election cycle under the increased contribution limits.  
3 They turned to the definition of "election cycle" at 11 CFR 400.2, however, and  
4 determined that a run-off election was considered to be an extension of the election cycle  
5 containing the election that necessitated the run-off election. Thus, the Miller and Hyer  
6 campaigns were permitted to use the funds remaining from the primary election for the  
7 July 1, 2004, run-off election because the July 1, 2004, run-off was considered to be part  
8 of the June 1, 2004, primary election cycle.

9 On July 1, 2004, Arlene Miller won the run-off election and prepared to face off  
10 against James Rockford in the general election. Rockford ran unopposed in the  
11 Republican primary and managed to secure the Republican Party's nomination without  
12 spending more than \$1 million of his personal funds. After winning the Republican  
13 endorsement, Rockford's authorized committee refunded the remaining \$49 million to  
14 the candidate. (His contribution on December 15<sup>th</sup> of \$1 million was for the general  
15 election.) Miller was not in such an advantageous position. Unfortunately for Miller, her  
16 authorized committee was completely out of cash by the time the run-off election ended.

17

### 18 General Election Campaign

19 The general election cycle got off to a raucous start. On July 2, 2004, Rockford  
20 used his own funds to purchase \$20 million in air time, locking up key commercial slots  
21 in every major media market in the state through Labor Day. As required by 11 CFR  
22 400.21, within 24 hours of executing the air time contract, Rockford filed an initial  
23 notification of expenditures from personal funds on FEC Form 10. He filed the original

1 form with the Secretary of the Senate and faxed copies to the Commission and the Miller  
2 campaign.

3 When Miller received Rockford's initial notification on July 3, 2004, she  
4 scrambled to determine the opposition personal funds amount, under 11 CFR 400.10, and  
5 the increased contribution and party expenditure limits under 11 CFR 400.40.

6

7 Reporting of gross receipts as of December 31, 2003

8 On January 31, 2004, the principal campaign committees of Arlene Miller, and  
9 Jim Hyer, filed the report required under 11 CFR 104.19(b)(2) disclosing gross receipts  
10 as of December 31, 2003. Frank Rogers' principal campaign committee did not have to  
11 file a report because he had withdrawn from the election.

12 Arlene Miller's principal campaign committee reported that it had \$6 million in  
13 gross receipts that could be expended for the primary. That \$6 million included her  
14 \$3million contribution from personal funds. The committee also reported that it had \$2  
15 million in gross receipts that could be spent on the general election. This amount came  
16 from contributions it had received under the applicable limit that had been designated for  
17 the general election. Miller did not make any contribution from personal funds for the  
18 general election.

19 Jim Hyer's principal campaign committee disclosed that it had \$1.2 million in  
20 gross receipts that could be spent for the primary. He did not make any contribution from  
21 personal funds. Additionally, the committee reported that it had no gross receipts for the  
22 general election.

1 James Rockford was a candidate for the Republican nomination for the Senate.  
2 His principal campaign committee was also required to file this report. It disclosed that it  
3 had \$50.3 million in gross receipts that could be spent on the primary including a \$50  
4 million contribution from Rockford's personal funds. The committee also reported that it  
5 had \$1 million in gross receipts for the general election, all of which was a contribution  
6 from Rockford's personal funds.

7  
8 Calculating the opposition personal funds amount for the Miller campaign

9 Given that the date of computation was on or after December 31 of the year  
10 preceding the year in which the general election was to be held, the applicable formula  
11 was the one outlined in 11 CFR 400.10(a)(3) ( $a - b - ((e - f) \div 2)$ ), where:

- 12 (a) represented the greatest aggregate amount of expenditures from personal  
13 funds made by Rockford in the general election (\$20 million);  
14 (b) represented the greatest amount of expenditures from personal funds made by  
15 Miller in the general election (\$0);  
16 (e) represented the aggregate amount of gross receipts of Miller's authorized  
17 committee (\$2 million), minus any contributions by Miller from personal  
18 funds (Note: this amount is \$0, because the \$3 million Miller contributed to  
19 her authorized committee on April 5, 2003 was made in connection with the  
20 primary and entirely spent), during any election cycle that may be expended in  
21 connection with the general election, as determined on December 31, 2003;  
22 and

1 (f) represented the aggregate amount of gross receipts of Rockford's authorized  
2 committee (\$1.1 million), minus any contributions by Rockford from personal  
3 funds (\$1 million), during any election cycle that may be expended in  
4 connection with the general election, as determined on December 31, 2003.

5 Miller determined the value of each variable as follows:

6 (a) = \$20,000,000

7 (b) = \$0.00

8 (e) = \$2,000,000 (\$2,000,000 - \$0)

9 (f) = \$100,000 (\$1,100,000 - \$100,000)

10 Inserting these above values into the applicable formula  $(a - b - ((e - f) \div 2))$ ,

11 Miller determined that the opposition personal funds amount was \$15,750,000, calculated  
12 as follows:

13  $\$20,000,000 - \$0 - ((\$2,000,000 - \$100,000) \div 2) = \$19,050,000$

14 Miller notified her national and State party committees and the Commission of this  
15 calculation, as required by 11 CFR 400.30(b).

16  
17 Calculating the increased contribution and coordinated party expenditure limits for the  
18 Miller campaign

19 Having determined that the opposition personal funds amount was \$19,050,000,  
20 Miller determined that, because the opposition personal funds amount was more than  
21 \$11,420,000 ( $\$0.40 \times 24,800,000$  (VAP of New Franklin) + \$1,500,000), the following  
22 increased contribution and coordinated party expenditure limits applied to her campaign,  
23 under 11 CFR 400.40:

1           Increased contribution limit

2           \$12,000 (6 x \$2,000 (applicable limit))

3           Coordinated party expenditure limit

4           Unlimited

5

6           Calculating the proportionality provision amount for the Miller campaign

7           Miller next calculated the aggregate amount of contributions her authorized  
8 committee would be able to receive before being in danger of exceeding 110 percent of  
9 the opposition personal funds amount (\$19,050,000), under 11 CFR 400.31:

10            $1.10 \times \$19,050,000 = \$20,955,000$

11           Miller started raising money in earnest. By the end of July, her campaign had  
12 managed to raise \$4,500,000, \$2,300,000 of which was received under the increased  
13 limits. In addition, sometime in the middle of the month, someone from the DSCC called  
14 to say they had not made any independent expenditures on her behalf, and wanted to  
15 make coordinated party expenditures to help her out. The DSCC official wanted to know  
16 what sort of help Miller needed most. Miller told the DSCC official that her campaign  
17 desperately needed air time in all of New Franklin's major media markets in order to  
18 compete with Rockford. The DSCC immediately purchased as much air time as was  
19 available between July 15, 2004, and Labor Day. The DSCC notified Miller that the total  
20 cost of the air time that the DSCC purchased on Miller's behalf was \$18,653,000 above  
21 the coordinated party expenditure limit. Although the New Franklin State Democratic  
22 Committee could also spend above the ordinarily-applicable \$1,781,136 coordinated

1 party spending limit, Miller was told they planned to make no coordinated party  
2 expenditures on her behalf.

3 On August 1, 2004, Arlene Miller received a telephone call from Rex Duncan, an  
4 old college friend. Duncan said that he knew Miller was running against a self-financed  
5 candidate and he wanted to send her a contribution but he wasn't sure how much he was  
6 allowed to give. Duncan explained that, since Election Day 2002, he had made a number  
7 of contributions to other Federal candidates. As of August 1, 2004, the aggregate amount  
8 of Duncan's contributions was \$35,500, just \$2,000 shy of the aggregate 2-year limit of  
9 \$37,500 for individual contributions to Federal candidate committees under 2 U.S.C.  
10 441a(a)(3)(A). He asked Miller how much he would be allowed to contribute to her  
11 campaign. Miller informed Duncan that only the first \$2,000 of his contribution to any  
12 one Federal candidate counted against his 2-year aggregate limit, pursuant to 11 CFR  
13 400.42. Any amount above the applicable limit given to candidates running against self-  
14 financing candidates was excluded from the calculation.

15 Nevertheless, Miller suspected that Duncan could not send her \$12,000, however,  
16 because she knew that her campaign was getting close to a crucial limit of its own under  
17 the proportionality provision. Miller told Duncan that she would have to call him back  
18 after she figured out how much of his money her campaign could legally accept. Miller  
19 calculated the aggregate amount of contributions already received and coordinated party  
20 expenditures already made under the increased limits, as follows:

21  $\$2,300,000$  (contributions) +  $\$18,653,000$  (coordinated expenditures) =  $\$20,953,000$

22 After performing these calculations, Miller realized that she could only accept  
23 \$2,000 from Duncan above the applicable limit of \$2,000. This meant that her campaign

1 could accept a check from Duncan in the amount of \$4,000 because, although the first  
2 \$2,000 of his contribution would count against his 2-year aggregate limit of \$37,500, it  
3 would not count against the Miller campaign's proportionality provision limit of  
4 \$20,955,000. Miller called Duncan back and asked him to send her a check for \$4,000.

5 Realizing that, under 11 CFR 400.31(d)(1)(B), Miller and her authorized  
6 committee were required to notify the national and State committees of her political party  
7 and the Commission within 24 hours of the time her campaign reached the  
8 proportionality provision limit, Miller immediately sent electronic mail messages to the  
9 DSCC, the New Franklin Democratic Federal Campaign Committee, and the  
10 Commission. Both committees were now on notice that they could no longer make  
11 coordinated expenditures on behalf of Miller's general election campaign in excess of the  
12 coordinated expenditure limitation in 11 CFR 109.32(b).

13 Miller realized that, unless Rockford spent more of his personal funds on behalf  
14 of his campaign, from that point forward, her campaign could only accept contributions  
15 up to the applicable limit (\$2,000 per individual). In addition, the national party  
16 committee would be prohibited from making any more coordinated expenditures on  
17 behalf of the Miller campaign, although it could still contribute up to \$35,000 directly to  
18 her principal campaign committee.

19 On August 3, 2004, Rockford reluctantly used his personal funds to purchase \$30  
20 million worth of air time between Labor Day and Election Day. Disappointed that he  
21 was again using personal funds, Rockford deemed \$20 million a contribution and \$10  
22 million a personal loan. As required, Rockford filed his original FEC Form 10 with the  
23 Secretary of the Senate and faxed copies of the form to the Commission and the Miller

1 campaign. Miller scrambled to recalculate the new opposition personal funds amount  
2 and increased contribution and coordinated party expenditure limits.

3

4 Calculating the new opposition personal funds amount for the Miller campaign

5 Given that the date of computation (August 4, 2004) was on or after February 1 of  
6 the year in which the general election was to be held, the applicable formula was the one  
7 outlined in 11 CFR 400.10(a)(3) ( $a - b - ((e - f) \div 2)$ ), where:

8 (a) represented the greatest aggregate amount of expenditures from personal

9 funds made by Rockford in the general election (\$51 million);

10 (b) represented the greatest amount of expenditures from personal funds made by

11 Miller in the general election (\$0);

12 (e) represented the aggregate amount of gross receipts of Miller's authorized

13 committee (\$2 million), minus any contributions by Miller from personal

14 funds (\$0), during any election cycle that may be expended in connection with

15 the general election, as determined on December 31, 2003; and

16 (f) represented the aggregate amount of gross receipts of Rockford's authorized

17 committee (\$1.1 million), minus any contributions by Rockford from personal

18 funds (\$1 million), during any election cycle that may be expended in

19 connection with the general election, as determined on December 31, 2003..

20 Miller determined the value of each variable as follows:

21 (a) = \$51,000,000

22 (b) = \$0

23 (e) = \$2,000,000 (\$2,000,000 - \$0)

1 (f) = \$100,000 (\$1,100,000 - \$1,000,000)

2 Plugging these values into the applicable formula, Miller determined that the  
3 opposition personal funds amount was \$45,750,000, calculated as follows:

4 
$$\$51,000,000 - \$0 - ((\$2,000,000 - \$100,000) + 2) = \$50,050,000$$

5 Miller notified her national and State party committees and the Commission of this  
6 calculation, as required by 11 CFR 400.30(b).

7  
8 Calculating the new increased contribution and coordinated party expenditure limits for  
9 the Miller campaign

10 Having determined that the opposition personal funds amount was \$50,050,000,  
11 Miller determined that, because the opposition personal funds amount was more than  
12 \$11,420,000 ( $\$0.40 \times 24,800,000$  (VAP of New Franklin) + \$1,500,000), the following  
13 increased contribution and coordinated party expenditure limits applied to her campaign,  
14 under 11 CFR 400.40:

15 Increased contribution limit – Miller campaign

16 \$12,000 (6 x \$2,000 (applicable limit))

17 Coordinated party expenditure limit – Miller campaign

18 Unlimited

19

1 Calculating the new proportionality provision amount for the Miller campaign

2 Miller next calculated the aggregate amount of contributions her authorized  
3 committee would be able to receive before being in danger of exceeding 110 percent of  
4 the opposition personal funds amount (\$45,750,000), under 11 CFR 400.31:

5  $1.10 \times \$50,050,000 = \$55,055,000$

6 As of August 4, 2004, the aggregate amount of contributions received under the  
7 increased limits (including Duncan's \$2,000) and coordinated party expenditures made  
8 under the increased limits equaled \$20,955,000. Accordingly, Miller's campaign could  
9 now receive an additional \$29,100,000 (\$55,055,000 - \$20,955,000) in contributions  
10 and/or coordinated party expenditures. Miller immediately called her old friend Rex  
11 Duncan and told him that he could now send her campaign an additional \$8,000 if he still  
12 wished to support her. Miller then received a call from a multicandidate political  
13 committee (PAC) wanting to know how much it could contribute to her campaign. She  
14 told the PAC's treasurer that she could accept up to \$5,000, as the PAC's contribution  
15 limits had not been raised.

16

17 Prohibition on redesignation of contributions received above the applicable limit to  
18 another election cycle

19 When the election was over, Miller's authorized committee had \$50,000 in  
20 contributions accepted under the increased limit left in its campaign account. Looking  
21 ahead to the 2010 primary and general elections, Miller wondered whether it would be  
22 possible to redesignate the \$50,000 to a future race, in the manner prescribed under 11  
23 CFR 110.1(b)(5). Miller quickly determined, however, that redesignation of

1 contributions received under the increased limits was strictly prohibited, under 11 CFR  
2 400.52.

3

4 Disposal of excess contributions received above the applicable limit

5 Miller was puzzled about what her authorized committee was supposed to do with  
6 the extra \$50,000 in contributions her committee had received during the general election  
7 cycle. Under 11 CFR 400.51, Miller's authorized committee was required to refund the  
8 excess contributions within 50 days of the general election. Miller's committee refunded  
9 the \$50,000 in excess contributions to those individuals who had made increased  
10 contributions during the general election cycle, being careful to make sure that no  
11 individual contributor received a refund that exceeded the aggregate amount of their  
12 contributions to the Miller campaign, pursuant to 11 CFR 400.53.

13 Miller's committee was required to notify the Commission about the disposition  
14 of these excess contributions under 11 CFR 400.54. Information about the source and  
15 amount of these excess contributions and the manner in which the committee used the  
16 funds had to be included in the first report that was due more than 50 days after the  
17 general election. According to the regulation, the report had to be submitted with  
18 Miller's FEC Form 3. Miller noted that the first report due more than 50 days after the  
19 November 8, 2004, general election was not the post-general report, which was due on  
20 December 8, 2004, but the year-end report, due on January 31, 2005.

1 Repayment of Rockford's personal loan

2 Rockford's authorized committee spent every available dollar on the general  
3 election campaign and, after the election was over, had no funds remaining to repay  
4 Rockford's \$10 million personal loan. Rockford wondered whether his authorized  
5 committee could use funds raised after the date of the election to repay the loan. He  
6 quickly realized, however, that BCRA set a limit on the amount of personal loans that  
7 may be repaid with funds raised after the end of an election cycle. The Commission's  
8 regulation implementing the new limit, 11 CFR 116.11, prohibited Rockford from using  
9 more than \$250,000 in contributions received after the date of the election to pay off his  
10 \$10 million personal loan. This meant, of course, that Rockford would never be able to  
11 recover the remaining \$9,750,000 (\$10,000,000 personal loan - \$250,000 limit) he lent  
12 his authorized committee during the general election cycle.

13  
14 **Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

15 The attached interim final rules will not have a significant economic impact on a  
16 substantial number of small entities. Although the interim final rules add new substantive  
17 provisions to the current regulations, those provisions, which are mandated by BCRA,  
18 generally represent a relaxation of current limitations on contributions to candidates for  
19 Federal office in certain, specified circumstances. Therefore, the attached interim final  
20 rules will not have a significant economic impact on a substantial number of small  
21 entities.

- 1 **List of Subjects**
- 2 **11 CFR Part 100**
- 3 Elections.
- 4 **11 CFR Part 101**
- 5 Political candidates, Reporting and recordkeeping requirements.
- 6 **11 CFR Part 104**
- 7 Campaign funds, Political committees and parties, Reporting and recordkeeping
- 8 requirements.
- 9 **11 CFR Part 110**
- 10 Campaign funds, Political committees and parties.
- 11 **11 CFR Part 116**
- 12 Administrative practice and procedure, Business and industry, Credit, Elections,
- 13 Political candidates, Political committees and parties.
- 14 **11 CFR Part 400**
- 15 Campaign funds, Elections, Political candidates, Political committees and parties,
- 16 Reporting and recordkeeping requirements.
- 17 **11 CFR Part 9035**
- 18 Campaign funds, Reporting and recordkeeping requirements.