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CHAPTER IV

MISCELLANEOUS PROVISIONS

This Chapter contains certain provisions of the Act which have general applicability or do not specifically fit into any other Chapter.

A. Statute of limitations (§406 of the Act)

1. No person shall be prosecuted, tried or punished for any violation of the Act or of those sections of the Federal Criminal Code which are the responsibility of the Commission (see section III.B supra),

UNLESS the indictment is found or the information is instituted within 3 years after the date of the violation.

2. The 3-year statute of limitations applies to violations committed before, on, or after the effective date of the Act.
3. No criminal proceeding may be instituted against any person for any act or omission which was a violation of the Act or of those provisions of the Federal Criminal Code which place limitations on contributions and expenditures by candidates, individuals, political committees, national banks, corporations, labor organizations, government contractors, or agents of foreign principals (18 U.S.C. §§608, 610, 611 and 613), as these were in effect prior to the effective date of the 1974 Amendments (January 1, 1975), if such act or omission does not constitute a violation of the Act and the above provisions of the Federal Criminal Code as amended by the 1974 Amendments.



[IV.A: Statute of limitations]

4. This statute of limitations does not affect any proceeding pending in any court of the United States on January 1, 1975.

B. Prohibition of franked solicitations (§319 of the Act)

1. No Senator, Representative, Resident Commissioner, or Delegate may make any solicitations of funds by a mailing under the frank.
2. Violation of this prohibition may result in a fine of not more than \$1,000 or imprisonment for not more than one year or both and if the punishment inflicted as a result of conviction does not include imprisonment, then the conviction will be deemed a misdemeanor conviction.

Comment: The types of mail which may be sent under the privilege of the frank are set out in 39 U.S.C. §3210. The costs of preparing and mailing any item which may legally be sent under the frank do not constitute contributions or expenditures. See section I.A.12.d.(6) supra.

C. Prohibition of acceptance of excessive honorariums (18 U.S.C. §616)

See section I.B.13 supra.

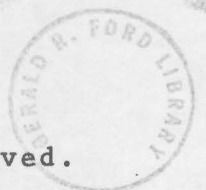
D. Use of excess campaign contributions and non-campaign contributions (§318 of the Act)

See section II.D.6 supra.

E. Use of communications media and campaign advertising

1. Repeal of "Campaign Communications Reform Act" (§205 of the 1974 Amendments)

The 1974 Amendments repealed the "Campaign Communications Reform Act" (Title I of the 1971 Act), which limited the expenditures which a candidate could make for use of communications media.



Chapter IV: Miscellaneous Provisions

[IV.E.2.a: Use of broadcasting stations (equal time)]

However, certain statutory provisions affecting a candidate's use of the media remain effective.

2. Broadcasting stations (47 U.S.C. §§315, 399)

a. Equal time

A broadcaster (including a community antenna television system) who permits any legally qualified candidate to use a broadcasting station must afford equal opportunities for all other legally qualified candidates for the same office to use the broadcasting station.

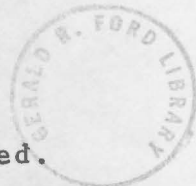
EXCEPTION

The following appearances on the media by a legally qualified candidate do not require the broadcaster to afford equal opportunities for use of the broadcasting station to all other legally qualified candidates for office:

- (1) appearance on a bona fide newscast;
- (2) appearance on a bona fide news interview;
- (3) appearance on a bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary; or
- (4) on-the-spot coverage of bona fide news events (including, but not limited to, political conventions and activities incidental thereto).

b. Rates

The charges made for the use of any broadcasting station (including a community



Chapter IV: Miscellaneous Provisions

[IV.E.2.b: Use of broadcasting stations (rates)]

antenna television system) by a legally qualified candidate for public office in connection with his campaign for nomination for election, or election, to such office shall not exceed

- (1) during the forty-five days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and
- (2) at any other time, the charges made for comparable use of such station by other users of the station.

c. Noncommercial educational broadcasting stations (47 U.S.C. §399)

No noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for political office. Such stations must retain for a 60-day period an audio recording of each broadcast of any program in which any issue of public importance is discussed.

d. Regulations

The Federal Communications Commission is charged with the duty of promulgating rules and regulations to carry out the above provisions of this section V.E. These regulations may be found in 47 CFR (Code of Federal Regulations) §§73.120, 73.290, 73.590 and 73.657.





[IV.E.3: Campaign advertising]

3. Campaign advertising (§305 of the Act)

a. Charges for newspaper or magazine advertising

No person who sells space in a newspaper or magazine to a candidate, or to the agent of a candidate, for use in connection with such candidate's campaign, may charge any amount for such space which exceeds the amount charged for comparable use of such space for other purposes.

b. Notice on solicitation by political committees

Each political committee must include on the face or front page of all literature and advertisements soliciting contributions the following notice:

"A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C."

Comment: Clarification should be sought from the Federal Election Commission on the question of whether this notice must appear on a television or radio advertisement soliciting contributions or only on printed solicitations.

c. Penalties

The penalties for violation of this provision are the same as the penalties for violation of the prohibition of franked solicitations described in section IV.B supra.

Chapter IV: Miscellaneous Provisions

[IV.F: Notice on solicitations by unauthorized committees]

F. Notice required on solicitations by unauthorized committees (2 U.S.C. §432)

1. Notice required

Any political committee which solicits or receives contributions or makes expenditures on behalf of any candidate that is not authorized in writing by such candidate to do so shall include a notice on the face or front page of all literature and advertisements published in connection with such candidate's campaign by such committee or on its behalf stating that the committee is not authorized by such candidate and that such candidate is not responsible for the activities of such committee.

2. Penalties

The penalties for violation of this provision are the same as the penalties for violation of the prohibition of franked solicitations described in section IV.B supra.

G. Repeal of tax deduction for advertising in a national political convention program (§406 of the Act)

The 1974 Amendments repealed §276(c) of the Internal Revenue Code, which allowed a tax deduction for advertising in a convention program of the national convention of a political party.

H. Prohibition of use of Economic Opportunity Act funds for election activities (2 U.S.C. §452)

No funds appropriated to carry out the Economic Opportunity Act of 1964 may be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or any voter registration activity, or to pay the salary of any officer or



Chapter IV: Miscellaneous Provisions

[IV.H: Use of certain funds for election activities]

employee of the Office of Economic Opportunity who, in his official capacity as such an officer or employee, engages in any such activity.

I. Extension of credit by regulated industries  
(2 U.S.C. §451)

The Civil Aeronautics Board, the Federal Communications Commission, and the Interstate Commerce Commission have each promulgated regulations with respect to the extension of credit, without security, by any person regulated by these agencies to any candidate for Federal office or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office. These regulations may be found in 14 CFR (Code of Federal Regulations) Part 374a (Civil Aeronautics Board), 47 CFR Part 64, Subpart H (Federal Communications Commission) and 49 CFR Part 1325 (Interstate Commerce Commission).

J. Political activity of Federal employees (5 U.S.C. §§7321-7327)

1. Coercion of political contribution or participation

The President has the power to prescribe rules which shall provide that an employee in an Executive agency or in the competitive civil service

- a. is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so; and
- b. may not use his official authority or influence to coerce the political action of a person or body.



Chapter IV: Miscellaneous Provisions

[IV.J.2: Political activity of Federal employees (gift for political purpose)]

2. Gift for political purpose

a. Restriction

An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes.

b. Penalty

An employee who violates this restriction shall be removed from the civil service.

3. Influencing elections; participation in political management or campaigns

a. Restrictions

An employee in an Executive agency or an individual employed by the government of the District of Columbia (other than an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization and other than an employee whom the Civil Service Commission has by regulation permitted to take an active part in political management and political campaigns involving the locality in which he lives) may not

- (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or



Chapter IV: Miscellaneous Provisions

[IV.J.3.a: Political activity of Federal employees (participation in political management or campaigns)]

- (2) take an active part in political management or in political campaigns.

(a) EXCEPTION:

The following individuals may take an active part in political management or in political campaigns:

an employee paid from the appropriation for the office of President;

the head or the assistant head of an Executive department or military department;

an employee appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws;

the Commissioner of the District of Columbia;

the Recorder of Deeds of the District of Columbia; and

an employee of The Alaska Railroad who resides in a municipality on the line of the railroad with respect to political activities involving that municipality.

(b) EXCEPTION (non-partisan activity):

Section IV.J.3.a.(2) does not prohibit political activity in connection with

an election and the preceding campaign if none of the candidates is to be nominated



Chapter IV: Miscellaneous Provisions

[IV.J.3.a: Political activity of Federal employees (restrictions on participation in political management or campaigns--exceptions)]

or elected at that election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or

a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States (including questions relating to constitutional amendments, referendums, approval of municipal ordinances and other questions of a similar character).

b. Right to vote

Nothing in this section IV.J.3 restricts the right of an individual to vote as he chooses and to express his opinion on political subjects and candidates.

c. Penalty

An employee or individual who violates this section IV.J.3 may be removed from his position.

4. Regulations

Regulations relating to restrictions on political activity by Federal employees may be found in 5 CFR (Code of Federal Regulations) Part 733.

K. Political activity of certain State and local officers and employees (5 U.S.C. §§1501-1503)

The 1974 Amendments eliminate the Federal prohibition barring a State or local officer or



Chapter IV: Miscellaneous Provisions

[IV.K: Political activity of certain State and local officers and employees]

employee (defined as an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency) from taking an active part in political management or in political campaigns. Such employees are now free to participate in political management or in political campaigns (but are not all free to run for elective office) UNLESS there is a State law which prohibits such activities.

Such State and local officers and employees are still prohibited from

1. using their official authority or influence for the purpose of interfering with, or affecting the result of, an election or a nomination for office;
2. directly or indirectly coercing, attempting to coerce, commanding or advising another such State or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose; or
3. being a candidate for elective office.

a. EXCEPTION:

The prohibition barring a State or local officer or employee from being a candidate for elective office does not apply to

- (1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;
- (2) the mayor of a city;
- (3) a duly elected head of an executive department of a State or municipality who is not classified



Chapter IV: Miscellaneous Provisions

[IV.K: Political activity of certain State and local officers and employees]

under a State or municipal merit or civil-service system; or

(4) an individual holding elective office.

b. EXCEPTION:

The prohibition barring State or local officers and employees from being a candidate for elective office does not prevent such a State or local officer or employee from being a candidate for elective office in an election in which all candidates are non-partisan. All candidates are non-partisan if none of them is to be nominated or elected as the representative of a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

Comment: Legislative history suggests that the changes in these provisions made by the 1974 Amendments were designed to open up the political process to greater numbers of people. The Act was not, however, intended to preempt or supersede any State law regulating the political activities of State and local officers and employees. It should be noted that the exceptions to the prohibition of being a candidate for elective office allow the Governor of a State and certain other specified individuals to be a candidate for Federal office without resigning from their respective offices.

L. Political activity of patriotic societies  
(36 U.S.C.)

Patriotic societies listed in Title 36 U.S.C., such as the Boy Scouts of America, are prohibited from contributing to or otherwise supporting or assisting any political party or candidate for elective public office.





Chapter IV: Miscellaneous Provisions

[IV.M: Judicial review of constitutionality of the Act]

M. Judicial review of constitutionality of the Act  
(§315 of the Act)

1. The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President of the United States may institute an action in the appropriate Federal district court, including an action for declaratory judgment, to construe the constitutionality of any provision of the Act or of those provisions of the Federal Criminal Code listed in section III.B supra.
2. All such constitutional questions shall be certified immediately by the district court to the appropriate United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.
3. The decision of the United States court of appeals shall be reviewable by direct appeal to the Supreme Court of the United States. This appeal must be brought within 20 days after the decision of the court of appeals.
4. The courts of appeals and the Supreme Court shall expedite as much as possible the disposition of such constitutional questions.

Comment: This provision is designed to provide expeditious review of constitutional questions.

N. Effect of partial invalidity of the Act (§404 of the Act)

1. A court's determination that part of the Act is invalid will not affect the validity of the other portions of the Act.
2. The determination that a part of the Act is invalid when applied to a certain person or circumstance will not mean that it is invalid when applied to any other person or circumstances.



[IV.0: Effect on State law]

O. Effect of Act on State law (§104 of the 1974 Amendments and §403 of the Act)

The provisions of the Act, and of the rules prescribed under the Act, supersede and preempt any provision of State law with respect to election to Federal office.

Comment: One supporter of the Act has said that the pre-emption of State law by the Act "will insure that election laws are consistent and uniform and that candidates for Federal office do not bear the burden of complying with several different sets of laws and regulations."

P. Repeal of Federal Corrupt Practices Act (§405 of the Act)

The Federal Corrupt Practices Act has been repealed.





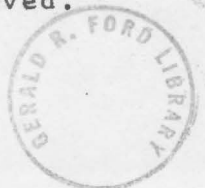
OUTLINE OF CHAPTER V

PUBLIC FINANCING OF PRESIDENTIAL  
PRIMARY AND GENERAL ELECTION CAMPAIGNS  
AND OF POLITICAL PARTY NATIONAL  
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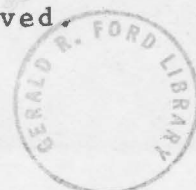


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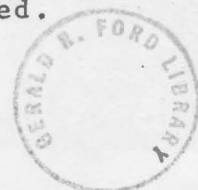
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## CHAPTER V

### PUBLIC FINANCING OF PRESIDENTIAL PRIMARY AND GENERAL ELECTION CAMPAIGNS AND OF POLITICAL PARTY NATIONAL NOMINATING CONVENTIONS

This chapter deals with the creation and maintenance of the Presidential Election Campaign Fund ("the Fund") as well as the various uses of the money in the Fund. The Fund receives all of its money from individuals who designate on their Federal income tax returns that \$1.00 (\$2.00 for persons filing joint returns) of their Federal income tax should go into the Fund. This designation is commonly referred to as the check off system.

The money in the Fund is to be used for the total financing of candidates' campaigns in the Presidential general election, if the candidates are eligible and elect to use public financing, as well as the total financing of the national nominating conventions of political parties, if the parties are eligible and elect to use public financing. A program of matching payments for Presidential candidates' primary campaign expenses has been established and will be funded by the Presidential Election Campaign Fund.

The entire public financing program is codified in Chapters 95 and 96 of the Internal Revenue Code.

A. Establishment and maintenance of the Presidential Election Campaign Fund by payments from taxpayers  
(26 U.S.C. § 006)

1. There is established on the books of the Treasury of the United States a special fund known as the "Presidential Election Campaign Fund". The Secretary of the Treasury shall from time to time transfer to the Presidential Election Campaign Fund an amount not in excess of the sum of the amounts designated (subsequent to the previous Presidential election) to the Fund by individuals under § 6096 of the Internal Revenue Code (the so-called check off system).



[V.A: Establishment and maintenance]

2. There is appropriated to the Fund for each fiscal year, out of amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to the amounts so designated during each fiscal year, which shall remain available to the fund without fiscal year limitations.
3. In addition, there is appropriated to the Fund an amount equal to the sum of the amounts designated (in their income tax returns) by individuals to the Presidential Election Campaign Fund before January 1, 1975, not otherwise taken into account by this section.
4. If, after a Presidential election and after all eligible candidates have been paid the amount which they are entitled to receive under this Chapter, there are moneys remaining in the Fund, the Secretary shall transfer the moneys so remaining to the general fund of the Treasury.

Comment: The Presidential Election Campaign Fund was in existence prior to the enactment of the 1974 Amendments to the 1971 Act. The proceeds in the fund prior to January 1, 1975 will be carried forward and commingled with any funds accumulated after January 1, 1975 by means of the taxpayer checkoff system. The Presidential Election Campaign Fund is the only source of public financing money. Excess money in the Fund may not be carried over from one Presidential election to the next. If money remains in the Fund after all obligations with respect to Presidential primary and general elections and national nominating conventions have been met, then the excess money must be transferred from the Presidential Election Campaign Fund to the general fund of the Treasury. If, on the other hand, the Fund is unable to cover all of the needs of the Presidential primary and general elections and the nominating conventions, the nominating conventions receive the initial funding. After the complete funding of the nominating conventions, the Presidential general election is next in line for funding. If any money remains in the Fund, it will be applied to the



[V.A: Establishment and maintenance]

Presidential primary matching payment program. Senator Cannon in the floor debate in the Senate on October 8, 1974 stated that the Presidential general election has first priority followed by the nominating conventions and then the Presidential primaries. This opinion by Senator Cannon appears to conflict directly with the clear statutory language and should not be followed. The Federal Election Commission will have to promulgate regulations spelling out the procedures for the division of the Fund when the money in the Fund fails to cover all needs.

B. Public financing of Presidential general election

1. Definitions (26 U.S.C. §9002)

- a. Authorized committee means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Federal Election Commission. Any withdrawal of authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

Comment: The intent of Congress is to permit authorized committees as well as the principal campaign committee of the candidate to make expenditures on behalf of the candidate.

- b. Candidate means, with respect to any Presidential election, an individual who
- (1) has been nominated for election to the office of President of the United States or the office of Vice President of the United States by a major party, or



Chapter V: Public Financing--Presidential General Election

[V.B.1.b: Definitions (candidate)]

- (2) has qualified to have his name on the election ballot (or to have the names of electors pledged to him on the election ballot), as the candidate of a political party for election to either such office, in 10 or more States.
- (3) For purposes of the definitions of "major party" and "minor party" (see sections V.B.1.e and f infra) and for purposes of the entitlements of eligible candidates of minor parties for payments as provided for in section V.B.3 infra, candidate means, with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.
- c. Eligible candidates mean the candidates of a political party for President and Vice President of the United States who have met all applicable conditions for eligibility to receive payments set forth in section V.B.2 infra.
- d. Fund means the Presidential Election Campaign Fund.
- e. Major party means, with respect to any Presidential election, a political party whose candidate for the office of President in the preceding Presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.
- f. Minor party means, with respect to any Presidential election, a political party



Chapter V: Public Financing--Presidential General Election

[V.B.1.f: Definitions (minor party)]

whose candidate for the office of President in the preceding Presidential election received, as the candidate of such party, 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office.

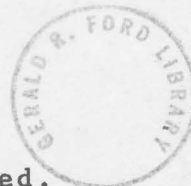
- g. New party means, with respect to any Presidential election, a political party which is neither a major party nor a minor party.

Comment: A party whose candidate for the office of President in the preceding Presidential election received, as the candidate of that party, less than 5 percent of the total popular votes received by all candidates for President is treated as a new party, even though, in fact, it may not be new.

- h. Political committee means any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to Federal, State, or local elective public office.

Comment: This definition of political committee is different from the definitions of political committee for purposes of the Federal Criminal Code (section I.A.4 supra) and the reporting and disclosure requirements (section II. A.4 supra). This Chapter's definition of political committee does not contain a \$1,000 minimum and does include committees which support candidates for State and local public elective office as well as Federal office.

- i. Presidential election means the election of Presidential and Vice Presidential electors.
- j. Qualified campaign expense means an expense



[V.B.1.j: Definitions (qualified campaign expense)]

- (1) incurred
  - (a) by the candidate of a political party for the office of President to further his election to such office or to further the election of the candidate of such political party for the office of Vice President, or both;
  - (b) by the candidate of a political party for the office of Vice President to further his election to such office or to further the election of the candidate of such political party for the office of President, or both;
  - (c) by an authorized committee of the candidates of a political party for the offices of President and Vice President to further the election of either or both of such candidates to such offices;
- (2) incurred within the expenditure report period, or incurred before the beginning of such period to the extent such expense is for property, services, or facilities used during such period; and
- (3) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which such expense is incurred or paid.

An expense shall be considered as incurred by a candidate or an authorized committee if it is incurred by a person authorized by such candidate or such



[V.B.1.j: Definitions (qualified campaign expense)] .

committee, as the case may be, to incur such expense on behalf of such candidate or such committee. If an authorized committee of candidates of a political party for President and Vice President of the United States also incurs expenses to further the election of one or more other individuals to Federal, State, or local elective public office, expenses incurred by such committee which are not specifically to further the election of such other individual or individuals shall be considered as incurred to further the election of such candidates for President and Vice President in such proportion as the Federal Election Commission prescribes by rules and regulations.

Comment: The Federal Election Commission will have to promulgate rules and regulations in order to determine how much will be chargeable to the Presidential candidate if an expenditure is made for the benefit of both the Presidential candidate and other candidates for Federal, State, or local elective office.

k. Expenditure report period means

- (1) in the case of a major party, the period beginning with the first day of September before the election, or if earlier, with the date on which such major party at its national convention nominated its candidate for election to the office of President of the United States, and ending 30 days after the date of the Presidential election;
- (2) in the case of a party which is not a major party, the same period as the expenditure report period of the major party which has the shortest expenditure report period for





Chapter V: Public Financing--Presidential General Election

[V.B.1.k: Definitions (expenditure report period)]

such Presidential election under subparagraph (1).

2. Actions which candidates are required to take in order to become eligible for payments from the Fund (26 U.S.C. §9003)

a. Agreement to general conditions

In order to be eligible to receive any payments from the Presidential Election Campaign Fund, the candidates of a political party in a Presidential general election shall, in writing,

- (1) agree to obtain and furnish to the Commission such evidence as it may request of the qualified campaign expenses of such candidates;
- (2) agree to keep and furnish to the Commission such records and books as it may request; and
- (3) agree to an audit and examination by the Commission, and to make repayments to the Secretary of the Treasury if such repayments are deemed necessary by the Commission after an audit.

Comment: Clarification should be sought from the Federal Election Commission on the question of when a candidate must agree to these general conditions.

b. Certification to the Commission with respect to specific conditions

(1) Major party

In order to be eligible to receive payments from the Presidential Election Campaign Fund, the candidates of a major party in a



Chapter V: Public Financing--Presidential General Election

[V.B.2.b.(1): Candidate's certification to the Commission with respect to specific conditions (major party candidate)]

Presidential general election shall certify to the Commission, under penalty of perjury,

- (a) that such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which they are entitled under section V.B.3 infra;
- (b) that no contributions to defray qualified campaign expenses have been or will be accepted by such candidates or any of their authorized committees EXCEPT to the extent necessary to make up any deficiency in payments received out of the Presidential Election Campaign Fund, said deficiencies being caused by an insufficient amount of money in the Fund to cover the entitlement of all eligible candidates;

Comment: Candidates who elect to use public financing may still receive contributions from private sources in order to insure that they will have funds equal to the maximum amount which they may spend (see section I.C.1.a supra) even if the Fund proves unable to pay them their maximum entitlement. If a candidate raises money to guard against this contingency, and in fact the Fund is able to pay him his maximum entitlement, then the disposition of the excess funds raised privately would presumably be governed by the provision dealing with excess contributions (permitting use of such excess funds (1) to defray expenses of holding office, (2) as charitable contributions or (3) for any lawful purpose; see section II.D.6 supra). Clarification should be sought from the Federal Election Commission on the question of when a candidate will be deemed to know that he will receive his full entitlement and, consequently, when he will be



Chapter V: Public Financing--Presidential General Election

[V.B.2.b.(1): Candidate's certification to the Commission with respect to specific conditions (major party candidate)]

barred from raising funds to guard against the contingency of inadequate money in the Fund. (See section V.B.8 infra.)

- (c) that no contributions to defray expenses which would be qualified campaign expenses but for the fact that incurring such expenses is a violation of any law of the United States or the State in which such expenses have been incurred have been or will be accepted by such candidates or any of their authorized committees.

(2) Minor and new parties

In order to be eligible to receive payment from the Presidential Election Campaign Fund, the candidates of minor and new parties shall certify to the Commission, under penalty of perjury,

- (a) that such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which eligible candidates of a major party are entitled under section V.B.3 infra, and
- (b) that such candidates and their authorized committees will accept and expend or retain contributions to defray qualified campaign expenses only to the extent that the qualified campaign expenses incurred by such candidates and their authorized committees as certified under section V.B. 2.b.(2)(a) supra exceed the



Chapter V: Public Financing--Presidential General Election

[V.B.2.b.(2): Candidate's certification to the Commission with respect to specific conditions (minor and new parties)]

aggregate payment received by such candidates out of the Fund.

(3) Time of certification

Certification by both major and minor party candidates shall be made within the time prior to the election as the Commission shall prescribe by rules or regulations.

Comment: The Commission will have to set the date for the filing of the certifications by the candidates of all parties. Since the candidates themselves must make the certifications under penalty of perjury, the administration and use of public funds for the payment of a candidate's qualified campaign expenses is very important.

3. Entitlements of eligible candidates to payments from the Fund (26 U.S.C. §9004)

- a. The eligible candidates of each major party in a Presidential general election shall be entitled to equal payments from the Presidential Election Campaign Fund in an amount which, in the aggregate, shall not exceed the applicable expenditure limitations as provided by section I.C.1.a supra. This figure is presently \$20,000,000.00, but it is subject to yearly increases based on a rise in the Consumer Price Index (see section I.C.1.c.(2) supra).
- b. The eligible candidates of a minor party shall be entitled to payments from the Presidential Election Campaign Fund in an amount bearing the same ratio to the amount allowed to a major party as the number of popular votes received by the candidate for President of the minor party in the preceding Presidential election bears to the average number of popular votes received by the candidate



[V.B.3: Entitlement to payments]

for President of the major parties in the preceding Presidential election.

- c. If the candidate of one or more political parties (including a major party) for the office of President was a candidate for such office in the preceding Presidential election and received 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office, such candidate and his running mate for the office of Vice President, upon compliance with the appropriate certification provisions, (see sections V.B.2.a. and b.(2) supra) shall be treated as eligible candidates entitled to payments from the Presidential Election Campaign Fund, in an amount allowed as provided by section V.B.3.b supra, by taking into account all the popular votes received by such candidate for the office of President in the preceding Presidential election. If eligible candidates of a minor party are entitled to payments under this subparagraph, such entitlement shall be reduced by the amount of the entitlement allowed under section V.B.3.b supra.

Comment: This section deals with the situation where candidate John Jones ran in the preceding Presidential election as the candidate of the American Party and received at least 5 percent but less than 25 percent of the popular vote and in the next Presidential election runs as the Presidential candidate of the National Party. John Jones, as the candidate of the National Party, is entitled to payments from the Presidential Election Campaign Fund allowed by the following equation:



Chapter V: Public Financing--Presidential General Election

[V.B.3: Entitlement to payments]

$$\begin{array}{l} \text{amount received} \\ \text{by John Jones} \\ \text{amount received} \\ \text{by major party} \\ \text{candidate} \end{array} = \begin{array}{l} \text{number of popular} \\ \text{votes received by} \\ \text{John Jones in the} \\ \text{preceding Presiden-} \\ \text{tial election as a} \\ \text{candidate of the} \\ \text{American Party} \\ \text{average number of} \\ \text{popular votes re-} \\ \text{ceived by the Presi-} \\ \text{dential candidates of} \\ \text{the major parties in} \\ \text{the preceding Presi-} \\ \text{dential election} \end{array}$$

In other words, this section protects a Presidential candidate who switches parties from one election to the next. However, if the National Party's candidate would be entitled to payments from the Fund as a minor party candidate even if John Jones were not the National Party's candidate, then the John Jones' entitlement would be reduced by the amount that the National Party candidate would have received by virtue of the fact that the National Party ran a candidate in the preceding election who received more than 5 percent but less than 25 percent of the popular votes. In other words, John Jones as the candidate of the National Party does not get the benefit of his own entitlement (by virtue of his performance in the preceding election) and the entitlement of the National Party candidate (by virtue of the performance of the National Party's former candidate in the preceding election).

- d. The eligible candidates of a minor party or a new party in a Presidential election, whose candidate for President in such election receives, as such candidate, 5 percent or more of the total number of popular votes cast for the office of President in such election shall be entitled to payment from the Presidential Election Campaign Fund equal in the aggregate to an amount which bears the same ratio to the amount allowed under section V.B.3.a supra for



[V.B.3: Entitlement to payments]

a major party as the number of popular votes received by such candidate in such election bears to the average number of popular votes received in such election by the candidates for President of the major parties. In the case of eligible candidates entitled to payments under sections V.B.3.b and c supra, the amount allowable under this paragraph shall be limited to the amount, if any, by which the entitlement under the preceding sentence exceeds the amount of the entitlement under sections V.B.3.b and c supra.

Comment: This section provides that a new party which did not have a candidate in the preceding Presidential election or else ran a candidate who received less than 5 percent of the popular vote in the preceding Presidential election. The candidate of this new party is not entitled to receive any payments from the Fund in the next Presidential election (unless, of course, the new party nominates a candidate who ran in the preceding election as the candidate of another party and received more than 5 percent of the popular vote). However, the new party candidate is entitled to receive payments as allowed by the previously discussed ratios to cover his qualified campaign expenses if he receives in the present election 5 percent or more of the popular vote.

For example, the Blue Party's candidate in the 1972 Presidential election did not receive 5 percent of the popular vote. The Blue Party's 1976 candidate is not entitled to receive funds from the Presidential Election Campaign Fund prior to the 1976 Presidential general election. However, if the Blue Party's candidate receives 5 percent or more of the popular vote in the 1976 Presidential election, he may receive funds, provided such funds are available, from the Presidential Election Campaign Fund in order to repay his qualified campaign expenses. The formula for computing the amount allowed to the Blue Party's candidate is the following equation:

Chapter V: Public Financing--Presidential General Election

[V.B.3: Entitlement to payments]

$$\begin{array}{l} \text{amount received by} \\ \text{the candidate of} \\ \text{the Blue Party in} \\ \text{the 1976 Presiden-} \\ \text{tial election} \\ \hline \text{amount received} \\ \text{by the candidate} \\ \text{of a major party} \end{array} = \begin{array}{l} \text{number of popular} \\ \text{votes received by} \\ \text{the candidate of} \\ \text{the Blue Party in} \\ \text{the 1976 Presiden-} \\ \text{tial election} \\ \hline \text{average number of} \\ \text{popular votes re-} \\ \text{ceived in 1976 by} \\ \text{the candidates for} \\ \text{President of the} \\ \text{major parties} \end{array}$$

This section also provides for an additional payment from the Fund if a minor party improves its popular vote total. For example, if the Blue Party's candidate received 7% of the popular vote in the 1972 Presidential election, its candidate in the 1976 election would receive a certain sum of money from the Fund prior to the election. This amount is computed by using the above equation and the 1972 figures. If, in the 1976 Presidential election, the Blue Party's candidate improves the percentage of the popular vote received by the Blue Party, the Blue Party's candidate will be entitled to receive further funds after the 1976 election. These funds are computed by using the above equation and the 1976 figures. The Blue Party's candidate is not, however, permitted to a double payment. In other words, if the Blue Party's candidate, because of the Blue Party's performance in 1972, was entitled to a \$2,000,000 payment prior to the 1976 Presidential election and, as a result of the Blue Party's showing in 1976, was entitled to \$3,000,000 after the 1976 election, the Blue Party's candidate must subtract what he had received prior to the election (\$2,000,000) from what he will now be entitled to receive based upon the 1976 showing of the Blue Party (\$3,000,000). Therefore, the Blue Party's candidate would be entitled to an additional payment of \$1,000,000 to use in order to pay his 1976 qualified campaign expenses.

- e. Limitations on payments from the Fund to minor or new party Presidential candidates
  - (1) The aggregate payments to which the eligible candidates of a political





[V.B.3: Entitlement to payments]

party shall be entitled under sections b, c and d supra, with respect to a Presidential election, shall not exceed an amount equal to the lower of

- (a) the amount of the qualified campaign expenses incurred by such eligible candidates and their authorized committees, reduced by the amount of contributions to defray qualified campaign expenses received and expended or retained by such eligible candidates and such committees, or
- (b) the aggregate payments to which the eligible candidates of a major party are entitled reduced by the amount of contributions described in section V.B.3.e.(1)(a) supra.

Comment: This section eliminates the possibility that the candidate of a minor party or new party will receive funds from the Presidential Election Campaign Fund which are in excess of the qualified campaign expenses incurred by the minor or new party's candidate in the Presidential general election. For example, the Green Party's candidate in the 1976 election is entitled to a payment of \$4,000,000 from the Fund because of its showing in the 1972 election. The Green Party receives this payment prior to the election. During the 1976 campaign the Green Party's candidate incurs qualified campaign expenses in the amount of \$4,000,000. The results of the popular vote of the 1976 election show that the Green Party has improved its position and that its candidate is entitled to \$5,000,000 when the 1976 figures are put into the equation (see section V.B.3.d supra). Without the limitation outlined in this section the Green Party's candidate would receive a windfall of \$1,000,000 from the Fund. However, the limitation prohibits such a windfall. The Green Party's candidate can only receive an



[V.B.3: Entitlement to payments]

amount which shall not exceed the lower of (a) the amount of qualified campaign expenses incurred by the Green Party's candidate (\$4,000,000) reduced by the amount of contributions which the Green Party's candidate had to raise to defray qualified campaign expenses (zero because the Green Party's candidate received \$4,000,000 from the Fund prior to the 1976 election) which leaves a figure of \$4,000,000 or (b) the aggregate payments to which a major party candidate was entitled prior to the 1976 election (hypothetically \$20,000,000) reduced by the amount of contributions received by the Green Party's candidate during the 1976 campaign (zero) which leaves a figure of \$20,000,000. Therefore, the lower figure is \$4,000,000. The Green Party's candidate has already received \$4,000,000 and, therefore, is not entitled to another \$1,000,000 payment from the Fund.

4. Restrictions on the use by eligible candidates of the payments received from the Fund (26 U.S.C. §9004)

Eligible candidates of a political party shall be entitled to payments from the Presidential Election Campaign Fund

- a. to defray qualified campaign expenses incurred by such eligible candidates or their authorized committees; or
- b. to repay loans the proceeds of which were used to defray such qualified campaign expenses, or otherwise restore funds (other than contributions to defray qualified campaign expenses received and expended by such candidates or committees) used to defray qualified campaign expenses.

Comment: A candidate may not use payments from the Fund to repay contributors the amounts they gave to his campaign, but he may use such payments to repay loans. See section V.B.8.d infra.

5. Certification by the Federal Election Commission (26 U.S.C. §9005)



Chapter V: Public Financing--Presidential General Election

[V.B.5: Certification by the Commission]

a. Initial Certification

No later than 10 days after candidates for President and Vice President have met all conditions for eligibility, the Commission shall certify to the Secretary of the Treasury for payment of the full amounts the candidates are entitled to receive.

b. Finality

Initial certification by the Commission under section V.B.5.a supra and all determinations made by it under this Chapter, shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission and judicial review.

6. Actual payment to the candidate (26 U.S.C. §9006)

- a. Upon receipt of a certification from the Commission for payment to the eligible candidates of a political party, the Secretary of the Treasury shall pay to such candidates out of the Fund the amount certified by the Commission. Amounts paid to any such candidates shall be under the control of such candidates.

Comment: Such payments must be deposited in the campaign depository of the candidate's principal campaign committee (see section II.D.3.c.(2) supra).

b. Insufficient money in Fund

- (1) If at the time of a certification by the Commission for payment to the eligible candidates of a political party, the Secretary or his delegate determines that the money



[V.B.6.b: Actual payment (insufficient money in the Fund)]

in the Fund is not, or may not be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he shall withhold from such payment such amount as he determines to be necessary to assure that the eligible candidates of each political party will receive their pro rata share of their full entitlement.

- (2) Amounts withheld by reason of the preceding sentence shall be paid when the Secretary or his delegate determines that there is sufficient money in the fund to pay such amounts, or portions thereof, to all eligible candidates from whom amounts have been withheld, but, if there is not sufficient money in the fund to satisfy the full entitlement of the eligible candidates of all political parties, the amounts so withheld shall be paid in such manner that the eligible candidates of each political party receive their pro rata share of their full entitlement.

7. Audits by the Commission (26 U.S.C. §9007(a))

After each Presidential election, the Commission shall examine and audit the qualified campaign expenses of the candidates of each political party for President and Vice President.

8. Repayments to the Secretary of the Treasury by eligible candidate after the Commission's audit (26 U.S.C. §§9007(b)-(d))

- a. If the Commission determines that any portion of the payments made to eligible candidates of a political party



Chapter V: Public Financing--Presidential General Election

[V.B.8: Repayments to the Secretary of Treasury]

under section V.B.6 supra was in excess of the aggregate payments to which candidates were entitled under section V.B.3 supra, it shall so notify such candidates and such candidates shall pay to the Secretary of the Treasury an amount equal to such portion.

Comment: This section provides for repayment of excess payments.

- b. If the Commission determines that the eligible candidates of a political party and their authorized committees incurred qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party were entitled under section V.B.3 supra, it shall notify such candidates of the amount of such excess and such candidates shall pay to the Secretary of the Treasury an amount equal to such amount.

Comment: This section provides for repayment of any excess qualified campaign expenses.

- c. If the Commission determines that the eligible candidates of a major party or any authorized committee of such candidate accepted contributions (other than contributions to make up deficiencies in payments out of the Fund on account of an insufficiency of money in the Fund) to defray qualified campaign expenses (other than qualified campaign expenses with respect to which repayment is required under section V.B.8.b supra) it shall notify such candidates of the amount of the contributions so accepted, and such candidates shall pay to the Secretary of the Treasury an amount equal to such amount.

Comment: This section deals with a major party candidate who has elected to finance his Presidential general election



Chapter V: Public Financing--Presidential General Election

[V.B.8: Repayments to the Secretary of Treasury]

campaign by means of public funds from the Presidential Election Campaign Fund. Since the major party candidate has chosen to use public financing, he is entitled to receive the maximum entitlement (presently \$20,000,000) from the Fund, assuming the Fund has enough money to supply funds to all of the Presidential candidates. Therefore, the Presidential candidate of the major party may not accept contributions to defray qualified campaign expenses because these contributions would be in excess of the maximum entitlement which the candidate received from the Fund--which is the same amount as the expenditure limit for a major party candidate, whether or not the major party candidate chose to use public financing. Of course, if the money in the Fund is insufficient to supply the major party candidate his full entitlement, the major party candidate may raise the balance by means of private contributions. The time at which a candidate learns whether he will receive his full entitlement may be significant in determining how much the candidate should spend on fund-raising, i.e., in determining the amount of his fund-raising expenditure exemption (see sections I.A.12.d.(8) and V.B.2.b.(1) supra).

d. If the Commission determines that any amount of any payment made to eligible candidates of a political party under section V.B.6 supra was used for any purpose other than

- (1) to defray the qualified campaign expenses with respect to which such payment was made,
- (2) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used to defray such qualified campaign expenses,

it shall notify such candidates of the amount so used, and such candidates shall pay to the Secretary of the Treasury an amount equal to such amount.



Chapter V: Public Financing--Presidential General Election

[V.B.8: Repayments to the Secretary of Treasury]

Comment: This section provides for repayment of amounts used for prohibited purposes. See section V.B.4 supra.

- e. No repayment shall be required from the eligible candidates of a political party under this repayment section to the extent that such repayment, when added to other repayments required from such candidates under this repayment section, exceeds the amount of payments received by such candidates under section V.B.3 supra.

Comment: A candidate cannot be required to repay more than he received from the Fund.

- f. No notification shall be made by the Commission under this repayment section with respect to a Presidential election more than 3 years after the day of such election.
- g. All repayments received by the Secretary of the Treasury under this repayment section shall be deposited by him in the general fund of the Treasury.

C. Public financing of national nominating conventions of political parties (26 U.S.C. §9008)

1. Definitions (26 U.S.C. §9002)

The definitions applicable to the public financing of Presidential general elections are also applicable to the public financing of political party national nominating conventions (see section V.B.1 supra).

2. Use of the Presidential Election Campaign Fund by political parties (26 U.S.C. §9008(a))

- a. The Secretary of the Treasury shall maintain in the Fund, in addition to any



[V.C.2: Use of the Fund by political parties]

account which he maintains for Presidential general election campaigns (see section V.B supra), a separate account for the national committee of each major party and minor party.

Comment: There is no provision for financing the national nominating convention of a new party.

- b. The Secretary shall deposit in each such account an amount equal to the amount which each such committee may receive pursuant to section V.C.3 infra (Entitlement to payments from the Fund).
- c. Such deposits shall be drawn from amounts designated by individuals under the checkoff system (see section V.A supra) and shall be made before any transfer is made to any account for any eligible candidate under the Presidential general election entitlement section.

Comment: This section clearly establishes that the nominating conventions have first priority in the distribution of money from the Fund and controverts Senator Cannon's remarks in the Senate floor debate on October 8, 1974. (See section V.A supra.)

3. Entitlement to payments from the Fund  
(26 U.S.C. §9008(b))

a. Major Parties

Subject to the limitations set forth below, the national committee of a major party shall be entitled to payments from the Fund, with respect to any Presidential nominating convention, in amounts which, in the aggregate, shall not exceed \$2,000,000.





Chapter V: Public Financing--National Conventions

[V.C.3.a: Entitlement to payments (major party)]

Comment: Participation in the convention financing program is optional for both major and minor parties. If the national committee of a major party chooses to participate and qualifies for payments, it will be limited to payments aggregating \$2,000,000, subject to an increase based on cost-of-living adjustments (see section V.C.3.e infra). If the national committee chooses not to participate in the financing program, it still will be subject to the \$2,000,000 spending limitation (subject, of course, to the cost-of-living adjustment).

b. Minor Parties

Subject to the limitations set forth below, the national committee of a minor party shall be entitled to payments from the Fund, with respect to any Presidential nominating convention, in amounts which, in the aggregate, shall not exceed an amount which bears the same ratio to the amount the national committee of a major party is entitled to receive under section V.C.3.a supra, as the number of popular votes received by the candidate for President of the minor party, as such candidate, in the preceding Presidential election bears to the average number of popular votes received by the candidates for President of the United States of the major parties in the preceding Presidential election.

Comment: Legislative history contains the following statement:

"If the national committee of a minor party chooses to participate and qualifies for payments, it will be entitled to payments in amounts based on the voting strength of the minor party. If the national committee of a minor party participates in the financing program, it still could use additional private funds in the operation of a Presidential nominating convention, but only to the extent that the total expenditures (counting both



[V.C.3.b: Entitlement to payments (minor party)]

public and private funds) do not exceed \$2,000,000. If the national committee of a minor party chooses not to participate in the financing program, it still will be subject to the \$2,000,000 spending limitation."

A minor party or a new party which did not have a candidate in the preceding Presidential general election will not be eligible for public financing of its nominating convention.

c. Payments

Upon receipt of certification from the Commission under section V.C.8 infra, the Secretary of the Treasury shall make payments from the appropriate account maintained under section V.C. 2.a supra to the national committee of a major or minor party which elects to receive its entitlement from the Fund. Such payments shall be available for use by such committee in accordance with the section dealing with the use of funds (section V.C.4 infra).

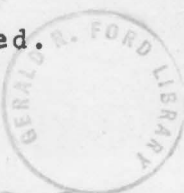
d. Limitation

Payments to the national committee of a major or minor party under this subsection from the account designated for such committee shall be limited to the amounts in such account at the time of payment.

e. Adjustment of Entitlements

The entitlements established by this section V.C.3 shall be adjusted annually to reflect increases in the Consumer Price Index.

Comment: The cost-of-living adjustment which is used in Chapter I to increase the expenditure limitations also



[V.C.3.e: Entitlement to payments (adjustment of entitlement)]

applies to the \$2,000,000 limitation for nominating conventions. The \$2,000,000 limitation will increase by the same percentage as the expenditure limitations in Chapter I. See section I.C.1.c.(2) supra.

4. Use of payments (26 U.S.C. §9008(c))

No part of any payment made under section V.C.3 supra (dealing with entitlements) shall be used to defray the expenses of any candidate or delegate who is participating in any Presidential nominating convention. Such payments shall be used only

- a. to defray expenses incurred with respect to a Presidential nominating convention (including the payment of deposits) by or on behalf of the national committee receiving such payments, or
- b. to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds (other than contributions to defray such expenses received by such committee) used to defray such expenses.

Comment: The national committee of a political party may not use payments from the Fund to repay contributors the amounts they gave in support of the national convention, but it may use such payments to repay loans.

The Federal Election Commission will have to develop regulations in order to determine what expenses are properly incurred by the national committee of a political party with respect to the party's nominating convention and what expenses are not properly incurred. Prior to the promulgation of such regulations, if a national committee is in doubt about a particular expense or expenses, it should seek clarification from the Commission by requesting an advisory opinion.



[V.C.5: Limitation on expenditures]

5. Limitation on expenditures (26 U.S.C. §9008(d))

a. Major parties

Except as provided by the exception in section V.C.5.c infra, the national committee may not make expenditures with respect to a Presidential nominating convention which, in the aggregate, exceed the amount of payments to which such committee is entitled under section V.C.3 supra (dealing with entitlements) (presently \$2,000,000).

b. Minor parties

Except as provided by the exception in section V.C.5.c infra, the national committee of a minor party may not make expenditures with respect to a Presidential nominating convention which, in the aggregate, exceed the amount of the entitlement of the national committee of a major party under section V.C.3 supra (dealing with entitlements) (presently \$2,000,000).

c. EXCEPTION

The Commission may authorize the national committee of a major or minor party to make expenditures which, in the aggregate, exceed the limitation established by sections V.C.5.a and b supra. Such authorization shall be based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, such expenditures are necessary to assure the effective operation of the Presidential nominating convention by such committee.

Comment: Legislative history contains a statement to the effect that the Commission should only authorize expenditures



[V.C.5: Limitation on expenditures]

above the limit "in cases in which events of a catastrophic nature overwhelmingly imperil the operation of a Presidential nominating convention." Thus the drafters of this section on nominating conventions have instructed the Commission to enforce strictly the expenditure limitations.

6. Availability of Payments (26 U.S.C. §9008(e))

The national committee of a major or minor party may receive payments from the Secretary of the Treasury beginning on July 1 of the calendar year immediately preceding the calendar year in which a Presidential nominating convention of the political party involved is held.

7. Transfer to the Fund (26 U.S.C. §9008(f))

If, after the close of a Presidential nominating convention and after the national committee of the political party involved has been paid the amount which it is entitled to receive under this section, there are moneys remaining in the account of such national committee, the Secretary of the Treasury shall transfer the moneys so remaining to the Fund.

8. Party statement and certification by the Commission (26 U.S.C. §9008(g))

a. Party statement

Any major party or minor party may file a statement with the Commission, in such form and manner and at such times as the Commission may require, designating the national committee of such party. Such statement shall include:

- (1) name and address;



Chapter V: Public Financing--National Conventions

[V.C.8.a: Party statement]

- (2) names, addresses and relationships of affiliated or connected organizations;
- (3) area, scope or jurisdiction;
- (4) name, address and position of the custodian of books and accounts;
- (5) name, address and position of other principal officers, including officers and members of the finance committee, if any;
- (6) name, address, office sought, party affiliation of:
  - (a) each candidate supported by the committee;
  - (b) any other individual, if any, the committee is supporting, or if the committee is supporting the entire ticket of any party, the party's name;
- (7) statement whether the committee is a continuing one;
- (8) disposition to be made of residual funds if committee is dissolved;
- (9) list of all banks, safety deposit boxes or other depositories used;
- (10) statement of reports required to be filed with state or local officers and the names, addresses and positions of these persons;
- (11) such other information as required by the Commission.



[V.C.8.b: Certification by Commission]

b. Certification by the Commission

Upon receipt of a statement filed under the preceding sentences, the Commission promptly shall verify such statement according to such procedures and criteria as it may establish and shall certify to the Secretary of the Treasury for payment in full to any such committee of amounts to which such committee may be entitled under section V.C.3 supra (dealing with entitlements). Such certifications shall be subject to an examination and audit which the Commission shall conduct no later than December 31 of the calendar year in which the Presidential nominating convention is held.

Comment: A national committee of a major or minor political party which wishes to obtain public funds for its nominating convention must file the prescribed statement with the Commission and have the statement verified before the Commission will certify that the national committee is entitled to payments from the Secretary of the Treasury. The Commission will have to adopt rules and regulations in order to implement the required verification procedure.

9. Repayments to the Secretary of the Treasury by national committee of a political party after the Commission's audit (26 U.S.C. §9008(h))

The Commission shall have the same authority to require repayments from the national committee of a major party or a minor party as it has with respect to repayments from any eligible candidate under section V.B.8 supra. The provisions of section V.B.8 supra shall apply with respect to any repayment required by the Commission under this section.



[V.D.1: Reports to Congress]

- D. General provisions relating both to public financing of Presidential general elections and to public financing of national nominating conventions of political parties (26 U.S.C. §§9009-9012)

This section applies only to the Presidential general election section (section V.B supra) and the nominating convention section (section V.C supra). The Presidential primary matching payment account section (section V.E infra) has its own virtually identical subsections on reports, judicial review and criminal penalties.

1. Reports to Congress (26 U.S.C. §9009(a))

The Commission shall, as soon as practicable after each Presidential election, submit a full report to the Senate and the House of Representatives setting forth

- a. the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by the candidates of each political party and their authorized committees;
- b. the amount certified by it under section V.B.5 supra for payment to the eligible candidates of each political party;
- c. the amount of payments, if any, required from such candidates under section V.B.8 supra (dealing with repayments by candidates), and the reasons for each repayment required;
- d. the expenses incurred by the national committee of a major or minor party with respect to a Presidential nominating convention;





[V.D.1: Reports to Congress]

- e. the amounts certified by it under section V.C.8 supra for payment to each such committee;
- f. the amount of payments, if any, required from such committee under section V.C.9 supra (dealing with repayments by national committees), and the reasons for each such payment.

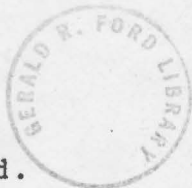
Each report submitted pursuant to this section shall be printed as a Senate document.

2. Regulations (26 U.S.C. §9009(b))

The Commission is authorized to prescribe such rules and regulations, to conduct such examinations and audits (in addition to the examination and audits required in connection with the Presidential general election; see section V.B.7 supra), to conduct such investigations, and to require the keeping and submission of such books, records, and information as it deems necessary to carry out the functions and duties imposed on it by section V.B supra (dealing with public financing of Presidential general elections) and section V.C supra (dealing with public financing of political party national nominating conventions).

3. Review of regulations (26 U.S.C. §9009(c))

- a. The Commission, before prescribing any rule or regulation under section V.D.2 supra (dealing with regulations), shall transmit a statement with respect to such rule or regulation to the Senate and to the House of Representatives, in accordance with the provisions of this section. Such statement shall set forth the proposed rule or regulation and shall contain a detailed explanation and justification of such rule or regulation.



Chapter V: Public Financing--General Provisions

[V.D.3: Review of regulations]

- b. If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this section.
- c. For purposes of this section, the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

Comment: The Houses of Congress may not prescribe rules and regulations for the Commission. They only have the power to approve or disapprove rules and regulations proposed by the Commission.

4. Judicial review (26 U.S.C. §9011)

- a. Review of certification, determination, or other action by the Commission (26 U.S.C. §9011(a))

Any certification, determination or other action by the Commission made or taken pursuant to section V.B. supra (dealing with public financing of Presidential general elections) and section V.C supra (dealing with public financing of political party national nominating conventions) shall be subject to review by the United States Court of Appeals for the District of Columbia, upon petition filed in such court by any interested person. Any petition filed pursuant to this section shall be filed within thirty days after the certification, determination, or other action by the Commission for which review is sought.



[V.D.4.b: Judicial review (implementing suits)]

b. Suits to implement the provisions of sections V.A through V.D (26 U.S.C. §9011(b))

(1) The Commission, the national committee of any political party, and individuals eligible to vote for President are authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriate to implement or construe any provision of sections V.A through V.D of this Chapter.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section V.D.4.b and shall exercise the same without regard to whether a person asserting rights under provisions of this section shall have exhausted any administrative or other remedies that may be provided at law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of §2284 of Title 28, United States Code, and any appeal shall be to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

c. Participation by the Commission in judicial proceedings (26 U.S.C. §9010)

(1) Appearance by counsel (26 U.S.C. §9010(a))

The Commission is authorized to appear in and defend against any



[V.D.4.c.(1): Judicial review (appearance by Commission through counsel)]

action filed under section V.D.4 supra either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of Chapter 51 and subchapter III of Chapter 53 of Title 5 of the United States Code.

(2) Recovery of certain payments (26 U.S.C. §9010(b))

The Commission is authorized through attorneys and counsel described in section V.D.4.c.(1) supra to appear in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary of the Treasury as a result of examination and audit made pursuant to sections V.B.7 and 8 supra.

(3) Declaratory and injunctive relief (26 U.S.C. §9010(c))

The Commission is authorized through attorneys and counsel described in section V.D.4.c.(1) supra to petition the courts of the United States for declaratory or injunctive relief concerning any civil matter covered by the provisions described in this Chapter V and §6096 of the Internal Revenue Code (the check off provision). Upon application of the Commission, an action brought pursuant to this section V.D.4.c.(3) shall be heard and determined by a court of three judges in accordance with the



[V.D.4.c.(3): Judicial review (declaratory and injunctive relief)]

provisions of §2284 of Title 28, United States Code, and any appeal shall be to the Supreme Court. It shall be the duty of the judge designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be expedited in every way.

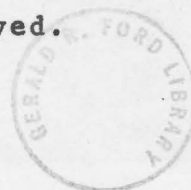
(4) Appeal (26 U.S.C. §9010(d))

The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

5. Penalties (26 U.S.C. §9012)

a. Excess expenses (26 U.S.C. §9012(a))

- (1) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a Presidential election, or any of his authorized committees, knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under section V.B.3 supra with respect to such election.
- (2) It shall be unlawful for the national committee of a major party or minor party knowingly and willfully to incur expenses with respect to a Presidential nominating convention in excess of the expenditure limitation applicable with



[V.D.5.a: Penalties (excess expenses)]

respect to such committee under section V.C.5 supra, unless the incurring of such expenses is authorized by the Commission as an extraordinary expense under section V.C.5.c supra.

- (3) Any person who violates sections V.D.5.a.(1) or (2) supra shall be fined not more than \$5,000 or imprisoned not more than one year or both. In case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than \$5,000 or imprisoned not more than one year or both.

b. Contributions (26 U.S.C. §9012(b))

- (1) It shall be unlawful for an eligible candidate of a major party in a Presidential election or any of his authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received out of the Fund on account of the application of section V.B.6.b supra or to defray expenses which would be qualified campaign expenses but for section V.B.1.j.(3) supra.
- (2) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a Presidential election, or any of his authorized committees, knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses



[V.D.5.b: Penalties (contributions)]

in an amount which exceeds the qualified campaign expenses incurred with respect to such election by such eligible candidate and his authorized committees.

- (3) Any person who violates sections V.D.5.b.(1) or (2) supra shall be fined not more than \$5,000 or imprisoned not more than one year or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than \$5,000 or imprisoned not more than one year or both.

c. Unlawful use of payments (26 U.S.C. §9012(c))

- (1) It shall be unlawful for any person who receives any payment under section V.B.6 supra, or to whom any portion of any payment received under such section is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than--
- (a) to defray the qualified campaign expenses with respect to which such payment was made; or
- (b) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.



[V.D.5.c: Penalties (unlawful use of payments)]

Comment: See sections V.B.4 and V.C.4 supra.

- (2) It shall be unlawful for the national committee of a major party or minor party which receives any payment under section V.C.3 supra to use, or authorize the use of, such payment for any purpose other than a purpose authorized by section V.C.4 supra.
  - (3) Any person who violates sections V.D.5.c.(1) or (2) supra shall be fined not more than \$10,000 or imprisoned not more than five years or both.
- d. False statements (26 U.S.C. §9012(d))
- (1) It shall be unlawful for any person knowingly and willfully--
    - (a) to furnish any false, fictitious or fraudulent evidence, books, or information to the Commission under any provision described in this Chapter V, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under sections V.A through V.D of this Chapter; or
    - (b) to fail to furnish to the Commission any records, books, or information requested by it for purposes of sections V.A through V.D of this Chapter.





[V.D.5.d: Penalties (false statements)]

- (2) Any person who violates section V.D.5.d.(1) supra shall be fined not more than \$10,000 or imprisoned not more than five years or both.

e. Kickbacks and illegal payments (26 U.S.C. §9012(e))

- (1) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of eligible candidates or their authorized committees.
- (2) It shall be unlawful for the national committee of a major party or minor party knowingly or willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a Presidential nominating convention.
- (3) Any person who violates sections V.D.5.e.(1) or (2) supra shall be fined not more than \$10,000 or imprisoned not more than five years or both.
- (4) In addition to the penalty provided by section V.D.5.e.(3) supra, any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of eligible candidates or their committees, or in connection with any expense incurred by the national committee of a major party or minor party with respect to a Presidential nominating convention shall pay to the Secretary of the Treasury, for deposit in the general fund of the Treasury, an amount



[V.D.5.e: Penalties (kickbacks and illegal payments)]

equal to 125 percent of the kick-back or payment received.

f. Unauthorized expenditures and contributions (26 U.S.C. §9012(f))

- (1) Except as provided in section V.D.5.f.(2) infra, it shall be unlawful for any political committee which is not an authorized committee with respect to the eligible candidates of a political party for President and Vice President in a Presidential election knowingly and willfully to incur expenditures to further the election of such candidates, which would constitute qualified campaign expenses if incurred by an authorized committee of such candidates, in an aggregate amount exceeding \$1,000.
- (2) This section V.D.5.f shall not apply to
  - (a) expenditures by a broadcaster regulated by the Federal Communications Commission, or by a periodical publication, in reporting the news or in taking editorial positions; or
  - (b) expenditures by any organization described in §501(c) of the Internal Revenue Code which is exempt from tax under §501(a) of the Internal Revenue Code in communicating to its members the views of that organization.
- (3) Any political committee which violates section V.D.5.f.(1) supra



[V.D.5.f: Penalties (unauthorized expenditures and contributions)]

shall be fined not more than \$5,000, and any officer or member of such committee who knowingly and willfully violates section V.D.5.f. (1) supra shall be fined not more than \$5,000 or imprisoned not more than one year or both.

g. Unauthorized disclosure of information  
(26 U.S.C. §9012(g))

- (1) It shall be unlawful for any individual to disclose any information obtained under the provisions of sections V.A through V.D of this Chapter except as may be required by law.
- (2) Any person who violates section V.D.5.g.(1) supra shall be fined not more than \$5,000 or imprisoned not more than one year or both.

E. Public financing of Presidential primary elections

The 1974 Amendments contain the Presidential Primary Matching Payment Account Act (Chapter 96 of the Internal Revenue Code, 26 U.S.C. §§9031-9042, replacing former Chapter 96 dealing with the Presidential Election Campaign Fund Advisory Board) which establishes a separate Presidential Primary Matching Payment Account within the Presidential Election Campaign Fund. Candidates for the Presidency who meet the criteria described below may receive money from the Presidential Election Campaign Fund for the purpose of financing their campaigns in primary elections. These funds are provided to candidates on a matching basis in an amount equal to certain funds which the candidates themselves have raised, to the extent that the funds raised by the candidate meet the criteria described below.



[V.E.1.a: Definitions (authorized committee)]

1. Definitions (26 U.S.C. §§9032, 9034)

- a. Authorized committee means any political committee authorized in writing by the Presidential or Vice Presidential candidates of a political party to incur expenses to further the election of these candidates. The authorization must be addressed to the chairman of the political committee, and a copy of the authorization must be filed by the candidate with the Commission. Any withdrawal of the authorization must be similarly addressed and filed.
- b. Candidate means an individual who seeks nomination for election to be President of the United States, as evidenced by the fact that he has
- (1) taken the action necessary under the law of a State to qualify himself for nomination for election to the Presidency;
  - (2) received contributions or incurred qualified campaign expenses, as defined below; or
  - (3) given his consent for any other person to receive contributions or incur qualified campaign expenses on his behalf.
- c. Commission means the Federal Election Commission.
- d. Contribution means
- (1) a gift, subscription, loan, advance, or deposit of money, or anything of value, which is



[V.E.1.d: Definitions (contribution)]

- (a) made for the purpose of influencing the result of a primary election, and
- (b) paid on or after the beginning of the calendar year immediately preceding the calendar year of the Presidential election with respect to which the contribution is made;

Comment: Donations made before the beginning of the calendar year preceding the calendar year of the election are not contributions for purposes of the Presidential Primary Matching Payment Account. For example, a gift of money in 1977 would not qualify as a contribution to a Presidential candidate's primary campaign in 1980.

- (2) a contract, promise or agreement, whether or not legally enforceable, to make such a contribution;
- (3) funds received by a political committee which are transferred to that committee from another committee; and
- (4) the payment by any person other than a candidate, or his authorized committee, of compensation for the personal services of another person which are rendered to the candidate or committee without charge.
- (5) EXCEPTIONS to definition of contribution:
  - (a) The value of personal services rendered to or for the benefit of a candidate by an individual who receives no compensation for rendering such service to or for the benefit of the candidate does not constitute a contribution,



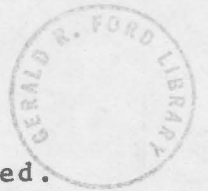
[V.E.1.d: Definitions (contribution)]

UNLESS a person other than the candidate, or other than his authorized committee, pays for such services pursuant to section V.E.1.d.(4) supra.

- (b) Payments made to the candidate from the Presidential Primary Matching Payment Account do not constitute contributions.
- (c) SPECIAL DEFINITION (26 U.S.C. §9034)

For purposes of determining whether a candidate is entitled to receive payments from the Presidential Primary Matching Payment Account (see section V.E.2. infra) and the amount of matching payments to which he is entitled (see section V.E.3 infra)

- (i) contribution means a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address;
- (ii) but contribution does not mean
  - (A) a subscription, loan, advance, or deposit of money, or anything of value;
  - (B) a contract, promise or agreement, whether or not legally enforceable, to make



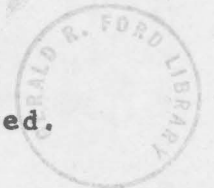
[V.E.1.d.(5)(c): Definitions (contribution--special definition)]

a contribution for the purpose of influencing the result of a primary election;

(C) funds received by a political committee which are transferred to that committee from another committee; or

(D) the payment by any person other than a candidate, or other than his authorized committee, of compensation for the personal services of another person which are rendered to the candidate or committee without charge.

Comment: The definition of contribution for purposes of determining whether a candidate is eligible to receive matching payments and the amount of matching payments to which a candidate is entitled is much narrower than the definition of contribution for other purposes. Any donation which does not fall within the definition of contribution in section V.E.1.d.(5)(c) supra will not qualify for a matching payment from the Presidential Primary Matching Payment Account, although it will constitute a contribution for other purposes (for example, for the purpose of determining whether an individual has received contributions and is, therefore, a candidate; see section V.E.1.b.(2) supra). It should be noted that to qualify for a matching payment a contribution must be of money (not, for example, an in-kind contribution or securities). A check bearing the donor's full name and address would probably satisfy the written instrument requirement. It is possible, however, that the Federal Election Commission may choose to prescribe a specific form. A promissory note would not constitute a contribution for purposes of qualifying for a matching payment.



Chapter V: Public Financing--Presidential Primaries

[V.E.1.e: Definitions (matching payment account)]

- e. Matching payment account means the Presidential Primary Matching Payment Account.
  
- f. Matching payment period means
  - (1) for a candidate for the Presidential nomination of a party which makes its nomination at a national convention, the period
    - (a) beginning with the beginning of the calendar year in which a general election for President will be held and
    - (b) ending on the date on which the national convention of the party whose nomination a candidate seeks nominates its candidate for President;
  
  - (2) for a candidate for the Presidential nomination of a party which does not make its nomination at a national convention, the period
    - (a) beginning with the beginning of the calendar year in which a general election for President will be held and
    - (b) ending on the earlier of
      - (i) the date such party nominates its candidate for President, or
      - (ii) the last day of the last national convention held by a major party during such calendar year.





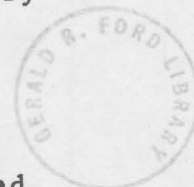
Chapter V: Public Financing--Presidential Primaries

[V.E.1.f: Definitions (matching payment period)]

Comment: The prescribed matching payment period (generally that portion of the election year up to the time of nomination) is the period during which a candidate may receive matching payment funds from the Presidential Primary Matching Payment Account. The period during which a Presidential candidate may collect contributions that will eventually be matched during the matching payment period, however, extends back to the beginning of the calendar year preceding the calendar year of the election. (See section V.E.3.a.(1)(a) infra.) For example, a candidate who intends to run for President in the 1976 general election could begin on January 1, 1975 to collect contributions for his campaign. Beginning on January 1, 1976 the candidate could collect from the Presidential Primary Matching Payment Account the matching funds to which he is entitled. In determining the amount of matching funds to which he would be entitled, the amount of qualifying contributions he had received since January 1, 1975 would be included.

- g. Primary election means an election, including a runoff election or a nominating convention or caucus held by a political party
- (1) for the selection of delegates to a national nominating convention of a political party, or
  - (2) for the expression of a preference for the nomination of persons for election to the office of President.
- h. Political committee means any individual, committee, association or organization (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purpose of influencing, or attempting to influence, the nomination of any person for election to the office of President.

Comment: Receipt or expenditure of any amount, rather than a \$1,000 minimum, is sufficient to classify a committee as a political committee for purposes of the Presidential Primary



[V.E.1.h: Definitions (political committee)]

Matching Payment Account, so long as the contribution or expenditure is made with respect to the nomination of a person for election to the Presidency. This definition of political committee explicitly includes an individual. Compare the definitions of political committee for other purposes in sections I.A.4, II.A.4 and V.B.1.g supra.

- i. Qualified campaign expense means a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value
  - (1) incurred by a candidate or by his authorized committee in connection with his campaign for nomination for election, and
  - (2) neither the incurring nor payment of which violates any law of the United States or of the State in which the expense is incurred or paid.
  - (3) An expense is incurred by a candidate or by an authorized committee if it is incurred by a person specifically authorized in writing by the candidate or committee, as the case may be, to incur such expense on behalf of the candidate or the committee.
  
- j. State means each State of the United States and the District of Columbia.

Comment: For purposes of the Presidential Primary Matching Payment Account the Commonwealth of Puerto Rico and territories or possessions of the United States are not States. Therefore, contributions from these areas will not count toward meeting the candidate's threshold requirement of \$5,000 from each of 20 States (see section V.E.2.b.(3) infra).



Chapter V: Public Financing--Presidential Primaries

[V.E.2.a: Eligibility (agreement to conditions)]

2. Eligibility to receive matching payments  
(26 U.S.C. §9033)

a. Agreement to conditions

In order to be eligible to receive matching payments a candidate must agree in writing

- (1) to obtain and furnish to the Commission any evidence the Commission may request of qualified campaign expenses;
- (2) to keep and furnish to the Commission any records, books and other information it may request; and
- (3) to undergo an audit and examination by the Commission and to repay any amounts required by the Commission.

b. Certification to the Commission that candidate meets certain criteria

In order to be eligible to receive matching payments a candidate must certify to the Commission that

- (1) the candidate and his authorized committees will not incur qualified campaign expenses
  - (a) in excess of the expenditure limitation imposed by section I.C.1.a.(1) supra, in the aggregate, in the candidate's campaign for nomination for election to the office of President;
  - (b) in any one State more than twice the expenditure limitation applicable in such State to a candidate for



[V.E.2.b: Eligibility (certification of compliance)].

nomination for election to the office of Senator, Delegate or Resident Commissioner, as the case may be;

Comment: The applicable aggregate expenditure limitation on a candidate's expenditures in his campaign for nomination is currently \$10,000,000 but is subject to increase in future years in accordance with the provisions for annual adjustment (see section I.C.1.c.(2) supra). The \$10,000,000 aggregate expenditure limitation is subject to the further restriction that a candidate may not spend in his campaign for nomination in any one State more than twice the amount which a candidate for nomination to the office of Senator may spend--currently the greater of 8 cents multiplied by the voting age population of the State or \$100,000 (see section I.C.1.a.(1)(b) supra). Even if a candidate does not participate in the matching payment program, he is, nevertheless, subject to the \$10,000,000 expenditure limitation.

- (2) the candidate is seeking nomination by a political party for election to the office of President;
- (3) the candidate has received matching contributions which in the aggregate exceed \$5,000 in contributions from residents of each of at least 20 States (\$100,000); and
- (4) no one person has contributed more than \$250, in the aggregate, to the minimum \$100,000 raised (\$5,000 from residents of each of at least 20 States).

Comment: Only certain types of donations are considered to be contributions for purposes of this section. (See section V.E.1.d.(5)(c) supra.) The maximum \$250 limit on contributions which will qualify for matching and the requirement that the contributions equal at least \$5,000 from each of 20 States for a total of \$100,000 are designed to ensure that the candidate demonstrate that he has a broad base of support before he becomes entitled to receive matching payments from



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[V.E.2.b: Eligibility (certification of compliance)]

the Presidential Primary Matching Payment Account. This provision is sometimes referred to as the "threshold requirement". See the definition of State in section V.E.1.j supra.

c. Special definition of contribution

For purposes of determining whether a candidate is eligible to receive matching payments the special definition of contribution contained in section V.E.1.d(5)(c) supra applies. See that section.

3. Amount of eligible candidate's entitlement  
(26 U.S.C. §9035)

a. Amount

Every candidate who is eligible to receive payments under section V.E.2 supra is entitled to receive matching payments from the Presidential Primary Matching Payment Account of the Presidential Election Campaign Fund in an amount

(1) equal to

(a) the amount of contributions which the candidate and his authorized committees received on or after the beginning of the calendar year immediately preceding the calendar year of the Presidential election with respect to which the candidate is seeking nomination,

(b) BUT disregarding any amount of contributions from any person to the extent that the total of the amounts contributed by such person amounted, in the



[V.E.3.a: Entitlement (amount)]

aggregate, to more than \$250 on or after the beginning of such preceding calendar year,

- (2) BUT not in excess of 50% of the expenditure limitation imposed on candidates for nomination for election to the office of President.

b. Special definition of contribution

For purposes of determining the amount of matching payments which a candidate is entitled to receive from the Presidential Primary Matching Payment Account, the special definition of contribution contained in section V.E.1.d.(5)(c) supra applies. See that section.

Comment: Only certain types of donations are considered to be contributions for purposes of this section. (See section V.E.1.d.(5)(c) supra.) A candidate may receive in the matching payment period (generally, that portion of the election year prior to nomination; see section V.E.1.f supra) funds to match qualifying contributions which he received not only in the matching payment period but also in the calendar year preceding the election year. Only those contributions which do not, in the aggregate, exceed \$250 will be matched. A further limitation is that no candidate may receive matching funds in an amount greater than 50% of the applicable expenditure limitation (see section I.C.1. a.(1)(a) supra). Thus under the current expenditure limitation (subject to annual adjustment) no candidate could receive more than \$5,000,000 (50% of \$10,000,000) from the Presidential Primary Matching Payment Account. Legislative history makes it clear that in computing the expenditure limitation the exception for fund-raising costs does not apply to matching payments received from the Presidential Primary Matching Payment Account (see section I.A.12.d.(8) supra). Thus under the current expenditure limitation a candidate who received the maximum \$5,000,000 from the Presidential Primary Matching Payment Account could spend \$11,000,000 in his campaign for nomination (\$5,000,000 from



[V.E.3.b: Entitlement (special definition of contribution)]

the Presidential Primary Matching Payment Account plus \$5,000,000 from private contributions plus \$1,000,000 (20% of \$5,000,000) spent in soliciting private contributions). A candidate who raised his entire \$10,000,000 limit from private funds and who did not participate in the matching payment program could spend a total of \$12,000,000 (\$10,000,000 from private funds plus \$2,000,000 (20% of \$10,000,000) spent in soliciting contributions). Since a candidate may not know at the beginning of his primary campaign the amount he will eventually receive from the Matching Payment Account, it may be difficult for him to plan his fund-raising expenses.

4. Limitation on qualified campaign expenses (26 U.S.C. §9035)

No candidate, regardless of whether he chooses to receive matching payments from the Presidential Primary Matching Payment Account, may knowingly incur qualified campaign expenses in excess of the applicable expenditure limitation.

Comment: The applicable expenditure limitation is currently \$10,000,000 for primary campaign expenses, in the aggregate (subject to annual cost-of-living increases; see section I.C.1.c.(2) supra) with the further restriction that the candidate spend no more in any one State than twice the expenditure limitation applicable in such State to a candidate for nomination for election to the office of Senator, Delegate or Resident Commissioner (see section I.C.1.a.(1) supra). Even if he does not choose to receive money from the Matching Payment Account, a candidate is subject to this limitation.

5. Procedure for payments from the Presidential Primary Matching Payment Account to eligible candidates

a. Commission's certification to Secretary of the Treasury as to candidate's eligibility (26 U.S.C. §9036)

(1) When made

Not later than 10 days after a candidate establishes his eligibility to receive payments, the



[V.E.5.a.(1): Procedure for payment (certification by Commission--when made)]

Commission will certify to the Secretary of the Treasury that payment in full of the amounts to which the candidate is entitled be made. The Commission will make additional certifications as the need arises.

(2) Finality

Certification and determinations made by the Commission are final and conclusive except to the extent that they are subject to examination and audit by the Commission (see section V.E.6 infra) and to the extent that they are subject to judicial review (see section V.E.12 infra).

b. Actual payment to the candidate

(1) When, by whom and to whom

- (a) Upon receipt of the certification from the Commission, BUT NOT BEFORE the beginning of the matching payment period (i.e., not before the beginning of the calendar year in which a general Presidential election will be held),
- (b) the Secretary of the Treasury will promptly transfer the amount due from the Presidential Primary Matching Payment Account
- (c) to the candidate.

In making payments to candidates of the same political party the Secretary must seek to achieve





[V.E.5.b.(1): Actual payment (when, by whom and to whom)]

an equitable distribution of available funds and shall take into account the sequence in which certifications are received.

Comment: Early certification may allow a candidate to receive more funds than other candidates from his party in the event of insufficient funds to meet everyone's entitlement.

(2) Nature and amount of Matching Payment Account

The Presidential Primary Matching Payment Account is a separate account within the Presidential Election Campaign Fund of the United States Treasury. The amount deposited by the Secretary of the Treasury in the Matching Payment Account will be the amount remaining in the Presidential Election Campaign Fund after the Secretary of the Treasury has made allowance for payments to political parties for national nominating conventions and for payments to candidates for the office of President in the general election.

Comment: The Presidential Primary Matching Payment Account only receives what remains in the Presidential Election Campaign Fund after an allowance has been made for the other obligations of the Fund (see section V.A. supra). Clarification should be sought from the Federal Election Commission on the question of whether a candidate who received at the outset of his campaign less than his full entitlement due to an insufficient amount of money in the Fund may receive his full entitlement if it later develops that there is money left over in the Fund.



[V.E.6: Examinations and audits by Commission]

6. Examinations and audits by the Commission

a. Mandatory (26 U.S.C. §9038)

After each matching payment period the Commission must conduct a thorough examination and audit of the qualified campaign expenses of every candidate, and his authorized committees, who received payments from the Matching Payment Account, in order to determine whether the candidate must make any repayments (see section V.E.7 infra).

b. Optional (26 U.S.C. §9039)

In addition to examinations and audits made in connection with determining the amount of a required repayment, the Commission may conduct such other examinations and audits as it deems necessary.

7. Repayments to the Secretary of the Treasury by candidates after the Commission's audit (26 U.S.C. §9038)

a. Required upon Commission's determination of amount and notification of candidate by Commission

(1) Bases for Commission's determination and notification

Upon notification by the Commission after an examination and audit, the candidate must repay to the Secretary of the Treasury (or to the Secretary's delegate) any amount which was paid to the candidate from the Matching Payment Account and which the Commission has determined



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[V.E.7.a.(1): Repayments by candidate (bases for Commission's determination)]

- (a) was in excess of the aggregate amount of payments to which the candidate was entitled, or
- (b) was used for any purpose other than
  - (i) to defray the qualified campaign expenses with respect to which such payment was made,
  - (ii) to repay loans the proceeds of which were used to defray qualified campaign expenses, or
  - (iii) otherwise to restore funds which were used to defray qualified campaign expenses

EXCEPT that funds received from the Matching Payment Account may not be used to reimburse donors for contributions which they made to the candidate, and which were spent by him, for the purpose of defraying his qualified campaign expenses.

- (2) Commission's notice must be sent within 3 years

The Commission may not send any notice of a required repayment with respect to a matching payment period more than 3 years after the end of the matching payment period in question.



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[V.E.7.b: Repayments by candidate (unexpended balance)]

b. Repayment of unexpended balance (six-month liquidation)

Payments received from the Matching Payment Account may be retained by the candidate for the purpose of liquidating all obligations to pay qualified campaign expenses incurred for a period not longer than six months from the end of the matching payment period. After all such obligations have been liquidated the candidate must promptly repay to the Secretary of the Treasury that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts.

c. Deposit of repayments in Matching Payment Account

Any repayments required by the Commission must be deposited by the Secretary of the Treasury in the Matching Payment Account.

8. Commission reports to Congress (26 U.S.C. §9039)

a. As soon as practicable after the end of each matching payment period the Commission must submit a full report to the Senate and the House of Representatives containing the following information:

- (1) the qualified campaign expenses incurred by the candidates of each political party and their authorized committees;



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[V.E.8: Commission reports to Congress]

- (2) the amounts certified by the Commission for payment to each eligible candidate; and
- (3) the amount of repayments, if any, required from candidates and the reasons for each repayment.

b. Each such report must be printed as a Senate document.

9. Rules and regulations (26 U.S.C. §9039)

The Commission is authorized to prescribe rules and regulations, subject to the requirement that the Commission submit proposed rules and regulations, and justifications and explanations thereof, to both Houses of Congress prior to promulgation and that the Commission not prescribe any such rule or regulation which either House of Congress disapproves within a period of 30 legislative days after receipt of the proposal (a legislative day being a calendar day on which both Houses of Congress are in session).

10. Participation in judicial proceedings  
(26 U.S.C. §9040)

The Commission is authorized to participate in judicial proceedings.

Through attorneys employed in its office, or through outside counsel appointed by the Commission, the Commission may appear in and defend against the following actions with respect to the Presidential Primary Matching Payment Account:

- a. action in the district courts of the United States to recover any repayments which the Commission may require of candidates pursuant to an examination and audit;



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[V.E.10: Participation by Commission in judicial proceedings]

- b. petitions in the courts of the United States for such injunctive relief as is appropriate to implement any provision of the Presidential Primary Matching Payment Account Act; and
- c. appeals and petitions for certiorari on behalf of the United States from judgments or decrees entered with respect to actions in which the Commission appears.

11. Additional powers of the Commission (26 U.S.C. §9039)

The Commission is authorized

- a. to conduct investigations; and
- b. to require the keeping and submission of any books, records and information which it determines to be necessary to carry out its responsibilities in connection with the Matching Payment Account.

12. Judicial review of Commission's actions (26 U.S.C. §9041)

Any Commission action pursuant to the Presidential Primary Matching Payment Account Act is subject to review by the United States Court of Appeals for the District of Columbia Circuit upon filing a petition within 30 days after the action for which review is sought.

13. Penalties (26 U.S.C. §9042)

- a. Excess campaign expenses

Any person who knowingly incurs, or any officer or member of a political committee who knowingly consents to, qualified campaign expenses in excess of the applicable expenditure limitations



[V.E.13.a: Penalties (excess campaign expenses)]

may be fined not more than \$25,000 or imprisoned not more than 5 years or both.

b. Unlawful use of payments

Any person who receives any payment from the Matching Payment Account, or any person to whom any portion of such payment is transferred, AND who knowingly and willfully uses or authorizes the use of such payment for any purpose other than

- (1) to defray qualified campaign expenses;
- (2) to repay loans the proceeds of which were used to defray qualified campaign expenses; or
- (3) otherwise to restore funds which were used to defray qualified campaign expenses (EXCEPT that funds received from the Matching Payment Account may not be used to reimburse donors for contributions which they made to the candidate, and which were spent by him, for the purpose of defraying his qualified campaign expenses)

may be fined not more than \$10,000 or imprisoned not more than 5 years or both.

c. False statements, etc.

Any person who knowingly and willfully

- (1) furnishes any false, fictitious or fraudulent evidence, books or information to the Commission; or



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[V.E.13.c: Penalties (false statements, etc.)]

- (2) includes in any evidence, books or information so furnished any misrepresentation of a material fact; or
- (3) falsifies or conceals any evidence, books or information relevant to a certification, an examination or audit by the Commission; or
- (4) fails to furnish to the Commission any records, books or information requested by it

may be fined not more than \$10,000 or imprisoned not more than 5 years or both.

d. Kickbacks and illegal payments

Any person who knowingly and willfully gives or accepts any kickback or any illegal payment in connection with any qualified campaign expense of a candidate (or his authorized committee) who receives payments from the Matching Payment Account

- (1) may be fined not more than \$10,000 or imprisoned not more than 5 years or both, AND
- (2) in addition must pay to the Secretary of the Treasury for deposit in the Matching Payment Account an amount equal to 125 percent of the kickback or illegal payment received.

14. Effective date (\$410 of the 1974 Amendments)

The Presidential Primary Matching Payment Account Act is effective for taxable years beginning after December 31, 1974.

