



## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 4, 100, 104, 106, 109, 110, 113, 114, 9004, and 9034

[NOTICE 2016-03]

#### Technical Amendments and Corrections

**AGENCY:** Federal Election Commission.

**ACTION:** Correcting amendments.

**SUMMARY:** The Commission is making technical corrections to various sections of its regulations.

**DATES:** Effective [Insert date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Eugene Lynch, Paralegal, 999 E Street, NW., Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

#### SUPPLEMENTARY INFORMATION:

##### Background

The existing rules that are the subject of these corrections are part of the continuing series of regulations that the Commission has promulgated to implement the Presidential Election Campaign Fund Act, 26 U.S.C. 9001-13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031-42 (collectively, the “Funding Acts”), and the Federal Election Campaign Act, 52 U.S.C. 30101-46 (“FECA”). The Commission is promulgating these corrections without advance notice or an opportunity for comment because they fall under the “good cause” exemption of the Administrative Procedure Act, 5 U.S.C. 553(b)(B). The Commission finds that notice and comment are unnecessary here because these corrections are merely typographical and technical; they effect no substantive changes to any rule. For the same reason, these corrections fall within the “good cause” exception to the delayed effective date

provisions of the Administrative Procedure Act and the Congressional Review Act. 5 U.S.C. 553(d)(3), 808(2).

Moreover, because these corrections are exempt from the notice and comment procedure of the Administrative Procedure Act under 5 U.S.C. 553(b), the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. See 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA or the Funding Acts. See 52 U.S.C. 30111(d)(1), (4) (providing for congressional review when Commission “prescribe[s]” a “rule of law”); 26 U.S.C. 9009(c)(1), (4), 9039(c)(1), (4) (same). Accordingly, these corrections are effective upon publication in the Federal Register.

## **Corrections to FECA and Funding Act Rules in Chapter I of Title 11 of the Code of Federal Regulations**

### **A. Correction to 11 CFR 4.8**

The Commission is updating paragraph (a) of this section regarding when a person may appeal the Commission’s failure to respond to a document inspection or production request filed under the Freedom of Information Act (“FOIA”), 5 U.S.C. 552. Paragraph (a) currently provides that a person may appeal the Commission’s failure to respond if the person has received no response within ten working days after the Commission received the FOIA request. When originally promulgated, this ten-day time period accurately reflected the time the Commission had to respond to a FOIA request. See 5 U.S.C. 552(a)(6)(A)(i) (1979); Public Records and Freedom of Information Act, 44 FR 33368 (June 8, 1979) (promulgating section 4.7(c), giving Commission ten working days to respond to FOIA request, and section 4.8(a), allowing FOIA requestors who did not receive response within ten working days to file appeals). Subsequently, however, Congress amended FOIA to allow agencies 20 days in which to respond to FOIA

requests, and the Commission revised its own response period in 11 CFR 4.7(c) accordingly. See Electronic Freedom of Information Act Amendments, 65 FR 9201 (Feb. 24, 2000). The Commission did not, however, make the necessary corresponding change to the regulation governing the time for filing an appeal. Accordingly, to conform the time period for appealing the Commission's failure to respond with the time that the Commission has to respond, the Commission is revising paragraph (a) by removing the word "ten" and replacing it with "twenty."

B. Correction to 11 CFR 100.54

The Commission is correcting two erroneous citations in the introductory paragraph of this section. This paragraph erroneously refers to 11 CFR 100.74 and 100.75 in discussing the exemption of certain legal and accounting services from the definition of "contribution." That exemption is set forth in sections 100.85 and 100.86, not in sections 100.74 and 100.75 (which address volunteer services and the use of a volunteer's real or personal property). Accordingly, the Commission is removing the citations to 11 CFR 100.74 and 100.75 and replacing them with 11 CFR 100.85 and 100.86, respectively.

C. Corrections to 11 CFR 104.4

The Commission is amending paragraphs (b)(1) and (2) of this section to remove an ambiguity regarding the reporting requirements for political committees making independent expenditures in a calendar year. These paragraphs require political committees to report all independent expenditures aggregating less than \$10,000 (paragraph (b)(1)) or \$10,000 or more (paragraph (b)(2)) with respect to a given election made "at any time during the calendar year up to and including the 20th day before an election." Some reporting entities have expressed uncertainty as to whether this language signifies that reporting is not required in a calendar year

other than an election year. As the Commission noted in promulgating this section, the reporting requirement applies to independent expenditures made by a political committee “at any time” and “at any point in the campaign,” up to and including 20 days before an election. 52 U.S.C. 30104(g)(2); Bipartisan Campaign Reform Act of 2002 Reporting, 68 FR 404, 406 (Jan. 3, 2003). To clarify that a political committee must report independent expenditures aggregating less than \$10,000, or \$10,000 or more, with respect to a given election made in any calendar year, the Commission is amending portions of the text in paragraphs (b)(1) and (2).

D. Corrections to 11 CFR 104.18

The Commission is revising paragraphs (b) and (g) of this section to reflect the availability and use of internet-based forms to file reports electronically with the Commission. The Commission has made a number of these forms available for use by filers on its website, at [www.fec.gov](http://www.fec.gov). Paragraph (b) provides that a political committee or other person not required to file reports electronically with the Commission may nonetheless choose to file reports in an electronic format that meets the requirements of this section, and a person who chooses to file reports electronically is generally required to continue to file electronically for the rest of that calendar year. The Commission is adding a reference to internet-based forms to paragraph (b), as an example of an electronic format that meets the requirements of this section.

Paragraph (g) requires the treasurer of a political committee and other persons responsible for filing reports with the Commission to verify the reports in specific ways. The Commission is revising paragraph (g) to clarify that a signed certification on a Commission internet form meets the verification requirement.

The Commission is also correcting a typographical error in paragraph (a)(3)(i)(A) of this section by replacing the phrase “nets debts” with the phrase “net debts.”

E. Correction to 11 CFR 106.6

The Commission is correcting an erroneous citation in paragraph (d)(1) of this section. Paragraph (d)(1) requires a political committee that collects both federal and nonfederal funds through a joint activity to allocate its direct costs of fundraising “as described in paragraph (a)(2) of this section” in a certain manner. Paragraph (a)(2) of this section, however, does not exist. Instead, the direct costs of fundraising are described in paragraph (b)(1) of this section. Thus, the Commission is replacing the reference to paragraph (a)(2) in paragraph (d)(1) with a reference to paragraph (b)(1).

F. Correction to 11 CFR 106.7

The Commission is correcting an erroneous citation in paragraph (d)(1)(ii) of this section. Paragraph (d)(1)(ii) requires state, district, and local party committees to use only federal funds to pay the salaries, wages, and fringe benefits of employees who spend more than 25% of their compensated time on federal election activities or activities in connection with a federal election, and cites to 11 CFR 300.33(d)(1). Paragraph (d)(1) of § 300.33, however, concerns employees who spend 25% or less of their compensated time on federal election activities or activities in connection with a federal election. Paragraph (d)(2) of § 300.33, on the other hand, relates to the payment of employees spending more than 25% of their compensated time on such activities. Accordingly, the Commission is replacing the reference to 11 CFR 300.33(d)(1) in paragraph (d)(1)(ii) with 11 CFR 300.33(d)(2).

G. Correction to 11 CFR 109.10

The Commission is amending paragraph (c) of this section to remove an ambiguity regarding the reporting requirements for persons who are not political committees and make \$10,000 or more in independent expenditures in a calendar year. For the reasons explained

above regarding the amendments to section 104.4, the Commission is amending portions of the text in paragraph (c).

H. Correction to 11 CFR 110.1

The Commission is correcting a typographical error in paragraph (b)(6) of this section. This Commission is replacing the reference to 11 CFR 110.1(1)(4) with a reference to 11 CFR 110.1(l)(4) (lowercase letter L).

I. Correction to 11 CFR 110.2

The Commission is correcting a typographical error in paragraph (b)(6) of this section. The Commission is replacing the reference to 11 CFR 110.1(1)(4) with a reference to 11 CFR 110.1(l)(4) (lowercase letter L).

J. Correction to 11 CFR 113.1

The Commission is correcting an erroneous citation in paragraph (g)(1)(i)(I) of this section. The last sentence of paragraph (g)(1)(i)(I) prohibits “[a] Federal officeholder, as defined in 11 CFR 100.5(f)(1),” from receiving salary payments from campaign funds as a candidate. Paragraph (f)(1) of § 100.5, however, defines “authorized committee,” not “Federal officeholder.” Paragraph (c) of § 113.1, on the other hand, defines “Federal officeholder.” As such, in the last sentence of paragraph (g)(1)(i)(I), the Commission is replacing “11 CFR 100.5(f)(1)” with “paragraph (c) of this section.”

K. Corrections to 11 CFR 114.2

The Commission is making a conforming change to the note to paragraph (b) of this section. In the note, the word “non-connected” appears twice. The Commission is replacing both references to “non-connected” with “nonconnected” to conform the word to how it appears in the rest of 11 CFR chapter 1.

L. Corrections to 11 CFR 114.10

For the reasons noted above regarding the correction to § 114.2, the Commission is replacing both references to “non-connected” in the note to § 114.10(a) with “nonconnected.”

M. Correction to 11 CFR 9004.6

The Commission is correcting a typographical error in paragraph (c) of this section. The Commission is removing the misspelled word “Deduction” and replacing it with the word “Deduction.”

N. Correction to 11 CFR 9034.2

The Commission is correcting an erroneous citation in paragraph (c)(1)(iii) of this section. This paragraph addresses the reattribution of contributions among joint tenants of a checking account, and requires the documentation “described in 11 CFR 110.1(1), (3), (5), and (6)” to accompany the reattributed contribution. The citation to 11 CFR 110.1(1), (3), (5), and (6) is incorrect, however, because those paragraphs do not exist. Instead, the documentation requirements for reattributed contributions appear in paragraph (l) (lowercase letter L) of section 110.1. Accordingly, the Commission is replacing the reference to 11 CFR 110.1(1), (3), (5), and (6) in § 9034.2 with 11 CFR 110.1(l)(3), (5), and (6).

**List of Subjects**

11 CFR Part 4

Freedom of information.

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 106

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR 109

Coordinated and independent expenditures.

11 CFR 110

Campaign funds, Political committees and parties.

11 CFR Part 113

Campaign funds, Political candidates.

11 CFR Part 114

Business and industry, Elections, Labor.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9034

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR chapter I, as follows:

**PART 4 – PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT**

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

Authority: 5 U.S.C. 552, as amended.

**§ 4.8 [Amended]**

2. Amend paragraph (a) of § 4.8 by removing “ten” and adding in its place “twenty”.

**PART 100 – SCOPE AND DEFINITIONS (52 U.S.C. 30101)**

3. The authority citation for part 100 continues to read as follows:

Authority: 52 U.S.C. 30101, 30104, 30111(a)(8), and 30114(c).

**§ 100.54 [Amended]**

4. Amend the introductory text of §100.54 by removing “11 CFR 100.74 and 100.75” and adding in its place “11 CFR 100.85 and 100.86”.

**PART 104 – REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)**

5. The authority citation for part 104 continues to read as follows:

Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(i), 30104, 30111(a)(8) and (b), 30114, 30116, 36 U.S.C. 510.

6. In § 104.4, revise paragraph (b)(1) and remove the first sentence in paragraph (b)(2) and add two sentences in its place.

The revision and additions read as follows:

**§ 104.4 Independent expenditures by political committees (52 U.S.C. 30104(b), (d), and (g)).**

\* \* \* \* \*

(b) \* \* \*

(1) Independent expenditures aggregating less than \$10,000 in a calendar year. For each election in which a political committee makes independent expenditures, the political committee shall aggregate its independent expenditures made in each calendar year to determine its reporting obligation. When a committee makes independent expenditures aggregating less than \$10,000 for an election in any calendar year, up to and including the 20th day before an election, the committee must report those independent expenditures on Schedule E of FEC Form 3X, at the time of its regular reports in accordance with 11 CFR 104.3, 104.5, and 104.9.

(2) \* \* \* For each election in which a political committee makes independent expenditures, the political committee shall aggregate its independent expenditures made in each calendar year to determine its reporting obligation. When a committee makes independent expenditures aggregating \$10,000 or more for an election in any calendar year, up to and including the 20th day before an election, it must report those independent expenditures on Schedule E of FEC Form 3X. \* \* \*

\* \* \* \* \*

**§ 104.18 [Amended]**

7. In § 104.18:

a. Amend paragraph (a)(3)(i)(A) by removing “nets debts” and adding in its place “net debts”.

b. Amend paragraph (b), first sentence, by adding “(internet forms included)” after “the requirements of this section”.

c. Amend paragraph (g), first sentence, by adding “; or by submitting a signed certification on a Commission internet form” after “in the electronic submission”.

## **PART 106 – ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES**

8. The authority citation for part 106 continues to read as follows:

Authority: 52 U.S.C. 30111(a)(8), 30116(b), 30116(g).

### **§ 106.6 [Amended]**

9. Amend the first sentence of paragraph (d)(1) of § 106.6 by removing “as described in paragraph (a)(2) of this section” and adding in its place “as described in paragraph (b)(1) of this section”.

### **§ 106.7 [Amended]**

10. Amend paragraph (d)(1)(ii) of § 106.7 by removing “11 CFR 300.33(d)(1)” and adding in its place “11 CFR 300.33(d)(2)”.

## **PART 109 – COORDINATED AND INDEPENDENT EXPENDITURES (52 U.S.C.**

### **30101(17), 30116(A) AND (D), AND PUB. L. 107-155 SEC. 214(C))**

11. The authority citation for part 109 continues to read as follows:

Authority: 52 U.S.C. 30101(17), 30104(c), 30111(a)(8), 30116, 30120; Sec. 214(c), Pub. L. 107-155, 116 Stat. 81.

12. Amend paragraph (c) of § 109.10 by removing the first sentence and adding two sentences in its place to read as follows:

### **§ 109.10 [Amended]**

\* \* \* \* \*

(c) \* \* \* For each election in which a person who is not a political committee makes independent expenditures, the person shall aggregate its independent expenditures made in each calendar year to determine its reporting obligation. When such a person makes independent expenditures aggregating \$10,000 or more for an election in any calendar year, up to and including the 20th day before an election, the person must report the independent expenditures on FEC Form 5, or by signed statement if the person is not otherwise required to file electronically under 11 CFR 104.18.

\* \* \* \* \*

**PART 110 – CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS**

13. The authority citation for part 110 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2), 30104(i)(3), 30111(a)(8), 30116, 30118, 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510.

**§ 110.1 [Amended]**

14. Amend paragraph (b)(6) by removing “11 CFR 110.1(1)(4)” and adding in its place “11 CFR 110.1(l)(4)”.

**§ 110.2 [Amended]**

15. Amend paragraph (b)(6) by removing “11 CFR 110.1(1)(4)” and adding in its place “11 CFR 110.1(l)(4)”.

**PART 113 – PERMITTED AND PROHIBITED USES OF CAMPAIGN ACCOUNTS**

16. The authority citation for part 113 continues to read as follows:

Authority: 52 U.S.C. 30102(h), 30111(a)(8), 30114, and 30116.

**§ 113.1 [Amended]**

17. Amend the last sentence of paragraph (g)(1)(i)(I) of § 104.4 by removing “11 CFR 100.5(f)(1)” and adding in its place “paragraph (c) of this section”.

**PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY**

18. The authority citation for part 114 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102, 30104, 30107(a)(8), 30111(a)(8), 30118.

**§ 114.2 [Amended]**

19. Amend the note to paragraph (b) of § 114.2 by removing all references to “non-connected” and adding in their place “nonconnected”.

**§ 114.10 [Amended]**

20. Amend the note to paragraph (a) of § 114.10 by removing all references to “non-connected” and adding in their place “nonconnected”.

**PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS**

21. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

**§ 9004.6 [Amended]**

22. Amend the subject heading to paragraph (c) introductory text of § 9004.6 by removing “Deduction” and adding in its place “Deduction”.

**PART 9034—ENTITLEMENTS**

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

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

**§ 9034.2 [Amended]**

24. Amend paragraph (c)(1)(iii) of § 9034.2 by removing “11 CFR 110.1 (1), (3), (5), and (6)” and adding in its place “11 CFR 110.1(l)(3), (5), and (6)”.

On behalf of the Commission,

Matthew S. Petersen,  
Chairman,  
Federal Election Commission.

DATED: May 23, 2016\_

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