

**FEDERAL ELECTION COMMISSION****11 CFR Parts 100, 104, and 113****[Notice 2002–8]****Brokerage Loans and Lines of Credit****AGENCY:** Federal Election Commission.**ACTION:** Final rules and transmittal of regulations to Congress.

**SUMMARY:** The Department of Transportation and Related Agencies Appropriations Act, 2001, amended the Federal Election Campaign Act (“FECA” or “the Act”) to allow a candidate to obtain a loan derived from an advance on a candidate’s brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate. The Federal Election Commission (“Commission”) is issuing this final rule to implement this amendment to the FECA including reporting requirements. Further information is provided in the supplementary information that follows.

**DATES:** Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days. 2 U.S.C. 438(d).

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosemary C. Smith, Acting Associate General Counsel, or Ms. Mai T. Dinh, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** As part of its 1999 legislative recommendations to Congress, the Commission sought guidance “ \* \* \* on whether candidate committees may accept contributions which are derived from advances from a financial institution, such as advances on a candidate’s brokerage accounts, credit card, or home equity line of credit \* \* \* ” See 1999 Fed. Election Comm. Annual Rep. at 45 (2000). The Commission recognized that, since the FECA was first enacted, financial institutions have created new financing products to allow consumers more access to credit. The Commission recommended that the FECA be amended to allow candidates to access these new forms of credit to finance their campaigns for federal office, provided that the extension of credit is done in accordance with applicable law, under commercially reasonable terms and by persons who make these loans in the normal course of their business. *Id.*

In the Department of Transportation and Related Agencies Appropriations Act, 2001, Congress amended the FECA (2 U.S.C. 431(8)(B)) to exclude from the

definition of contribution “a loan of money derived from an advance on a candidate’s brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate\* \* \* ” The amendment also included the three conditions contained in the Commission’s legislative recommendation described above. The Department of Transportation and Related Agencies Appropriations Act, 2001, became Public Law 106–346 on October 23, 2000.<sup>1</sup>

The Commission is issuing these final rules to implement this amendment to the FECA. The final rules also include the reporting requirements associated with obtaining and repaying loans derived from brokerage accounts, credit card advances, and lines of credit. In addition to publishing the final rules in the **Federal Register**, the Commission is submitting these final rules to Congress for 30 legislative days before publishing an effective date. See 2 U.S.C. 438(d). This submission will satisfy the requirements of the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), requiring agencies to submit final rules to the Speaker of the House of Representatives and the President of the Senate and to publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on brokerage loans and lines of credit were transmitted to Congress on May 28, 2002.

**Explanation and Justification**

On July 25, 2001, the Commission published a Notice of Proposed Rulemaking (“NPRM”) containing its proposal to make the regulatory changes that would implement the amendment to the FECA to permit candidates to receive advances from their brokerage accounts, credit cards, home equity lines of credit, or other lines of credit. 66 FR 38576. The Commission raised several issues in the NPRM and solicited comments on those issues, as well as the proposed rules in general. The Commission also announced that it would hold a public hearing on September 19, 2001, if there were sufficient requests to testify. The deadline for submitting comments and requesting to testify at the public hearing was August 24, 2001. Because the Commission did not receive any requests to testify, it canceled the public

hearing. The notice of the cancellation was published in the **Federal Register** on September 11, 2001. 66 FR 47120. The Commission received only one comment, which was from Mr. Scott Holz, Senior Counsel at the Board of Governors of the Federal Reserve System.

**Amendment to Definitions of Contribution and Expenditure**

11 CFR 100.7 Contribution (2 U.S.C. 431(8))

**1. General Provisions on Brokerage Loans and Lines of Credit**

In order to exempt loans covered by this amendment to the FECA from the definition of “contribution,” the final rules amend 11 CFR 100.7(b) by changing the introductory language of paragraph (b)(11) and adding a new 11 CFR 100.7(b)(22) to include brokerage loans, credit card advances, and other lines of credit made to candidates as among the items that are not considered contributions. The amended and new paragraphs track the language of the amendment to the FECA including the conditions set forth, along with some additional clarifications and guidance regarding reporting requirements.

The Commission recognizes that commercial banks offer various lines of credit to their customers. Because the amendment to the FECA specifically establishes different criteria for lines of credit for candidates, the Commission is amending 11 CFR 100.7(b)(11) to exempt specifically brokerage loans, credit card advances, and other lines of credit extended to candidates from the requirements of bank loans contained in section 100.7(b)(11). The final rules amend paragraph (b)(11) by adding a sentence at the end of the introductory text that states that brokerage loans, credit card advances, and other lines of credit made to candidates under section 100.7(b)(22) are not subject to section 100.7(b)(11). This exception also includes overdrafts made on personal checking or savings accounts of candidates because overdraft protection is one form of a line of credit. Thus, overdrafts made on a candidate’s personal bank accounts are subject to the requirements of new section 100.7(b)(22). It is important to note that section 100.7(b)(11) will still apply to all loans and lines of credit made to a political committee and to conventional bank loans made to a candidate. No substantive comments were received regarding this issue.

<sup>1</sup> Public Law 106–346 included other statutory changes regarding reporting of independent expenditures, which has been addressed in a separate rulemaking. See Independent Expenditure Reporting Final Rules, 67 FR 12834 (March 20, 2002).

## 2. Endorsers, Guarantors, and Co-Signers

New paragraph (b)(22) implements the three statutory requirements for obtaining a loan derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit, which are: that the loan is made in accordance with applicable law; that the loan is made under commercially reasonable terms; and that persons making the loans make such loans in the normal course of their business. This new regulation also addresses situations where there are endorsers, guarantors, or co-signers of these loans. New paragraph (b)(22), similar to current paragraph (b)(11), provides that an endorser, guarantor, or co-signer is considered a contributor for the amount that the endorser, guarantor or co-signer is liable. This information must be disclosed on the Schedule C or C-P. See below. The exception is when the endorser, guarantor, or co-signer is the spouse of the candidate and the candidate's share of collateral used to obtain a secured loan equals or exceeds the amount of the loan. See 11 CFR 100.7(a)(1)(i)(D). Under proposed section 100.7(b)(22)(ii)(B) in the NPRM, when a spouse is an endorser, guarantor, or co-signer of an unsecured loan, the spouse would not be considered a contributor if the candidate uses, in connection with the campaign, only one-half of the available credit. The Commission sought comments on whether the regulations should allow the candidate to use the entire amount of the available credit for use in connection with a campaign in instances where the loan is in the ordinary course of business and the candidate is liable for the entire amount of the loan even though the spouse has endorsed, guaranteed, or co-signed for the loan. The Commission received no comments on this issue. In order for new section 100.7(b)(22)(ii)(B) to be consistent with the existing requirements of current paragraphs 100.7(a)(1)(i)(D) and (b)(11) regarding spouses who are endorsers, guarantors, or co-signers,<sup>2</sup> the Commission decided not to change the language in the proposed rule. Because no collateral is offered for unsecured debt, one-half of the available credit is a reasonable amount.

<sup>2</sup> Paragraph 100.7(a)(1)(i)(D), which paragraph (b)(11) adopts by reference, states that:

The spouse shall not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property equals or exceeds the amount of the loan which is used for the candidate's campaign.

Finally, section 432(e)(2) of the FECA and 11 CFR 101.2 state that a candidate is an agent of the candidate's authorized committee when he or she obtains a loan for use in connection with a campaign. Given that Public Law 106-346 did not distinguish loans derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit, from other types of loans, a candidate who obtains these loans for use in connection with the candidate's campaign is acting as an agent for his or her authorized committee under 2 U.S.C. 432(e) and 11 CFR 101.2.

## 3. Loans for Routine Living Expenses

In addition to provisions described above, new section 100.7(b)(22) contains a provision that addresses loans derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit that are used for the candidate's routine living expenses. The Commission has determined that such loans would not violate 2 U.S.C. 439a or 11 CFR 113.2(d), prohibiting personal use of campaign funds. The loan, however, must be repaid from the candidate's personal funds.

The Commission sought comment in the NPRM on whether the final rules should contain a descriptive and/or inclusive definition of the phrase "personal living expenses." The Commission did not receive any comments on this question. Upon further examination of 11 CFR part 100, the Commission has determined that "personal living expenses" are no different than "routine living expenses" as described in 11 CFR 100.8(b)(22). Because it is unnecessary to introduce a new term into the regulations in this instance, the Commission has decided to use "routine living expenses" in new section 100.7(b)(22)(iii) instead of "personal living expenses."

Although the final rules do not define "personal living expenses," the Commission has determined that it may be useful if this Explanation and Justification includes examples of items that are considered to be "routine living expenses," recognizing that it would be impossible to describe every possible expense of a candidate that is not for the purpose of influencing the candidate's election to Federal office. The examples are: (1) Household items or supplies, including food, furniture, and accessories; (2) funeral, cremation, or burial expenses; (3) clothing, other than clothing purchased to attend campaign related events or appearances; (4) tuition payments, other than those associated with training relating to the

campaign; (5) mortgage, rent, and utility payments, and maintenance and repair expenses associated with residential real property; (6) investment expenses such as acquiring securities on margin if no amount of the investment and its proceeds are used for the purpose of influencing the candidate's election for Federal office; (7) vehicle expenses, including loan payments, gas, insurance, maintenance, and repair; (8) charitable donations unless the candidate receives compensation for services to the charitable entity that become personal funds of the candidate and then are used for the purpose of influencing the candidate's election for Federal office; and (9) travel expenses if the travel is unrelated to the campaign.

*A. Loans Used Exclusively for Routine Living Expenses.* In the NPRM the Commission sought comments on whether the final rule should require the candidate's authorized committee to report loans used exclusively for the candidate's routine living expenses. The Commission did not receive any comments on this issue. If a candidate used all of the loan proceeds for routine living expenses, then it logically follows that none of the loan proceeds is used for the purpose of influencing the candidate's election for federal office. Therefore, the Commission concludes that the reporting requirements in the final rule, which remains unchanged from the proposed rule, are a reasonable approach to loans used for this purpose. Under new paragraph 100.7(b)(22)(iii)(A), loans used *solely* for routine living expenses do not need to be reported in accordance with 11 CFR part 104.

*B. Loans Used for Routine Living Expenses and for the Purpose of Influencing the Candidate's Election for Federal Office.* Unlike loans that are used exclusively for routine living expenses, the final rules require reporting of loans that are used both for routine living expenses and for the purpose of influencing the candidate's election for federal office. Under new section 100.7(b)(22)(iii)(D), if a loan or an advance that is derived from the candidate's brokerage account, credit card, home equity line of credit, or other line of credit is used for the purpose of influencing the candidate's election for Federal office and for other purposes, including routine living expenses, then the portion that is used for the purpose of influencing the candidate's election for Federal office must be reported under 11 CFR part 104. For example, if a candidate establishes a margin account with a brokerage firm to acquire additional securities on margin and to obtain non-purpose credit to finance the

campaign, then the non-purpose credit used to finance the campaign must be reported, but the credit used to purchase securities purchased on margin does not need to be reported.

*C. Repayments of Loans Used for Routine Living Expenses by Third Parties.* Under new paragraphs (b)(22)(iii)(C), the candidate's principal campaign committee must report a loan that is used for routine living expenses if a third party, except the candidate's spouse, repays, guarantees, endorses, or co-signs the loan, in part or in whole. The third party is deemed to make a contribution in the amount of the endorsement, guarantee, or liability and this amount would be subject to the limitations and prohibitions of the FECA. See 11 CFR 113.1(g)(6). Thus, if a third party repays, guarantees, endorses, or co-signs the loan, the authorized committee must report the loan and the repayment under 11 CFR 104.3, 104.8 and 104.9.

*D. Defining "Used for the Candidate's Campaign".* In addition to seeking comment on whether the term "personal living expenses" is sufficiently descriptive and inclusive, the Commission also sought comment on whether the final rules should define the scope of the phrase "used for the candidate's campaign," which is included in proposed section 100.7(b)(22)(ii)(A) in the NPRM and is derived from 2 U.S.C. 432(e)(2). No comments concerning this issue were received. After additional analysis, the Commission decided not to define the phrase "used for the candidate's campaign." Rather, the phrases "used for the candidate's campaign" and "used in connection with the campaign" (in proposed section 100.7(b)(22)(ii)(B) in the NPRM) have been replaced by the phrase "used for the purpose of influencing the candidate's election for Federal office" in the final rules. This new phrase is derived from the statutory language in 2 U.S.C. 431(8)(A)(i).<sup>3</sup> The amendment to the FECA, that is the basis of this rulemaking, added loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, and other lines of credit available to the candidate to the list of valuable services in 2 U.S.C. 431(8)(B) that are not considered as contributions. It is appropriate to use similar terminology because regulatory language should reflect the statutory language on which

it is based and section 100.7 is grounded in 2 U.S.C. 431(8).

The only difference is that the regulatory language of new paragraph 100.7(b)(22) limits the application to the candidate's election, not to any election, for Federal office. For example, if Candidate X uses a draw on his own personal line of credit to make a contribution to Candidate Y's campaign, then Candidate X's committee does not have to report the draw.

The final rules do not contain a definition of "used for the purpose of influencing the candidate's election for Federal office" because the meaning of the phrase "for the purpose of influencing any election for Federal office" has been extensively discussed in advisory opinions, enforcement actions (matter under review or "MUR"), and court cases. See e.g. *FEC v. Ted Haley Cong. Comm.*, 852 F.2d 111, 114–16 (9th Cir. 1998); Advisory Opinions 1983–12, 1990–5, and 1992–6; MUR 3918 (Hyatt for Senate). The court cases, advisory opinions, and enforcement actions provide guidance on when a loan is being used for the purpose of influencing the candidate's election for Federal office.

*E. Bank Loans Used for Routine Living Expenses.* The NPRM sought comments on whether the final rules should make similar clarifications regarding the reporting of bank loans that are used solely for the candidate's personal living expenses. The Commission did not receive any comments on this issue. The FECA standards for bank loans are higher than those for loans derived from a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit. Bank loans are required, among other things, to be made on a basis that assures repayment and must be subject to a due date or amortization schedule, requirements that do not generally exist for loans derived from a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit. See 2 U.S.C. 431(8)(B)(vii)(II). Thus, the FECA already provides for greater safeguards ensuring repayment of bank loans. Consequently, the Commission has concluded that it is not necessary to amend the bank loan rules at this time to address more specifically loans whose proceeds are used for routine living expenses.

#### 4. Repayments of Loans by Authorized Committees to Either the Candidate or the Lending Institution

Under new section 100.7(b)(22)(iv), the candidate's authorized committee will have the option of repaying the loan directly to the lending institution

or to the candidate. The NPRM included an alternative approach as to how the candidate's authorized committee must accept and use the proceeds of a loan derived from a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit, and repays that loan. The alternative approach set out in the proposed rules would require that the initial receipt and eventual repayment of the loan must pass through the candidate's personal account. In other words, the lending institution must disburse the loan proceeds to the candidate who would then loan or contribute the money to the authorized committee. If the candidate loans the money to the authorized committee, the committee would be required to repay the loan to the candidate, not to the lending institution, and the candidate would then repay the lending institution. If the candidate makes a contribution as a gift to the campaign, the committee would not repay either the candidate or the financial institution.

The Commission did not receive any comments to this alternative approach. The final rules do not adopt this alternative approach in order to allow the candidates and their authorized committees the flexibility to structure and manage these loans in a manner that fits their needs and circumstances. Requiring that the disbursement and repayment of these loans pass through the candidate's personal bank account may be burdensome and inefficient for some candidates and their committees. Therefore, the final rules allow the candidate and the authorized committee to decide whether the disbursement of the loan proceeds and the loan repayments should pass through the candidate's personal bank account or be paid, and repaid, directly between the financial institution and the authorized committee.

#### 5. Other Amendments to 11 CFR 100.7(b)

The final rules delete an obsolete reference in the introductory text of 11 CFR 100.7(b)(11) to the Federal Savings and Loan Insurance Corporation ("FSLC"). The FSLC has been dissolved and its deposit insurance responsibilities have been transferred to the Federal Deposit Insurance Corporation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73 (August 9, 1989).

#### 11 CFR 100.8 Expenditure

Currently, 11 CFR 100.8(b)(12) exempts bank loans from the definition of "expenditure" and contains parallel

<sup>3</sup> The statutory language states that "[t]he term 'contribution' includes—(i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office; \* \* \*

language to that found in the exceptions to the definition of "contribution" in section 100.7(b)(11). The final rules exempt loans derived from advances on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, from the definition of "expenditure" by amending section 100.8(b)(12) and by adding a new section 100.8(b)(24). The amendments to section 100.8(b)(12) are similar to the amendments to section 100.7(b)(11). *See above.* New section 100.8(b)(24) adopts, by reference, the language of new section 100.7(b)(22).

### Reporting Requirements

The NPRM included several reporting requirements pertaining to loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit for use in connection with the candidate's campaign. Under the proposed rules, the candidate's principal campaign committee would report transactions between the lending institution and the candidate, and between the candidate and the principal campaign committee.

The NPRM also included an alternative reporting approach and sought comments on the approach. Under this alternative, a committee would be required only to report certain limited information about loans derived from advances on brokerage accounts, credit cards, home equity lines of credit, or other lines of credit when the candidate has loaned or contributed outright, as a gift, such funds to the committee. This information would include the name of the institution and any applicable interest rate and the due date. Further, in the situation where the candidate has loaned the funds to the committee, the committee would only be required to report repayments to the candidate, and would not report the repayments by the candidate to the lending institution. This limited reporting approach would be applied to loans from banks as well as to the loans derived from other sources covered by the recent statutory amendment. It would rely on the complaint and audit processes to monitor situations where the lending institution forgives the loan, in part or in whole, or where the candidate relies on third parties to make the repayments to the lending institution. The Commission did not receive any comments on this alternative. The Commission has decided to adopt this alternative reporting approach. The new reporting requirements are described below.

### 11 CFR 104.3 Contents of Reports

As noted above, the final rules require that loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit for use in connection with the candidate's campaign, be reported by the candidate's principal campaign committee. The requirements are set forth in several sections in 11 CFR part 104. In section 104.3, the candidate's principal campaign committee is required to report the loan of money from the candidate as a receipt under revised paragraph (a)(3)(vii)(B). It is also required to report any repayment of the loan to the candidate as a disbursement under revised paragraph (b)(2)(iii)(A). These two paragraphs are amended to reflect that loans from the candidate may derive from a bank loan or an advance from a brokerage account, credit card, home equity line of credit or other lines of credit available to the candidate.

Under the final rules, section 104.3(b)(4)(iii) is amended to specifically include persons who receive repayments from a reporting committee of loans derived from an advance on a candidate's brokerage account, credit card, or lines of credit, as among those who must be identified and itemized in the report. "Persons" in this new section include candidates and lending institutions. Section 104.3(b)(4)(iv) is deleted, removing the requirement that the principal campaign committee report each person who receives a repayment from the candidate.

Current 11 CFR 104.3(d) describes the requirements for reporting debts and obligations. The final rules amend this paragraph to set forth the new reporting requirements for loans derived from advances on a candidate's brokerage account, credit card, home equity line of credit and other lines of credit and for bank loans made to candidates. First, the introductory language of paragraph (d) is amended to make clear that these advances must be reported if they are used for the candidate's campaign even if the advances were received before the individual became a candidate for federal office. Second, the reference to "candidate" in paragraph (d)(1) is deleted to exclude bank loans to candidates from the reporting requirements of that paragraph. Instead of paragraph (d)(1), bank loans to candidates must now be reported in accordance with paragraph (d)(4) in Schedule C-1 or C-P-1. Political committees must continue to report the information listed in paragraph (d)(1) in Schedule C-1 and C-P-1.

The final rules add a new section 104.3(d)(4) to describe the information that must be disclosed in the report about loans to candidates, including bank loans. The new paragraph requires authorized committees to disclose loans derived from an advance from a candidate's brokerage account, credit card, or line of credit on Schedules C, C-P, C-1, and C-P-1. Current Schedules C, C-P, C-1 and C-P-1 have not been revised to reflect the new reporting requirements for loans to candidates from financial institutions. Rather, the instructions to Schedules C, C-P, C-1 and C-P-1, and to the Detailed Summary Pages for Forms 3 and 3P, will be modified to reflect the new reporting requirements under new section 104.3(d)(4). Revisions to the instructions to these schedules will be transmitted to Congress at a later point, and will become effective at the same time as the amendments to the regulations. The revised instructions will be posted on the Commission's Web site ([www.fec.gov](http://www.fec.gov)) and will be available to the public through the Commission's Information Division.

Under new section 104.3(d)(4), committees are required to disclose the following information: date, amount and interest rate of the loan; name and address of the lending institution; and type and value of collateral or security, if any. The Commission did not receive any comments pertaining to this section.

### 11 CFR 104.8 Uniform Reporting of Receipts

Current 11 CFR 104.8 requires that certain receipts, including loans, be disclosed on Schedule A. The final rules add new paragraph (g) to section 104.8 to describe how receipt of bank loans to candidates and loans derived from an advance from a candidate's brokerage account, credit card, or line of credit must be reported on Schedule A. When the candidate's committee receives the funds directly from the lending institution or from the candidate (as a loan or a contribution, as a gift), it is reported as an itemized entry on Schedule A. A cross reference to section 100.7(b)(22)(iii) is also included in new section 104.8(g) regarding the reporting of loans obtained solely for the candidate's routine living expenses. Unlike the proposed rules, the committee is not required to report loan disbursements to the candidate. Also, the loan must be continuously reported on Schedule C or C-P until it is extinguished. The candidate may choose either to loan or to contribute, as a gift, the loan proceeds to the

authorized committee.<sup>4</sup> If the money is designated as a contribution when the authorized committee reports the receipt, then the authorized committee cannot repay the underlying loan to the financial institution. Any repayment of the underlying loan would constitute conversion of campaign funds for personal use and is prohibited by 11 CFR 113.2(d). The reporting requirements remain the same. The contribution, as a gift, from the candidate to the authorized committee must be reported as an itemized receipt in Schedule A. The underlying loan must be reported on the Schedule C-1 or C-P-1.

#### *11 CFR 104.9 Uniform Reporting of Disbursements*

Current 11 CFR 104.9 requires that certain disbursements, including loan repayments, be disclosed on Schedule B. The final rules add new paragraph (f) to section 104.9 to explain how repayments of bank loans to candidates and loans derived from an advance from a candidate's brokerage account, credit card, or line of credit are to be reported on Schedule B. Repayment by the candidate's committee to the lending institution or the candidate is reported as an itemized entry on Schedule B. Unlike the proposed rules, the committee is not required by the final rules to report repayments by the candidate to the lending institution.

#### *11 CFR 104.14 Formal Requirements Regarding Reports and Statements*

Unlike the regulations for bank loans to political committees, the final rules do not require principal campaign committees to submit to the Commission loan agreements or similar documents that are connected with a bank loan to the candidate or a loan derived from an advance from a candidate's brokerage account, credit card, or line of credit. However, the alternative reporting approach, which the Commission has adopted in the final rules, contemplates that in lieu of requiring the candidate's committee to disclose detailed information about these loans, the final rules would require candidates to preserve records pertaining to bank loans to the candidates or loans derived from an advance from a candidate's brokerage account, credit card, or line of credit. This will enable the Commission to conduct investigations and audits when necessary, pursuant to the enforcement and audit authority. See 2 U.S.C. 437g

and 438(b). Therefore, the final rules added new paragraph (b)(4) to section 104.14 that lists the following types of documents that candidates must preserve for three years following the date of the election for which they were candidates:

- a. Records that demonstrate the ownership of the accounts or assets securing the loans such as statements for accounts that identify the account holders, the owners of the credit card account, and the names on the deed for the home used for a line of credit;
- b. Copies of the executed loan agreements and all security and guarantee statements;
- c. Statements of account for all accounts used to secure any loan for the period the loan is outstanding such as brokerage accounts or credit card accounts, and statements on any line of credit account that was used for the purpose of influencing the candidate's election for Federal office;
- d. For brokerage loans or other loans secured by financial assets, documentation to establish the source of the funds in the account at the time of the loan; and
- e. Documentation (check copies *etc.*) for all payments made on the loan by any person.

The NPRM solicited comments on whether to require the candidate's principal campaign committee to submit loan agreements and similar documents on loans derived from an advance from a candidate's brokerage account, credit card, or line of credit when the committee files Schedule D. The Commission did not receive any comments on this issue. Because the Commission has decided to adopt the alternative reporting approach, the candidate's principal campaign committee is not required to submit these documents.

The Commission, however, did receive a comment concerning the documents that are required to be maintained under section 104.14. The NPRM listed the Federal Reserve's Form T-4 as among the documents that must be maintained for three years. The commenter stated that non-purpose credit extended from margin accounts does not require a Form T-4. Only those that are extended from non-purpose credit accounts require Form T-4. Also, the brokerage firms generally retain the forms and do not necessarily provide a copy to the customer. Therefore, authorized committees do not need to maintain copies of Form T-4 in their files.

## **Conforming Amendment**

### *11 CFR 113.1 Definitions*

Under the final rules, the third party payments provisions of the definition of "personal use" in 11 CFR 113.1(g)(6) is amended to include a repayment, endorsement, guarantee, or co-signature of a loan derived from a candidate's brokerage account, credit card, home equity line of credit, or other line of credit and used for the candidate's routine living expenses within the meaning of "payment." A cross reference to section 100.7(b)(22) is included in this paragraph.

### **Additional Topics on Which No Changes to the Rules Are Being Made**

#### *Margin Requirements*

The NPRM stated that a loan derived from a brokerage account is obtained by opening a non-purpose credit account. The commenter pointed out that non-purpose credit can also be extended from margin accounts but they are subject to the limitations and regulations of Regulation T, 12 CFR part 220. Under 12 CFR 220.6(e), however, non-purpose credit accounts are not subject to Regulation T's margin requirements but are subject to the rules of the self regulating organizations ("SRO") that regulate the exchanges. Recognizing that non-purpose credit accounts contain similar inherent risks to margin accounts, the two largest SRO, the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers ("NASD"), established minimum maintenance margins for non-purpose credit accounts that are applicable to the members in their exchanges.<sup>5</sup> Generally, the minimum maintenance margin is 25 percent.<sup>6</sup> That is, a customer must maintain securities valued at 125 percent of the outstanding non-purpose credit. Individual brokerage firms may require higher maintenance margins.

<sup>5</sup> Margin is the amount paid by the customer when using the broker's credit to purchase securities. The maintenance margin is the minimum margin that must be held or maintained in an account. As long as the value of the equity in the customer's account exceeds the maintenance margin, the customer is not required to make payments on the loan. A margin call occurs when the value of a customer's account falls below the maintenance margin and the brokerage firm issues a demand to a customer to deposit more cash or securities into the account so that the value of the account increases to at least the maintenance margin.

<sup>6</sup> However, the Federal Reserve Board may amend Regulation T to change the minimum maintenance for margin accounts. Also, the SRO may change the maintenance margin for non-purpose credit account with the approval of the Securities and Exchange Commission (SEC).

<sup>4</sup> The contribution is not subject to contribution limitations in 2 U.S.C. 441a(a). See *Buckley v. Valeo*, 424 U.S. 1 (1976).

Brokerage firms are supposed to issue a margin call if the equity in a customer's non-purpose credit account falls below the maintenance margin. Both the NYSE and the NASD, however, allow firms not to issue a margin call if the firm is willing to take a charge against its net capital, pursuant to SEC Rule 15c3-1, for the amount the customer would have been required to deposit to meet the margin call.<sup>7</sup> See NYSE Rule 431(e)(7) and NASD Rule 2520(e)(7).

Although this practice may be considered to be in the ordinary course of business, nevertheless, the candidate would receive something of value—not having to deposit additional cash or securities into an account—for free. Essentially, the brokerage firm is providing additional collateral to the candidate without being compensated. Even though the brokerage firm may provide the same service to other customers who are not seeking Federal office, the Commission has determined that services offered free of charge by corporations in the ordinary course of business for promotional or good will purposes (if these services might otherwise have required consideration) are prohibited by 2 U.S.C. 441b. See Advisory Opinions 1996-2, 1988-25, 1988-12. Moreover, by not making the margin call, the candidate has increased his or her risk exposure and may be less likely to be able to repay the loan.

In the NPRM, the Commission sought comments on whether a brokerage firm that makes a charge against net capital may, under certain circumstances, provide something of value to candidates which is prohibited by 2 U.S.C. 441b. The Commission did not receive any comments on this issue. Given the analysis above, the Commission has concluded that brokerage firms that take a charge against their net capital instead of making a margin call on non-purpose credit accounts used by candidates to finance their campaign are making an unlawful corporate contribution. The final rules do not specifically address this issue because the Federal Reserve Board and the Securities and Exchange Commission have primary jurisdiction over these transactions. Rather, should the situation arise, the Commission may address this issue on a case-by-case basis through its enforcement or advisory opinion processes.

<sup>7</sup> This practice is not available to non-purpose credit extended from margin accounts because the Federal Reserve Board's Regulation T requires that brokers issue a margin call when a margin account falls below the maintenance margin.

### *Repayment and Termination*

Loans derived from a candidate's brokerage account, credit card account, home equity line of credit, or other lines of credit, present several repayment issues. Under 2 U.S.C. 432(e)(2), a candidate is considered an agent of the authorized committee when obtaining a loan for use in connection with the candidate's campaign for federal office. As such, the authorized committee currently has a continuing obligation to report the loan until it is repaid to the lending institution. In practice, customers are not required to make payments on the loans derived from a brokerage account unless the value of the non-purpose credit account falls below the maintenance margin. If the securities in margin and non-purpose credit accounts continually increase in value, then the customer does not have to make any payments. Thus, a candidate could maintain a loan balance well after the candidate is no longer seeking federal office.

Currently, a committee reports the disposition and repayment of its loans, including loans to the candidate that are used for campaign purposes, before it can terminate. For purposes of determining the disposition of these loans, the Commission sought comments on when a brokerage loan should be considered repaid in full and on when a committee can terminate. The Commission did not receive any comments on these questions.

Because the Commission has adopted the alternative reporting approach, the candidate's principal campaign committee no longer must report the candidate's repayments directly to the lending institution. Thus, the committee may terminate once it has repaid the loans made to the committee even if the underlying loan remains outstanding against the candidate. However, it is important to note that the candidate must still preserve the records described in new section 104(b)(4) for three years after the election even if the committee terminates before that date.

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

The attached final rules do not have a significant economic impact on a substantial number of small entities. The final rules implement the changes to the FECA expressly permitting candidates to obtain loans from a wider range of financial institutions. This increases the flexibility that candidates would have to seek financing for their campaigns. The requirement to report loans derived from an advance from a

candidate's brokerage account, credit card, or line of credit only impacts the candidates and their campaign committees. It does not have a significant economic impact on these committees because they are already required to report all loans that are made in connection with a federal campaign. In fact, the reporting requirements in the final rules are minimal. The changes will not cause committees to devote much additional time or resources to comply with the reporting requirements. Therefore, the attached final rules do not have a significant economic impact on a substantial number of small entities.

### **List of Subjects**

#### *11 CFR Part 100*

Elections.

#### *11 CFR Part 104*

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

#### *11 CFR Part 113*

Campaign funds.

For the reasons set out in the preamble, Subchapter A, Chapter I of title 11 of the *Code of Federal Regulations* is amended as follows:

### **PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)**

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

**Authority:** 2 U.S.C. 431, 434(a)(11), 438(a)(8).

2. 11 CFR 100.7 is amended by revising the introductory text of paragraph (b)(11) and adding new paragraph (b)(22) to read as follows:

#### **§ 100.7. Contribution (2 U.S.C. 431(8)).**

\* \* \* \* \*

(b) \* \* \*

(11) A loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it: Bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written

instrument; and is subject to a due date or amortization schedule. Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a) and (d). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement, except that, in the event of a signature by the candidate's spouse, the provisions of 11 CFR 100.7(a)(1)(i)(D) shall apply. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a contribution by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. For purposes of this paragraph (b)(11), an overdraft made on a checking or savings account, other than the personal account of a candidate, shall be considered a contribution by the bank or institution unless: The overdraft is made on an account which is subject to automatic overdraft protection; the overdraft is subject to a definite interest rate which is usual and customary; and there is a definite repayment schedule. However, this paragraph (b)(11) shall not apply to any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in paragraph (b)(22) of this section.

\* \* \* \* \*

(22) (i) Any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, including an overdraft made on a personal checking or savings account of a candidate, provided that:

(A) Such loan is made in accordance with applicable law and under commercially reasonable terms; and

(B) The person making such loan makes loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit in the normal course of the person's business.

(i) Each endorser, guarantor, or co-signer shall be deemed to have contributed that portion of the total amount of the loan derived from an advance on a candidate's brokerage account, credit card, home equity line of

credit, or other line of credit available to the candidate, for which he or she agreed to be liable in a written agreement, including a loan used for the candidate's routine living expenses. Any reduction in the unpaid balance of the loan, advance, or line of credit shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan, advance, or line of credit for which each endorser, guarantor, or co-signer is liable, the loan shall be considered a contribution by each endorser or guarantor in the same proportion to the unpaid balance that each endorser, guarantor, or co-signer bears to the total number of endorsers or guarantors. However, if the spouse of the candidate is the endorser, guarantor, or co-signer, the spouse shall not be deemed to make a contribution if:

(A) For a secured loan, the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan that is used for the candidate's campaign; or

(B) For an unsecured loan, the amount of the loan used for in connection with the candidate's campaign does not exceed one-half of the available credit extended by the unsecured loan.

(iii) (A) A loan derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, that is used by the candidate solely for routine living expenses, as described in 11 CFR 100.8(b)(22), does not need to be reported under 11 CFR part 104 provided that the loan, advance, or line of credit is repaid exclusively from the personal funds of the candidate or payments that would have been made irrespective of the candidacy pursuant to 11 CFR 113.1(g)(6).

(B) Any repayment, in part or in whole, of the loan, advance, or line of credit described in paragraph (b)(22)(iii)(A) of this section by the candidate's authorized committee constitutes the personal use of campaign funds and is prohibited by 11 CFR 113.2.

(C) Any repayment or forgiveness, in part or in whole, of the loan, advance, or line of credit described in paragraph (b)(22)(iii)(A) of this section by a third party (other than a third party whose payments are permissible under 11 CFR 113.1(g)(6)) or the lending institution is a contribution, subject to the limitations and prohibitions of 11 CFR parts 110 and 114, and shall be reported under 11 CFR part 104.

(D) Notwithstanding paragraph (b)(22)(iii)(A) of this section, the portion of any loan or advance from a candidate's brokerage account, credit card account, home equity line of credit, or other line of credit that is used for the purpose of influencing the candidate's election for Federal office shall be reported under 11 CFR part 104.

(iv) The candidate's authorized committee may repay a loan from the candidate that is derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, directly to the candidate or the original lender. The amount of the repayment shall not exceed the amount of the principal used for the purpose of influencing the candidate's election for Federal office and interest that has accrued on that principal.

(v) Loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate shall be reported by the candidate's principal campaign committee in accordance with 11 CFR part 104.

\* \* \* \* \*

3. 11 CFR 100.8 is amended by revising the introductory text of paragraph (b)(12) and adding new paragraph (b)(24) to read as follows:

**§ 100.8 Expenditure (2 U.S.C. 431(9)).**

\* \* \* \* \*

(b) \* \* \*

(12) A loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration is not an expenditure by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it: Bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule. Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a) and (d). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement, except that, in the event of a signature by the candidate's spouse,

the provisions of 11 CFR 100.7(a)(1)(i)(D) shall apply. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that the loan agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered an expenditure by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. For the purpose of this paragraph (b)(12), an overdraft made on a checking or savings account shall be considered an expenditure unless: The overdraft is made on an account which is subject to automatic overdraft protection; and the overdraft is subject to a definite interest rate and a definite repayment schedule. However, this paragraph (b)(12) shall not apply to any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in paragraph (b)(24) of this section.

\* \* \* \* \*

(24) Any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, as defined in 11 CFR 100.7(b)(22).

\* \* \* \* \*

#### **PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)**

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

**Authority:** 2 U.S.C. 431(1), 431(8), 431(9), 432 (i), 434, 438(a), 438(b), 439a.

5. 11 CFR 104.3 is amended as follows:

- a. Revise paragraph (a)(3)(vii)(B);
- b. Revise paragraph (b)(2)(iii)(A);
- c. Revise paragraph (b)(4)(iii);
- d. Remove and reserve paragraph (b)(4)(iv);
- e. Revise the introductory text of paragraph (d);
- f. Revise the introductory text of paragraph (d)(1);
- g. Revise paragraph (d)(2);
- h. Revise paragraph (d)(3); and
- i. Add paragraph (d)(4).

The revisions and additions read as follows:

#### **§ 104.3 Contents of reports (2 U.S.C. 434(b), 439(a))**

- (a) \* \* \*
- (3) \* \* \*
- (vii) \* \* \*

(A) Loans made, guaranteed, or endorsed by a candidate to his or her authorized committee including loans derived from a bank loan to the candidate or from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24); and

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*
- (iii) \* \* \*

(A) Repayment of loans made, guaranteed, or endorsed by the candidate to his or her authorized committee including loans derived from a bank loan to the candidate or from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24);

\* \* \* \* \*

- (4) \* \* \*

(iii) Each person who receives a loan repayment, including a repayment of a loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24), from the reporting committee during the reporting period, together with the date and amount of such loan repayment;

- (iv) [Reserved]

\* \* \* \* \*

(d) *Reporting debts and obligations.* Each report filed under 11 CFR 104.1 shall, on Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee. Loans, including a loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22), obtained by an individual prior to becoming a candidate for use in connection with that individual's campaign shall be reported as an outstanding loan owed to the lender by the candidate's principal campaign committee, if such loans are outstanding at the time the individual becomes a candidate. Where such debts and obligations are settled for less than their reported amount or value, each report filed under 11 CFR 104.1 shall contain a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the amount paid. *See* 11 CFR 116.7.

(1) In addition, when a political committee obtains a loan from, or establishes a line of credit at, a lending institution as described in 11 CFR 100.7(b)(11) and 100.8(b)(12), it shall

disclose in the report covering the period when the loan was obtained, the following information on schedule C-1 or C-P-1:

\* \* \* \* \*

(2) The political committee shall submit a copy of the loan or line of credit agreement which describes the terms and conditions of the loan or line of credit when it files Schedule C-1 or C-P-1. This paragraph (d)(2) shall not apply to any Schedule C-1 or C-P-1 that is filed pursuant to paragraph (d)(4) of this section.

(3) The political committee shall file in the next due report a Schedule C-1 or C-P-1 each time a draw is made on a line of credit, and each time a loan or line of credit is restructured to change the terms of repayment. This paragraph (d)(3) shall not apply to any Schedule C-1 or C-P-1 that is filed pursuant to paragraph (d)(4) of this section.

(4) When a candidate obtains a bank loan or loan of money derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24) for use in connection with the candidate's campaign, the candidate's principal campaign committee shall disclose in the report covering the period when the loan was obtained, the following information on Schedule C-1 or C-P-1:

(i) The date, amount, and interest rate of the loan, advance, or line of credit;

(ii) The name and address of the lending institution; and

(iii) The types and value of collateral or other sources of repayment that secure the loan, advance, or line of credit, if any.

\* \* \* \* \*

6. 11 CFR 104.8 is amended by adding paragraph (g) to read as follows:

#### **§ 104.8 Uniform reporting of receipts.**

\* \* \* \* \*

(g) The principal campaign committee of the candidate shall report the receipt of any bank loan obtained by the candidate or loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24), as an itemized entry of Schedule A as follows:

(1) The amount of the loan that is used in connection with the candidate's campaign shall be reported as an itemized entry on Schedule A.

(2) *See* 11 CFR 100.7(b)(22)(iii) for special reporting rules regarding certain loans used for a candidate's routine living expenses.

7. 11 CFR 104.9 is amended by adding paragraph (f) to read as follows:

**§ 104.9 Uniform reporting of disbursements.**

\* \* \* \* \*

(f) The principal campaign committee of the candidate shall report its repayment to the candidate or lending institution of any bank loan obtained by the candidate or loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24) as an itemized entry on Schedule B.

8. Amend § 104.14 by revising paragraph (b) to read as follows:

**§ 104.14 Formal requirements regarding reports and statements.**

\* \* \* \* \*

(b) Each political committee or other person required to file any report or statement under this subchapter shall maintain all records as follows:

(1) Maintain records, including bank records, with respect to the matters required to be reported, including vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness;

(2) Preserve a copy of each report or statement required to be filed under 11 CFR parts 102 and 104, and all records relevant to such reports or statements;

(3) Keep all reports required to be preserved under this section available for audit, inspection, or examination by the Commission or its authorized representative(s) for a period of not less than 3 years after the report or statement is filed (*See* 11 CFR 102.9(c) for requirements relating to preservation of records and accounts); and

(4) Candidates, who obtain bank loans or loans derived from an advance from the candidate's brokerage account, credit card, home equity line of credit, or other lines of credit available to the candidate, must preserve the following records for three years after the date of the election for which they were a candidate:

(i) Records to demonstrate the ownership of the accounts or assets securing the loans;

(ii) Copies of the executed loan agreements and all security and guarantee statements;

(iii) Statements of account for all accounts used to secure any loan for the period the loan is outstanding such as brokerage accounts or credit card

accounts, and statements on any line of credit account that was used for the purpose of influencing the candidate's election for Federal office;

(iv) For brokerage loans or other loans secured by financial assets, documentation to establish the source of the funds in the account at the time of the loan; and

(v) Documentation for all payments made on the loan by any person.

\* \* \* \* \*

**PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT FEDERAL OFFICEHOLDER ACTIVITIES (2 U.S.C. 439a)**

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

**Authority:** 2 U.S.C. 432(h), 438 (a)(8), 439a, 441a.

10. 11 CFR 113.1 is amended by revising the introductory text in paragraph (g)(6) to read as follows:

**§ 113.1 Definitions (2 U.S.C. 439a).**

\* \* \* \* \*

(g) \* \* \*

(6) *Third party payments.*

Notwithstanding that the use of funds for a particular expense would be a personal use under this section, payment of that expense by any person other than the candidate or the campaign committee shall be a contribution under 11 CFR 100.7 to the candidate unless the payment would have been made irrespective of the candidacy. "Payment" includes repayment, endorsement, guarantee, or co-signature of a loan described in 11 CFR 100.7(b)(22) and used for the candidate's routine living expenses. Examples of payments considered to be irrespective of the candidacy include, but are not limited to, situations where—

\* \* \* \* \*

Dated: May 24, 2002.

**David M. Mason,**

*Chairman, Federal Election Commission.*

[FR Doc. 02-13689 Filed 6-3-02; 8:45 am]

**BILLING CODE 6715-01-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of Federal Housing Enterprise Oversight**

**12 CFR Part 1710**

**RIN 2550-AA20**

**Corporate Governance**

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Final regulation.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) is responsible for ensuring the safety and soundness of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (Enterprises). In furtherance of that responsibility, OFHEO is issuing a final regulation to set forth minimum standards with respect to corporate governance practices and procedures of the Enterprises.

**EFFECTIVE DATE:** August 5, 2002.

**FOR FURTHER INFORMATION CONTACT:**

David W. Roderer, Deputy General Counsel, telephone (202) 414-3804 (not a toll-free number); or Isabella W. Sammons, Associate General Counsel, telephone (202) 414-3790 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**Background**

Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102-550, titled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act) (12 U.S.C. 4501 *et seq.*) established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are adequately capitalized and operate safely and in compliance with applicable laws, rules, and regulations.

The Enterprises were established and operate under the authority of their respective Federal chartering acts as government-sponsored, privately owned corporations, to be directed by their respective boards of directors to fulfill the public purpose of providing a stable