

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 104, and 113

[Notice 2001—10]

Brokerage Loans and Lines of Credit

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

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 notice of proposed rulemaking ("NPRM") to solicit comments on its proposal to implement this amendment to the FECA. Please note that the draft rules that follow do not represent a final decision by the Commission on the issues presented by this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before August 24, 2001. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on September 19, 2001, at 10 a.m. Persons wishing to testify at the hearing should so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up. Electronic mail comments should be sent to loansnprm@fec.gov. Commenters sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full

name, electronic mail address and postal service address of the commenter will not be considered. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant 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 be 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, 2000.¹

The following represents the Commission's proposal to implement the amendment to the FECA allowing candidates to receive advances from

their brokerage accounts, credit cards, home equity lines of credit, or other lines of credit. In the narrative below, the Commission raises several issues associated with this NPRM. It welcomes comments on those issues as well as any additional comments that may be pertinent to this rulemaking but that have not been addressed in this NPRM.

Proposed Rules

11 CFR 100.7 Contribution

A. General Provisions on Brokerage Loans and Lines of Credit

In order to implement this amendment to the FECA, the Commission proposes to amend 11 CFR 100.7(b) by amending 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 proposed rules would 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 proposes to amend 11 CFR 100.7(b)(11) to specifically exempt 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 proposed rules would 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 § 100.7(b)(22) would not be subject to § 100.7(b)(11). This exception would also include overdrafts made on personal checking or saving accounts of candidates because overdraft protection is a form of a line of credit. Thus, overdrafts made on a candidate's personal accounts would be subject to the requirements of proposed § 100.7(b)(22). It is important to note that the § 100.7(b)(11) would still apply to all loans and lines of credit made to a political committee and to

¹ Public Law 106-346 included other statutory changes regarding reporting of independent expenditures, which are being addressed in a separate rulemaking.

conventional bank loans made to a candidate.

B. Endorsers, Guarantors, and Co-signers

Proposed paragraph (b)(22) would contain 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 would be made in accordance with applicable law; that the loan would be made under commercially reasonable terms; and that the persons making the loans make such loans in the normal course of their business. This new regulation would also address situations where there are endorsers, guarantors, or co-signers of these loans. New paragraph (b)(22), like current paragraph (b)(11), would provide that an endorser, guarantor, or co-signer would be considered a contributor for the amount that the endorser, guarantor or co-signer is liable. This information would be disclosed on new schedule C-2 or C-P-2. *See infra*. The exception would be 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 § 100.7(b)(22)(ii)(B), 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 only one-half of the available credit in connection with the campaign. The Commission seeks comments on whether the regulations should allow the candidate to use the entire amount of the available credit 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.

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 in connection with a campaign. Because the amendment to FECA 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 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.

C. Loans for Personal Living Expenses

Proposed section 100.7(b)(22) also contains a provision whereby a candidate would be able to obtain a loan derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit for personal living expenses without the loan being reportable. Further, the loan would not violate 2 U.S.C. 439a or 11 CFR 113.2(d) prohibiting personal use of campaign funds. The loan, however, would have to be repaid from the candidate's personal funds.

It is important to note that this exception in paragraph (b)(22)(iii) is limited to loans used solely for personal living expenses. Thus, if all or part of the loan proceeds is used in connection with a campaign, the loan would need to be reported under 11 C.F.R. part 104. As an alternative to proposed paragraph (b)(22)(iii), the Commission seeks comments on whether to require the candidate's authorized committee to report loans used exclusively for the candidate's personal living expenses.

The Commission is seeking comment on how to make proposed § 100.7(b)(22)(iii)(A) more precise, since a candidate might borrow money for any number of personal, commercial or investment purposes that would fall outside the category of "personal living expenses," yet such a loan would not be appropriate to characterize as "in connection with a campaign." For example, if a candidate establishes a margin account at a brokerage firm to acquire additional securities, this would not appear to be a "personal living expense."

In addition to seeking comment on whether the term "personal living expenses" is sufficiently descriptive and inclusive, the Commission is also seeking comment on the scope of the phrase "used for the candidate's campaign," which is included in proposed § 100.7(b)(22)(ii)(A) and is derived from 2 U.S.C. 432(e)(2). Should this phrase encompass only loans the proceeds of which are lent or contributed to the candidate's campaign or are used to defray campaign expenses? Even with this narrowing construction, because money is fungible, what additional guidance should the Commission provide as to the reporting obligations of candidates who receive money from multiple sources (e.g., a loan and the liquidation of stock) and who contribute or lend money to their candidate committee?

The exception in new paragraph (b)(22)(iii) would not apply, however, if a third party repays, guarantees,

endorses, or co-signs a loan for personal living expenses, in part or in whole. The third party would be 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.

The Commission is considering making similar clarifications regarding the reporting of bank loans that are used solely for the candidate's personal living expenses. Please note this is not reflected in the proposed rules that follow. Under this clarification, bank loans would not be required to be reported if: (1) No part of the loan proceeds is used in connection with a campaign; (2) the loan is repaid wholly from the candidate's personal funds; (3) the loan does not pass through the authorized committee's account and the authorized committee does not endorse, guarantee, co-sign, or pay the loan; and (4) there is no endorsement, guarantee, co-signature, or payment by a third party. The Commission seeks comments on whether it is advisable to adopt such clarifications regarding bank loans used for a candidate's personal living expenses.

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

Under proposed § 100.7(b)(22)(iv), the candidate's authorized committee would have the option of repaying the loan directly to the lending institution or to the candidate. If the repayment is made to the candidate, however, the candidate must repay the lending institution within 30 days of receiving the committee's repayment. This is to ensure that the funds will not be available for the candidate's personal use. *See* 2 U.S.C. 439a and 11 CFR 113.2(d).

E. Other Amendments to 11 CFR 100.7(b)

The proposed rules would also 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, Public Law 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 language to that found in the exceptions to the definition of "contribution" in provision of § 100.7(b)(11). The Commission proposes to 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 § 100.8(b)(12) and by adding a new § 100.8(b)(24). The proposed amendments to § 100.8(b)(12) are similar to the proposed amendments to § 100.7(b)(11). Proposed § 100.8(b)(24) adopts, by reference, the language of proposed § 100.7(b)(22).

11 CFR 104.3 Contents of Reports

As noted above, the Commission would 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 in connection with the candidate's campaign would have to be reported by the candidate's principal campaign committee. The requirements would be set out in several sections in 11 CFR part 104. In § 104.3, the candidate's principal campaign committee would be required to report the loan of money as a receipt under proposed paragraph (a)(3)(vii)(D). It would also be required to report any repayment of the loan as a disbursement under proposed paragraph (b)(2)(iii)(D).

Under the proposed rules, § 104.3(b)(4)(iii) would be 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 proposed section would include candidates and lending institutions. The proposed amendment to § 104.3(b)(4)(iv) would make the same change with regard to persons who receive a repayment of a loan from a candidate.

Current 11 CFR 104.3(d) describes the requirements for reporting debts and obligations. The proposed rules would amend this paragraph to include loans derived from advances on a candidate's brokerage account, credit card, home equity line of credit and other lines of credit. First, the introductory language of paragraph (d) would be 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. Paragraph (d)(1) would also be changed to recognize that lines of credit established by a candidate at any lending institution would be subject to the reporting requirements of new 11 CFR 104.3(d)(4) and not the reporting requirements of current § 104.3(d)(1). The amendment would clearly state that only lines of credit obtained by political committees would be subject to the bank loan regulations.

The proposed rules would add a new § 104.3(d)(4) to describe the information that must be disclosed in the report. The proposed paragraph would require committees to disclose loans derived from an advance from a candidate's brokerage account, credit card, or line of credit on new schedules C-2 and C-P-2. The Commission will design these new schedules to reflect the final rules and will have them available by the effective date of the final rules.

Under proposed § 104.3(d)(4), committees would be required to disclose the following information: Date, amount and interest rate of the loan; name and address of the lending institution; type and value of collateral or security; and each draw or advance on the credit card or line of credit. The Commission seeks comment on whether additional information is necessary.

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 proposed rules would add new paragraph (g) to § 104.8 to describe how receipt of a loan derived from an advance from a candidate's brokerage account, credit card, or line of credit would be reported on Schedule A. When the candidate's committee receives the funds directly from the lending institution, it would be reported as an itemized entry on Schedule A. If the candidate receives the funds from the lending institution and then makes a loan or a gift to the committee, then the transfer of funds from the lending institution to the candidate would be reported as a memo entry on Schedule A and the loan or gift of money from the candidate to the committee would be reported as an itemized entry on Schedule A. A cross reference to § 100.7(b)(22)(iii) would also be included in new § 104.8(g) regarding the reporting of loans obtained solely for the candidate's personal living expenses.

The Commission is also considering expanding the scope of proposed § 104.8(g) to include similar changes to the way in which bank loans obtained by candidates directly must be reported

on Schedule A as memo entries if they are used in connection with a campaign. This would provide further guidance to authorized committees on the proper reporting mechanism for bank loans obtained by candidates where the funds are turned over to the committee. The Commission seeks comments on whether it is advisable to expand the scope of proposed § 104.8(g) to address bank loans received initially by the candidate.

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. New paragraph (f) would be added to § 104.9 to explain how repayments of a loan derived from an advance from a candidate's brokerage account, credit card, or line of credit would be reported on Schedule B. If the candidate's committee directly repays the lending institution, then the repayment would be an itemized entry on Schedule B. If the committee repays the candidate who, in turn, repays the lending institution, then the repayment to the candidate would be an itemized entry and the repayment to the lending institution would be a memo entry. The Commission also seeks comments on whether it is advisable to expand the scope of proposed § 104.9(f) so that the repayment of bank loans would be reported in the same manner on Schedule B.

Alternative Approach on the Authorized Committee's Receipt of Loan Proceeds

Proposed 11 CFR 100.7(b)(22)(vi), 104.8(g), and 104.9(f) would permit the proceeds of the loan to be paid directly to the candidate's authorized committee and would permit the authorized committee to repay the loan directly to the lending institution. As an alternative to the approach set out in the proposed rules, the Commission is considering whether to require that the payment and repayment of the loan pass through the candidate's personal account, in order to distinguish bank loans made directly to an authorized committee from loans derived from a candidate's brokerage account, credit card, home equity line of credit, or other line of credit. In other words, the lending institution must disburse the loan 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.

Alternative Reporting Approach

As an alternative to the foregoing reporting approach in the proposed amendments to 11 CFR 104.3, 104.8, and 104.9, the Commission seeks comment on a less extensive reporting system. A committee only would be required to report certain limited information about the sources of bank loans and 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 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 lent the funds to the committee, the committee only would be required to report repayments to the candidate, not the repayments by the candidate to the lending institution. This reporting approach would be applied to loans from banks as well as 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 committee makes loan repayments but the candidate does not use such repayments to repay the lending institution or relies on third parties to make the repayments to the lending institution. It would involve repeal of 11 CFR 104.3(d)(1)(iii)–(v), (d)(2)–(3), and the elimination of lines A through F of schedules C–1 and C–P–1.

11 CFR 104.18 Electronic Filing of Reports

Paragraph (h) of section 104.18 sets forth the requirements for the filing of special schedules and forms that must accompany the electronic filing of reports. These special schedules and forms generally require original signatures on them. The Commission has not yet designed schedules C–2 and C–P–2 described in proposed 11 CFR 104.3(d)(4). However, the Commission intends to require signatures on these new schedules and therefore, § 104.18(h) would be amended to include schedules C–2 and C–P–2. The proposed change is based on the proposed amended language for § 104.18(h) in the notice of proposed rulemaking entitled “Independent Expenditure Reporting.” See 66 FR (2001). The Commission seeks comments on the advantages and disadvantages of requiring the lenders’ signatures on these new schedules and

whether the Commission should require these signatures.

11 CFR 113.1 Definitions

Under the proposed rules, the third party payments provisions of the definition of “personal use” in 11 CFR 113.1(g)(6) would be 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 personal living expenses within the meaning of “payment”. A cross reference to § 100.7(b)(22) would be included in this paragraph.

Additional Issues

11 CFR 104.14 Formal Requirements Regarding Reports and Statements

Unlike the regulations for bank loans, the proposed rules would not require principal campaign committees to submit to the Commission loan agreements or similar documents that are connected with a loan derived from an advance from a candidate’s brokerage account, credit card, or line of credit. The committees, however, would still be required, under current 11 CFR 104.14, to maintain records connected with these types of loans for three years. For example, committees would be required to maintain any agreements or documents that are connected with these loans, including but not limited to: the Federal Reserve Board’s Form T–4 that is required to obtain a brokerage loan, any loan agreements, and any receipts or copies of a credit card company’s check that are evidence of an advance from a candidate’s credit card. The Commission seeks comments on whether it should 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 C–2 or C–P–2.

Margin Requirements

A loan derived from a brokerage account is obtained by opening a non-purpose credit account. Margin accounts and non-purpose credit accounts are subject to the Federal Reserve Board’s Regulation T, 12 CFR part 220. Under 12 CFR 220.6(e), 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.² Generally, the minimum maintenance margin is 25 percent.³ 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.

Brokerage firms are supposed to issue a margin call if the equity in a customer’s 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. 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. The Commission seeks comments on whether a brokerage firm that takes a charge against net capital may, under certain circumstances, be providing

² Margin is the amount of securities held or maintained in an account above the balance of outstanding credit. 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.

³ However, the SRO may change the maintenance margin with the approval of the Security Exchange Commission (SEC).

something of value to candidates which is prohibited by 2 U.S.C. 441b.

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 a few 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 has a continuing obligation to report the loan until it is repaid. Because of the nature of brokerage loans, the Commission is unsure as when to consider a loan repaid. In practice, customers are not required to make payments on the loan unless the value of the non-purpose credit account falls below the maintenance margin. If the securities in the non-purpose credit account 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.

Normally, a committee reports the disposition of its loans before it can terminate. *See infra*. For purposes of determining the disposition of these loans, the Commission seeks comments on when a brokerage loan should be considered paid in full. Should the candidate be required to liquidate an amount of securities, or make a deposit, or a combination of both, equal to the amount of the outstanding brokerage loan plus any interest that may have accrued?

The other issue that needs to be addressed in the context of repayment of loans derived from a candidate's brokerage account, credit card account, home equity line of credit, or other lines of credit, is termination of political committees. Under 11 CFR 104.11, a loan remains an outstanding debt that the candidate's authorized committee must continue to report until it is extinguished. Additionally, these loans, similar to bank loans, would not be subject to debt settlement under 11 CFR 116.4. Because a political committee cannot terminate unless all outstanding debts are satisfied, the candidate's authorized committee cannot terminate, even if the candidate is no longer seeking federal office, until the loan is paid in full. *See* 11 CFR 102.3. The exception is when the Commission administratively terminates a political committee under 11 CFR 102.4. Under these circumstances, a committee would be terminated even if it has outstanding

debts provided that the criteria for administrative termination are met.

One option under consideration is requiring committees to report until the original amount of the loan plus any interest or penalty are repaid. Another option is to allow the committee to terminate if it has extinguished its debt to the candidate even if the candidate has not repaid the entire loan to the lending institution. Alternatively, committees would be allowed to terminate if it can demonstrate unique circumstances that will ensure that the loan would be repaid, under commercially reasonable terms, from the candidate's personal funds. An example of unique circumstances is a brokerage loan that is subject to fixed due date and a repayment schedule.

The Commission seeks comments on which of these three approaches best advance the purpose of FECA. The Commission also welcomes suggestions on alternative methods of reporting outstanding debts and termination of a committee where either the candidate or the candidate's committee has an outstanding loan that is derived from the candidate's brokerage account, credit card, home equity line of credit, or other lines of credit.

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

The attached proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rules would implement the changes to the FECA expressly permitting candidates to obtain loans from a wider range of financial institutions. This would increase 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 would only impact the candidates and their campaign committees. It would 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 proposed rules are minimal. The Commission does not anticipate that these changes will cause committees to devote much additional time or resources to comply with the proposed reporting requirements. Therefore, the attached proposed rules, if promulgated, will 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, it is proposed to amend Subchapter A, Chapter I of title 11 of the Code of Federal Regulations as follows:

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

1. The authority for part 100 would continue to read as follows:

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

2. 11 CFR 100.7 would be 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 paragraph (a)(1)(i)(D) of this section 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, an overdraft made on a checking or savings account 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, paragraph (b)(11) of this section 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.

(ii) 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 personal 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, 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 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 personal living expenses, does not need to be reported under 11 CFR part 104 provided that the loan, advance, or line of credit is wholly repaid from the personal funds of the candidate.

(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, in part or in whole, by a third party of the loan, advance, or line of credit described in paragraph (b)(22)(iii)(A) of this section is a contribution and shall be reported under 11 CFR part 104.

(D) Each endorser, guarantor, or co-signer of 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 personal living expenses, shall be subject to the provisions of paragraph (b)(22)(ii) of this section, and the loan, advance, or line of credit and all repayments shall be reported under 11 CFR part 104.

(iv) The candidate's authorized committee may repay 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, directly to the candidate or the original lender. The amount of the repayment shall not exceed the amount of the principal used in connection with the campaign and interest that has accrued on that principal. If the candidate's authorized committee makes a repayment to the candidate, the candidate shall repay the original lender the same amount of the repayment within thirty (30) days of receipt of the

repayment from the candidate's authorized committee. Failure to repay the lender within thirty (30) days constitutes the personal use of campaign funds and is prohibited under 11 CFR 113.2.

(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 would be amended by revising paragraph (b)(12) and adding new paragraph (b)(24) to read as follows:

§ 100.8 Expenditures (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, 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 for part 104 would continue 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 would be amended by revising paragraphs (a)(3)(vii)(c), (b)(2)(iii)(c), (b)(4)(iii) and (iv), the introductory text of paragraphs (d) and (d)(1), and adding paragraphs (a)(3)(vii)(D), (b)(2)(iii)(D), and (d)(4) to read as follows:

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

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

(C) 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 11 CFR 100.7(b)(22) and 100.8(b)(24); and

(D) Total loans;

* * * * *

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

(C) Repayment of 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 11 CFR 100.7(b)(22) and 100.8(b)(24); and

(D) Total loans;

* * * * *

(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) 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 candidate during the reporting period, if the proceeds of such loan were used in connection with the candidate's campaign, together with the date and amount of such loan repayment;

* * * * *

(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 candidate or political committee obtains a loan from, or when a political committee 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 or line of credit was obtained, the following information on schedule C-1 or C-P-1:

* * * * *

(4) When a candidate obtains a 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), the candidate's principal campaign committee shall disclose in the report covering the period when the loan or line of credit was obtained, the following information on schedule C-2 or C-P-2:

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

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

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

(iv) Each draw or advance on the credit card or line of credit.

* * * * *

6. 11 CFR 104.8 would be 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 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 follows:

(1) If the loan is paid directly to the candidate's authorized committee, the amount of the loan shall be reported as an itemized entry on Schedule A;

(2) If the loan is paid to the candidate and the candidate makes a loan or a gift to the candidate's authorized committee, the money paid to the candidate shall be reported as a memo entry on Schedule A, and the candidate loan or gift to the candidate's authorized committee shall be reported as an itemized entry on Schedule A; or

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

7. 11 CFR 104.9 would be 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 repayment of 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 11 CFR 100.7(b)(22) and 100.8(b)(24) as follows:

(1) If the candidate's authorized committee makes a repayment of the loan of money to either the candidate or the lending institution, the repayment shall be reported as an itemized entry on Schedule B; or

(2) If the candidate makes a repayment of the loan of money to the lending institution, regardless of whether the candidate has received a repayment from the candidate's authorized committee or repayment is from the candidate's personal funds, the repayment shall be reported as a memo entry on Schedule B.

8. The proposed revision of 11 CFR 104.18 published on May 9, 2001 (66 FR 23632) would be further amended by revising paragraphs (h)(1)(i) and (ii) and adding paragraph (h)(i)(iii) to read as follows:

§ 104.18 Electronic filing of reports (2 U.S.C. 432 (d) and 434 (a)(11)).

* * * * *

(h) (1) * * *

(i) Schedules C-1 and C-P-1, Loans and Lines of Credit From Lending Institutions (see 11 CFR 104.3(d);

(ii) Form 8, Debt Settlement Plan (see 11 CFR 116.7(e)); and

(iii) Schedule C-2 and C-P-2, Loans of Money Derived from an Advance on a Candidate's Brokerage Account, Credit Card, Home Equity Line of Credit, or Other Lines of Credit (see 11 CFR 104.3(d)).

* * * * *

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

9. The authority for part 113 would continue to read as follows:

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

10. 11 CFR 113.1 would be 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 personal living expenses. Examples of payments considered to be irrespective of the candidacy include, but are not limited to, situations where—

* * * * *

Dated: July 19, 2001.

Danny L. McDonald,
Chairman, Federal Election Commission.
[FR Doc. 01-18439 Filed 7-24-01; 8:45 am]
BILLING CODE 6715-01-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-381-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 707 and 720 series airplanes. This proposal would require installation of a new support structure for the trailing edge beam and main landing gear uplock mechanism. This action is necessary to prevent cracking in the frame and adjacent structure near the attach bolt of the main landing gear uplock mechanism, which could lead to compromised structural integrity. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 10, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-381-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000-NM-381-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton,

Washington 98055-4056; telephone (425) 227-2773; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM-381-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-381-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received reports indicating that cracks have been discovered in station 900 frame and its adjacent structure, near the attach bolt of the main landing gear (MLG) uplock mechanism. These cracks were caused by flexure of the wing, imposing