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NEWSLETTER

Millionaires' Amendment: Six Steps to More Money

September 2004

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The Millionaires' Amendment, inserted into the Federal Election Campaign Act by the Bipartisan Campaign Reform Act of 2002, allows a candidate to receive contributions from individuals exceeding the regular $2,000 per election contribution limit if the candidate's opponent spends a threshold amount of his or her own personal money on the opponent's campaign. Unfortunately, the Millionaires' Amendment has been implemented by a complicated set of Federal Election Commission (FEC) regulations that differ slightly for House and Senate candidates. Below is our 'plain language' attempt to cut through the regulations and to describe the rules to the regulated community.

The Millionaires' Amendment is, in effect, an equilibrium formula. Congress and the FEC will allow a candidate to receive increased contributions only if the non-millionaire candidate does not have a large fundraising advantage over the millionaire opponent. (This, in theory, prevents an incumbent with a large war chest from accepting increased contributions merely because his or her challenger uses large amounts of personal funds.)

Step 1: Triggering Event
The Millionaires' Amendment is triggered by large personal contributions or expenditures by a candidate's opponent to, or for, the opponent's campaign. To start, the amount of the personal contributions or expenditures by the opponent must at least exceed the Effective Threshold Amount of $350,000 for the House and $300,000 + ($0.08 x Voting Age Population (VAP) of the state) for the Senate. A candidate will know when his or her opponent has hit this triggering event because the opponent (as well as all candidates) is required to notify the FEC and each opposing candidate within 24

hours of making personal contributions to, or expenditures for, his or her campaign that aggregate in excess of the Effective Threshold Amount (reported on FEC Form 10).

Step 2: Determining the Opposition Personal Funds Amount

After a candidate's opponent makes the large contribution to his or her own campaign, the FEC regulations then require a second calculation of something called the Opposition Personal Funds Amount before increased contribution limits set in. This calculation is determined by using various formulas depending on the time before the election and relative fundraising circumstances. Only if the Opposition Personal Funds Amount exceeds the Effective Threshold Amount (same as above) may the candidate accept increased contributions (for Senate candidates, the more the Opposition Personal Funds Amount exceeds the Effective Threshold Amount, the greater the increased contributions).

In order to determine the amount of Opposition Personal Funds Amount, a candidate must decide what formula is to be used. In order to decide what formula is to be used, the date of the analysis is important. A different formula may be used if the analysis takes place before February 1 of the election year and, again, a different formula may be used if the analysis takes place before July 16 of the year preceding the candidate's election year. However, because we are in the time period subsequent to the filing deadline for the 2003 Year-End Report (*i.e.*, after February 1, 2004), we will proceed solely with the formulas and analysis applicable in the Fall of 2004.

If on the 2003 Year End FEC Report the amount raised by the candidate from outside sources (*i.e.*, not including personal funds) is greater than the amount raised by his or her opponent from outside sources, then the formula for calculating the Opposition Personal Funds Amount for the candidate is as follows:

- The amount of personal funds that the opponent contributed to his or her campaign minus the amount of personal funds the candidate contributed to his or her campaign minus (the amount of candidate's receipts not from personal funds, minus the amount of opponent's receipts not from personal funds divided by 2) [or, in algebraic terms, a-b-((c-d)/2)]

Conversely, if an opponent has raised more money from outside sources than the candidate has, then the formula for calculating the candidate's Opposition Personal Funds Amount is simply as follows:

- The amount of personal funds that the opponent has contributed to his or her campaign minus the amount of personal funds that the candidate has contributed to his or her campaign.

These two formulas determine the candidate's Opposition Personal Funds Amount. Even though the candidate's gross receipts portion of the formula (which is reliant upon the FEC Report information) remains constant once calculated on July 16 and February 1, the Opposition Personal Funds Amount may still vary, depending on the total amount of personal expenditures by both candidates during the election cycle. If either the candidate or his or her opponent contributes additional funds to his or her own campaign, then the Opposition Personal Funds Amount will change.

Step 3: Effect of Exceeding Threshold Amounts

Once a candidate's Opposition Personal Funds Amount exceeds the Effective Threshold Amount, then the increased contribution limits are triggered and, at certain levels, the party coordinated expenditure limits are lifted. For a House candidate, once a candidate's Opposition Personal Funds Amount exceeds $350,000, the candidate's limit for individual contributions is tripled to $6,000 and the national and state parties may make unlimited coordinated expenditures on the candidate's behalf.

Again, though, the Senate is more complicated:

- Where a Senate candidate's Opposition Personal Funds Amount exceeds the Effective Threshold Amount, the candidate's individual limits are tripled to $6,000.
- Where a Senate candidate's Opposition Personal Funds Amount exceeds $600,000 + (.16 x VAP) the candidate's individual limits are sextupled to $12,000.
- Where a Senate candidate's Opposition Personal Funds Amount exceeds $1,500,000 + (.40 x VAP) the candidate's individual limits are sextupled to $12,000 and the national and state parties may make unlimited coordinated expenditures on behalf of the candidate.

Candidates who have become eligible for increased limits and coordinate expenditures must file FEC Form 11 (Calculation of Opposition Personal Funds Amount) within 24 hours of eligibility, informing their national and state parties and the FEC of their Opposition Personal Funds Amount. FEC Form 11 must be filed by a House candidate if his or her Opposition Personal Funds Amount exceeds $350,000. A Senate candidate files FEC Form 11 only if his or her Opposition Personal Funds Amount exceeds the sum of $1,500,000 and ($0.40 x VAP). (Please note that because Senate candidates qualify for increased contribution limits but not party coordinated expenditures at levels lower than the threshold for filing FEC Form 11, such Senate candidates may be accepting increased contributions even though they have not filed any paper with the FEC stating as much.) The party committees that then make coordinated expenditures must notify both the FEC and the candidate for whom the expenditures were made, via Schedule F, within 24 hours of each expenditure.

Step 4: Day-to-Day Monitoring Required

Because of the constant monitoring necessary for the calculation of the personal funds amount through the election period, the FEC requires ongoing reporting and notifications. Within 15 days of a candidate's entry into a race, he or she must file a Declaration of Intent (FEC Form 2) with the FEC and each opposing candidate, disclosing those planned personal fund election expenditures that are expected to exceed the Effective Threshold Amount. During the campaign, and as stated above, in addition to the other regular FEC filings, a candidate must notify the FEC, each opposing candidate and his or her national party committees, via FEC Form 10 (Notification of Expenditures from Personal Funds), within 24 hours of exceeding the Effective Threshold Amount. A Senate candidate must also notify the Secretary of the Senate within 24 hours of such an event. After an initial breach of the Effective Threshold Amount, a candidate must notify each of the above parties, again through FEC Form 10, after making any additional personal fund expenditure of more than $10,000 in the aggregate. Each time a candidate receives an FEC Form 10, he or she must recalculate the Opposition Personal Funds Amount.

Step 5: Period of Availability

The relaxation of these particular election law regulations and the increased contribution limits do not last for the rest of the election. The Millionaires' Amendment provisions are only available for House candidates until the aggregate amount of (1) contributions received by the candidate above the normal limit of $2,000 per election and (2) the party coordinated expenditures equals the Opposition Personal Funds Amount as determined by, and defined in, the candidate's FEC Form 11. Senate candidates, on the other hand, may receive up to 110 percent of the Opposition Personal Funds Amount in increased contributions and in party coordinated expenditures. (Of course, if a candidate makes personal contributions to his or her campaign along the way, then his or her Opposition Personal Funds Amount is reduced unless the opponent also makes additional personal campaign contributions.)

Once that Opposition Personal Funds Amount is reached, a candidate must: inform the national and State committees within 24 hours, file FEC Form 12 (Notice of Suspension of Increased Limits) within 24 hours, and no longer accept contributions at the increased levels or party coordinated expenditures.

Also, if an opponent who is expending personal funds withdraws from the race, either by public statement or other ineligibility, the candidate for whom the increased limits applied may no longer accept donations at those increased limits and may no longer accept coordinated party expenditures. Other than public withdrawal, additional ways by which a candidate may become ineligible include failure to file by a specified date or failure to qualify for a run-off election.

Step 6: Returning Excess Contributions

Once an election is over, either primary or general, contributions received under the increased limits that were unspent during the election must be refunded within 50 days. The contributions may not be re-designated or carried over to the candidate's next race. Any refunds must be included in the first report that the campaign is required to file after the 50 day refund window; such information must be included in the candidate's Form 3, filed with the FEC.