

§ 100.81

CFR 100.24, 104.17(a) and part 300, subpart B for exempt activities that also constitute Federal election activity.

§ 100.81 Payments by corporations and labor organizations.

Any payment made or obligation incurred by a corporation or a labor organization is not a contribution, if under the provisions of 11 CFR part 114 such payment or obligation would not constitute an expenditure by the corporation or labor organization.

§ 100.82 Bank loans.

(a) *General provisions.* A loan of money to a political committee or a candidate 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:

- (1) Bears the usual and customary interest rate of the lending institution for the category of loan involved;
- (2) Is made on a basis that assures repayment;
- (3) Is evidenced by a written instrument; and
- (4) Is subject to a due date or amortization schedule.

(b) *Reporting.* Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a) and (d).

(c) *Endorsers and guarantors.* 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 100.52(b)(4) 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

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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.

(d) *Overdrafts.* For purposes of this section, an overdraft made on a checking or savings account of a political committee shall be considered a contribution by the bank or institution unless:

(1) The overdraft is made on an account that is subject to automatic overdraft protection;

(2) The overdraft is subject to a definite interest rate that is usual and customary; and

(3) There is a definite repayment schedule.

(e) *Made on a basis that assures repayment.* A loan, including a line of credit, shall be considered made on a basis that assures repayment if it is obtained using either of the sources of repayment described in paragraphs (e)(1) or (2) of this section, or a combination of paragraphs (e)(1) and (2) of this section:

(1)(i) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan, the fair market value of the collateral is equal to or greater than the loan amount and any senior liens as determined on the date of the loan, and the candidate or political committee provides documentation to show that the lending institution has a perfected security interest in the collateral. Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit.

(ii) Amounts guaranteed by secondary sources of repayment, such as guarantors and cosigners, shall not exceed the contribution limits of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, 110.20, part 114 and part 115; or

(2) The lending institution making the loan has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts, such as public financing payments under 11 CFR part

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9001 through part 9012, or part 9031 through part 9039, contributions, or interest income, provided that:

(i) The amount of the loan or loans obtained on the basis of such funds does not exceed the amount of pledged funds;

(ii) Loan amounts are based on a reasonable expectation of the receipt of pledged funds. To that end, the candidate or political committee must furnish the lending institution documentation, i.e., cash flow charts or other financial plans, that reasonably establish that such future funds will be available;

(iii) A separate depository account is established at the lending institution or the lender obtains an assignment from the candidate or political committee to access funds in a committee account at another depository institution that meets the requirements of 11 CFR 103.2, and the committee has notified the other institution of this assignment;

(iv) The loan agreement requires the deposit of the public financing payments, contributions and interest income pledged as collateral into the separate depository account for the purpose of retiring the debt according to the repayment requirements of the loan agreement; and

(v) In the case of public financing payments, the borrower authorizes the Secretary of the Treasury to directly deposit the payments into the depository account for the purpose of retiring the debt.

(3) If the requirements set forth in this paragraph are not met, the Commission will consider the totality of the circumstances on a case-by-case basis in determining whether a loan was made on a basis that assures repayment.

(f) This section shall not apply to loans described in 11 CFR 100.73.

[67 FR 50585, Aug. 5, 2002, as amended at 67 FR 78680, Dec. 26, 2002]

§ 100.83 Brokerage loans and lines of credit to candidates.

(a) *General provisions.* 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:

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

(2) 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.

(b) *Endorsers and guarantors.* 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:

(1) 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

(2) 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.

(c) *Routine living expenses.* (1) 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