

and General Election Candidates, 60 FR 31854, 31865–31866 (June 16, 1995). The Commission stated that winding down costs “can result in additional audit fieldwork and preparation of addenda to audit reports” and that as part of an “effort to streamline and shorten the audit process,” the Commission sought comment on ways to reduce winding down time for campaigns. *Id.* The Commission considered limiting winding down expenses to a dollar amount or a fixed percentage of the candidate’s total expenditures during the campaign or matching funds certified to a primary candidate. *Id.* at 31866. Alternatively, the Commission considered “a cutoff date after which winding down expenses would no longer be considered qualified campaign expenses.” *Id.* Commenters objected that campaigns need resources to respond during the audit process, to defend themselves in enforcement actions and to verify the proper payment of the campaign’s remaining bills. *Id.* Ultimately, the Commission did not add new restrictions to the rules governing winding down costs, stating that it would be “quite difficult to select an amount or time frame sufficient to meet reasonable expenses incurred in winding down the campaign.” *Id.*

In recent election cycles, the winding down period for some candidates has extended over several years, and the amount of winding down costs has increased. During the audit and repayment process, presidential committees and the Commission’s auditors estimate future winding down costs, and may sometimes reach substantially disparate winding down estimates. Issues have arisen as to the appropriate amounts and types of winding down expenses and as to the length of time committees need to wind down. These disputes lengthen the audit and repayment process and can provide a basis for judicial challenges to the Commission’s repayment determinations. Both actual and estimated future winding down costs are included in a primary election candidate’s Statement of Net Outstanding Campaign Obligations [“NOCO”] or a general election candidate’s Statement of Net Outstanding Qualified Campaign Expenses [“NOQCE”]. Consequently, if the Commission auditors’ figures are lower than the committee’s estimates, a dispute may arise in determining the candidate’s NOCO or NOQCE and any remaining entitlement, surplus funds, or resulting repayment. Disallowed winding down expenses can increase

the amount of any surplus funds and the resulting repayment determination, or they can reduce or eliminate a deficit and the corresponding amount of a primary candidate’s entitlement to matching funds. Therefore, the Commission is again considering ways to limit winding down expenses in order to establish a fair and readily determined amount to ensure public funds are used in accordance with statutory purposes, campaigns are treated consistently with respect to winding down costs, and to provide for more expeditious completion of these matters. Thus, the proposed rules establish both an ending date and maximum amount for winding down costs.

The Commission proposes new sections governing winding down expenses at 11 CFR 9004.11 and 11 CFR 9034.11 that would delineate new restrictions on both the amount and timing of winding down costs. Publicly funded campaign committees should wind down in as quick and efficient manner as possible. The proposed restrictions are intended to contain winding down costs and periods, but allow campaigns a reasonable amount of winding down costs and a long enough winding down period to respond during the audit and repayment process and verify the payment of bills to terminate the campaign. The proposed restrictions would work in concert. Thus, candidates would be unable to continue to use public funds to pay for winding down costs if they reach the monetary limit prior to the end of their winding down period or if their winding down period ends before they reach the monetary limit.

The proposed rules at 11 CFR 9004.11 and 9034.11 include both a temporal restriction and a limitation of the total amount of winding down expenses. The proposed time restriction would permit a candidate to use public funds to pay for winding down expenses only until the end of the “winding down period.” The winding down period would begin on the day after the candidate’s date of ineligibility, for primary candidates who do not participate in the general election, or the day after the end of the expenditure report period for publicly funded general election candidates, or the day following the date 30 days after the general election for candidates who participate in the general election but do not receive public funds for the general election. The winding down period would end no earlier than the latest of: (1) 30 days after the candidate’s receipt of an audit report that does not contain any repayment determinations; (2) 60 days after service of notice to the

candidate of the Commission’s repayment determination, if the committee does not dispute the repayment determination; or (3) 30 days after service of notice of the Commission’s repayment determination following an administrative review.

The proposed winding down period would allow sufficient time for campaigns to seek administrative review of repayment determinations. The 30-day period following a candidate’s receipt of an audit report that does not contain a repayment determination would allow sufficient time to complete winding down because the audit and repayment process would have concluded. The 60-day period allowed for winding down after service to a candidate of a repayment determination that the candidate does not dispute reflects the amount of time permitted for candidates to respond to repayment determinations at 11 CFR 9007.2(c)(2) and 9038.2(c)(2). If a candidate disputes any repayment determination by responding and seeking administrative review, the winding down period would extend to 30 days after service of notice of the Commission’s repayment determination following administrative review. This is consistent with 11 CFR 9007.2(d)(2) and 9038.2(d)(2), which require candidates to make a post-administrative review repayment within 30 days after service of the Commission’s post-administrative review repayment determination. The Commission notes that if it is unable by an affirmative vote of at least 4 of its members to make a repayment determination after an administrative review, the 30-day period would run from the date of service of notice of the Commission’s final action concerning the administrative review.

The proposed rules would accommodate repayment determinations related to Commission audit reports, addenda to audit reports and 11 CFR 9039.3 inquiries. Thus, if a candidate did not dispute a repayment determination in an audit report but did subsequently dispute a repayment determination arising from an inquiry pursuant to 11 CFR 9039.3, the candidate’s winding down period would extend until 30 days after service of notice of the Commission’s repayment determination upon administrative review related to the 11 CFR 9039.3 investigation. In addition, the time restriction’s terms are “no earlier than” the expiration of the specified time period to permit the Commission the administrative flexibility of choosing a convenient end point, like the end of a month, and to allow for staff to estimate time for