

Commission approval and transmittal to the committee of the audit report or repayment determination.

To reflect this new time restriction, the Commission also proposes revising 11 CFR 9004.9(a)(4) and 9034.5(b)(2) to require candidates' NOCO or NOQCE Statements to break down estimated winding down costs through the end of the winding down period, rather than the expected termination of the committee's political activity.

In addition to the temporal restriction, the proposed rules at 11 CFR 9004.4(a)(4) and 9034.4(a)(3) would limit the total amount of winding down expenses that may be paid for, in whole or part, with public funds. This "winding down limitation" would limit the total amount of publicly funded winding down expenses for primary candidates to the lesser of either: (1) 5% of the overall expenditure limitation; or (2) 5% of the total of the candidate's expenditures subject to the overall expenditure limitation as of the candidate's DOI, plus the candidate's expenses exempt from the overall expenditure limitation as of DOI, such as fundraising, legal and accounting compliance expenses and other expenses. For general election candidates, the winding down limitation would be the lesser of: (1) 2.5% of the expenditure limitation; or (2) 2.5% of the total of the candidate's expenditures subject to the expenditure limitation as of the end of the expenditure report period, plus the candidate's expenses exempt from the expenditure limitation, such as fundraising expenses, as of the end of the expenditure report period.

The Commission notes that the fundraising exemption for general election candidates is applicable only to those candidates who may accept contributions to defray qualified campaign expenses pursuant to 26 U.S.C. 9003(b)(2) or 9003(c)(2): minor party candidates and major party candidates who may solicit contributions to make up a deficiency in public funds received. See 11 CFR 100.152, 9003.3(b) and (c). Those general election candidates who may solicit contributions may also exempt legal and accounting compliance expenses from their expenditure limitations. See 11 CFR 100.146, 9003.3(b) and (c). Thus, the proposed rule would address the calculation of the winding down limitation for those general election candidates who may solicit contributions by calculating the total of their expenditures subject to the limit and their exempt expenses. The winding down limitation for fully funded major party general election

candidates would generally be 2.5% of the expenditure limitation. For both primary and general candidates, expenses for transportation of Secret Service and national security staff and media transportation expenses that are reimbursed by the media do not count against the expenditure limitations. See 11 CFR 9004.6(a), 9034.6(a). In addition, taxes on non-exempt function income such as interest, dividends and sale of property are exempt from a primary candidate's overall expenditure limitation. See 11 CFR 9034.4(a)(4).

Notwithstanding the amount determined based on these calculations, the proposed rule would permit all primary and general election candidates to spend a minimum of \$100,000 on winding down costs. The \$100,000 minimum winding down limitation is proposed to recognize that publicly funded committees face winding down expenses related to the requirements of the audit and repayment process that do not vary with the size of the committees. The Commission seeks comment on whether \$100,000 is the appropriate minimum amount and whether it should be adjusted for inflation or replaced with a percentage of the expenditure limitation.

In practice, the winding down limitation for primary candidates with large campaigns and for fully funded major party general election candidates would be the maximum winding down limitation: 5% of the overall expenditure limitation for primary candidates or 2.5% of the expenditure limitation for general election candidates. For primary candidates with smaller campaigns, the winding down limitation would equal 5% of their expenses prior to DOI. The winding down limitation for most minor party general election candidates and major party candidates who must solicit contributions to make up a deficiency in public funds would equal 2.5% of their expenses during the expenditure report period. For purposes of calculating the amount of the winding down limitation based on a primary or general candidate's expenses, a candidate's expenses would include both disbursements and accounts payable as of the DOI or the end of the expenditure report period for the following categories of expenses (as listed on page 2 of FEC Form 3P): operating expenses (line 23), fundraising (line 25), exempt legal and accounting (line 26), and other disbursements (line 29). The following payments would not be included in the expenses used to calculate the winding down limitation: Transfers to other authorized committees (line 24), loan repayments (line 27), or contribution

refunds (line 28). The winding down limitation would not include any expenditures in excess of the general election candidate's expenditure limitation or the primary candidate's overall expenditure limitation; thus, making expenditures or accepting in-kind contributions that exceed the expenditure limits would not provide a basis for an increased winding down limitation. The maximum winding down limitation would be calculated based upon a percentage of the primary candidate's overall expenditure limitation or the general election candidate's expenditure limitation pursuant to 26 U.S.C. 441a(b), similar to the calculation of the 20% fundraising exemption or the 15% compliance exemption. See 11 CFR 100.146, 100.152, 9002.11(b)(5) and 9035.1(c)(1) and (2).

All expenses incurred and paid by a candidate during the winding down period, including fundraising costs, would be subject to the winding down limitation. Expenses for legal and accounting compliance costs paid for with public funds would count against the winding down limitation, but compliance costs paid by a General Election Legal and Accounting Compliance Fund ["GELAC"] would not count against the winding down limitation.

The Commission reviewed the amounts spent for winding down costs by all publicly funded candidates during the 2000 election cycle. It compared their approximate winding down costs to the proposed winding down limitation. Of three publicly funded general election candidates, one would have spent less than 1% of the expenditure limitation, the second would have spent less than 2% of his expenditures, while the third would have spent only slightly more than the 2.5% winding down limitation. The last committee paid some of its winding down expenses with GELAC funds, which reduced its percentage to less than 2%. Ten primary candidates received matching funds in 2000. Three of these primary candidates' winding down limitations would have been calculated based on the maximum winding down limitation of 5% of the overall expenditure limitation. Of these, one would have exceeded the winding down limitation, spending more than approximately 8% of the expenditure limitation. Six primary candidates' winding down limitations would have been calculated based on their expenditures. Of these, four candidates would have exceeded the 5% winding down limitation, with winding down costs ranging between approximately