

13% and 42% of their expenditures. One candidate that would have been subject to the minimum winding down limitation of \$100,000 spent substantially less than that amount. Of all 13 publicly funded committees in the 2000 presidential elections, five primary committees had winding down expenses that would have exceeded the proposed amount limitation. One of these committees had sufficient funds in its related GELAC that could have paid the excessive winding down expenses. The other four committees would have received fewer matching funds after their DOIs.¹

The proposal puts forth a lower percentage for general election campaign committees than for primary campaigns for several reasons. General election candidates may pay for winding down costs with funds from the candidates' GELAC, an option not currently available for primary election campaigns. General election campaigns are also shorter in length than most primary campaigns and thus, may have fewer transactions and vendors to deal with while terminating the campaign. The Commission also notes that the total amount of public funds and expenditure limitations are larger for major party candidates who receive public funds; thus, a smaller percentage of their expenditures would result in a larger dollar figure.

Under the proposed rules, the use of public funds to pay for winding down expenses in excess of these restrictions would constitute a non-qualified campaign expense that may be subject to repayment. However, these restrictions would apply to the use of public funds or a mixture of public and private funds for winding down costs. The proposed rules would not limit the payment of winding down expenses from a candidate's GELAC. The proposed rules would also allow a primary candidate who is in a deficit position at the DOI to pay for winding down costs in excess of the restrictions after the committee's accounts no longer contain any matching funds. See 11 CFR 9038.2(b)(2)(iii)(B) and (iv). Primary candidates who have a surplus at the DOI would be required to make a surplus repayment to the United States Treasury before they could use private funds for winding down costs in excess of the restrictions. See 11 CFR 9038.3(c).

The proposal includes both temporal and amount restrictions rather than just one or the other so that these restrictions would work together to

reinforce each other. The proposed rules would not permit the use of public funds for winding down costs after either: (1) The total amount of winding down expenses reach the winding down dollar limitation or (2) the end of the winding down period, whichever event occurs first. The proposed restrictions would prevent the pre-payment of large amounts for speculative future winding down goods and services prior to the end of the winding down period. They would also prevent a prolonged winding down period from extending and complicating the audit process. In addition, the proposed rules are intended to reflect factors that could affect the amount of winding down costs needed to terminate the campaign. The proposed winding down limitation is based on a percentage of a campaign's expenses to reflect that larger campaigns generally incur more expenses as they terminate their activities. The calculation includes exempt expenses such as fundraising and legal and accounting compliance costs to reflect the actual size of the campaign that is winding down. In addition, the proposed rule would restrict the expenses used to calculate the winding down limitation to the period prior to a primary candidate's DOI or the end of a general election candidate's expenditure report period to prevent candidates from increasing their winding down limitation by spending more for winding down expenses.

One factor under consideration, but not included in the proposed rules that follow, is the number of complaints and other compliance actions filed against a presidential candidate or campaign committee. Winding down costs include, *inter alia*, the costs of "complying with the post-election requirements of the Act," such as the audit and repayment process, reporting and recordkeeping. 11 CFR 9004.4(a)(4) and 9034.4(a)(3). The compliance process is separate from the required audit and repayment process and its requirements are not election dependent, which raises the issue of whether such compliance costs should be considered "post-election requirements of the Act." Compliance matters, unlike compulsory audits and repayment determinations, are not unique to candidates who receive public funds. Consequently, the proposed rule would allow a publicly funded candidate to pay initial expenses for compliance matters arising from the campaign with public funds as winding down costs, but the winding down period would not be prolonged until enforcement matters related to the

campaign have closed, if the audit and repayment process has concluded. Private funds would be available to general election candidates through their GELAC and to primary candidates after their accounts no longer contain public funds. As discussed below, however, the proposed rules would also permit a GELAC to pay the primary committee's winding down expenses under certain conditions. The Commission seeks comment on whether the existence of compliance matters should be considered as a factor in determining a candidate's winding down period or winding down limitation.

The proposed new sections at 11 CFR 9004.11 (general election) and 9034.11 (primary election) governing winding down costs are intended to simplify and clarify the rules governing winding down costs. Proposed new 11 CFR 9004.11 and 9034.11 contain the definition of winding down costs, moved from current sections 9004.4(a)(4) and 9034.4(a)(3)(i), the proposed temporal and monetary restrictions, and proposed rules governing the allocation of winding down costs between a candidate's primary election and general election campaigns. In addition, the Commission proposes revisions to 11 CFR 9004.4(a)(4) and 9034.4(a)(3)(i) and (ii) to move provisions from those sections to the new sections and to otherwise conform these sections to the proposed new rules. Proposed 11 CFR 9004.4(a)(4) would state that payments may be used to defray winding down costs subject to the restrictions of new 11 CFR 9004.11. Current section 9004.4(a)(4)(ii) would be renumbered as 9004.4(a)(5). Proposed 11 CFR 9034.4(a)(3)(i) would state that winding down costs subject to the restrictions in proposed 11 CFR 9034.11 are qualified campaign expenses. Proposed 11 CFR 9034.4(a)(3)(ii) would include a reference to proposed 11 CFR 9034.11.

The Commission seeks comment on the proposed winding down restrictions. Are the restrictions fair to publicly funded committees? Should winding down expenses be limited to a fixed dollar amount or a combination of a dollar amount and a percentage rather than the proposed percentage? If so, what dollar amount would be appropriate? Would it be preferable to apply a percentage or dollar cap to specific categories of winding down expenses rather than the total of winding down costs? Would a shorter or longer winding down period be preferable to the proposed time period? Should there be a minimum winding

¹ Of course, this comparison is hypothetical because the committees may have behaved differently had the proposed rules been in effect.