

down period, and if so, how long should the minimum winding down period be?

Specifically, the Commission seeks comment on whether the winding down period should include an additional time period or dollar allowance for candidates who seek judicial review of a Commission repayment determination and if so, how long that period should be. Should candidates who accept public funds for both the primary and general elections be allowed to combine their primary and general election winding down limitations into a joint monetary limit for the total winding down expenses of both committees, with the temporal limit based on the last repayment determination received by either committee? Would the proposed rule encourage candidates to attempt to extend the audit process to lengthen the winding down period?

The Commission is also considering two alternatives to the proposed temporal and monetary restrictions on winding down expenses. The first alternative would, in effect, disallow the use of public funds to pay for winding down costs. Under this alternative, a primary election candidate would not be permitted to use public funds to pay for either: (1) All expenses incurred after the candidate's DOI or (2) all expenses for goods or services to be used after the DOI even if the expenses are incurred prior to the DOI. A general election candidate would not be permitted to use public funds to pay for either: (1) All expenses incurred after the end of the expenditure report period or (2) all expenses for goods or services to be used after the end of the expenditure report period even if they are incurred during the expenditure report period.

This alternative would end the Commission's treatment of winding down costs as qualified campaign expenses. Winding down costs are a category of qualified campaign expenses recognized by the Commission that is not specifically identified in the Fund Act or the Matching Payment Act. This category of qualified campaign expenses is an exception to the rules requiring qualified campaign expenses to be incurred during the expenditure report period, for general election candidates, 26 U.S.C. 9002(11)(B), or prior to a primary candidate's DOI, 11 CFR 9032.9(a)(1); *see also* 26 U.S.C. 9032(6) and 9033(c)(2). Since winding down costs are incurred after the end of a candidate's active campaign, the question arises whether they are incurred "to further" a general election candidate's election to the office of President or Vice President, 26 U.S.C. 9002(11), or "in connection with" a

primary candidate's campaign for the nomination, 26 U.S.C. 9032(9). Comments are sought on whether permitting public funds to be used for winding down costs may be inconsistent with these provisions or with 26 U.S.C. 9038(b)(3), which requires candidates to retain matching funds "for the liquidation of all obligations to pay qualified campaign expenses for a period not exceeding 6 months after the end of the matching payment period" and to "promptly" repay a ratio of any surplus funds.

Disallowing the use of public funds for winding down expenses would ensure that public funds are used for expenses that further a candidate's active campaign. Under this alternative, general election candidates would be able to pay for their winding down expenses with GELAC funds. Primary candidates would not pay for winding down costs with matching funds, but could use contributions or other private funds to pay these costs. Under this approach, a primary candidate's winding down costs would not count as liabilities in determining the candidate's net outstanding campaign obligations; thus, winding down costs could not increase a primary candidate's entitlement to Federal funds or decrease a surplus.

Please note that this alternative is not set forth in the draft rules that follow. This alternative would require the deletion of the rules governing winding down costs as well as changes to other rules to delete references to winding down costs. Specifically, this alternative would require deletion or revisions to: 11 CFR 9002.11(c) (expenses after the last day of the candidate's eligibility may be qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a)); 9004.4(a)(4) (winding down costs as qualified campaign expenses); 9004.4(b)(3) (non-qualified campaign expenses do not include winding down expenses permitted by 11 CFR 9004.4(a)(4)); 9004.9(a)(1) and (4) (inclusion of estimated winding down expenses in the NOCQE statement); 9032.9(c) (expenses after the last day of candidate's eligibility may be qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a)); 9034.4(a)(3) (winding down costs as qualified campaign expenses); 9034.4(a)(5) (bonuses are permitted until 30 days after DOI); 9034.4(b)(3) (non-qualified campaign expenses do not include winding down expenses permitted by 11 CFR 9034.4(a)(3)); and 9034.5(b)(1) and (2) (inclusion of estimated winding down expenses in the NOCO statement). Please also note that this alternative is inconsistent with

some of the other proposals in this rulemaking, such as dividing winding down expenses between a candidate's primary and general campaigns or treating certain convention expenses of ineligible candidates as qualified campaign expenses, as discussed below. The Commission seeks comment on this alternative approach. Would disallowing the use of public funds for winding down costs hinder candidates from responding adequately during the audit and repayment process? Would this alternative serve as a disincentive for candidates to seek public funds? Is this approach nonetheless required by the Fund Act and the Matching Payment Act? Should primary candidates be permitted to establish a separate account of solely private funds, with separate contribution limits for contributors, to be used for winding down expenses? If so, may the Commission permit contributors to make more than one contribution of the amount specified in 2 U.S.C. 441a(a)(1)(A) or 2 U.S.C. 441a(a)(2)(A) to the same candidate or authorized committee? May the Commission permit such candidates and authorized committees to accept such contributions consistent with 2 U.S.C. 441a(f) and 441i(e)(1)(A)?

The Commission is also considering a second alternative approach to winding down costs. This alternative, which is also not set forth in the draft rules that follow, would not place restrictions on the amount or timing of winding down costs but would more precisely delineate the types of winding down costs that are permissible. The Commission is considering various categories of permissible winding down costs including staff salaries, legal and accounting services, office space rental, utilities, computer services, other overhead expenses, consultants, storage, insurance, office supplies and fundraising expenses.

The Commission seeks comment on this alternative. Disputes over winding down expenses often concern the appropriate amounts spent for particular expenses, the appropriate length of time a campaign should continue to need certain goods or services, and whether the campaign committee has provided sufficient documentation of expenses. Should a list of permissible winding down expenses provide guidance as to the appropriate amounts, duration, or documentation required to support such expenses? Should there be any dollar limits on any of the expenses? Would this alternative reduce the amount of winding down expenses? The Commission also seeks comment on any