

other alternative proposals for limiting winding down expenses.

The Commission proposes another change to clarify the rules on winding down costs at 11 CFR 9034.4(b)(3). Current paragraph (a) of 11 CFR 9034.4 lists qualified campaign expenses, while paragraph (b) sets forth certain non-qualified campaign expenses. Paragraph (a)(1) states that, except as provided in paragraph (b)(3), all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses. Paragraph (b)(3) states that general election and post-ineligibility expenditures are not qualified campaign expenses, except to the extent permitted under paragraph (a)(3), which concerns winding down and continuing-to-campaign expenses. For clarity, the Commission is proposing to add a provision to paragraph (b)(3) to specifically state that the winding down and continuing-to-campaign costs addressed in paragraph (a)(3) and 11 CFR 9034.11 are considered qualified campaign expenses. Corresponding changes would be made to the similar provision for the general election, 11 CFR 9004.4(b)(3).

Please note that the Commission is not proposing any changes at this time to 11 CFR 9008.10(g)(7), governing winding down costs of convention committees. The Commission nonetheless welcomes comments as to whether similar restrictions should apply to winding down expenses for convention committees.

B. Candidates Who Run in Both Primary and General Elections

The Commission seeks comment on proposed revisions to its rules to clarify which costs constitute primary winding down costs for candidates who participate in both the primary and general elections. The Commission's current regulations allow only candidates who do not run in the general election to begin to incur winding down costs and to treat winding down expenses for salary, overhead and computer costs as 100% compliance costs beginning immediately after their DOI. See 11 CFR 9034.4(a)(3)(i) and (iii). Candidates who run in the general election, whether or not they receive public funds for that election, must wait until the day following the date 30 days after the general election, which is the end of the expenditure report period for publicly financed general election candidates, 11 CFR 9002.12, before they may begin to incur and pay winding down expenses or allocate them as 100% compliance

expenses. In 1999, the Commission revised 11 CFR 9034.4(a)(3)(iii) to allow primary candidates who do not run in the general election to begin to treat 100% of winding down expenses for salary, overhead and computer costs as 100% compliance costs beginning immediately after their DOI.

Explanation and Justification for the Rules Governing Public Financing of Presidential Primary and General Election Candidates, 64 FR 49355, 49358–59 (Sept. 13, 1999). The wording of 11 CFR 9034.4(a)(3)(iii), however, refers to “candidates who receive public funding for the general election” but does not expressly address the situation of a candidate who runs in both the primary and general elections and does not receive public funding for the general election. In the 2000 election, questions arose about how to treat administrative expenses incurred during the general election expenditure report period by a publicly funded primary election candidate who also ran in the general election but did not receive public funds for the general election.

The Commission's approach in 11 CFR 9034.4(a)(3)(iii) reflects its belief that candidates who are actively campaigning in the general election should not be considered to be terminating political activity and winding down their primary campaigns. The proposal seeks to extend this concept to apply without regard to whether their general election campaigns are publicly funded. Expenses incurred by such candidates during the expenditure report period, for publicly funded general election candidates, or the equivalent time period ending 30 days after the general election, for other general election candidates, should be considered general election expenses, rather than primary winding down costs. This approach prevents the use of primary matching funds for non-qualified expenses related to the general election. See 11 CFR 9032.9(a) and 9034.4(b). Although this approach may result in general election campaigns incurring some administrative costs related to terminating the primary campaign during the general election period, identifying those costs would consume resources of audited committees and the Commission. This approach is also consistent with the Commission's bright line rules for allocating expenses between primary and general campaigns at 11 CFR 9034.4(e), which in effect allow some primary related expenses to be paid by the general election committee and *vice versa*.

The Commission proposes a new paragraph at 11 CFR 9034.11(e), which

is based on current 11 CFR 9034.4(a)(3)(i), with revisions to clarify this rule and to prevent any future confusion. The proposed rule at 11 CFR 9034.11(e) would provide that a candidate who runs in the general election must wait until the day following the date 30 days after the general election before using matching funds for primary winding down costs, regardless of whether the candidate receives public funds for the general election. This rule would also clarify that no expenses incurred prior to 31 days after the general election by candidates who run in the general election may be considered primary winding down costs or paid with matching funds.

The Commission also proposes revisions to 11 CFR 9035.1(c)(1) that would include a revised version of current 11 CFR 9034.4(a)(3)(iii) to provide that only candidates who do not run in the general election may treat 100% of salary, overhead and computer expenses as compliance expenses immediately after their date of ineligibility. Candidates who run in the general election must wait until the day following the date 30 days after the general election to treat these expenses as exempt compliance costs. The Commission proposes, for greater clarity, to move this revised version of 11 CFR 9034.4(a)(3)(iii) into current 11 CFR 9035.1(c)(1), which concerns the legal and compliance exemption to the expenditure limitations, because this paragraph concerns the treatment of certain winding down expenses as 100% compliance costs.

The Commission seeks comment on these proposals. Should there be an exception for expenses incurred during the time period prior to 31 days after the general election that are solely related to winding down the primary campaign, and if so, what requirements should there be to ensure that such costs are solely related to winding down the primary campaign? For example, should there be an exception for fundraising expenses incurred during this period to retire a primary committee's NOCO? Would primary-related fundraising activities during this period also have the effect of promoting the candidate's general election campaign? Would a fundraising exception encourage candidates to add a solicitation to general election related events or communications during this period in order to treat expenses for those activities as primary winding down expenses?

In addition, the definition of “winding down costs” in new section 9034.11(a) would include a revised