

version of the first sentence of current 11 CFR 9034.4(a)(3)(i) to clarify that winding down costs are limited to costs associated with the termination of political activity related to seeking that candidate's nomination for election. This would clarify that primary election campaign winding down expenses are legally distinct from general election campaign winding down expenses.

A related issue is how to allocate winding down expenses for candidates who run in both the primary and general elections. Allocating winding down expenses between the primary and general election campaigns during the period following the date 30 days after the general election, can be complicated because both campaigns are winding down simultaneously, often using the same staff, offices, equipment, vendors and legal representatives. The Commission proposes new sections 11 CFR 9004.11(d) and 9034.11(d) allowing a candidate who runs in both the primary and general election to divide winding down costs between the primary and general campaigns using any allocation method, including allowing either the primary or the general campaign to pay 100% of winding down expenses.

This proposal would give candidates the flexibility to allocate their winding down expenses based on the particular circumstances of their campaigns. Winding down activity for some candidates may be largely or entirely focused on one election. For example, candidates who do not receive public funds for the general election might concentrate winding down activity on their publicly funded primary committee. In addition, candidates might concentrate winding down efforts and expenses on the committee that must address more difficult and complex issues in the audit and repayment process or that has a larger potential repayment.

An alternative proposal for dividing winding down expenses between the primary and general campaigns, which was used in some 2000 election cycle audits, would be to divide expenses equally but allow committees to use an alternative allocation method if they provide sufficient documentation to support that allocation. Because the documentation of the primary and general election committees' allocation must be reviewed and disputes may arise about whether committees have provided sufficient documentation to support their proposed allocation, this alternative could prolong the audit process and use the resources of the Commission and audited committees. The draft rules that follow do not

incorporate this alternative. The Commission seeks comment as to what amount or type of documentation should be considered sufficient to support allocations proposed by committees. What standard would be appropriate for evaluating alternative allocations proposed by committees?

The Commission seeks comment on any other method of allocating winding down expenses between the primary and general election committees. Specifically, would either of these alternative proposals result in the primary or general election campaign using public funds to pay for non-qualified expenses related to the other election? Should campaigns be permitted to allocate their costs to effectively reduce potential repayments? Would a default allocation of 50% for each committee be equitable to differently situated candidates? Finally, are these alternative approaches inconsistent with the Fund Act or the Matching Payment Act?

C. Use of GELAC Funds To Pay Winding Down Costs

The Commission's rules at 11 CFR 9003.3(a) permit publicly funded major party presidential candidates to establish and solicit private contributions to GELAC funds, if certain conditions are met. Payments from these accounts for exempt legal and accounting services are not counted against the candidate's overall expenditure limits under 2 U.S.C. 441a(b) and 11 CFR 110.8. *See* 11 CFR 100.8(b)(15).

In 1995, the Commission adopted 11 CFR 9004.4(a)(4)(iii) to address the use of the GELAC to pay certain winding down costs of general election candidates. This paragraph states that 100% of salary, overhead and computer expenses incurred by a campaign after the end of the expenditure report period may be paid from a GELAC, and that such expenditures will be presumed to be solely to ensure compliance with the FECA and the Fund Act. 60 FR 31875 (June 16, 1995). This paragraph was included in the 1996 through 1999 editions of the Code of Federal Regulations, but was inadvertently omitted from the 2000, 2001 and 2002 editions. The Commission intends to reinstate this important provision, with certain revisions discussed below, but move it to the regulation that governs GELAC funds, proposed 11 CFR 9003.3(a)(2)(i)(I).

The Commission is also considering whether, and to what extent, GELAC funds may be used to pay for primary winding down expenses incurred after the end of the expenditure report

period. As noted above, the primary and general election campaigns are simultaneously winding down during this period and often share salary, overhead and computer expenses. The current regulations at 11 CFR 9034.4(a)(3)(iii) recognize that a significant amount of winding down activity during this period is related to compliance and allow primary campaigns to treat 100% of salary, overhead and computer costs during this period as legal and accounting compliance expenses exempt from the expenditure limitations. Permitting the GELAC to pay salary, overhead, and computer costs after the end of the expenditure report period for both the primary and general campaigns would allow candidates who run in both the primary and general elections to choose to pay these costs from the GELAC without having to allocate them between the primary and general campaign committees. In addition, the primary and general election committees often share winding down expenses related to legal and accounting compliance such as attorneys and accountants. Further, primary campaign committees may lack sufficient funds to complete winding down activity.

The Commission proposes to revise the language of former 11 CFR 9004.4(a)(4)(iii), at proposed 11 CFR 9003.3(a)(2)(i)(I), to allow contributions to the GELAC to be used for winding down expenses for legal and accounting compliance activities incurred after the end of the expenditure report period by either the primary or general election committee or by both committees. All salary, overhead, and computer expenses after the end of the expenditure report period would be considered winding down expenses for legal and accounting compliance activities payable by the GELAC.

The Commission seeks comments on the proposed rule. Should the GELAC be allowed to pay for the primary committee's legal and accounting compliance expenses during the winding down period or must the primary committee pay all primary winding down expenses? The Commission also seeks comment on whether, and to what extent, GELAC funds may be used to pay for primary winding down expenses other than legal and accounting compliance expenses, salary, overhead and computer costs. Should the rule list in more detail the types of primary winding down expenses that may be paid with GELAC funds?