

D. Convention Expenses of Ineligible Candidates

The Commission proposes to add a new provision to the rules to reflect its decision in AO 2000–12 permitting certain convention expenses incurred by presidential primary candidates after their dates of ineligibility to be considered qualified campaign expenses. In AO 2000–12, the Commission determined that certain expenses related to meetings and events at the national nominating conventions could be treated as qualified campaign expenses by ineligible candidates. First, the Commission determined that expenses for certain meetings and receptions to thank delegates and supporters could be treated as qualified campaign expenses under 11 CFR 9034.4(a)(5), which specifically includes gifts to “committee employees, consultants and volunteers” for “campaign-related activities or services.” The current rule limits this to \$150 per individual and \$20,000 total for all gifts. The Commission noted that such meetings should be restricted to attendees who served the campaign in the capacity of a committee employee, consultant or volunteer to be considered qualified campaign expenses, and that the current regulation does not allow the payment of travel expenses to attend or organize the events to be considered qualified campaign expenses.

Second, the Commission permitted the ineligible candidates to incur qualified campaign expenses related to fundraising events at the conventions. The Commission stated that as long as the candidates’ primary committees had remaining net outstanding campaign obligations, they may continue to receive matching funds, and may use matching funds to pay for fundraising expenses to retire those campaign obligations as qualified campaign expenses. See 11 CFR 9034.1(b). The Commission concluded that the candidates may incur qualified campaign expenses for expenses related to specific fundraising events held at the nominating conventions. It stated that the candidates could also use matching funds to pay the travel expenses for candidates to attend the fundraising events and for campaign staff who participate in the organizing and administration of the fundraising events. The Commission emphasized that the fundraising expenses must be for specific fundraising events at the convention. In addition, expenses allocable to participation by the candidates or their staff members in any other part of the conventions would constitute non-qualified campaign

expenses. Finally, such expenses would be qualified campaign expenses only if, at the time of the convention, the candidates had net outstanding campaign obligations. See 11 CFR 9034.1(b).

Consequently, the Commission proposes adding new 11 CFR 9034.4(a)(6) to reflect its decision in AO 2000–12. The proposed rules at paragraph (a)(6)(i) provide that expenses directly related to a specific fundraising event at a national nominating convention to retire an ineligible candidate’s debt owed by the candidate’s primary committee, including travel expenses for the candidate to attend the fundraising event and for those campaign staff who organize and administer the fundraising event, may be considered qualified campaign expenses. This paragraph provides that covered travel expenses would consist of transportation, hotel or other lodging, and *per diem* subsistence for the candidates, their spouses, campaign staff, and volunteers who organize or administer the event. The proposed rule provides that expenses allocable to participation by the candidate or staff in the national nominating convention itself, or in any activities related to the convention, other than the fundraising event, would constitute non-qualified campaign expenses. The proposed rule also states that expenses for a fundraising event at the convention may be considered qualified campaign expenses only to the extent that, on the date of the fundraising event, the candidate has net outstanding campaign obligations pursuant to 11 CFR 9034.1(b). Proposed paragraph (a)(6)(ii) would also permit expenses for events to thank campaign employees, consultants and volunteers to be considered qualified campaign expenses, but would provide that travel expenses to such events would not constitute qualified campaign expenses.

The Commission’s decision in AO 2000–12 delineates a carefully circumscribed exception to the Commission’s general past practice that convention expenses of ineligible candidates are non-qualified campaign expenses. As AO 2000–12 states, the Commission has generally concluded in its audits of presidential primary campaign committees that expenses associated with attending national nominating conventions incurred by losing primary candidates are non-qualified campaign expenses. The opinion discusses a number of audits of presidential campaigns in which the Commission determined that expenses of ineligible candidates related to the national nominating convention such as

preparatory staff work, hotel, and airline tickets were non-qualified campaign expenses. For example, the U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission’s determination that convention-related expenses incurred by an unsuccessful presidential campaign committee to attend the convention and for activities to bolster the support and enthusiasm of the candidate’s delegates were non-qualified campaign expenses where the committee claimed that the expenses were fundraising activities because the video and audio record of the candidate’s attendance at the convention would be used for later fundraising efforts. *Robertson v. FEC*, 45 F.3d 486, 492 (D.C. Cir. 1995). AO 2000–12 explains that while the Commission’s general practice is that expenses for ineligible candidates, such as travel costs, related to the convention are non-qualified campaign expenses, matching funds may be used for such expenses in certain limited circumstances.

Prior to the 1996 election cycle, the Commission sought comment on whether to expand the definition of “qualified campaign expense” in 11 CFR 9032.9 to include losing candidates’ convention expenses. See *Explanation and Justification to the Rules Governing Public Financing of Presidential Primary and General Election Candidates*, 60 FR 31854, 31871 (June 16, 1995). In declining to do so, however, the Commission noted that the statutory definition of qualified campaign expense is limited to expenses “incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election.” *Id.*; see 26 U.S.C. 9032(9)(A). This definition arguably does not apply to those no longer seeking the presidential nomination. However, the 1995 *Explanation and Justification* cited above noted that candidates are permitted to count fundraising expenses incurred after DOI, including those incurred at a national nominating convention, as qualified campaign expenses as part of their winding down costs, but only those expenses directly related to fundraising are qualified campaign expenses. *Id.*

The Commission seeks comment on this proposed rule and on its previous treatment of these expenses. Should the Commission incorporate the exception described in AO 2000–12 into its regulations? Are there any possible adverse consequences of allowing ineligible candidates to treat these expenses as qualified campaign expenses? Should the Commission