

as all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts. 11 CFR 9038.3(c)(2). However, the current rules do not specifically include the value of in-kind contributions received or accepted in the calculation of the repayment ratio. Including in-kind contributions received or accepted in the calculation of the repayment ratio would reduce the resulting ratio to more accurately reflect the amount of public funds that are spent in excess of the expenditure limitations or used for other non-qualified campaign expenses.

The Commission proposes to revise 11 CFR 9038.2(b)(2)(iii) to include both total deposits and in-kind contributions received or accepted by the candidate or the candidate's authorized committee or agents in the calculation of the repayment ratio for non-qualified campaign expenses. In-kind contributions would be valued at the usual and normal charge for the goods and services provided to the candidate. The Commission requests comment on this proposed change.

C. Parallel Changes to General Election Rules (11 CFR 9004.4(b)(2) and 9007.2(b)(2))

The Commission is considering certain parallel changes to the rules governing the expenditure limitations and repayments for general election committees at 11 CFR 9004.4(b)(2) and 9007.2(b)(2), but is not including specific changes in the proposed rules at this time. The Commission notes that expenditures in excess of the coordinated party expenditure limitations at 2 U.S.C. 441a(d) and 11 CFR 109.32(a) may be in connection with the general election and attributable to a candidate's general election expenditure limitation under the "bright line" rules at 11 CFR 9034.4(e). The Commission also notes that general election candidates who receive the full public grant may not accept any contributions, including in-kind contributions, and must repay the entire amount of any in-kind contribution received. *See* 26 U.S.C. 9007(b)(3). The Commission seeks comment on whether changes similar to those proposed for primary candidates would be appropriate for general election candidates and on any other issues related to including in-kind contributions in a general election candidate's total expenditures.

III. GELAC Funds (11 CFR 9003.3(a))

A. Funds Remaining in the GELAC

The Commission proposes to revise its rules concerning the use of GELAC funds to update the permissible uses of GELAC funds consistent with BCRA. Currently, the rules at 11 CFR 9003.3(a)(2)(iv) state that if there are "excess campaign funds" after payment of all expenses set out in section 9003.3(a)(2)(i), such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts.

BCRA amended 2 U.S.C. 439a to eliminate its reference to "excess campaign funds." The Commission revised 11 CFR part 113 accordingly. *See Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds*, 67 FR 76962, 76978–79 (Dec. 13, 2002). The Commission proposes to replace the reference to "excess campaign funds" in 11 CFR 9003.3(a)(2)(iv) with "funds remaining in the GELAC" in order to clarify that only funds that are not needed for GELAC expenses may be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113.

The Commission also proposes revisions to 11 CFR 9003.3(a)(2)(iv) to more clearly state that GELAC funds must not be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113 until the completion of the audit and repayment process, which includes making any repayments owed. The Commission requests comments on these proposed changes.

B. Primary Repayments

The Commission is also considering whether candidates should be required to use GELAC funds to make any repayments arising from their primary campaigns, if the primary committee is unable to make the repayment, before the remaining funds in the GELAC could be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113. Currently, GELAC funds may be used to make general election repayments. 11 CFR 9003.3(a)(2)(i)(D). Therefore, the Commission proposes revisions to 11 CFR 9003.3(a)(2)(i)(D) to specify that the GELAC may make repayments owed by the candidate's primary campaign committee pursuant to 11 CFR 9038.2 and 9038.3. Under this proposal, if a candidate's primary or general election committees do not have sufficient funds to make a repayment, the GELAC funds must be used to make the repayment before funds remaining in the GELAC may be used for the purposes permitted under 2 U.S.C. 439a

and 11 CFR part 113. However, the proposed rule would not require that repayments must be made before other permissible uses of GELAC funds under paragraphs (a)(2)(i)(A) through (H). These proposed amendments to the GELAC rules are based on the Commission's interpretation of 2 U.S.C. 439a(a)(1), which permits contributions to be used "for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual." This provision is sufficiently broad to encompass both primary repayments and the other limited purposes specified in 11 CFR 9003.3(a)(2)(i).

C. Solicitation of GELAC Funds

The Commission is also considering whether to revisit its rules regarding the solicitation and deposit of GELAC contributions prior to June 1 of the calendar year in which a presidential general election is held. The Commission is considering changing the June 1 date to an earlier date or abolishing the June 1 restriction. Under current 11 CFR 9003.3(a)(1)(i), prior to June 1 of the presidential election year, contributions may only be deposited in a GELAC if they are made for the primary election, exceed the contributor's contribution limit for the primary and are redesignated by the contributor for the GELAC pursuant to 11 CFR 110.1. In addition, contributions shall not be solicited for the GELAC before June 1 of the calendar year in which a presidential general election is held. 11 CFR 9003.3(a)(1)(i)(A). As a result of this regulation, although candidates are permitted to establish GELAC accounts at any time, they are barred from soliciting or accepting any direct contributions to the GELAC until five months before the general election.

The Commission revised this section in 1999 to establish the June 1 time limit. *See Explanation and Justification to the Rules Governing Public Financing of Presidential Primary and General Election Candidates*, 64 FR 49355, 49356–57 (Sept. 13, 1999). In the 1999 rulemaking, the Commission considered changes to "address problems that have arisen when primary candidates established GELACs relatively early in the primary campaign but subsequently failed to win their party's nomination." *Id.* at 49356. One problem was that candidates who do not receive their party's nomination must refund contributions received by the GELAC, but difficulties arose if GELAC funds had been used to defray overhead or GELAC fundraising expenses. *Id.* Another problem was ensuring that the GELAC is not improperly used to make