

Campaign Funds, 67 FR 76962, 76971–73 (Dec. 13, 2002). The Explanation and Justification for 11 CFR 113.1(g) stated that a salary payment to a candidate from campaign funds would be considered personal use if the salary payment is “in excess of the salary paid to a Federal officeholder—U.S. House, U.S. Senate, or the Presidency.” *Id.* The new rules, however, do not specifically state whether or not publicly funded presidential candidates may receive salaries from their campaigns. The Commission noted that a candidate’s salary is a non-qualified campaign expense under 11 CFR 9004.4(b) and 9034.4(b), *see also* 11 CFR 9002.11 and 9032.9. *Id.* at 76972.

Currently, the rules at 11 CFR 9004.4(b)(6) and 9034.4(b)(5) state that payments made to a candidate by the candidate’s committee, other than to reimburse funds advanced by the candidate, are non-qualified campaign expenses. In promulgating these rules in 1987, the Commission explained that “no payments may be made to the candidate from accounts containing public funds” except for reimbursements, and candidates “may not receive a salary for services performed for the campaign nor may a candidate receive compensation for lost income while campaigning.” *See Explanation and Justification for the Rules on Public Financing of Presidential Primary and General Election Candidates*, 52 FR 20864, 20866 and 20870 (June 3, 1987).

The Commission is considering whether to revise its rules to allow publicly funded general election and primary presidential candidates to receive salary payments paid for, in whole or part, with public funds. Thus, salary payments to candidates would be considered qualified campaign expenses. The Commission is considering allowing salary payments to be paid to publicly funded candidates under similar conditions to those for salary payments to other Federal candidates at 11 CFR 113.1(g)(1)(i)(I). Thus, the candidate’s publicly funded principal campaign committee would be permitted to make salary payments to the candidate. Salary payments to publicly funded candidates would be permissible beginning on January 1 of the calendar year prior to the presidential election year or the filing of the candidate’s statement of candidacy, whichever is later. This earlier starting date than the time restrictions for other Federal candidates would recognize that the presidential primary campaign begins before the presidential election year. Salary payments paid by the candidate’s primary committee would

be permitted through the candidate’s date of ineligibility and salary payments from a candidate’s general election committee would begin on the date of nomination and end on the date of the general election. Only non-incumbent presidential candidates who are not currently Federal officeholders would be able to receive a salary paid with public funds.

Candidates who hold office in a State would be able to receive salary payments only to the extent they are permitted to do so under the laws of that State. Salary payments would be limited to the lesser of the annual salary paid to the President or the earned income that the candidate received during the year prior to becoming a candidate. Any earned income the candidate would receive from salaries or wages from any other source would count against the salary limitation. In addition, the candidate would be required to provide income tax records for the relevant year and other evidence of earned income upon request by the Commission. Finally, salary payments could be made only on a pro rata basis.

The Commission seeks comment on this approach, but no specific provision is proposed in the draft rules that follow. Should candidate salary be considered a qualified campaign expense payable with public funds or should candidate salaries for publicly funded candidates continue to be considered non-qualified campaign expenses? Would candidates avail themselves of a salary paid with public funds? Would the proposed change encourage candidates of modest means who depend on their earned income to run for the Presidency? Is this an appropriate use for public funds, and is there a potential for abuse? Should any additional restrictions on candidate salaries apply to publicly funded candidates?

Should payments of salary to candidates who receive public funds be prohibited so that in addition to the committee being required to repay the public funds involved, the candidate would violate 2 U.S.C. 439a by accepting the salary payments? Should the candidate and committee agreements described in 11 CFR 9003.1 and 9033.1 contain a provision agreeing that no salary would be paid to the candidate?

E. Gifts and Bonuses (11 CFR 9004.4(a)(5) and 9034.4(a)(5))

The Commission is considering revisiting its rules governing payment of gifts and bonuses by primary and general election candidates at current 11 CFR 9004.4(a)(5) and 9034.4(a)(5). The

current rules allow gifts and bonuses to be treated as qualified campaign expenses if they meet certain restrictions. Gifts for committee employees, consultants and volunteers in recognition of campaign-related activities or services are limited to \$150 per individual recipient and a total of \$20,000 for all gifts. 11 CFR 9004.4(a)(5) and 9034.4(a)(5). Monetary bonuses for employees and consultants in recognition for campaign-related activities or services must be provided for pursuant to a written contract made prior to the general election for general election candidates or the DOI for primary candidates and must be paid no later than 30 days after the DOI for primary candidates or the end of the expenditure report period for general election candidates. *Id.*

The Commission has not proposed any changes to these rules in the draft rules that follow, but seeks comment on the current rules. Should the Commission maintain its current rules on gifts and bonuses? Should the current restrictions on gifts and bonuses be strengthened, reduced, or eliminated? Should the permissible dollar amounts for gifts to individuals or the total amounts of gifts be lowered, or raised? Should the requirement of a written contract be clarified to delineate what constitutes an acceptable written agreement? Is the requirement of a written contract for monetary bonuses too restrictive, since written contracts are not required for salary payments? Should additional restrictions be added, such as limiting the amount of bonuses or requiring committees to provide other documentation of the reasons for the bonus such as the type and amount of work performed? What additional, or different, controls should be used for gifts and bonuses? Should candidates be required to sign any contracts that include employment bonus provisions? This would ensure that high-level campaign officials do not engage in self-dealing. If the current restrictions are deleted from the rules, how should the Commission ensure that gifts and bonuses comply with the restrictions on personal use of campaign funds at 2 U.S.C. 439a and 11 CFR part 113?

In addition, should changes also be made to current 11 CFR 9008.7(a)(4)(xii) to make the rule for convention committees more similar to the rules for candidates by including the same requirements for bonuses? Currently 11 CFR 9008.7(a)(4)(xii) limits all gifts and monetary bonuses to national committee or convention committee employees, volunteers and convention officials to \$150 per individual or a total of \$20,000 for all gifts.