

*F. Shortfall Exemption (11 CFR 9035.1(c))*

During recent election cycles, the Presidential Primary Matching Payment Account has occasionally experienced a shortfall in that it contained insufficient funds to fully pay all of the matching funds to which primary candidates were entitled on the dates payments were due. See 26 U.S.C. 9037; 11 CFR 9036.4(c)(2), 9037.1, 9037.2. The delay or deficiency in matching fund payments has resulted in inconvenience and additional costs for candidates such as the costs of obtaining bridge loans from banks to pay for their expenses until they received their full entitlement of matching funds several months later. Such expenses currently count against a candidate's overall expenditure limitation, reducing the amount the candidate may spend on other campaign activities.

In order to mitigate the effect of a potential shortfall on candidates, the Commission proposes a new "shortfall exemption" from a primary candidate's overall expenditure limitation at new paragraph 11 CFR 9035.1(c)(3). This new exemption would equal 5% of the amount of any delayed or deficient payment of matching funds to which the candidate is entitled.

The Commission seeks comment on this proposal. To what extent would the proposed exemption ameliorate the negative impact of delayed or deficient payments of matching funds on a primary candidate's campaign? Should a different percentage be used? Would this exemption be workable for candidates? Is this exemption a permissible interpretation of the statutory spending limit?

*G. Expenditures by a Multicandidate Political Committee for Qualified Campaign Expenses of a Candidate (Proposed 11 CFR 110.2(l) and 9034.10)*

In December 2002, the Commission published an NPRM entitled "Leadership PACs" seeking comment on its proposal to promulgate new regulations addressing this specific type of multicandidate political committee. The Commission conducted a public hearing on February 26, 2003, to discuss the NPRM. During the public hearing, the issue of leadership PACs paying for qualified campaign expenses of potential Presidential candidates during the "testing the waters" stage was raised and discussed. Because this issue implicates the regulations addressing Presidential campaigns and elections, the Commission has decided to seek comment on the relationship, if any, between multicandidate political

committees and Presidential candidates in this NPRM. The Commission is continuing to review the Leadership PACs NPRM as it applies outside Presidential campaigns and elections, and the comments received in connection with the NPRM, and the Commission intends to conclude that rulemaking at a later date.

The proposed rules herein would create a new paragraph in 11 CFR 110.2 and a new section in 11 CFR part 9034 that would address the payment by a multicandidate political committee of a qualified campaign expense of a Presidential candidate. Proposed section 110.2(l) would apply to candidates who are not accepting public funding from the Presidential Election Campaign Fund for the primary or general election. Proposed 11 CFR 9034.10 would apply to Presidential candidates who are accepting public funding for the primary election. Because Presidential candidates who accept public funding for the general election may not accept contributions from multicandidate political committees, the proposed rules would not include a parallel provision in 11 CFR subchapter E.

1. Scope of the Proposed Rules

Proposed 11 CFR 110.2(l) and 9034.10 would be applicable to all multicandidate political committees, not just those commonly known as Leadership PACs. The rationale for this approach is that leadership PACs are not defined or specifically addressed in FECA or in the current Commission regulations. Rather, leadership PACs are formed as multicandidate political committees that are defined and addressed in FECA and current Commission regulations. In the Commission's experience, other types of multicandidate political committees do not make expenditures for qualified campaign expenses of potential Presidential candidates. Thus, including all multicandidate political committees within the proposed rules would not have unintended consequences of encompassing other types of activity.

Nevertheless, the Commission seeks comment on whether the proposed rules should be limited to leadership PACs. If the Commission were to adopt such an approach, it would also become necessary for the Commission to adopt a definition for "leadership PACs." Consequently, the Commission seeks comment as to what that definition should be.

2. Definition of "Qualified Campaign Expense"

Proposed 11 CFR 9034.10(a) would include a definition of "qualified campaign expense" that would vary from the current definition in 11 CFR 9032.9 but would limit the scope of the proposed definition to proposed 11 CFR 9034.10. The definition in proposed paragraph (a) would adopt language similar to that of 11 CFR 9032.9(a) but would not include the timing element of section 9032.9(a)(1). The timing element of current section 9032.9(a)(1), which limits qualified campaign expenses to expenses incurred between the date a person becomes a candidate and the last day of the candidate's eligibility, should not be applied here because a major goal of the proposed rules is to treat qualified campaign expenses that are paid by multi-candidate committees as in-kind contributions to Presidential candidates whenever such qualified campaign expenses are incurred, even if they are incurred prior to the date a person becomes a candidate.

Additionally, the proposed definition would not include the provisions in section 9032.9(a)(3) requiring that a qualified campaign expense comply with all Federal, state, and local laws. The purpose of this provision in section 9032.9(a)(3) is to prevent the authorized committees from paying for items such as parking tickets. Because the purpose of proposed section 9034.10 is to treat the payment of qualified campaign expenses of a Presidential candidate by multicandidate political committees as in-kind contributions, it would be inconsistent with this purpose to exclude these items.

Proposed 11 CFR 9034.10(a)(1) and (2) would be the operative definition of "qualified campaign expense" as it would be applied to proposed 11 CFR 110.2(l) and 9034.10. Under the proposed definition, "qualified campaign expense" would mean purchase, payment, etc., that is incurred by, on behalf of, or for the benefit of a candidate or the candidate's authorized committee and is made in connection with that candidate's campaign for nomination. Proposed paragraph (a)(3) would provide a non-exhaustive list of examples of expenses that would be considered as a qualified campaign expense, such as polling expenses, staff salary, travel, and office space expenses. The Commission seeks comment on whether polling expenses in proposed paragraph (a)(3)(i) should be limited to polls that reference a Presidential candidate. The Commission notes that none of the foregoing expenses would be qualified campaign expenses under