

the proposed rule unless they were made in connection with a Presidential candidate's campaign for nomination. The Commission seeks comment on whether more specific examples of qualified campaign expenses should be provided and whether there are other expenses that should be included in proposed paragraph (a)(3). The Commission also seeks comments on whether it should use a terminology other than "qualified campaign expenses" in this proposed section to avoid confusion with the current definition of "qualified campaign expenses."

3. Qualified Campaign Expenses as In-Kind Contributions

The NPRM would set forth the consequences of a multicandidate committee paying for qualified campaign expenses for a Presidential candidate in proposed 11 CFR 9034.10(b)(1) through (4). The introductory language of proposed paragraph (b) would limit the "look back" period of the proposed rules to January 1 of the year immediately following the last Presidential election year. Thus, if an expenditure made by a multi-candidate committee for a qualified campaign expense were made prior to that date, it would not be subject to the provisions of proposed section 9034.10. The Commission seeks comments on whether the "look back" period should start at a different date, such as the day after the last Presidential election or some other date. Additionally, the proposed rule would only apply to qualified campaign expenses paid by multi-candidate committees for individuals who actually become Presidential candidates.

Under the proposed rule, an expenditure by a multicandidate political committee for a qualified campaign expense of a Presidential candidate would have four effects. First, the expenditure would be deemed as an in-kind contribution from the multicandidate political committee to the Presidential candidate under proposed 11 CFR 9034.10(b)(1). Second, proposed paragraph (b)(2) would subject the expenditure/contribution to the contribution limitations for multicandidate political committees to Presidential candidates, *i.e.* \$5000 per election. Third, under proposed paragraph (b)(3), the expenditure would count towards the expenditure limitations for Presidential candidates accepting public funding under 11 CFR part 9035. Finally, proposed paragraph (b)(4) would subject the expenditure to the audit provision of 11 CFR 9038.1. The proposed rules would also amend

current 11 CFR 9038.1(a)(2) to make clear that multicandidate political committees that make expenditures for qualified campaign expenses would be subject to examinations and audits as deemed necessary. The Commission seeks comments on whether changes to the audit provision of 11 CFR 9038.1 is appropriate or necessary to effectuate any new rule it may promulgate in this area. It is important to note that, under this proposed rule, coordination would not be relevant in determining that a multicandidate political committee has made an in-kind contribution when it pays for a qualified campaign expense of a Presidential candidate.

As stated above, proposed 11 CFR 9034.10(b)(2) would subject a multicandidate political committee's expenditure for qualified campaign expenses to the contribution limitations that apply to Presidential campaign committees. Under proposed paragraph (c), any amount of the expenditure that exceeds the contribution limit for multicandidate political committees to Presidential candidate committees would be deemed an excessive contribution and liability would attach to both the multicandidate political committee for making the excessive contribution and the authorized committee of the Presidential candidate for accepting an excessive contribution. The Commission seeks comment on whether the proposed rules should include a provision that would allow the authorized committee to "cure" the excessive contribution and, therefore, avoid liability. For instance, if the authorized committee of the Presidential candidate reimburses the multicandidate political committee for any expenditure for qualified campaign expenses that exceed the contribution limit within thirty days of the date of the person becoming a candidate, should these expenditures not be considered as excessive contributions? The Commission seeks comment on this approach or suggestions on alternative ways excessive contributions may be "cured."

While proposed 11 CFR 9034.10 would apply to Presidential candidates who accept public funding for their primary election campaigns, the proposed rules would add a new paragraph (l) to current section 110.2 that would apply to Presidential candidates who do not accept any public funds. Proposed 11 CFR 110.2(l)(1) would incorporate by reference the definition of "qualified campaign expense" in proposed section 9034.10(a) for purposes of proposed paragraph (l). Proposed paragraph (l)(2)

would include the same "look back" period as proposed section 9034.10(b).

Similar to proposed section 9034.10(b)(1) and (2), an expenditure by a multicandidate political committee for a qualified campaign expense of a Presidential candidate who is not receiving public funds would be deemed to be an in-kind contribution from the multicandidate political committee to the Presidential candidate and that contribution would be subject to the relevant contribution limitations. Proposed 11 CFR 110.2(l)(1) and (2). Proposed section 110.2(l) would not have provisions that parallel proposed section 9034.10(b)(3) and (4) because Presidential candidates who do not receive public funding for their campaigns are not subject to the expenditure limitations in 11 CFR part 9035 or the audit provisions of 11 CFR 9038.1. Proposed 11 CFR 110.2(l)(3) would include similar language as proposed section 9034.10(c) stating that expenditures exceeding the contribution limits for multicandidate political committees to Presidential candidates would be deemed as excessive contributions.

The Commission seeks comment on this proposal to treat expenditures by multicandidate committees for qualified campaign expenses of Presidential candidates as in-kind contributions. The Commission also welcomes comments on the ramifications of such treatment as well as on the issues raised above.

H. Technical Amendments

1. Word Omitted From 11 CFR 9038.2(b)(4)

Under 11 CFR 9038.2(b)(4), the Commission may determine that the net income derived from an investment or other use of surplus public funds after a candidate's DOI, less Federal, State and local taxes paid on that income, shall be paid to the Federal Treasury. However, the word "taxes" was inadvertently dropped from that paragraph and needs to be included.

2. Correcting Citations in 11 CFR 104.5(b)(1)

The Commission proposes to correct several citations in 11 CFR 104.5(b)(1) to reflect changes to 11 CFR 104.5(a) promulgated in the implementation of BCRA. Specifically, the Commission proposes in 11 CFR 104.5(b)(1)(i)(C) to change the reference to 11 CFR 104.5(a)(1)(i) to "paragraph (a)(2)(i) of this section" and to change the reference to 11 CFR 104.5(a)(1)(ii) to "paragraph (a)(2)(ii) of this section." In 11 CFR 104.5(b)(1)(ii), the Commission proposes to change the reference to 11