

based on the conditions delineated at 11 CFR 110.1(b)(5)(ii)(C). The Commission's rules at 11 CFR 110.1(b)(5)(ii)(C) allow authorized committees to redesignate excessive contributions presumptively to the primary election, under certain conditions. One commenter supported the proposal to apply these rules to the GELAC.

The Commission has determined that no further changes to §9003.3(a)(1) in this regard are necessary because there are no other GELAC contributions that could be presumptively redesignated for the primary election. Contributions that are designated in writing by the contributors for the GELAC would be ineligible for redesignation by presumption pursuant to 11 CFR 110.1(b)(5)(ii)(C)(2). Contributions that are not designated in writing for the GELAC will be considered made with respect to the primary election, except when the conditions for depositing them in the GELAC pursuant to 11 CFR 9003.3(a)(1)(iv) are satisfied. If these contributions exceed the contributor's primary election contribution limit, they may be presumptively redesignated pursuant to revised §9003.3(a)(1)(v).

11 CFR 9003.3(a)(2)—Uses

The rule on the uses of GELAC funds is being revised to update the permissible uses of GELAC funds consistent with BCRA and to otherwise improve the rule.

11 CFR 9003.3(a)(2)(i)(D)—Primary Repayments

The NPRM proposed amending the rule on the permissible uses of GELAC funds to permit Presidential candidates to use GELAC funds to make any repayments owed by their authorized committee for the primary election. GELACs are permitted to make general election repayments under 11 CFR 9007.2, and the proposed revisions at 11 CFR 9003.3(a)(2)(i)(D) specified that GELACs may also make primary campaign repayments required under 11 CFR 9038.2 or 9038.3. One commenter stated the revision is justified, provided the rule does not require that repayments must be made before other permissible uses of GELAC funds under paragraphs (a)(2)(i)(A) through (H). The only other commenter opposed the proposed revision, based on an expressed opposition to GELACs in general.

The Commission has decided to revise 11 CFR 9003.3(a)(2)(i)(D) to specify that the GELAC may be used to make repayments owed by the candidate's primary campaign committee pursuant to 11 CFR 9038.2

and 9038.3 in addition to general election repayments under 11 CFR 9007.2. This amendment to the GELAC rules is 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 statutory language is sufficiently broad to encompass primary election repayments. The effect of this revision, combined with the revisions to 11 CFR 9003.3(a)(2)(iv) described below, is to require Presidential candidates to use their GELAC funds for their primary committee repayments before any funds remaining in the GELAC can be dispensed pursuant to 2 U.S.C. 439a. Thus, this revision imposes an obligation on GELACs as much as it permits such funds to be used to satisfy debts to the United States Treasury.

11 CFR 9003.3(a)(2)(i)(I)—Winding Down Expenses

The NPRM proposed revisions to 11 CFR 9003.3(a)(2)(i) to restore a provision related to the use of GELACs for general election winding down expenses. In 1995, the Commission adopted 11 CFR 9004.4(a)(4)(iii), which stated that 100% of salary, overhead, and computer expenses incurred by a campaign after the end of the expenditure report period may be paid from a GELAC, and that such expenditures will be presumed to be solely to ensure compliance with the FECA and the Fund Act. 60 FR 31875 (June 16, 1995). This paragraph was included in the 1996 through 1999 editions of the Code of Federal Regulations, but was inadvertently omitted from the 2000 through 2003 editions. The Commission is reinstating this important provision, with certain revisions discussed below, and moving it to 11 CFR 9003.3(a)(2)(i)(I). No commenters addressed this rule.

In addition, the Commission has decided to add primary election winding down costs incurred after the end of the expenditure report period to the rule on permissible uses of GELAC funds at new 11 CFR 9003.3(a)(2)(i)(I). Two commenters addressed this proposal. One commenter expressed opposition to GELACs in general and, by extension, any expansion of permissible uses of GELACs. Another commenter thought it unfair to permit candidates who run in both the primary and the general elections to use GELACs to pay primary winding down costs, while primary candidates who do not compete in the general election are required to refund GELAC contributions. This commenter also faulted the use of any GELAC funds for

expenditures subject to the primary expenditure limit.

In reaching its decision, the Commission considered that the primary and general election campaign committees are simultaneously winding down following the expenditure report period and often share salary, overhead, and computer expenses. In addition, the primary and general election committees often share winding down expenses related to legal and accounting compliance such as attorneys and accountants. The regulation at 11 CFR 9034.4(a)(3)(iii) recognizes that a significant amount of winding down activity during this period is related to compliance and allows primary campaigns to treat 100% of salary, overhead, and computer costs during this period as legal and accounting compliance expenses exempt from the expenditure limitations. Similarly, former 11 CFR 9004.4(a)(4)(iii) presumed these expenses were for compliance and therefore exempted them from the general election expenditure limitation pursuant to 11 CFR 9002.11(b)(5). Permitting the GELAC to pay salary, overhead, and computer costs after the end of the expenditure report period for both the primary and general election committees will allow candidates who run in both the primary and general elections to choose to pay these costs from the GELAC. Because these expenses are exempt from both the primary and general election expenditure limits, the concerns about one publicly financed campaign funding another are reduced. Any primary winding down costs not entitled to the compliance exemption will be subject to the primary expenditure limit, even if paid by the GELAC. Primary winding down costs paid by the GELAC must be included on the Statement of Net Outstanding Campaign Obligations pursuant to 11 CFR 9034.5(a)(1). A receivable from the GELAC must also be listed for any primary winding down costs paid with GELAC funds. 11 CFR 9034.5(a)(2)(iii). Any winding down costs paid by the GELAC will not count toward either winding down limitations in new 11 CFR 9004.11(b) or 9034.11(b).

The Commission acknowledges that primary candidates who do not compete in the general election will not have GELAC funds available for their winding down costs. This result is unavoidable, however, because FECA's contribution limits are per election. See 2 U.S.C. 441a. Thus, contributors to candidates who compete only in the primary are limited to contributing for that election only; while contributors to candidates who compete in both the