

primary and general elections may contribute the full amount for both the primary election and the GELAC. The authorization to use GELAC funds to pay primary winding down expenses does not cause the different treatment, and it cannot justify permitting primary candidates to receiving contributions of twice the per-election limit.

11 CFR 9003.3(a)(2)(iv)—Funds Remaining in the GELAC

The rule at 11 CFR 9003.3(a)(2)(iv) concerning the use of GELAC funds is being revised to update the permissible uses of GELAC funds consistent with BCRA. The previous rule at 11 CFR 9003.3(a)(2)(iv) stated that if there are “excess campaign funds” after payment of all expenses set forth in §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,” and 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 rule governing the use of GELAC funds is being revised to replace the reference to “excess campaign funds” in 11 CFR 9003.3(a)(2)(iv) with “funds remaining in the GELAC” 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. All of the commenters who addressed this proposed change supported it, provided the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113 continue to be permissible uses of funds remaining in the GELAC, which they are.

The Commission also is revising 11 CFR 9003.3(a)(2)(iv) to state expressly that GELAC funds must not be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113 that are beyond the uses listed in 11 CFR 9003.3(a)(2) until the completion of the audit and repayment process, which includes making any repayments owed. No commenters addressed this provision.

11 CFR 9003.5—Documentation of Disbursements

Commission regulations in 11 CFR 102.9(b) describe the requirements for the documentation of disbursements applicable to all political committees. Additional documentation requirements for publicly funded general election committees are set forth in 11 CFR

9003.5. Section 9003.5 is being revised to clarify that publicly funded general election candidates must comply with both the general rules at §102.9(b), as well as the specific rules applicable to publicly funded general election candidates governing the documentation of disbursements in 11 CFR 9003.5(b). No commenters addressed this revision.

11 CFR Part 9004—Entitlement of Eligible Candidates to Payments; Use of Payments

11 CFR 9004.4—Use of Payments; Examples of Qualified Campaign Expenses and Non-Qualified Campaign Expenses

Section 9004.4, which concerns qualified and non-qualified campaign expenses, is being revised in several respects. First, the section heading for 11 CFR 9004.4 is being modified to indicate that it contains examples of qualified campaign expenses and non-qualified campaign expenses. Previous §9004.4(a)(4)(ii) is being renumbered as §9004.4(a)(5) to clarify that accounts payable costs are a separate type of qualified campaign expense from winding down costs. There were no comments on these changes.

Second, the rules on winding down costs are being moved from paragraph (a)(4) to new §9004.11. Revised 11 CFR 9004.4(a)(4) provides that payments from the Presidential Election Campaign Fund may be used to defray winding down costs pursuant to 11 CFR 9004.11, which contains new rules on winding down costs and is discussed below.

11 CFR 9004.4(a)(6)—Gifts and Bonuses

The NPRM proposed revising the rules governing payment of gifts and bonuses by general election candidates at newly redesignated 11 CFR 9004.4(a)(6). The rules allow gifts and bonuses to be treated as qualified campaign expenses for general election candidates if they meet certain conditions. Under 11 CFR 9004.4(a)(6), 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. Monetary bonuses for employees and consultants in recognition of campaign-related activities or services must be provided for pursuant to a written contract made prior to the general election and must be paid no later than 30 days after the end of the expenditure report period. *Id.* The NPRM sought comment as to whether to limit the amounts of gifts and bonuses, whether to retain the requirement of a

written contract for monetary bonuses, and whether to create possible additional or different controls.

The Commission has decided to narrow the requirements with respect to when a written contract will be required for monetary bonuses. Because the Commission does not require written contracts for other employer-employee relationships, the new rule is more narrowly tailored to address the purpose of the restriction. The previous regulation was promulgated in reaction to a publicly funded campaign paying large monetary bonuses after the election upon discovery of excess public funds. The new rule addresses that abuse more directly while not otherwise limiting employment arrangements, in recognition of the absence of an incentive to waste public funds before the date of the election. Therefore, the new rule requires a written contract only when monetary bonuses are paid after the election.

11 CFR 9004.4(b)(3)—Non-Qualified Campaign Expenses

Section 9004.4(b) lists non-qualified campaign expenses. Paragraph (b)(3) previously stated that any expenditures incurred after the close of the expenditure report period were not qualified campaign expenses except to the extent permitted as winding down costs or accounts payable under 11 CFR 9004.4(a)(4). Section 9004.4(b)(3) is being clarified to state specifically that accounts payable pursuant to newly redesignated 11 CFR 9004.4(a)(5) and winding down costs pursuant to new §9004.11, discussed below, are considered qualified campaign expenses. There were no comments on these changes.

11 CFR 9004.11—Winding Down Costs

During the audit and repayment process, Presidential committees and the Commission's auditors estimate costs associated with terminating the campaign and complying with the post-election requirements of the Fund Act and FECA, and may sometimes reach substantially disparate winding down estimates. Issues have arisen as to the appropriate amounts and types of winding down expenses and as to the length of time committees need to wind down. These disputes have lengthened the audit and repayment processes for some campaigns. Both actual and estimated future winding down costs are included in a general election candidate's Statement of Net Outstanding Qualified Campaign Expenses (“NOQCE”). Consequently, if the Commission auditors' figures are lower than the committee's estimates, a