

The Commission expects that most PCCs of Presidential candidates will incur winding down expenses substantially below the new dollar limitations. Campaigns with unusually high compliance costs may use their GELAC or a primary candidate's private funds after no public funds remain in the candidate's accounts to pay for such expenses. Paying winding down expenses with a GELAC is justified because a large amount of winding down expenses are related to compliance and most winding down expenses are not directly related to active campaigning.

In practice, the winding down limitation for fully funded major party general election candidates will be the maximum winding down limitation, 2.5% of the expenditure limitation for general election candidates under § 9004.11(b)(1). This maximum winding down limitation is calculated based upon a percentage of the general election candidate's expenditure limitation pursuant to 2 U.S.C. 441a(b), similar to the calculation of the 20% fundraising exemption or the 15% compliance exemption. See 11 CFR 100.146, 100.152, and 9002.11(b)(5). Currently, the general election expenditure limitation is equal to \$72,960,000, so the 2.5% limit would equal \$1,824,000.¹

In contrast, the winding down limitation for most minor party general election candidates will equal 2.5% of their expenses during the expenditure report period under section 9004.11(c)(2).² The final rule addresses the calculation of the winding down limitation for those general election candidates who may solicit contributions by calculating the total of their expenditures subject to the limit, § 9004.11(b)(2)(i), plus their exempt expenses, § 9004.11(b)(2)(ii). The calculation includes exempt expenses such as fundraising and legal and accounting compliance costs to reflect the actual size of the campaign that is winding down. The fundraising exemption for general election candidates is applicable only to those candidates who may accept contributions to defray qualified campaign expenses pursuant to 26 U.S.C. 9003(b)(2) or 9003(c)(2), *i.e.*, minor party candidates and major party

candidates who may solicit contributions to make up a deficiency in public funds received. See 11 CFR 100.152, 9003.3(b) and (c). Those general election candidates who may solicit contributions may also exempt legal and accounting compliance expenses from their expenditure limitations. See 11 CFR 100.146, 9003.3(b) and (c). Expenses for transportation of Secret Service and national security staff and media transportation expenses that are reimbursed by the media do not count against the expenditure limitations. See 11 CFR 9004.6(a), 9034.6(a). Thus, the exempt expenses considered under § 9004.11(c)(2)(ii) will include all three of the types of exempt expenses.

For purposes of calculating the amount of the winding down limitation under § 9004.11(b)(2), a candidate's expenses will include both disbursements and accounts payable as of the end of the expenditure report period for the following categories of expenses (as listed on page 2 of FEC Form 3P): operating expenses (line 23), fundraising (line 25), exempt legal and accounting (line 26), and other disbursements (line 29). The following payments should not be included in the expenses used to calculate the winding down limitation: transfers to other authorized committees (line 24), loan repayments (line 27), or contribution refunds (line 28).

The winding down limitation calculation does not include any expenditures in excess of the general election candidate's expenditure limitation; thus, making expenditures or accepting in-kind contributions that exceed the expenditure limits would not provide a basis for an increased winding down limitation. In addition, the new rule restricts the expenses used to calculate the winding down limitation to the period prior to the end of a general election candidate's expenditure report period to prevent candidates from increasing their winding down limitation by spending more for winding down expenses.

2. Expenses Subject to Winding Down Limitation

All expenses incurred and paid by a candidate during the winding down period, including fundraising costs, are subject to the new winding down limitation in new 11 CFR 9004.11. Under the new rule, the use of public funds to pay for winding down expenses in excess of these restrictions will constitute a non-qualified campaign expense that may be subject to repayment. However, these restrictions apply to the use of public funds or a

mixture of public and private funds for winding down costs and will not limit the payment of winding down expenses from private contributions in a candidate's GELAC. Thus, expenses for legal and accounting compliance costs paid for with public funds count against the winding down limitation, but any winding down costs paid by a GELAC do not.

11 CFR 9004.11(c)—Allocation of Primary and General Winding Down Costs

Candidates who run in both the primary and general elections must allocate winding down expenses between the primary and general election campaigns. This can be complicated during the period after the general election because both campaigns are winding down simultaneously, often using the same staff, offices, equipment, vendors and legal representatives. To simplify the allocation, the NPRM proposed that committees could divide winding down costs between the primary and general campaigns using any allocation method, including allowing either the primary or the general campaign to pay 100% of winding down expenses.

One commenter advocated allowing campaigns to use any reasonable method that would require expenses indisputably related to one election be paid as winding down expenses of that election while shared winding down expenses such as legal fees could be allocated on any reasonable basis reflecting a good-faith estimate.

The final rules in new 11 CFR 9004.11(c) allow a candidate who runs in both the primary and general election to divide winding down costs between the primary and general campaigns using any reasonable allocation method. The final rule also specifies that an allocation method will be considered reasonable if it divides the total winding down costs between the primary and general election committees and results in no less than one third of total winding down costs allocated to each committee. With this provision, the Commission has created a range of winding down cost allocations between a candidate's primary and general election authorized committees that will be considered *per se* to be the result of a reasonable method and therefore in compliance with this requirement. If particular circumstances require a candidate to allocate winding down costs so that one of the two committees is allocated less than one third of the total costs, with the other necessarily being allocated more than two thirds, those committees will be required to

¹ Before the 2004 general election, the general election expenditure limit under 2 U.S.C. 441a(b)(1)(B) is subject to an additional annual adjustment under 2 U.S.C. 441a(c).

² If major party candidates were required to solicit contributions to make up a deficiency in public funds, the winding down limitation would also equal 2.5% of their expenses during the expenditure report period.