

the national nominating conventions, as well as travel expenses to attend such events.

One commenter agreed that the expenses in AO 2000–12 should be treated as qualified campaign expenses, and suggested that the rule should be extended to cover most convention expenses of primary candidates incurred after DOI. This commenter asserted that reasonable convention expenses are in connection with a candidate's campaign for nomination both for candidates who continue to campaign past their eligibility date and those who withdraw or suspend their campaigns. Candidates who withdraw or suspend their campaigns might restart their campaigns depending on changed circumstances. The commenter suggested a ceiling of \$100,000 to \$250,000 for such expenses.

The Commission is adding new 11 CFR 9034.4(a)(6) to provide a simpler approach in which a candidate may treat expenses related to the national nominating convention of up to \$50,000 as qualified campaign expenses. This rule recognizes that ineligible candidates have interests in participating in their parties' national nominating convention related to their candidacy for the nomination. Thus, it is reasonable to allow candidates to use public funds to participate in their party's national nominating convention. This bright line rule avoids the necessity of considering whether convention expenses are in fact necessary for fundraising activities or are genuinely to thank those who assisted the campaign as required by AO 2002–12.

The new rule in 11 CFR 9034.4(a)(6) provides that an ineligible candidate may treat up to \$50,000 in expenses related to the national nominating convention as qualified campaign expenses. Any costs reasonably related to the candidate's attendance, participation or activities at the Presidential nominating convention would be a qualified campaign expense under the new rule, including travel and lodging costs of the candidate, his or her family, and campaign staff, consultants and volunteers to attend the convention, the costs of hosting receptions and events, and other convention-related costs. Any amount in excess of \$50,000 will not be considered a qualified campaign expense and may be subject to repayment. The \$50,000 cap is based on the Commission's experience as to how much is reasonably necessary for this purpose. Apart from the \$50,000 cap, any candidate who is in a deficit position after DOI may incur additional qualified campaign expenses related to

fundraising events at the national nominating conventions to retire campaign debt.

11 CFR 9034.4(b)(3)—Non-Qualified Campaign Expenses

Revisions are being made to 11 CFR 9034.4(b)(3) to more clearly state that winding down costs addressed in paragraph (a)(3) of this section are qualified campaign expenses. The revised rules also indicate that certain convention expenses permitted under paragraph (a)(6) of this section are qualified campaign expenses. As proposed in the NPRM, § 9034.4(b)(3) would have also referred to continuing to campaign costs; however, in the final rules, it does not refer to continuing to campaign costs because those costs are not qualified campaign expenses.

11 CFR 9034.10—Pre-Candidacy Payments by Multicandidate Political Committees Deemed In-kind Contributions and Qualified Campaign Expenses; Effect of Reimbursement

In the NPRM, the Commission proposed adding language at 11 CFR 9034.10 to treat certain expenses incurred by multicandidate committees as in-kind contributions benefiting publicly funded Presidential candidates. Similar language was proposed at 11 CFR 110.2(l) to reach a similar result where multicandidate committees incur such expenses benefiting Presidential candidates who are not publicly funded. These provisions were designed to address situations where unauthorized political committees closely associated with a particular individual planning to run for President defray costs that are properly treated as in-kind contributions unless reimbursed by the Presidential campaign.

Two commenters addressed this topic. One commenter generally supported the proposed rule, but noted that it did not address similar issues in Congressional campaigns. The other commenter suggested that in this context even polling that did not mention a particular Presidential candidate should be covered.

The Commission is adopting final rules that use much of the approach set forth in the proposed rules. The final rules, though, narrow their focus so they are clearer in application and better targeted to the situations that truly present the potential for evasion of the contribution and spending limits. The final rules also provide a mechanism for a Presidential campaign to achieve compliance with the law by promptly reimbursing the multicandidate committee. If there is full and timely reimbursement, the multicandidate

political committee's payment is not to be treated as an in-kind contribution for either entity, but rather the reimbursement is an expenditure of the candidate's campaign and is a qualified campaign expense of the candidate's campaign (in the case of a publicly funded candidate).

One distinction built into the final rules is that they cover only payments by multicandidate political committees before the individual benefiting actually becomes a *candidate* within the meaning of 2 U.S.C. 431(2) and 26 U.S.C. 9032(2). The Commission's experience is that after an individual becomes a candidate for the Presidency by virtue of receiving more than \$5,000 in contributions or making more than \$5,000 in expenditures, and taking into account the "testing the waters" allowances at 11 CFR 100.72 and 100.131, the candidate's principal campaign committee or other authorized committee would pay the types of expenses involved here. The focus of the final rules, therefore, is those expenses paid by multicandidate political committees prior to actual candidacy under the law, *i.e.*, during the "testing the waters" phase and before. For other situations not addressed in new § 110.2(l) or § 9034.10, including when expenditures are paid for by multicandidate committees after candidacy, the general provisions describing in-kind contributions at 11 CFR 100.52(a) and (d), 109.20, 109.21, 109.23, and 109.37 would apply. The covered expenses in the new rules at 11 CFR 110.2(l) and 9034.10 would not trigger candidacy themselves, but would count as contributions in-kind and/or qualified campaign expenses if and when the individual benefiting becomes a candidate, including by operation of 11 CFR 100.72(b) and 100.131(b).

Both final rules narrow the types of expenses covered in the proposed rules by qualifying each. For example, only polling expenses that involve measuring the favorability, name recognition, or relative support of the person who becomes a Presidential candidate are subject to the rules. General polling solely regarding issues would not be covered. Compensation and office expenses would be covered only to the extent they relate to activities in states where Presidential primaries, caucuses, or preference polls are yet to be conducted.

Both final rules also narrow the coverage to situations where there is some involvement of the benefiting candidate. It became apparent that there may be some multicandidate political committee payments of the type described that are undertaken without