



Federal Election Commission

Washington, D.C. 20463

Winding Down Your Federal Campaign

This article answers common questions from candidates and officeholders who are registered with the Federal Election Commission (the Commission) but are “no longer actively seeking” election to federal office. Federal candidates who withdraw from the race before the election takes place, lose the primary or general election or retire from office may choose to terminate their campaign committees. The Federal Election Campaign Act (the Act) and Commission regulations contain certain provisions related to the process of winding down and terminating a principal campaign committee (committee), including the proper use of remaining campaign funds, the settlement of committee debts and the process for terminating the committee’s reporting obligations.

I collected contributions for the general election but will not participate in that election. Are refunds required?

Yes. A candidate is entitled to an election limit only if he or she seeks office in that election. Thus, a candidate who loses the primary (or otherwise does not participate in the general election) does not have a separate contribution limit for the general. If a candidate accepts contributions for the general election before the primary is held and loses the primary (or does not otherwise participate in the general election), the candidate’s principal campaign committee must return the general election contributions within 60 days of the primary or the date the candidate became ineligible to participate in the general election. 11 CFR 102.9(e)(3) and 110.1(b)(3)(i). Alternatively, the campaign committee may redesignate the contributions in accordance with 11 CFR 110.1(b)(5) or 110.2(b)(5), or redistribute them in accordance with 11 CFR 110.1(k)(3), as appropriate.

Can my committee continue to pay expenses even if the campaign is over?

Yes. Under the Act, campaign funds may be used for the following non-campaign purposes:

- Defrayal of ordinary and necessary expenses of a federal officeholder, such as travel expenses for a federal officeholder and an accompanying spouse, provided that the travel is undertaken to participate in a function that is connected to the officeholder’s official responsibilities. 113.2(a)(1);
- Winding down costs of a federal officeholder’s office for a period of six months after leaving office. 113.2(a)(2);

- Donations to charitable organizations defined in 26 U.S.C §170(c). 113.2(b);
- Unlimited transfer to any national, state or local political party committee. 113.2(c);
- Donations to state and local candidates, pursuant to state law. 113.2(d); and
- Any other lawful purpose, unless such use is personal use under 11 CFR 113.1(g). 113.2(e).

Can I use remaining campaign funds to cover personal expenses?

Using campaign funds for personal use is prohibited, even when a federal candidate or officeholder is no longer seeking election to federal office. In determining whether expenses are for personal use or are legitimate campaign/officeholder expenses, the Commission uses the “Irrespective Test.” Personal use is any use of funds in a campaign account of a candidate (or former candidate) to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or responsibilities as a federal officeholder. 11 CFR 113.1(g). More simply put, if the expense would exist even in the absence of the candidacy or even if the officeholder were not in office, then the personal use ban applies.

Automatic Personal Use. Commission regulations list some expenses that are automatically considered to be personal use:

- Household food items and supplies;
- Funeral, cremation and burial expenses, except for a candidate or campaign worker whose death arises out of, or in the course of, the campaign;
- Clothing, except for the cost of campaign T-shirts, hats, etc.;
- Tuition payments;
- Mortgage, rent and utility payments for the candidate’s personal residence, even if a portion of the space is used for campaign purposes. AO 1995-08;
- Investment expenses, unless all of the investment and its proceeds are used for campaign purposes or one of the permissible non-campaign uses of funds described above. 67 Fed. Reg. 38354 (June 4, 2002);
- Entertainment expenses, such as concert or sporting event tickets, unless the entertainment is part of a specific campaign or officeholder activity;

- Dues, fees and gratuities for country clubs, health clubs, recreational facilities or other nonpolitical organizations; and
- Salary payments to the candidate's family, unless the family member is providing a *bona fide* service to the campaign and the payments reflect the fair market value of those services. 11 CFR 113.1(g)(1)(i)(A)-(J).

Case-by-Case Determination of Personal Use. The Commission will determine, on a case-by-case basis, whether other expenses would exist irrespective of the candidate's campaign or duties as a federal officeholder and would be considered personal use expenses. 11 CFR 113.1(g)(1)(ii).

Can my campaign committee pay winding down costs?

Yes. Excess campaign funds may be used to pay any ordinary and necessary expenses incurred in connection with one's duties as a federal officeholder. Such expenses include the costs of winding down the office of a former federal officeholder for a period of six months after he or she leaves office. 113.2(a)(2). Winding down costs include:

Moving Expenses. A retiring Member may use campaign funds to pay for the expenses of moving office and personal furnishings from the Congressional office in Washington, D.C., back to the Member's home state. While the costs of transporting a Member's personal household effects and furnishings from Washington, D.C., to the Member's home state are not "winding down costs," such costs are "ordinary and necessary expenses" incurred in connection with ending the Member's duties as a federal officeholder. AO 1996-14. Similarly, a retiring Member may use campaign funds to pay the expenses of transporting office furnishings from the Member's district office to Washington, D.C., where the Member will remain upon leaving office. Such costs are considered winding down costs. AO 1996-44. All such moving expenses should be reported as "other disbursements" by the Member's committee, with the specific payee(s) and purpose noted. 11 CFR 104.3(b)(2)(vi) and (b)(4)(vi).

Payments to Committee Staff. A retiring Member may use excess funds to pay staff salaries and incidental expenses while performing duties "imposed by virtue of having been a Member." AOs 1976-90 and 1978-43.

Gifts. Campaign funds may be used to purchase gifts or make donations of nominal value to persons other than the members of the candidate's family. 11 CFR 113.1(g)(4).

Can my campaign committee contribute to other candidates?

Yes. A federal candidate committee may contribute up to \$2,000 per election to the committee of another federal candidate. 11 CFR 102.12(c)(2).¹ Donations

from federal candidate committees to state or local candidate committees are subject to state law.

Can my campaign committee donate to a charitable organization?

Yes. Gifts to charity are not considered personal use expenses as long as the candidate does not receive compensation from the charitable organization before it has expended the entire amount donated. Note that the amount donated must have been used for purposes that do not personally benefit the candidate. 11 CFR 113.1(g)(2). AOs 2005-6, 1997-1, 1996-40 and 1994-20.

May I convert my principal campaign committee into a PAC?

In past advisory opinions, the Commission has explicitly permitted a principal campaign committee to become a multicandidate committee as an alternative to the committee's termination. In meeting the requirements for multicandidate status, a former principal campaign committee may avail itself of the length of time of its prior registration, the number of contributions it has made in the past and the number of contributions it has received. Note that the prohibition on converting campaign funds to personal use still applies to such a committee. AOs 2004-3, 1988-41 and 1985-30.

May I use remaining campaign funds in a future federal election?

Yes, surplus funds may be used in connection with a future election. Funds may be transferred between authorized committees of the same candidate (for example, from a previous campaign committee to a current campaign committee) without limit as long as the committee making the transfer has no "net debts outstanding" as defined in 11 CFR 110.1(b)(3)(ii). 11 CFR 110.3(c) and 116.2(c)(2). Alternatively, a candidate may redesignate a former campaign committee as the principal campaign committee of his or her current campaign and use the excess funds of the previous campaign in the current campaign. AO 1980-30. A candidate who wishes to use the committee for a subsequent federal campaign, may redesignate it as an authorized committee using FEC Form 2.

How does a committee terminate?

A committee may file a termination report at any time, provided that:

- The committee no longer intends to receive contributions, make expenditures or make any disbursements that would otherwise qualify it as a political committee; and
- Neither the committee seeking to terminate nor any other authorized committee of the same candidate has any outstanding debts or obligations. 11 CFR 102.3 and 116.1.

A committee involved in an FEC enforcement action, an FEC audit or litigation with the FEC, however, must continue to file regularly scheduled reports until the matter is resolved. When filing the committee's termination report, the treasurer should check the "Termination Report" box on Line 4 of the Summary Page of FEC Form 3. The termination report must disclose:

- All receipts and disbursements not previously reported, including an accounting of debt retirement; and
- The purposes for which any remaining committee funds or assets will be used. 11 CFR 102.3(a).

The committee's reporting obligation ends only when the Commission notifies the committee in writing that the termination report has been accepted. Until the committee receives this notification, it must continue to file reports. The FEC, upon its own initiative or at the request of a political committee, may administratively terminate a committee's reporting status. For details on administrative termination, consult section 102.4 of the regulations.

— *Isaac J. Baker*