



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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June 20, 2005

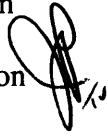
AGENDA ITEM


For Meeting of: 06-23-05


MEMORANDUM


SUBMITTED LATE

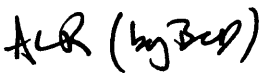
TO: The Commission

THROUGH: James A. Pehrkon 
Staff Director

FROM: Lawrence H. Norton 
General Counsel

Rosemary C. Smith 
Associate General Counsel

Brad C. Deutsch 
Assistant General Counsel

Amy L. Rothstein 
Attorney

SUBJECT: Final Rules and Explanation and Justification on Payroll
Deductions by Member Corporations for Contributions to a
Trade Association's Separate Segregated Fund
(11 CFR Part 114)

Attached are Final Rules and an Explanation and Justification for Commission consideration. The Final Rules would amend the Commission's regulations regarding contributions to a trade association's separate segregated fund (SSF) by member corporations through the use of a payroll deduction or check-off system.

Recommendation:

The Office of General Counsel recommends that the Commission approve the attached Final Rules and Explanation and Justification for publication in the *Federal Register* and transmittal to Congress.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 114**

3 **[Notice 2005 - >]**

4 **Payroll Deductions by Member Corporations for Contributions**

5 **To a Trade Association's Separate Segregated Fund**

6 **AGENCY:** Federal Election Commission.

7 **ACTION:** Final Rules and Transmittal of Rules to Congress.

8 **SUMMARY:** The Federal Election Commission is amending its rules

9 regarding contributions to the separate segregated fund

10 ("SSF") of a trade association by employee-stockholders

11 and executive and administrative personnel (collectively,

12 "solicitable class employees") of corporations that are

13 members of the trade association. The revised rules will no

14 longer prohibit corporate members of a trade association

15 from using a payroll deduction or check-off system for

16 employee contributions to the trade association's SSF.

17 Instead, these final rules will allow a corporate member of a

18 trade association to provide incidental services to collect and

19 forward contributions from its solicitable class employees to

20 the SSF of the trade association, including use of a payroll

21 deduction or check-off system, upon written request of the

22 trade association. These final rules will also require any

23 corporate member of a trade association that provides

1 incidental services for contributions to a trade association’s
2 SSF to provide the same services for contributions to the
3 SSF of any labor organization that represents employees of
4 the corporation, upon written request of the labor
5 organization and at a cost not to exceed actual expenses
6 incurred. Additional information appears in the
7 Supplementary Information that follows.

8 **DATES:** These rules are effective [INSERT DATE 30 DAYS
9 AFTER DATE OF PUBLICATION IN THE FEDERAL
10 REGISTER].

11 **FOR FURTHER**
12 **INFORMATION**

13 **CONTACT:** Mr. Brad C. Deutsch, Assistant General Counsel, or Ms.
14 Amy L. Rothstein, Attorney, 999 E Street NW, Washington,
15 DC 20463, (202) 694-1650 or (800) 424-9530.

16 **SUPPLEMENTARY**
17 **INFORMATION:**

18 The Commission is promulgating final rules at 11 CFR 114.2 and 114.8 as
19 the last step in a rulemaking process that began in 2003, when the Commission
20 received a petition for rulemaking (the “Petition”) from America’s Community
21 Bankers and its SSF, the America's Community Bankers Community Campaign
22 Committee (collectively, “Petitioners”). Petitioners asked the Commission to
23 change its rules to allow a corporate member of a trade association to make payroll
24 deductions and check-off systems available to the corporation’s restricted class
25 employees for their voluntary contributions to the trade association’s SSF.

1 The Commission issued a Notice of Availability stating that the Petition
2 was available for public review and comment. See Notice of Availability, 68 FR
3 60887 (October 24, 2003). The comment period closed on November 24, 2003.
4 The Commission received 30 comments in response to the Notice of Availability.
5 All of the comments supported the Petition.

6 After considering the comments on the Petition, the Commission issued a
7 Notice of Proposed Rulemaking (“NPRM”). See 69 FR 76628 (Dec. 22, 2004).
8 The NPRM proposed to change the Commission’s rules at 11 CFR 114.2 and
9 114.8 to allow a corporate member of a trade association to provide incidental
10 services to collect and forward voluntary contributions from its restricted class
11 employees to the trade association’s SSF, including use of a payroll deduction or
12 check-off system, upon written request of the trade association. Under the
13 proposed rules, any corporate member of a trade association that provided
14 incidental services for contributions to the trade association’s SSF also would have
15 had to provide the same services for contributions to the SSF of any labor
16 organization that represented employees of the corporation, upon written request of
17 the labor organization and at a cost not to exceed actual expenses incurred.

18 The Commission received 34 comments in response to the NPRM. None
19 of the comments opposed the proposed changes to the Commission’s rules,
20 including a letter from the Internal Revenue Service stating that it had “no
21 comments at this time.” The comments are discussed further in the Explanation &
22 Justification, below.

1 The Commission held a public hearing on May 17, 2005, on this
2 rulemaking.¹ At the hearing, representatives of Petitioner and two other
3 commenters testified. For purposes of this document, the terms “comment” and
4 “commenter” apply to both written comments and oral testimony at the public
5 hearing. The written comments and the transcripts of the hearing are available at
6 http://www.fec.gov/law/law_rulemakings.shtml.

7 Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the
8 Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies
9 must submit final rules to the Speaker of the House of Representatives and the
10 President of the Senate, and publish them in the Federal Register at least 30
11 calendar days before they take effect. The final rules that follow were transmitted
12 to Congress on X.

13 **Explanation and Justification**

14 The Federal Election Campaign Act of 1971, as amended (the “Act”), and
15 the Commission’s regulations permit any trade association to solicit contributions
16 to the trade association’s SSF from the stockholders and executive and
17 administrative personnel, and their families, of the trade association’s member
18 corporations, so long as these member corporations separately and specifically
19 approved the solicitation and have not approved a solicitation by any other trade
20 association for the same calendar year. See 2 U.S.C. 441b(b)(4)(D); 11 CFR
21 114.8(c). Once these conditions are met, “[t]here is no limitation on the method of

¹ See Notice of Public Hearing, Candidate Solicitation at State, District and Local Party Fundraising Events; Definition of “Agent” for BCRA Regulations; Payroll Deductions By Member Corporations for Contributions to a Trade Association’s Separate Segregated Fund, 70 FR 21,163 (April 25, 2005).

1 soliciting voluntary contributions or the method of facilitating the making of
2 voluntary contributions which a trade association may use.” 11 CFR 114.8(e)(3).

3 Although the regulations do not limit the methods that a trade association
4 may use to solicit and facilitate the making of voluntary contributions to its SSF
5 from the solicitable class employees of consenting member corporations, before
6 this rulemaking the regulations did limit the methods that a consenting member
7 corporation may use to collect and forward those contributions. Specifically, prior
8 to this rulemaking, 11 CFR 114.8(e)(3) stated that a “member corporation may not
9 use a payroll deduction or check-off system for executive or administrative
10 personnel contributing to the separate segregated fund of the trade association.”
11 The Commission has interpreted this prohibition to extend to all employees of the
12 corporation who may be solicited by the trade association (i.e., solicitable class
13 employees), including the member corporation’s employee-stockholders. See
14 Advisory Opinion (“AO”) 1989-3.

15 In recent years, the Commission has recognized that corporations have
16 some latitude in collecting and forwarding contributions to a trade association’s
17 SSF, so long as the collection does not involve employee payroll deductions. For
18 example, in AO 2003-22, the Commission interpreted the regulations to permit a
19 corporate member of a trade association to collect voluntary contributions in the
20 form of paper checks from its executive and administrative personnel, and to
21 forward the contributions to the trade association’s SSF. In that advisory opinion,
22 the Commission also interpreted the regulations to permit corporate executives
23 who were collecting employee contribution checks to use the member

1 corporation's inter-office mail system to help collect the checks, and to provide
2 envelopes and postage in which contributors could send their contributions to the
3 trade association's SSF. See also AO 2000-4 (incorporated credit union members
4 of a trade association permitted to deduct and transfer contributions to the trade
5 association's SSF from the share accounts of the credit unions' individual
6 members).

7 The revised final rules are identical to the rules proposed by the
8 Commission in the NPRM. The revised rules:

- 9 • Remove the prohibition on corporate use of a payroll deduction or check-
10 off system for solicitable class employee contributions to the SSF of a trade
11 association of which the corporation is a member (11 CFR 114.8(e)(3));
- 12 • Specifically authorize a member corporation to provide incidental services
13 to collect and forward contributions from its solicitable class employees to
14 a trade association's SSF, including a payroll deduction or check-off
15 system, upon written request of the trade association (new 11 CFR
16 114.8(e)(4));
- 17 • Require any corporation that provides these incidental services also to
18 make the same services available to a labor organization representing
19 members who work for the corporation, upon written request by the labor
20 organization and at a cost not to exceed any actual expenses incurred (new
21 11 CFR 114.8(e)(4)); and

- 1 • Clarify that the provision of incidental services pursuant to new 11 CFR
2 114.8(e)(4) is not prohibited corporate facilitation (new 11 CFR
3 114.2(f)(5)).

4 1. 11 CFR 114.8 – Trade associations

5 Generally, 11 CFR 114.8 sets out the circumstances under which an
6 incorporated trade association may solicit contributions to its SSF. It defines the
7 group of persons that may be solicited, e.g., stockholders and the executive and
8 administrative personnel of member corporations that give a yearly prior approval
9 to the trade association to solicit such personnel, and the methods that may be used
10 for such solicitation. Section 114.8(e) more particularly addresses the timing and
11 methods of such solicitation.

12 A. 11 CFR 114.8(e)(3)

13 The Commission is deleting the second sentence of former 11 CFR
14 114.8(e)(3) in its entirety. This second sentence prohibited a corporation from
15 using a payroll deduction or check-off system for contributions by the
16 corporation’s solicitable class employees to the SSF of a trade association of which
17 the corporation is a member. The Commission is making this change to conform
18 paragraph 114.8(e)(3) with new paragraph 114.8(e)(4), discussed below.

19 B. 11 CFR 114.8(e)(4)

20 The Commission is adding a new paragraph 114.8(e)(4) to allow, but not
21 require, a corporation to provide incidental services to collect and forward
22 contributions from its solicitable class employees to the SSF of a trade association
23 of which the corporation is a member, upon written request of the trade

1 association. The new rule expressly provides that incidental services may include
2 a payroll deduction or check-off system.

3 (i) Incidental services

4 By changing the rules to allow a corporate member of a trade association to
5 provide incidental services to collect and forward voluntary employee
6 contributions to the trade association's SSF, the Commission is recognizing that a
7 special relationship exists between a trade association and its member
8 corporations.

9 The Commission has recognized this special relationship before. For
10 example, the Commission has specifically rejected an interpretation of the Act that
11 would have required a trade association to reimburse its member corporations for
12 incidental costs related to assistance with fundraising by the trade association for
13 its SSF. As the Commission stated, "to require a trade association to reimburse the
14 corporation for incidental services, such as the distribution of the association's
15 [SSF fundraising] material via the corporation's internal mailing system, seemed
16 tenuous since the trade association will be paying for the substantial costs of the
17 solicitation with the membership fees from corporations. Consequently, the
18 Commission has not required the trade association to reimburse the corporation for
19 such incidental expenditures."² See also AO 1978-13 ("Just as a corporation is not
20 precluded from giving incidental aid, which entails incidental expenditures, to
21 solicitations made by a trade association, a corporate member of a trade association
22 is not precluded from making incidental expenditures regarding administration of

² Explanation and Justification, Federal Election Regulations, House Document No. 95-44, 95th Cong., 1st Session at 114 (1977).

1 the trade association's [SSF].") (citation omitted); and AO 1979-8 ("Since [the
2 trade association] is permitted to spend dues monies from its corporate members
3 for the establishment, administration, and solicitation of contributions to the PAC,
4 it may also have the benefit of incidental services . . . provided by executive and
5 administrative personnel of its member corporations who conduct those same
6 activities.").

7 The Act, too, recognizes the special relationship between trade associations
8 and their member corporations. Although the Act generally prohibits a corporation
9 and its SSF from soliciting contributions from anyone other than the corporation's
10 own stockholders, executive and administrative personnel, and their families, the
11 Act specifically allows a trade association, including an incorporated trade
12 association and its SSF, to solicit contributions from the stockholders, executive
13 and administrative personnel, and their families, of the trade association's member
14 corporations to the extent specifically permitted by these corporations. See 2
15 U.S.C. 441b(b)(4)(A)(i); 2 U.S.C. 441b(b)(4)(D).

16 (ii) Payroll deductions

17 Nearly all the commenters observed that it no longer makes sense to
18 distinguish between payroll deductions and other forms of permissible incidental
19 services. The Commission agrees that technological and societal changes over the
20 past 29 years support a change in the treatment of payroll deductions, when used
21 by a corporate member of a trade association.

22 The availability and use of electronic payments in general have changed
23 considerably since 1976, when the Commission first prohibited corporate use of

1 payroll deduction and check-off systems for employee contributions to a trade
2 association's SSF. Although "it has taken years of investments in electronic
3 infrastructure at homes and businesses to support the use of electronic payments as
4 a convenient and relatively low-cost alternative to checks,"³ electronic payment
5 systems are now widely used by Federal agencies, such as the Internal Revenue
6 Service and the Social Security Administration, and by the private sector. In fact,
7 there were almost 10 billion more electronic payments in this country than
8 payments by paper check in 2003.⁴

9 Payroll deductions, in particular, are increasingly prevalent in the
10 workplace. A large number of employees use them to pay for a variety of goods
11 and services, such as health and life insurance premiums, flexible spending
12 accounts, retirement savings plans, charitable contributions, loan and mortgage
13 payments, gym memberships and club dues. Several commenters observed that
14 payroll deductions are widely available, reliable, simple to administer, convenient,
15 and impose minimal or no cost on the corporations that offer them. The
16 Commission now believes that a member corporation's collection and forwarding
17 of voluntary employee contributions to a trade association's SSF via payroll
18 deduction under these circumstances is a permissible "incidental service."

19 Several commenters pointed out the important public policy objectives that
20 will be furthered by allowing solicitable class employees to contribute voluntarily

³ Remarks by Alan Greenspan at the Federal Reserve Payments System Development Committee 2003 Conference, Oct. 29, 2003.

⁴ Federal Reserve Board Press Release: Federal Reserve Studies Confirm Electronic Payments Exceed Check payments for the First Time (Dec. 6, 2004), available at <http://www.federalreserve.gov/boarddocs/press/other/2004/20041206/default.htm> (viewed June 2, 2005).

1 through payroll deductions or check-off systems to the SSF of a trade association
2 of which their corporation is a member. By permitting solicitable class employees
3 to sign up for automatic payroll deductions, rather than requiring them to write a
4 contribution check, these employees may spread out their contributions over time,
5 thereby potentially enhancing their participation in the political process.
6 Moreover, the ability to participate in the process by contributing to a trade
7 association's SSF is particularly important for employees of the many small
8 companies that rely exclusively on their trade associations' SSFs to serve as their
9 political voice. This position was reiterated by two of the commenters at the
10 Commission's May 17, 2005 hearing.

11 As the Supreme Court noted in Buckley v. Valeo, "[e]ncouraging citizen
12 participation in political campaigns while continuing to guard against the
13 corrupting potential of large financial contributions to candidates" is an important
14 goal of the Act. Buckley v. Valeo, 424 U.S. 1, 36 (1976). The Commission
15 believes that permitting a corporation's solicitable class employees to make
16 voluntary contributions to the SSF of the corporation's trade association through
17 payroll deduction will help to achieve this objective.

18 In addition, a number of commenters indicated that the use of payroll
19 deductions for voluntary employee contributions to a trade association's SSF will
20 enable the SSF to more easily track and report such contributions. The disclosure
21 requirements of the Act serve three important government interests: (1) providing
22 the electorate with information; (2) deterring actual corruption and avoiding the
23 appearance of corruption; and (3) gathering data necessary for enforcement of the

1 Act. See *McConnell v. Federal Election Commission*, 540 U.S. 93, 196 (2003).

2 The Commission believes that this final rule will help to further these important
3 interests by enhancing the ability of a trade association's SSF to track and report
4 individual employee contributions.

5 Removing the regulatory prohibition on the use of payroll deduction and
6 check-off systems could also help to reduce some perceived disadvantages in the
7 fundraising abilities of trade association SSFs. Some commenters indicated that
8 the current prohibition in 11 CFR 114.8(e)(3) disadvantages SSFs sponsored by
9 smaller trade associations that try to compete in the political arena against SSFs
10 sponsored by larger trade associations, because SSFs sponsored by smaller trade
11 associations have fewer resources to devote to fundraising. Other commenters
12 complained that the prohibition further disadvantages SSFs sponsored by trade
13 associations that try to compete with larger corporate and labor organization SSFs,
14 because corporate and labor organization SSFs are allowed to offer payroll
15 deductions for contributions to their own SSFs and are not required to obtain
16 approval before soliciting restricted class or member employees. Removing the
17 prohibition on member corporations' use of payroll deductions to collect
18 solicitable class employee contributions to a trade association's SSF would help to
19 reduce these perceived disadvantages.

20 The Commission cautions, however, that the provision of incidental
21 services by a member corporation to a trade association remains subject to certain
22 requirements under the Act and Commission regulations. For example, the
23 member corporation must first "separately and specifically approve" the

1 solicitation of its solicitable class employees by a trade association, and it cannot
2 authorize more than one trade association to solicit these employees in any
3 calendar year. See 2 U.S.C. 441b(b)(4)(D); 11 CFR 114.8(c), (d).

4 Moreover, contributions made via payroll deduction or check-off system
5 trigger special recordkeeping obligations for the recipient SSF. Each contributor
6 must affirmatively authorize the deduction in writing, in advance, and the
7 authorization must manifest the contributor’s “specific and voluntary donative
8 intent.” See Federal Election Commission v. National Education Association, 457
9 F.Supp. 1102 (D.D.C. 1978); AOs 2001-4 and 1997-25. The SSF must maintain
10 the authorization for audit or inspection purposes for at least three years after the
11 filing date of each report that discloses a contribution made pursuant to the
12 authorization. See 11 CFR 104.14(b)(2), 102.9(c); AO 2000-4, n.3.

13 (iii) Equal access for labor organizations

14 In addition to permitting a member corporation to provide incidental
15 services to collect and forward employee contributions to a trade association’s
16 SSF, new 11 CFR 114.8(e)(4) requires any corporation that provides these services
17 to make the same services available to a labor organization representing employees
18 of the corporation, upon written request of the labor organization and at a cost that
19 does not exceed any actual expenses incurred. The Commission considers this
20 requirement to be necessary, in light of the acknowledgements by Petitioners and
21 other commenters that corporations that do not have their own SSFs often rely
22 exclusively on their trade associations’ SSFs to represent their corporate interests
23 in the political arena. Absent such a requirement, a corporation could allow

1 solicitable class employees to contribute through payroll deductions to the
2 corporation's "proxy SSF" administered by a trade association, without permitting
3 employees who are members of a labor organization to contribute to their labor
4 organization's SSF through payroll deductions. This outcome would be
5 inconsistent with the careful balance struck in the Act and Commission regulations
6 between corporate SSFs and labor organization SSFs. See 2 U.S.C. 441b(b)(6); 11
7 CFR 114.5(k)(1); see also 2 U.S.C. 441b(b)(5).

8 This final rule distinguishes between providing incidental services to
9 collect and forward employee contributions to a trade association's SSF on the one
10 hand, and providing incidental services to collect and forward employee
11 contributions to a labor organization's SSF on the other hand, only with regard to
12 the requirement for reimbursement by the recipient SSF. As noted above,
13 "incidental services by corporate members would not require reimbursement by
14 the trade association since, in any event, reimbursement if required would come
15 from membership dues paid to the trade association by its corporate members."
16 AO 1979-8 (citation omitted); see also AO 1978-13. A labor organization or its
17 SSF that receives incidental services from a corporate employer of members of the
18 labor organization, by contrast, is required to reimburse the corporation for the cost
19 of providing those services. See AOs 1981-39 and 1979-21. The Commission has
20 previously found that a prohibited corporate contribution would result from a
21 failure by a labor organization to reimburse a corporation for actual expenses
22 incurred by the corporation in providing a payroll deduction or check-off system
23 for contributions to the labor organization's SSF. Id.

1 One commenter asked the Commission to change the proposed rule, so that
2 if a corporation or any of its subsidiaries, divisions, branches or affiliates uses a
3 payroll deduction or check-off system to collect and forward voluntary employee
4 contributions to a trade association’s SSF, then any labor organization representing
5 any employees that work for the corporation or for any of its subsidiaries,
6 divisions, branches or affiliates would be entitled to have all of its member-
7 employees’ contributions to the labor organization’s SSF collected and forwarded
8 via payroll deduction or check-off. This commenter asserted that the change is
9 required by 2 U.S.C. 441b(b)(6), which provides that “[a]ny corporation, including
10 its subsidiaries, branches, divisions, and affiliates,” that uses a method of soliciting
11 voluntary contributions or of facilitating the making of voluntary contributions,
12 must make that method available to a labor organization “representing any
13 members working for such corporation, its subsidiaries, branches, divisions, and
14 affiliates,” upon written request of the labor organization and at a cost sufficient
15 only to reimburse the corporation for its expenses. 2 U.S.C. 441b(b)(6).

16 However, in support of the rule proposed in the NPRM, the Petitioner
17 explained that 2 U.S.C. 441b(b)(6) must be read in context with 2 U.S.C.
18 441b(b)(4)(D), the statutory provision enabling the solicitation of executive and
19 administrative employees of member corporations for contributions to a trade
20 association’s SSF. Although the Petitioner acknowledged that the Act and
21 regulations strike a careful balance between corporations and labor organizations,
22 the Petitioner points out that 2 U.S.C. 441b(b)(4)(D) specifically limits the scope
23 of trade association solicitations of member corporation employees, and does not

1 extend the scope of permissible solicitations to employees of non-member
2 subsidiaries or affiliates.

3 The Commission declines to adopt any substantive changes to the rule as
4 proposed in the NPRM because neither 2 U.S.C. 441b(b)(6) nor its implementing
5 regulation, 11 CFR 114.5(k)(1), requires this result, especially when read in
6 conjunction with 2 U.S.C. 441b(b)(5). The equal access provisions in 2 U.S.C.
7 441b(b)(6) and 11 CFR 114.5(k)(1) only apply to situations in which a corporation
8 is soliciting for its own, or for an affiliate's, SSF. As such, they reflect the
9 affiliation provisions of the statute and regulations. See 2 U.S.C. 441a(a)(5); 11
10 CFR 100.5(g)(2) and 110.3(a)(1)(ii) (providing that all political committees
11 established financed, maintained, or controlled by a corporation, labor
12 organization, person or group of persons, "including any parent, subsidiary,
13 branch, division, department, or local unit thereof" are affiliated (emphasis
14 added)).

15 Under the affiliation provisions, a corporation and its SSF may solicit
16 contributions not only from the corporation's shareholders and executive and
17 administrative personnel, but also from the shareholders and executive and
18 administrative personnel of the corporation's parent, subsidiaries, branches,
19 divisions, and affiliates. See 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1); AO
20 1982-18. The provisions cited by the commenter – 2 U.S.C. 441b(b)(6) and 11
21 CFR 114.5(k)(1) – complement these provisions by ensuring that a labor
22 organization will have equal access to corporate methods of solicitation and

1 facilitation, regardless of where in the affiliated corporate structure the methods
2 may be used.

3 A trade association, by contrast, generally may not solicit contributions
4 from the employees of a parent, subsidiary, or affiliate of a member corporation,
5 unless the parent, subsidiary or affiliate is itself a member of the trade association
6 and has authorized these solicitations.⁵ See 11 CFR 114.8(f); see also 2 U.S.C.
7 441b(b)(4)(D).

8 Thus, if the Commission were to adopt the commenter’s approach, then a
9 labor organization that represents any employee of a corporation that provides
10 incidental services to a trade association under new 11 CFR 114.8(e)(4), or that
11 represents any employee of a parent, subsidiary, or affiliate of that corporation,
12 would be entitled to receive the same incidental services from the corporation and
13 the corporation’s parent, subsidiaries and affiliates, even though the trade
14 association would be prohibited from soliciting contributions from the employees
15 of the parent, subsidiaries, and affiliates. The effect would be to grant a labor
16 organization greater access to a corporation’s payroll deduction system for SSF
17 fundraising purposes than the corporation’s trade association would have, which
18 would be inconsistent with the balance between corporate and labor organization
19 interests that Congress sought to establish in the Act.

20 Moreover, the statutory provision cited by the commenter on its face
21 applies only to “method[s] of soliciting” voluntary contributions and “method[s] of
22 facilitating the making of” voluntary contributions. 2 U.S.C. 441b(b)(6). In

⁵ The result would be different if the trade association in question were found to be affiliated with its corporate member(s), but this finding would depend upon the specific facts of the given case. See 11 CFR 100.5(g).

1 contrast, the new regulation involves the provision of incidental services by a
2 corporate member of a trade association to collect and forward contributions to the
3 trade association's SSF. The provision of incidental services pursuant to new 11
4 CFR 114.8(e)(4) is neither a method of soliciting voluntary contributions, nor a
5 method of facilitating the making of voluntary contributions, as described further
6 below.

7 Accordingly, the Commission declines to adopt the commenter's approach.

8 2. 11 CFR 114.2 – Prohibitions on contributions and expenditures

9 The Commission is making a conforming change to 11 CFR 114.2(f),
10 which prohibits a corporation from facilitating the making of contributions to
11 political committees, other than to the corporation's own SSF. The term
12 "facilitation" means "using corporate or labor organization resources or facilities
13 to engage in fundraising activities in connection with any federal election." 11
14 CFR 114.2(f)(1). Facilitation does not include, however, enrollment by a
15 corporation or labor organization of members of the corporation's or labor
16 organization's restricted class in a payroll deduction plan or check-off system to
17 make contributions to the corporation's or labor organization's SSF. See 11 CFR
18 114.2(f)(4)(i).

19 The Commission is adding a new paragraph (5) to 11 CFR 114.2(f), to
20 specify that facilitation also does not include the provision of incidental services
21 by a corporation to collect and forward voluntary contributions from its solicitable
22 class employees to the SSF of a trade association of which the corporation is a
23 member, pursuant to 11 CFR 114.8(e)(4), as revised. New 11 CFR 114.2(f)(5)

1 expressly permits a corporation to collect these contributions through a payroll
2 deduction or check-off system. The Commission did not receive any comments on
3 this change, which was proposed in the NPRM.

4 Additionally, the Commission is revising the second sentence of paragraph
5 (a) of 11 CFR 114.2 to correct two typographical errors. In the phrase that
6 currently reads, “. . . form making expenditures as defined in 11 FR 114.1(a) . . . ,”
7 the Commission is changing the word “form” to “from” and is correcting the
8 citation to “11 CFR 114.1(a).” Because these corrections are merely technical and
9 non-substantive, they are not a substantive rule requiring notice and comment
10 under the Administrative Procedure Act, 5 U.S.C. 553.

11 3. Other issues

12 In response to the NPRM, one commenter asked the Commission also to
13 change 11 CFR 114.7, to allow a corporation to provide incidental services to
14 collect and forward contributions to a membership organization’s SSF from
15 employees who are members of the membership organization. The Commission
16 has determined, however, that this proposal falls outside of the scope of this
17 rulemaking.

18 **Certification of No Effect Pursuant to 5 U.S.C. § 605(b) (Regulatory** 19 **Flexibility Act)**

20 The Commission certifies that the attached final rules would not have a
21 significant economic impact on a substantial number of small entities. The basis
22 for this certification is that the attached rules permit, but do not require, a
23 corporation to provide incidental services to collect and forward contributions

1 from its solicitable class employees to the separate segregated fund of a trade
2 association of which the corporation is a member, including the use of a payroll
3 deduction or check-off system. A corporation is currently permitted to collect and
4 transmit contributions by other means to the SSF of a trade association of which
5 the corporation is a member. The attached rules enable those corporations that
6 wish to transmit employee contributions to trade association SSFs to do so more
7 efficiently and use fewer resources.

8 **List of Subjects**

9 11 CFR Part 114

10 Business and industry, elections, labor.

11

1 For the reasons set out in the preamble, subchapter A of chapter 1 of title
2 11 of the Code of Federal Regulations is amended as follows:

3 **PART 114 – CORPORATE AND LABOR ORGANIZATION ACTIVITY**

4 1. The authority citation for part 114 continues to read as follows:

5 Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 438(a)(8), 441b.

6 2. Section 114.2 is amended by revising the second sentence of paragraph (a)

7 and by adding new paragraph (f)(5), to read as follows:

8 **§ 114.2 Prohibitions on contributions and expenditures.**

9 (a) * * *

10 National banks and corporations organized by authority of any law of Congress are
11 prohibited ~~from~~ from making expenditures as defined in 11 CFR 114.1(a) for
12 communications to those outside the restricted class expressly advocating the
13 election or defeat of one or more clearly identified candidate(s) or the candidates
14 of a clearly identified political party, with respect to an election to any political
15 office, including any local, State, or Federal office.

16 * * * * *

17 (f) * * *

18 (5) Facilitating the making of contributions also does not include the
19 provision of incidental services by a corporation to collect and
20 forward contributions from its employee stockholders and executive
21 and administrative personnel to the separate segregated fund of a
22 trade association of which the corporation is a member, including

1 collection through a payroll deduction or check-off system,

2 pursuant to 11 CFR 114.8(e)(4).

3 * * * * *

4 3. In section 114.8, paragraph (e)(3) is revised, paragraph (e)(4) is
5 redesignated as new paragraph (e)(5), and new paragraph (e)(4) is added to read as
6 follows:

7 **§ 114.8 Trade associations.**

8 * * * * *

9 (e) * * *

10 (3) There is no limitation on the method of soliciting voluntary
11 contributions or the method of facilitating the making of voluntary
12 contributions which a trade association may use. ~~The member~~
13 ~~corporation may not use a payroll deduction or checkoff system for~~
14 ~~executive or administrative personnel contributing to the separate~~
15 ~~segregated fund of the trade association.~~

16 (4) A corporation may provide incidental services to collect and
17 forward contributions from its employee stockholders and executive
18 and administrative personnel to the separate segregated fund of a
19 trade association of which the corporation is a member, including a
20 payroll deduction or check-off system, upon written request of the
21 trade association. Any corporation that provides such incidental
22 services shall make those incidental services available to a labor
23 organization representing any members working for the

1 corporation, upon written request of the labor organization and at a
2 cost sufficient only to reimburse the corporation for the expenses
3 incurred thereby.

4 (5) * * *

5 * * * * *

6 _____
7 Scott E. Thomas
8 Chairman
9 Federal Election Commission

10
11 DATED _____
12 BILLING CODE: 6715-01-U

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