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OFFICE OF THE CHAIRMAN


June 21, 2005

AGENDA ITEM
For Meeting of: 06-23-05

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Scott E. Thomas
Chairman 

SUBJECT: Alternative re final rules on payroll deductions

I attach an alternative to the draft OGC has circulated regarding the use of payroll deduction at corporations that are members of a trade association. The alternative would provide a broader right to a labor organization wishing to utilize a similar method of facilitating the making of contributions. It follows the arguments of the commenter that raised this issue.

In my view, the statutory language at 2 U.S.C. 441b(b)(6) strongly suggests this result. I note, further, the relative ease of providing payroll deduction, as established by many commenters. Finally, I note that a labor organization, unlike the trade association getting the benefit of the proposed final rule, must compensate the corporation for the costs of providing payroll deduction services.

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FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 2005 - >]

**Payroll Deductions by Member Corporations for Contributions
To a Trade Association’s Separate Segregated Fund**

AGENCY: Federal Election Commission.

ACTION: Final Rules and Transmittal of Rules to Congress.

SUMMARY: The Federal Election Commission is amending its rules regarding contributions to the separate segregated fund (“SSF”) of a trade association by employee-stockholders and executive and administrative personnel (collectively, “solicitable class employees”) of corporations that are members of the trade association. The revised rules will no longer prohibit corporate members of a trade association from using a payroll deduction or check-off system for employee contributions to the trade association’s SSF. Instead, these final rules will allow a corporate member of a trade association to provide incidental services to collect and forward contributions from its solicitable class employees to the SSF of the trade association, including use of a payroll deduction or check-off system, upon written request of the trade association. These final rules will also require any corporate member of a trade association, including its

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

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

13 **FOR FURTHER**
14 **INFORMATION**
15 **CONTACT:**

Mr. Brad C. Deutsch, Assistant General Counsel, or Ms.
16 Amy L. Rothstein, Attorney, 999 E Street NW, Washington,
17 DC 20463, (202) 694-1650 or (800) 424-9530.

18 **SUPPLEMENTARY**
19 **INFORMATION:**

20 The Commission is promulgating final rules at 11 CFR 114.2 and 114.8 as
21 the last step in a rulemaking process that began in 2003, when the Commission
22 received a petition for rulemaking (the "Petition") from America's Community
23 Bankers and its SSF, the America's Community Bankers Community Campaign
24 Committee (collectively, "Petitioners"). Petitioners asked the Commission to
25 change its rules to allow a corporate member of a trade association to make payroll

1 deductions and check-off systems available to the corporation's restricted class
2 employees for their voluntary contributions to the trade association's SSF.

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

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

20 The Commission received 34 comments in response to the NPRM. None
21 of the comments opposed the proposed changes to the Commission's rules,
22 including a letter from the Internal Revenue Service stating that it had "no

1 comments at this time.” The comments are discussed further in the Explanation &
2 Justification, below.

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

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

15 **Explanation and Justification**

16 The Federal Election Campaign Act of 1971, as amended (the “Act”), and
17 the Commission’s regulations permit any trade association to solicit contributions
18 to the trade association’s SSF from the stockholders and executive and
19 administrative personnel, and their families, of the trade association’s member
20 corporations, so long as these member corporations separately and specifically
21 approved the solicitation and have not approved a solicitation by any other trade

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 association for the same calendar year. See 2 U.S.C. 441b(b)(4)(D); 11 CFR
2 114.8(c). Once these conditions are met, “[t]here is no limitation on the method of
3 soliciting voluntary contributions or the method of facilitating the making of
4 voluntary contributions which a trade association may use.” 11 CFR 114.8(e)(3).

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

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

1 the Commission also interpreted the regulations to permit corporate executives
2 who were collecting employee contribution checks to use the member
3 corporation's inter-office mail system to help collect the checks, and to provide
4 envelopes and postage in which contributors could send their contributions to the
5 trade association's SSF. See also AO 2000-4 (incorporated credit union members
6 of a trade association permitted to deduct and transfer contributions to the trade
7 association's SSF from the share accounts of the credit unions' individual
8 members).

9 The revised final rules are identical to the rules proposed by the
10 Commission in the NPRM except for one modification. The revisions to these
11 rules:

- 12 • Remove the prohibition on corporate use of a payroll deduction or check-
13 off system for solicitable class employee contributions to the SSF of a trade
14 association of which the corporation is a member (11 CFR 114.8(e)(3));
- 15 • Specifically authorize a member corporation to provide incidental services
16 to collect and forward contributions from its solicitable class employees to
17 a trade association's SSF, including a payroll deduction or check-off
18 system, upon written request of the trade association (new 11 CFR
19 114.8(e)(4));
- 20 • Require any corporation, including its subsidiaries, branches, divisions, and
21 affiliates, that provides these incidental services also to make the same
22 services available to a labor organization representing members who work
23 for the corporation, including its subsidiaries, branches, divisions, and

1 affiliates, upon written request by the labor organization and at a cost not to
2 exceed any actual expenses incurred (new 11 CFR 114.8(e)(4)); and

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

6 1. 11 CFR 114.8 – Trade associations

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

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

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

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

22 The Commission is adding a new paragraph 114.8(e)(4) to allow, but not to
23 require, a corporation to provide incidental services to collect and forward

1 contributions from its solicitable class employees to the SSF of a trade association
2 of which the corporation is a member, upon written request of the trade
3 association. The new rule expressly provides that incidental services may include
4 a payroll deduction or check-off system.

5 (i) Incidental services

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

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

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

1 solicitations made by a trade association, a corporate member of a trade association
2 is not precluded from making incidental expenditures regarding administration of
3 the trade association’s [SSF].”) (citation omitted); and AO 1979-8 (“Since [the
4 trade association] is permitted to spend dues monies from its corporate members
5 for the establishment, administration, and solicitation of contributions to the PAC,
6 it may also have the benefit of incidental services . . . provided by executive and
7 administrative personnel of its member corporations who conduct those same
8 activities.”).

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

18 (ii) Payroll deductions

19 Nearly all the commenters observed that it no longer makes sense to
20 distinguish between payroll deductions and other forms of permissible incidental
21 services. The Commission agrees that technological and societal changes over the
22 past 29 years support a change in the treatment of payroll deductions, to the extent

1 that payroll deductions constitute an “incidental service” by a corporate member of
2 a trade association.

3 The availability and use of electronic payments in general have changed
4 considerably since 1976, when the Commission first prohibited corporate use of
5 payroll deduction and check-off systems for employee contributions to a trade
6 association’s SSF. Although “it has taken years of investments in electronic
7 infrastructure at homes and businesses to support the use of electronic payments as
8 a convenient and relatively low-cost alternative to checks,”³ electronic payment
9 systems are now widely used by Federal agencies, such as the Internal Revenue
10 Service and the Social Security Administration, and by the private sector. In fact,
11 there were almost 10 billion more electronic payments in this country than
12 payments by paper check in 2003.⁴

13 Payroll deductions, in particular, are increasingly prevalent in the
14 workplace. A large number of employees use them to pay for a variety of goods
15 and services, such as health and life insurance premiums, flexible spending
16 accounts, retirement savings plans, charitable contributions, loan and mortgage
17 payments, gym memberships and club dues. Several commenters observed that
18 payroll deductions are widely available, reliable, simple to administer, convenient,
19 and impose minimal or no cost on the corporations that offer them. The
20 Commission now believes that a member corporation’s collection and forwarding

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) <http://www.federalreserve.gov/boarddocs/press/other/2004/20041206/default.htm> (viewed June 2, 2005).

1 of voluntary employee contributions to a trade association's SSF via payroll
2 deduction under these circumstances is a permissible "incidental service."

3 Several commenters pointed out the important public policy objectives that
4 will be furthered by allowing solicitable class employees to contribute voluntarily
5 through payroll deductions or check-off systems to the SSF of a trade association
6 of which their corporation is a member. By permitting solicitable class employees
7 to sign up for automatic payroll deductions, rather than requiring them to write a
8 contribution check, these employees may spread out their contributions over time,
9 thereby potentially enhancing their participation in the political process.

10 Moreover, the ability to participate in the process by contributing to a trade
11 association's SSF is particularly important for employees of the many small
12 companies that rely exclusively on their trade associations' SSFs to serve as their
13 political voice. This position was reiterated by two of the commenters at the
14 Commission's May 17, 2005 hearing.

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

22 In addition, a number of commenters indicated that the use of payroll
23 deductions for voluntary employee contributions to a trade association's SSF will

1 enable the SSF to more easily track and report such contributions. The disclosure
2 requirements of the Act serve three important government interests: (1) providing
3 the electorate with information; (2) deterring actual corruption and avoiding the
4 appearance of corruption; and (3) gathering data necessary for enforcement of the
5 Act. See *McConnell v. Federal Election Commission*, 540 U.S. 93, 196 (2003).
6 The Commission believes that this final rule will help to further these important
7 interests by enhancing the ability of a trade association's SSF to track and report
8 individual employee contributions.

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

1 The Commission cautions, however, that the provision of incidental
2 services by a member corporation to a trade association remains subject to certain
3 requirements under the Act and Commission regulations. For example, the
4 member corporation must first “separately and specifically approve” the
5 solicitation of its solicitable class employees by a trade association, and it cannot
6 authorize more than one trade association to solicit these employees in any
7 calendar year. See 2 U.S.C. 441b(b)(4)(D); 11 CFR 114.8(c), (d).

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

17 (iii) Equal access for labor organizations

18 In addition to permitting a member corporation to provide incidental
19 services to collect and forward employee contributions to a trade association’s
20 SSF, new 11 CFR 114.8(e)(4) requires any corporation, including its subsidiaries,
21 branches, divisions, and affiliates, that provides these services to make the same
22 services available to a labor organization representing employees of the
23 corporation, including its subsidiaries, branches, divisions, and affiliates, upon

1 written request of the labor organization and at a cost that does not exceed any
2 actual expenses incurred. The Commission considers this requirement to be
3 necessary, in light of the acknowledgements by Petitioners and other commenters
4 that corporations that do not have their own SSFs often rely exclusively on their
5 trade associations' SSFs to represent their corporate interests in the political arena.
6 Absent such a requirement, a corporation could allow solicitable class employees
7 to contribute through payroll deductions to the corporation's "proxy SSF"
8 administered by a trade association, without permitting employees who are
9 members of a labor organization to contribute to their labor organization's SSF
10 through payroll deductions. This outcome would be inconsistent with the careful
11 balance struck in the Act and Commission regulations between corporate SSFs and
12 labor organization SSFs. See 2 U.S.C. 441b(b)(6); 11 CFR 114.5(k)(1); see also 2
13 U.S.C. 441b(b)(5).

14 This final rule distinguishes between providing incidental services to
15 collect and forward employee contributions to a trade association's SSF on the one
16 hand, and providing incidental services to collect and forward employee
17 contributions to a labor organization's SSF on the other hand, only with regard to
18 the requirement for reimbursement by the recipient SSF. As noted above,
19 "incidental services by corporate members would not require reimbursement by
20 the trade association since, in any event, reimbursement if required would come
21 from membership dues paid to the trade association by its corporate members."
22 AO 1979-8 (citation omitted); see also AO 1978-13. A labor organization or its
23 SSF that receives incidental services from a corporate employer of members of the

1 labor organization, by contrast, is required to reimburse the corporation for the cost
2 of providing those services. See AOs 1981-39 and 1979-21. The Commission has
3 previously found that a prohibited corporate contribution would result from a
4 failure by a labor organization to reimburse a corporation for actual expenses
5 incurred by the corporation in providing a payroll deduction or check-off system
6 for contributions to the labor organization's SSF. Id.

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

22 However, in support of the rule proposed in the NPRM, the Petitioner
23 argued that 2 U.S.C. 441b(b)(6) must be read in context with 2 U.S.C.

1 441b(b)(4)(D), the statutory provision enabling the solicitation of executive and
2 administrative employees of member corporations for contributions to a trade
3 association's SSF. Although the Petitioner acknowledged that the Act and
4 regulations strike a careful balance between corporations and labor organizations,
5 the Petitioner pointed out that 2 U.S.C. 441b(b)(4)(D) specifically limits the scope
6 of trade association solicitations of member corporation employees, and does not
7 extend the scope of permissible solicitations to employees of non-member
8 subsidiaries or affiliates.

9 The Commission has decided to adopt the commenter's change to the rule
10 proposed in the NPRM because 2 U.S.C. 441b(b)(6) and its implementing
11 regulation, 11 CFR 114.5(k)(1), require this result. The equal access provisions in
12 2 U.S.C. 441b(b)(6) and 11 CFR 114.5(k)(1) apply without distinction to situations
13 in which a corporation is utilizing a method of facilitating the making of
14 contributions for its own SSF or for the SSF of a trade association. While the trade
15 association is restricted by statute to only seeking solicitation rights at a
16 corporation that itself is a member, 2 U.S.C. 441b(b)(4)(D), the member
17 corporation is separately governed by the broad equal access provisions. These
18 provisions prevent a corporate structure with subsidiaries, branches, divisions, or
19 affiliates from utilizing a method for facilitating contributions in only part of the
20 corporate structure so that it would have the associated advantages, but a labor
21 organization representing employees at other parts of the corporate structure would
22 have no such advantages. This rule has similar prophylactic benefits in the
23 situation where only one unit in a corporate structure joins a trade association and

1 gains the benefit of payroll deductions for contributions to the trade association
2 PAC, but a labor organization representing employees at other parts of the
3 corporate structure would have no similar opportunity.

4 The Commission is making this change to the proposed rule regarding
5 equal access mindful of the fact that virtually all commenters have indicated
6 payroll deduction arrangements are relatively common and easy to administer.
7 Moreover, any labor organization requesting use of such a method of facilitating
8 contributions will have to be willing to pay the corporation for the expenses
9 involved.

10 2. 11 CFR 114.2 – Prohibitions on contributions and expenditures

11 The Commission is making a conforming change to 11 CFR 114.2(f),
12 which prohibits a corporation from facilitating the making of contributions to
13 political committees, other than to the corporation’s own SSF. The term
14 “facilitation” means “using corporate or labor organization resources or facilities
15 to engage in fundraising activities in connection with any federal election.” 11
16 CFR 114.2(f)(1). Facilitation does not include, however, enrollment by a
17 corporation or labor organization of members of the corporation’s or labor
18 organization’s restricted class in a payroll deduction plan or check-off system to
19 make contributions to the corporation’s or labor organization’s SSF. See 11 CFR
20 114.2(f)(4)(i).

21 The Commission is adding a new paragraph (5) to 11 CFR 114.2(f), to
22 specify that facilitation also does not include the provision of incidental services
23 by a corporation to collect and forward voluntary contributions from its solicitable

1 class employees to the SSF of a trade association of which the corporation is a
2 member, pursuant to 11 CFR 114.8(e)(4), as revised. New 11 CFR 114.2(f)(5)
3 expressly permits a corporation to collect these contributions through a payroll
4 deduction or check-off system. The Commission did not receive any comments on
5 this change, which was proposed in the NPRM.

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

13 3. Other issues

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

20 **Certification of No Effect Pursuant to 5 U.S.C. § 605(b) (Regulatory** 21 **Flexibility Act)**

22 The Commission certifies that the attached final rules would not have a
23 significant economic impact on a substantial number of small entities. The basis

1 for this certification is that the attached rules permit, but do not require, a
2 corporation to provide incidental services to collect and forward contributions
3 from its solicitable class employees to the separate segregated fund of a trade
4 association of which the corporation is a member, including the use of a payroll
5 deduction or check-off system. A corporation is currently permitted to collect and
6 transmit contributions by other means to the SSF of a trade association of which
7 the corporation is a member. The attached rules enable those corporations that
8 wish to transmit employee contributions to trade association SSFs to do so more
9 efficiently and using fewer resources.

10 **List of Subjects**

11 **11 CFR Part 114**

12 Business and industry, elections, labor.

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, including its subsidiaries,
22 branches, divisions, and affiliates, that provides such incidental
23 services shall make those incidental services available to a labor

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organization representing any members working for the
corporation, including its subsidiaries, branches, divisions, and
affiliates, upon written request of the labor organization and at a
cost sufficient only to reimburse the corporation for the expenses
incurred thereby.

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Scott E. Thomas
Chairman
Federal Election Commission

DATED _____
BILLING CODE: 6715-01-U