




FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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WASHINGTON, D.C. 20463
2005 JUL 12 P 4: 01

OFFICE OF THE CHAIRMAN

MEMORANDUM

TO: The Commission

FROM: Scott E. Thomas 
Chairman

DATE: July 12, 2005

RE: Payroll Deductions Revised Final Rule
(11 CFR Part 114)

AGENDA ITEM
For Meeting of: 07-14-05

SUBMITTED LATE

I attach a revised version of my approach set forth in Agenda Doc. 05-30-B for consideration at Thursday's meeting.

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 of corporations
12 that are members of the trade association (collectively,
13 "solicitable class employees"). 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 member corporation that provides incidental services for

1 contributions to a trade association’s SSF, as well as the
2 corporation’s subsidiaries, divisions, branches and affiliates,
3 to provide the same services for contributions to the SSF of
4 any labor organization that represents members working for
5 the corporation, or the corporation’s subsidiaries, divisions,
6 branches or 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:**

16 Mr. Brad C. Deutsch, Assistant General Counsel, or Ms.
17 Amy L. Rothstein, Attorney, 999 E Street NW, Washington,
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

1 change its rules to allow a corporate member of a trade association to make payroll
2 deductions and check-off systems available to the corporation's restricted class
3 employees for their voluntary contributions to the trade association's SSF.

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

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

22 The Commission received 34 comments in response to the NPRM. None
23 of the comments opposed the proposed changes to the Commission's rules,

1 including a letter from the Internal Revenue Service stating that it had “no
2 comments at this time.” The comments are discussed further in the Explanation &
3 Justification, below.

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

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

16 **Explanation and Justification**

17 The Federal Election Campaign Act of 1971, as amended (the “Act”), and
18 the Commission’s regulations permit any trade association to solicit contributions
19 to the trade association’s SSF from the stockholders and executive and
20 administrative personnel, and their families, of the trade association’s member
21 corporations, so long as these member corporations separately and specifically

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 approved the solicitation and have not approved a solicitation by any other trade
2 association for the same calendar year. See 2 U.S.C. 441b(b)(4)(D); 11 CFR
3 114.8(c). Once these conditions are met, “[t]here is no limitation on the method of
4 soliciting voluntary contributions or the method of facilitating the making of
5 voluntary contributions which a trade association may use.” 11 CFR 114.8(e)(3).

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

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

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

10 These final rules are substantively identical to the rules proposed by the
11 Commission in the NPRM, except for one change, discussed below. The 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 that provides these incidental services, and the
21 corporation's subsidiaries, divisions, branches and affiliates, also to make
22 the same services available to a labor organization representing members
23 who work for the corporation, or the corporation's subsidiaries, divisions,

1 branches or affiliates, for contributions to the labor organization's SSF by
2 members of the labor organization, upon written request by the labor
3 organization and at a cost not to exceed any actual expenses incurred (new
4 11 CFR 114.8(e)(4)); and

- 5 • Clarify that the provision of incidental services pursuant to new 11 CFR
6 114.8(e)(4) is not prohibited corporate facilitation (new 11 CFR
7 114.2(f)(5)).

8 1. 11 CFR 114.8 – Trade associations

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

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

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

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

1 The Commission is adding a new paragraph 114.8(e)(4) to allow, but not
2 require, a corporation to provide incidental services to collect and forward
3 contributions from its solicitable class employees to the SSF of a trade association
4 of which the corporation is a member, upon written request of the trade
5 association. The new rule expressly provides that incidental services may include
6 a payroll deduction or check-off system.

7 (i) Incidental services

8 The Commission is changing the rules to allow a corporate member of a
9 trade association to provide incidental services to collect and forward voluntary
10 contributions from solicitable class employees to the trade association's SSF,
11 because of the special relationship that exists between a trade association and its
12 member corporations. This special relationship is firmly rooted in the Act.
13 Although the Act generally prohibits a corporation and its SSF from soliciting
14 contributions from anyone other than the corporation's own stockholders,
15 executive and administrative personnel, and their families, the Act specifically
16 allows a trade association, including an incorporated trade association and its SSF,
17 to solicit contributions from the stockholders, executive and administrative
18 personnel, and their families, of the trade association's member corporations, to
19 the extent specifically approved by the member corporations. See 2 U.S.C.
20 441b(b)(4)(A)(i); 2 U.S.C. 441b(b)(4)(D).²

² A member corporation may not approve solicitations by more than one trade association in any calendar year. 2 U.S.C. 441b(b)(4)(D); 11 CFR 114.8(c)(2).

1 The Commission has recognized this special relationship before. For
2 example, the Commission specifically rejected an interpretation of the Act that
3 would have required a trade association to reimburse its member corporations for
4 incidental costs related to assistance with fundraising by the trade association for
5 its SSF. As the Commission stated, “to require a trade association to reimburse the
6 corporation for incidental services, such as the distribution of the association’s
7 [SSF fundraising] material via the corporation’s internal mailing system, seemed
8 tenuous since the trade association will be paying for the substantial costs of the
9 solicitation with the membership fees from corporations. Consequently, the
10 Commission has not required the trade association to reimburse the corporation for
11 such incidental expenditures.”³ See also AO 1978-13 (“Just as a corporation is not
12 precluded from giving incidental aid, which entails incidental expenditures, to
13 solicitations made by a trade association, a corporate member of a trade association
14 is not precluded from making incidental expenditures regarding administration of
15 the trade association’s [SSF].”) (citation omitted); and AO 1979-8 (“Since [the
16 trade association] is permitted to spend dues monies from its corporate members
17 for the establishment, administration, and solicitation of contributions to the PAC,
18 it may also have the benefit of incidental services . . . provided by executive and
19 administrative personnel of its member corporations who conduct those same
20 activities.”).

21 (ii) Payroll deductions

³ Explanation and Justification, Federal Election Regulations, House Document No. 95-44, 95th Cong., 1st Session at 114 (1977).

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

6 The availability and use of electronic payments in general have changed
7 considerably since 1976, when the Commission first prohibited corporate use of
8 payroll deduction and check-off systems for employee contributions to a trade
9 association's SSF. Although "it has taken years of investments in electronic
10 infrastructure at homes and businesses to support the use of electronic payments as
11 a convenient and relatively low-cost alternative to checks,"⁴ electronic payment
12 systems are now widely used by Federal agencies, such as the Internal Revenue
13 Service and the Social Security Administration, and by the private sector. In fact,
14 there were almost 10 billion more electronic payments in this country than
15 payments by paper check in 2003.⁵

16 Payroll deductions, in particular, are increasingly prevalent in the
17 workplace. A large number of employees use them to pay for a variety of goods
18 and services, such as health and life insurance premiums, flexible spending
19 accounts, retirement savings plans, charitable contributions, loan and mortgage
20 payments, gym memberships and club dues. Several commenters observed that

⁴ Remarks by Alan Greenspan at the Federal Reserve Payments System Development Committee 2003 Conference, Oct. 29, 2003.

⁵ 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 payroll deductions are widely available, reliable, simple to administer, convenient,
2 and impose minimal or no cost on the corporations that offer them. The
3 Commission now believes that a member corporation's collection and forwarding
4 of voluntary contributions from solicitable class employees to a trade association's
5 SSF via payroll deduction under these circumstances is a permissible "incidental
6 service."

7 Several commenters pointed out the important public policy objectives that
8 will be furthered by allowing solicitable class employees to contribute voluntarily
9 through payroll deductions or check-off systems to the SSF of a trade association
10 of which their corporation is a member. By permitting solicitable class employees
11 to sign up for automatic payroll deductions, rather than requiring them to write a
12 contribution check, these employees may spread out their contributions over time,
13 thereby potentially enhancing their participation in the political process.
14 Moreover, the ability to participate in the process by contributing to a trade
15 association's SSF is particularly important for employees of the many small
16 companies that rely exclusively on their trade associations' SSFs to serve as their
17 political voice. This position was reiterated by two of the commenters at the
18 Commission's May 17, 2005 hearing.

19 As the Supreme Court noted in Buckley v. Valeo, "[e]ncouraging citizen
20 participation in political campaigns while continuing to guard against the
21 corrupting potential of large financial contributions to candidates" is an important
22 goal of the Act. Buckley v. Valeo, 424 U.S. 1, 36 (1976). The Commission
23 believes that permitting a corporation's solicitable class employees to make

1 voluntary contributions to the SSF of the corporation's trade association through
2 payroll deduction will help to achieve this objective.

3 In addition, a number of commenters indicated that the use of payroll
4 deductions for voluntary contributions from solicitable class employees to a trade
5 association's SSF will make it easier for the SSF to track and report such
6 contributions. The disclosure requirements of the Act serve three important
7 government interests: (1) providing the electorate with information; (2) deterring
8 actual corruption and avoiding the appearance of corruption; and (3) gathering data
9 necessary for enforcement of the Act. See *McConnell v. Federal Election*
10 *Commission*, 540 U.S. 93, 196 (2003). The Commission believes that this final
11 rule will help to further these important interests by enhancing the ability of a trade
12 association's SSF to track and report individual employee contributions.

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

1 approval before soliciting restricted class or member employees. Removing the
2 prohibition on member corporations' use of payroll deductions to collect
3 solicitable class employee contributions to a trade association's SSF will help to
4 reduce these perceived disadvantages.

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

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

21 (iii) Equal access for labor organizations

22 Under the rule proposed in the NPRM, any member corporation that
23 provided incidental services to collect and forward contributions by certain persons

1 to a trade association's SSF also would have had to make these incidental services
2 available to a labor organization representing members working for the
3 corporation, upon written request of the labor organization and at a cost that does
4 not exceed any actual expenses incurred. As stated in the NPRM, the Commission
5 considers this requirement to be necessary to prevent circumvention of provisions
6 in the Act and Commission regulations that seek to prevent corporate SSFs from
7 gaining an unfair fundraising advantage over labor organization SSFs. See 69 FR
8 76631.

9 One commenter asserted that the Act requires the Commission to change
10 the proposed rule by extending the equal access requirement to a member
11 corporation's subsidiaries, divisions, branches and affiliates, in addition to the
12 corporation itself. The commenter argued that, if a corporate member of a trade
13 association uses a payroll deduction or check-off system to collect and forward
14 employee contributions from solicitable class employees to the trade association's
15 SSF, then a labor organization representing any members that work for the
16 corporation or for any of the corporation's subsidiaries, divisions, branches or
17 affiliates would be entitled to require the corporation and the corporation's
18 subsidiaries, divisions, branches or affiliates to provide a payroll deduction or
19 check-off system to collect and forward contributions to the labor organization's
20 SSF.

21 The commenter stated that this change to the proposed rule is mandated by
22 2 U.S.C. 441b(b)(6). Section 441b(b)(6) provides that "[a]ny corporation,
23 including its subsidiaries, branches, divisions, and affiliates," that uses a method of

1 soliciting voluntary contributions or of facilitating the making of voluntary
2 contributions, must make that method available to a labor organization
3 “representing any members working for such corporation, its subsidiaries,
4 branches, divisions, and affiliates,” upon written request of the labor organization
5 and at a cost sufficient only to reimburse the corporation for its expenses. 2 U.S.C.
6 441b(b)(6).

7 In support of the rule proposed in the NPRM, however, the Petitioner
8 asserted that 2 U.S.C. 441b(b)(6) must be read together with 2 U.S.C.
9 441b(b)(4)(D), the statutory provision enabling the solicitation of executive and
10 administrative employees of member corporations for contributions to a trade
11 association’s SSF. While acknowledging that the Act and regulations strike a
12 careful balance between corporations and labor organizations, the Petitioner
13 argued that 2 U.S.C. 441b(b)(4)(D) specifically limits the scope of trade
14 association solicitations of solicitable employees of the member corporation, and
15 does not extend the scope of permissible solicitations to other employees of non-
16 member subsidiaries or affiliates.

17 The Commission believes that 2 U.S.C. 441b(b)(6) and its implementing
18 regulation, 11 CFR 114.5(k)(1), require the proposed rule to be changed as
19 requested by the commenter. Although, as noted by the Petitioner, a trade
20 association’s ability to seek solicitation rights from member corporations is
21 governed by 2 U.S.C. 441b(b)(4)(D), the member corporations themselves are
22 separately subject to the broad equal access provisions of 2 U.S.C. 441b(b)(6) and
23 11 CFR 114.5(k)(1). Moreover, these equal access provisions do not distinguish

1 between corporate methods of facilitating the making of contributions to a
2 corporation's own SSF and corporate methods of facilitating the making of
3 contributions to the SSF of a trade association of which the corporation is a
4 member. Rather, the provisions apply broadly to "[a]ny corporation . . . that
5 utilizes a method of . . . facilitating the making of voluntary contributions." 2
6 U.S.C. 441b(b)(6); 11 CFR 114.5(k). Methods of facilitating the making of
7 contributions include payroll deduction and check-off systems. See 114.1(f).

8 Thus, under this new rule, any corporate member of a trade association that
9 chooses to provide incidental services to collect and forward voluntary
10 contributions from its solicitable class employees to the trade association's SSF
11 must provide the same services upon request to the SSF of a labor organization
12 representing any members working for the corporation or the corporation's
13 subsidiaries, divisions, branches, or affiliates. In addition, the subsidiaries,
14 divisions, branches, and affiliates of the corporate member must also provide the
15 same incidental services upon request to the SSF of a labor organization
16 representing any members working for the corporation or the corporation's
17 subsidiaries, divisions, branches, or affiliates.

18 This result is also consistent with the Commission's application of the
19 equal access provisions of 2 U.S.C. 441b(b)(6) to twice yearly solicitations. See 2
20 U.S.C. 441b(b)(4)(B); 11 CFR 114.6. In the context of twice yearly solicitations,
21 if any corporate unit within a corporate family uses a method of facilitating the
22 making of contributions to the corporation's SSF, then all units within that family
23 must make the method available to a labor organization. See, e.g., AO 1990-25 (a

1 parent corporation that uses a method of facilitation for only certain subsidiaries
2 must nonetheless ensure that the method is available to a labor organization, even
3 at subsidiaries that do not themselves use the method of facilitation).

4 In addition to being compelled by the Act, there are strong policy reasons
5 for making this change. The Petitioners and other commenters acknowledged that
6 corporations that do not have their own SSF may rely exclusively on their trade
7 associations' SSFs to serve as their proxy SSFs in representing their corporate
8 interests in the political arena. In such circumstances, the Commission concludes
9 that labor organizations should have the same rights that they would enjoy if the
10 corporations had established their own SSFs.

11 Moreover, under the rule proposed in the NPRM, corporate families that
12 employ most of their administrative and management personnel in one corporation,
13 and most of their members of labor organizations in another corporation, could
14 have effectively undermined the equal access rights of labor organizations, by
15 providing incidental services to collect and forward solicitable class employee
16 contributions to a trade association's SSF only within the corporation employing
17 executive and administrative personnel and not in the corporation employing labor
18 organization members. This outcome would be inconsistent with the careful
19 balance struck by Congress and the Commission between corporate SSFs and labor
20 organization SSFs. See, e.g., 122 Cong. Rec. 3782 (daily ed. May 3, 1976)
21 (Statement of Rep. Brademas, reprinted in Legislative History of the Federal
22 Election Campaign Act Amendments of 1976 at 1082).

1 The Commission is also mindful that virtually all commenters indicated
2 that payroll deductions are both easy to administer and common, and that this new
3 rule requires any labor organization requesting access to such a method of
4 facilitating contributions to reimburse the corporation for the expenses incurred.

5 (iv) Reimbursement by labor organizations

6 This final rule distinguishes between providing incidental services to
7 collect and forward solicitable class employee contributions to a trade
8 association's SSF on the one hand, and providing incidental services to collect and
9 forward employee-member contributions to a labor organization's SSF on the
10 other hand, with regard to the requirement for reimbursement by the recipient SSF.

11 As noted above, "incidental services by corporate members would not require
12 reimbursement by the trade association since, in any event, reimbursement if
13 required would come from membership dues paid to the trade association by its
14 corporate members." AO 1979-8 (citation omitted); see also AO 1978-13. A labor
15 organization or its SSF that receives incidental services from a corporate employer
16 of members of the labor organization, by contrast, is required to reimburse the
17 corporation for the cost of providing those services. See AOs 1981-39 and 1979-

18 21. The Commission has previously concluded that a prohibited corporate
19 contribution would result from a failure by a labor organization to reimburse a
20 corporation for actual expenses incurred by the corporation in providing a payroll
21 deduction or check-off system for contributions to the labor organization's SSF.

22 Id.

23 2. 11 CFR 114.2 – Prohibitions on contributions and expenditures

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

11 The Commission is adding a new paragraph (5) to 11 CFR 114.2(f), to
12 specify that facilitation also does not include the provision of incidental services
13 by a corporation to collect and forward voluntary contributions from its solicitable
14 class employees to the SSF of a trade association of which the corporation is a
15 member, pursuant to 11 CFR 114.8(e)(4), as revised. New 11 CFR 114.2(f)(5)
16 expressly permits a corporation to collect these contributions through a payroll
17 deduction or check-off system. The Commission did not receive any comments on
18 this change, which was proposed in the NPRM.

19 Additionally, the Commission is revising the second sentence of paragraph
20 (a) of 11 CFR 114.2 to correct two typographical errors. In the phrase that
21 currently reads, “. . . form making expenditures as defined in 11 FR 114.1(a) . . . ,”
22 the Commission is changing the word “form” to “from” and is correcting the
23 citation to “11 CFR 114.1(a).” Because these corrections are technical, they are

1 not a substantive rule requiring notice and comment under the Administrative
2 Procedure Act, 5 U.S.C. 553.

3 3. Other issues

4 In response to the NPRM, one commenter asked the Commission also to
5 change 11 CFR 114.7, to allow a corporation to provide incidental services to
6 collect and forward contributions to a membership organization's SSF from
7 employees who are members of the membership organization. The Commission
8 has determined, however, that this proposal falls outside of the scope of this
9 rulemaking.

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

12 The Commission certifies that the attached final rules would not have a
13 significant economic impact on a substantial number of small entities. The basis
14 for this certification is that the attached rules permit, but do not require, a
15 corporation to provide incidental services to collect and forward contributions
16 from its solicitable class employees to the separate segregated fund of a trade
17 association of which the corporation is a member, including the use of a payroll
18 deduction or check-off system. A corporation is currently permitted to collect and
19 transmit contributions by other means to the SSF of a trade association of which
20 the corporation is a member. The attached rules enable those corporations that
21 wish to transmit employee contributions to trade association SSFs to do so more
22 efficiently and use fewer resources.

- 1 **List of Subjects**
- 2 **11 CFR Part 114**
- 3 **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 that provides such incidental
22 services, and the corporation's subsidiaries, branches, divisions, and
23 affiliates, shall make those incidental services available to a labor

