

## § 113.2

## 11 CFR Ch. I (1–1–09 Edition)

rules of the United States Senate is not personal use to the extent that the expense is an expenditure under subpart D of part 100 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office. Any use of funds that would be personal use under paragraph (g)(1) of this section will not be considered an expenditure under subpart D of part 100 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office.

(6) *Third party payments.* Notwithstanding that the use of funds for a particular expense would be a personal use under this section, payment of that expense by any person other than the candidate or the campaign committee shall be a contribution under subpart B of part 100 to the candidate unless the payment would have been made irrespective of the candidacy. Examples of payments considered to be irrespective of the candidacy include, but are not limited to, situations where—

(i) The payment is a donation to a legal expense trust fund established in accordance with the rules of the United States Senate or the United States House of Representatives;

(ii) The payment is made from funds that are the candidate's personal funds as defined in 11 CFR 110.10(b), including an account jointly held by the candidate and a member of the candidate's family;

(iii) Payments for that expense were made by the person making the payment before the candidate became a candidate. Payments that are compensation shall be considered contributions unless—

(A) The compensation results from *bona fide* employment that is genuinely independent of the candidacy;

(B) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and

(C) The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

(7) *Members of the candidate's family.* For the purposes of paragraph (g) of this section, the candidate's family includes:

- (i) The spouse of the candidate;
- (ii) Any child, step-child, parent, grandparent, sibling, half-sibling or step-sibling of the candidate or the candidate's spouse;
- (iii) The spouse of any child, step-child, parent, grandparent, sibling, half-sibling or step-sibling of the candidate; and
- (iv) A person who shares a residence with the candidate.

(8) *Recordkeeping.* For those uses of campaign funds described in proposed paragraphs (g)(1)(i) and (g)(1)(ii) of this section that involve both personal use and either campaign or office-holder use, a contemporaneous log or other record must be kept to document the dates and expenses related to the personal use of the campaign funds. The log must be updated whenever campaign funds are used for personal expenses, as described in paragraph (g)(1) of this section, rather than for campaign or office-holder expenses. The log or other record must also be maintained and preserved for 3 years after the report disclosing the disbursement is filed, pursuant to 11 CFR 102.9 and 104.14(b).

[45 FR 15124, Mar. 7, 1980, as amended at 56 FR 34126, July 25, 1991; 60 FR 7874, Feb. 9, 1995; 67 FR 38361, June 4, 2002; 67 FR 76978, Dec. 13, 2002]

EFFECTIVE DATE NOTE: At 73 FR 79602, Dec. 30, 2008, §113.1, paragraph (g)(6)(ii) is amended by removing the reference to "11 CFR 110.10(b)" and adding in its place "11 CFR 100.33", effective February 1, 2009.

### § 113.2 Permissible non-campaign use of funds (2 U.S.C. 439a).

In addition to defraying expenses in connection with a campaign for federal office, funds in a campaign account or an account described in 11 CFR 113.3:

(a) May be used to defray any ordinary and necessary expenses incurred in connection with the recipient's duties as a holder of Federal office, if applicable, including:

(1) The costs of travel by the recipient Federal officeholder and an accompanying spouse to participate in a function directly connected to *bona fide* official responsibilities, such as a fact-finding meeting or an event at which the officeholder's services are provided

## Federal Election Commission

## § 113.2

through a speech or appearance in an official capacity; and

(2) The costs of winding down the office of a former Federal officeholder for a period of 6 months after he or she leaves office; or

(b) May be contributed to any organization described in section 170(c) of Title 26, of the United States Code; or

(c) May be transferred without limitation to any national, State, or local committee of any political party; or

(d) May be donated to State and local candidates subject to the provisions of State law; or

(e) May be used for any other lawful purpose, unless such use is personal use under 11 CFR 113.1(g).

(f)(1) Except as limited by paragraph (f)(5) of this section, a qualified Member who serves in the 102d or an earlier Congress may convert to personal use no more than the unobligated balance of excess funds as of November 30, 1989. This unobligated balance shall be calculated under either paragraph (f)(1)(i) or (ii) of this section.

(i) Cash assets the Member may convert any excess campaign or donated funds in an amount up to the Member's authorized committee(s)' cash on hand, determined under 11 CFR 104.3(a)(1), as of November 30, 1989, less the committee(s)' total outstanding debts as of that date.

(ii) *Cash Plus Nonliquid Assets.* (A) The Member may convert unliquidated committee assets held by his or her authorized committee(s) on November 30, 1989; or the value of such assets may be added to the value of the committee(s)' cash assets under paragraph (f)(1)(i) of this section to determine the amount which is eligible for conversion. In either case, prior to conversion, the committee shall amend its 1989 year end reports to indicate, as memo entries to Schedule A, the assets to be converted. These amendments shall list each asset, give its date of acquisition, its fair market value as of November 30, 1989, and a brief narrative description of how this value was ascertained. The committee shall also disclose the disposition made of each such asset, including its fair market value on the date of sale or other disposition, in its termination report, unless the asset was sold or otherwise disposed of dur-

ing an earlier period and included in the report covering that period.

(B) The Member may add the value of debts and loans reported as owed to the Member's authorized committee(s) as of November 30, 1989, and itemized on the committee(s)' year end reports for 1989, to the unobligated balance, provided that such receivables are actually collected by the committee(s) prior to their termination.

(C) The Member may add to the unobligated balance the value of vendor credits and deposit refunds to which authorized campaign committee(s) are entitled, if these receivables are itemized on Schedule C or D of the committee(s)' 1989 year end reports or in amendment(s) thereto.

(2) If the unobligated balance subsequently falls below its November 30, 1989, level, a qualified Member may use contributions lawfully received or other lawful committee income received after that date to restore the account up to that level.

(3) A qualified Member may convert committee assets which were not held on November 30, 1989, to personal use; however, the fair market value of such assets at the time of conversion shall be counted against the unobligated balance.

(4) Under no circumstances may an amount greater than the unobligated balance on November 30, 1989, be converted to personal use. Should money from subsequent contributions, other committee income, and/or the sale of campaign assets exceed the amount needed to restore the unobligated balance to its November 30, 1989, level, such additional funds shall not be converted to personal use but may be used for the purposes set forth in paragraphs (a), (b), and (c) of this section.

(5) 103d Congress or later Congress: A qualified Member who serves in the 103d Congress or a later Congress may not convert to personal use any campaign or donated funds, as of the first day of such service.

(g) Nothing in this section modifies or supersedes other Federal statutory restrictions or relevant State laws that may apply to the use of campaign or

### § 113.3

donated funds by candidates or Federal officeholders.

[45 FR 15124, Mar. 7, 1980, as amended at 56 FR 34126, July 25, 1991; 60 FR 7875, Feb. 9, 1995; 67 FR 76979, Dec. 13, 2002; 72 FR 56247, Oct. 3, 2007]

#### § 113.3 Deposits of funds donated to a Federal or State officeholder (2 U.S.C. 432(h)).

All funds donated to a federal officeholder, or State officeholder who is a candidate for federal office, shall be deposited into one of the following accounts:

(a) An account of the officeholder's principal campaign committee or other authorized committee pursuant to 11 CFR part 103;

(b) An account to which only funds donated to an individual to support his or her activities as a holder of federal office are deposited (including an office account).

#### § 113.4 Contribution and expenditure limitations (2 U.S.C. 441a).

(a) Any contributions to, or expenditures from an office account which are made for the purpose of influencing a federal election shall be subject to 2 U.S.C. 441a and 11 CFR part 110 of these regulations.

(b) If any treasury funds of a corporation or labor organization are donated to an office account, no funds from that office account may be transferred to a political committee account or otherwise used in connection with a federal election.

## PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

Sec.

114.1 Definitions.

114.2 Prohibitions on contributions, expenditures and electioneering communications.

114.3 Disbursements for communications to the restricted class in connection with a Federal election.

114.4 Disbursements for communications beyond the restricted class in connection with a Federal election.

114.5 Separate segregated funds.

114.6 Twice yearly solicitations.

114.7 Membership organizations, cooperatives, or corporations without capital stock.

114.8 Trade associations.

### 11 CFR Ch. I (1–1–09 Edition)

114.9 Use of corporate or labor organization facilities.

114.10 Nonprofit corporations exempt from the prohibitions on making independent expenditures and electioneering communications.

114.11 Employee participation plans.

114.12 Incorporation of political committees; payment of fringe benefits.

114.13 Use of meeting rooms.

114.14 Further restrictions on the use of corporate and labor organization funds for electioneering communications.

114.15 Permissible use of corporate and labor organization funds for certain electioneering communications.

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

#### § 114.1 Definitions.

(a) For purposes of part 114 and section 12(h) of the Public Utility Holding Company Act (15 U.S.C. 791(h))—

(1) The terms *contribution* and *expenditure* shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, if such loan is made in accordance with 11 CFR 100.82(a) through (d)) to any candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to in 11 CFR 114.2 (a) or (b) as applicable.

(2) The terms *contribution* and *expenditure* shall not include—

(i) Communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and executive or administrative personnel, and their families, on any subject;

(ii) Registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel, and their families, or by a labor organization aimed at its members and executive or administrative personnel, and their families, as described in 11 CFR 114.3;

(iii) The establishment, administration, and solicitation of contributions