

September 20, 2024

The Honorable Kamala D. Harris
President of the Senate
S-212, The Capitol
Washington, D.C. 20510

Dear Madam President:

Enclosed please find Final Rules on Use of Campaign Funds for Candidate and Officeholder Security that were approved by the Federal Election Commission on Thursday, September 19, 2024. The Commission is amending its regulations to codify several Commission advisory opinions that authorize the use of campaign funds to pay for certain security measures and address additional issues raised in those advisory opinions.

The enclosed notice of the Final Rules, which includes a detailed explanation and justification of the rules, will be published in the *Federal Register*. By this letter, the FEC is transmitting the rules to the House of Representatives in accordance the Federal Election Campaign Act of 1971, § 311(d)(1) (*codified at* 52 U.S.C. § 30111(d)(1)). Similar letters will be sent to the Senate as well. The Final Rules will take effect on January 1, 2025, which assumes that thirty legislative days without Congressional disapproval will have passed by that date.

Thank you for your consideration.

Sincerely,

J. Duane Pugh
Director
Congressional, Legislative and
Intergovernmental Affairs

Enclosure

cc: The Hon. Amy Klobuchar, Chairwoman
The Hon. Deb Fischer, Ranking Member
Committee on Rules and Administration

September 20, 2024

The Honorable J. Michael Johnson
Speaker of the House of Representatives
H-232, The Capitol
Washington, D.C. 20515

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Enclosure

cc: The Honorable Bryan G. Steil, Chairman
The Honorable Joseph D. Morelle, Ranking Member
Committee on House Administration

September 20, 2024

The Honorable Patty Murray
President *Pro Tempore* of the Senate
United States Senate
S-126, The Capitol
Washington, DC 20510

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cc: The Hon. Amy Klobuchar, Chairwoman
The Hon. Deb Fischer, Ranking Member
Committee on Rules and Administration

FEDERAL ELECTION COMMISSION

11 CFR Part 113

[Notice 2024-22]

Use of Campaign Funds for Candidate and Officeholder Security

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: The Federal Election Commission is amending its regulations regarding the use of campaign funds to pay for security measures for federal candidates, officeholders, and members of their family and staff. The Commission is adopting this rule to codify several Commission advisory opinions that authorize the use of campaign funds to pay for certain security measures and address additional issues raised in those advisory opinions.

DATES: The effective date is January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Robert M. Knop, Assistant General Counsel for Policy, Luis M. Lipchak, Attorney, or Joseph P. Wenzinger, Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is amending its regulations at 11 CFR 113 to clarify that federal candidates and officeholders may use campaign funds to pay for security measures so long as the security measures address ongoing dangers or threats that would not exist irrespective of the individual's status or duties as a federal candidate or officeholder. The Commission is amending its regulations consistent with prior advisory opinions that authorized such spending on certain security measures, including non-structural security devices; structural security devices; security personnel and services; and cybersecurity software, devices,

and services. The Commission’s amendments to the regulations also address additional issues raised in prior advisory opinions.

Transmitting Final Rules to Congress

Before promulgating rules or regulations to carry out the provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”),¹ the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty-legislative-day review period.² The effective date of the final rule is January 1, 2025.

Explanation and Justification

I. Background

A. Act and Commission Regulations

The Act identifies six categories of permissible uses of contributions and donations accepted by a federal candidate, two of which are “ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of Federal office,” and “any other lawful purpose not prohibited by 52 U.S.C. § 30114(b).”³ Under 52 U.S.C. § 30114(b), contributions accepted by a candidate may not be converted to “personal use” by any person.

The Act and Commission regulations define “personal use” as the use of campaign funds “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.”⁴ The Act and Commission regulations provide a non-exhaustive list of expenses that, when paid using

¹ 52 U.S.C. 30101–45.

² *Id.* 30111(d).

³ 52 U.S.C. 30114(a); *see also* 11 CFR 113.2(a)–(e).

⁴ 52 U.S.C. 30114(b)(2); *see also* 11 CFR 113.1(g) (defining “personal use”).

campaign funds, constitute *per se* conversion of those funds to personal use.⁵ The Commission determines on a case-by-case basis whether the use of campaign funds to pay expenses other than those listed would be a prohibited conversion of the funds to personal use.⁶

The Commission has long recognized that if a candidate “can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.”⁷

B. Security Measures

Neither the Act nor Commission regulations identify the use of campaign funds to pay for the costs of security measures for federal candidates or officeholders as *per se* personal use. In numerous advisory opinions, however, the Commission has permitted the use of campaign funds to pay for various security measures for federal candidates or officeholders.

The Commission has issued several advisory opinions authorizing the use of campaign funds for certain home security upgrades to protect against threats to the physical safety of federal officeholders and their families.⁸ The facts presented in those advisory opinions indicated that the threats were motivated by the requestors’ public roles as federal officeholders, candidates, or both. The Commission determined in each instance that the expenses for the

⁵ See 52 U.S.C. 30114(b)(2); 11 CFR 113.1(g)(1)(i).

⁶ See 11 CFR 113.1(g)(1)(ii) (providing non-exhaustive list of expenses to be determined for personal use on a case-by-case basis).

⁷ Personal Use of Campaign Funds, 60 FR 7862, 7867 (Feb. 9, 1995).

⁸ See Advisory Opinion 2022-02 (Steube) at 5 (approving use of campaign funds for the cost of a locking steel security gate at the federal officeholder’s residence); Advisory Opinion 2020-06 (Escobar) at 2 (authorizing the use of campaign funds for security lighting and wiring at a federal officeholder’s residence); Advisory Opinion 2011-17 (Giffords) at 3 (approving use of campaign funds for installing improved exterior lighting, improved locks, and a duress alarm button); Advisory Opinion 2011-05 (Terry) at 4 (approving use of campaign funds for installation of an exterior closed circuit television monitor); Advisory Opinion 2009-08 (Gallegly) at 4 (approving use of campaign funds for non-structural upgrades to home security system).

proposed security upgrades would not have existed irrespective of the candidate's election campaign or the individual's duties as a federal officeholder.⁹ Therefore, the Commission concluded that the use of campaign funds to pay for the security upgrades was permissible under the Act and Commission regulations.¹⁰

The Commission has also previously considered the implications of the heightened threat environment faced by Members of Congress collectively, necessitating increased residential security measures even if an individual Member has not received direct threats. For example, in Advisory Opinion 2017-07 (Sergeant at Arms), the Commission considered information from the House Sergeant at Arms about the threats faced by Members of Congress due to their status as federal officeholders and the recommendations of the Capitol Police that Members of Congress install or upgrade residential security systems to protect themselves and their families in response to those threats. In light of that information, the Commission concluded that certain costs of installing or upgrading home security systems in and around a Member's residence would constitute ordinary and necessary expenses incurred in connection with that Member's duties as a federal officeholder and that, therefore, Members of Congress may use campaign funds to pay reasonable costs associated with such home security systems.¹¹

In two advisory opinions, the Commission has also considered whether campaign funds may be used to pay for window security film as an authorized security enhancement in response

⁹ Additionally, in Advisory Opinion 2020-06 (Escobar), the Commission specified that the requested wiring and lighting costs "constitute an integral part of an ordinary and necessary expense that may be paid with campaign funds." Advisory Opinion 2020-06 (Escobar) at 4. Likewise, in Advisory Opinion 2022-02 (Steube), the Commission stated that the requested locking steel gate at the entrance to the property was a "necessary component" of a residential security system and the costs of which "constitute an integral part of an ordinary and necessary expense that may be paid with campaign funds." Advisory Opinion 2022-02 (Steube) at 5.

¹⁰ See Advisory Opinion 2022-02 (Steube) at 5; Advisory Opinion 2020-06 (Escobar) at 2; Advisory Opinion 2011-17 (Giffords) at 3; Advisory Opinion 2011-05 (Terry) at 4; Advisory Opinion 2009-08 (Gallegly) at 4.

¹¹ Advisory Opinion 2017-07 (Sergeant at Arms) at 3.

to a heightened threat environment faced by federal officeholders. In Advisory Opinion 2022-05 (Crapo), the Commission considered whether campaign funds could be used to pay for a series of residential security enhancements recommended by the U.S. Capitol Police, including the installation of security film “on all accessible windows to prevent surreptitious observation into the residence.”¹² Similarly, in Advisory Opinion 2023-04 (Guy for Congress), the Commission considered whether campaign funds could be used to pay for the costs to purchase and install a security window film to protect a Member of Congress’s home. The Commission determined in both instances that window security film, as a removeable security measure designed to mitigate potential threats stemming from the Members’ duties as federal officeholders, falls within the category of “non-structural security devices” for which campaign funds could be used, citing Advisory Opinion 2017-07 (Sergeant at Arms).¹³

The Commission also has permitted the use of campaign funds to pay for security measures beyond home security upgrades. In Advisory Opinion 2021-03 (NRSC *et al.*), the Commission authorized the use of campaign funds to pay for “bona fide, legitimate, professional personal security personnel” as ordinary and necessary expenses incurred in connection with an officeholder’s duties.¹⁴ The Commission concluded that such expenses were permissible due to the threats arising from members’ status as federal officeholders, including the heightened threat environment faced by Members of Congress collectively.¹⁵

¹² Advisory Opinion 2022-05 (Crapo) at 3.

¹³ Advisory Opinion 2022-05 (Crapo) at 5; Advisory Opinion 2023-04 (Guy for Congress) at 4.

¹⁴ *Id.*

¹⁵ *See id.* at 3.

Last, in two advisory opinions, the Commission authorized the use of campaign funds to pay for reasonable cybersecurity expenses as ordinary and necessary expenses incurred in connection with the requestors' duties as federal officeholders.¹⁶ In those opinions, the Commission also determined that the incidental benefit to others of cybersecurity measures, like the incidental benefit to others of home security measures to protect against physical harm, do not change the conclusion that such expenses are ordinary and necessary expenses incurred in connection with a federal officeholder's duties.¹⁷

C. Notice of Proposed Rulemaking

On April 9, 2024, the Commission published a Notice of Proposed Rulemaking ("NPRM") in the *Federal Register* proposing to amend its regulations to authorize the use of campaign funds to pay for security measures to protect federal candidates and officeholders.¹⁸

The Commission's regulations at 11 CFR 113.1(g)(1) through (9) address the personal use of campaign funds. In the NPRM, the Commission proposed adding a new paragraph (g)(10) to address the use of campaign funds for security measures.

Proposed paragraph (g)(10) provided that federal candidates and officeholders may use campaign funds to pay for the reasonable costs of security measures so long as the security measures address ongoing dangers or threats that would not exist irrespective of the individual's status or duties as a federal candidate or officeholder.¹⁹

¹⁶ See Advisory Opinion 2018-15 (Wyden) at 4 (permitting use of campaign funds for cybersecurity expenses including hardware, software, consulting services, and emergency assistance); Advisory Opinion 2022-17 (Warren) at 5 (approving use of campaign funds for the incremental costs of professionally managed cybersecurity services for ongoing network monitoring, patch management, backup management, and remote incident remediation).

¹⁷ See Advisory Opinion 2022-17 (Warren) at 5.

¹⁸ Candidate Salary, Notice of Proposed Rulemaking ("NPRM"), 89 FR 24738 (April 9, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425136>.

¹⁹ New paragraph (g)(10) also requires disbursements for security measures to be for the usual and normal charge and explains the meaning of usual and normal charge.

It included four subparagraphs as follows:

- New 11 CFR 113.1(g)(10)(i), to identify non-structural security devices as a category of security measures for which reasonable expenses would not be personal use and provide a non-exhaustive list of examples of non-structural security devices.
- New 11 CFR 113.1(g)(10)(ii), to identify structural security devices as a category of security measures for which reasonable expenses would not be personal use and include a non-exhaustive list of examples of structural security devices.
- New 11 CFR 113.1(g)(10)(iii), to identify security personnel and services as a category of security measures for which reasonable expenses would not be personal use.
- New 11 CFR 113.1(g)(10)(iv), to identify cybersecurity software, devices and services as a category of security measures for which reasonable expenses would not be personal use.

D. Public Comments on the NPRM

The Commission received 14 timely comments and two late comments in response to the NPRM. Seven comments were submitted by or on behalf of organizations, and nine were from individuals.

The comments universally supported the Commission's proposal to authorize the use of campaign funds to pay for certain security measures for federal candidates and officeholders and the Commission's proposal to include a non-exhaustive list of examples for which reasonable expenses would not be deemed personal use.²⁰ Commenters agreed with the Commission's rationale that federal candidates and officeholders should be able to spend campaign funds for security measures given the safety and security threats that are faced by individuals running

²⁰ Three comments received from individuals were not responsive to the NPRM.

campaigns and holding federal office. And commenters broadly cited the threats faced by candidates and officeholders and referred to specific incidents of threats and harassment that have occurred involving candidates and officeholders at the local, state, and federal levels.

Although the comments broadly supported the Commission’s proposal, some raised concerns, particularly regarding the risks of improper use of campaign funds under the pretext of security spending, such as for security services that may not be bona fide, legitimate, and professional, as discussed further below. Commenters also suggested two additions to the proposed rule, most notably (1) to allow campaign funds to be used to pay for security expenses for the staff and family of candidates and officeholders in addition to the candidates and officeholders themselves, and (2) to clarify that any security services used by the federal candidate or officeholder must be bona fide, legitimate, and professional. The Commission agrees with these commenters and, accordingly, adopts the proposed rule with these two additions, as discussed below.

II. Revised 11 CFR Part 113.1 – Definitions

After reviewing public comments received in response to the NPRM, the Commission is amending its regulations regarding the use of campaign funds to allow the use of campaign funds to pay for certain security measures for candidates, officeholders, members of their family, and employees — as the term is defined at 26 CFR 31.3401 (c)-1 — of the campaign or office (hereinafter also referred to as “staff”). The Commission has long recognized that if a candidate “can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.”²¹ Consistent with this rationale and prior advisory opinions that have authorized the use of campaign funds to pay for

security measures, the Commission is amending the regulatory definition of personal use to clarify that campaign funds may be spent on certain security measures.

As proposed in the NPRM, the Commission is adding a new paragraph at 11 CFR 113.1(g)(10) to address the use of campaign funds for security measures. Paragraph (g)(10) states the basic rule and personal use standard. Subparagraphs (g)(10)(i) through (iv) provide a non-exhaustive list of examples that would not be deemed personal use.

A. New 11 CFR 113.1(g)(10) — Candidate and Federal Officeholder Security

The Commission is adopting paragraph (g)(10) as proposed, with the exception that the final rule will also cover family members and staff of candidates and officeholders. Accordingly, the Commission's new regulation provides that the use of campaign funds to pay for the reasonable costs of security measures for a federal candidate or officeholder or their family and staff is not personal use, so long as the security measures address ongoing dangers or threats that would not exist irrespective of the individual's status or duties as a federal candidate or officeholder. The new regulation also requires that the payment for security measures be made at the usual and normal charge for such goods or services.²²

Reasonable Costs

In the NPRM, the Commission proposed to limit the use of campaign funds for security measures to cover only the "reasonable costs" of such security measures.

The Commission received five comments on the proposed "reasonable cost" standard, four of which supported the proposal and one that opposed it. One of the commenters supporting the proposal urged the Commission to issue guidance or factors to consider in determining

²² The new regulation defines "usual and normal charge" as, in the case of goods, the price of those goods in the market in which they are ordinarily purchased and, in the case of services, the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services are rendered. *See also* 11 CFR 100.52(d)(2) (defining "usual and normal charge" generally).

reasonableness of security expenses. This commenter suggested that the Commission take into account several factors in determining whether a security expense is reasonable, including: (1) the nature of the specific threat environment faced by the candidate or officeholder, (2) the cost of the security measure and how commonly it is used, (3) whether the security measure was recommended as part of a qualified security assessment, (4) whether the candidate or officeholder (or a member of their immediate family or staff) is a vulnerable person, and (5) whether the candidate's or officeholder's personally identifiable information is publicly available.²³

Another commenter suggested that a "tailoring requirement" should be added, *i.e.*, candidates and officeholders should only be permitted to spend campaign funds on security measures that are "reasonably tailored to addressing ongoing dangers or threats."²⁴ In the commenter's view, the tailoring requirement would prevent abuse of campaign funds and ensure that they are used in both a reasonable and limited manner.²⁵

The commenter opposing the reasonableness standard viewed it as unnecessary. This commenter asserted that the irrespective test in the personal use regulations should be used to determine whether a security expense is permissible rather than adopting a new reasonableness standard.

The Commission agrees with the comments that support the use of the reasonable cost standard in the proposed rule. The Commission finds that the reasonable cost standard is a fair

²³ Brennan Center for Justice, Comment at 11–12 (June 10, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425200>.

²⁴ Campaign Legal Center, Comment at 3 (June 10, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425201>.

²⁵ *Id.*

standard that provides appropriate notice to candidates, officeholders, and the public at large, and that the standard strikes the appropriate balance between granting candidates and officeholders the authority to use campaign funds for security needs while limiting such authority to prevent the misuse of campaign funds in the name of security. Therefore, the Commission adopts the rule as proposed in the NPRM, which authorizes the use of campaign funds for reasonable costs.

Candidates and Officeholders

As proposed in the NPRM, the rule would authorize the use of campaign funds to pay for certain security expenses for both candidates and federal officeholders so long as the security measures address ongoing dangers or threats that would not exist irrespective of the individual's status or duties as a federal candidate or federal officeholder.

The Commission sought comment on whether any distinction should be made between federal candidates and officeholders in how campaign funds may be used to pay for security measures. Most of the commenters agreed that the rule should authorize the use of campaign funds for security expenses for both candidates and officeholders, and none suggested that a distinction should be made between the two.

The Commission agrees. As is well documented in the comments and in prior advisory opinions discussed above, both federal candidates and officeholders face safety and security threats due to running campaigns or holding federal office. Accordingly, the Commission adopts the proposed rule authorizing the use of campaign funds for certain security measures by both candidates and officeholders.

Ongoing Dangers or Threats

As proposed in the NPRM, the new regulation would only permit the use of campaign funds to pay for security measures that address *ongoing dangers or threats* that would not exist irrespective of the individual's status or duties as a federal candidate or federal officeholder.

Most of the commenters generally supported the proposed rule without commenting on the ongoing dangers or threats limitation. Several commenters, however, questioned whether the *ongoing dangers or threats* language was appropriate. One commenter recommended expanding the rule to include “reasonably likely future threats or dangers, or past threats or dangers that may reoccur.”²⁶ Another commenter expressed concern that the proposed rule was too restrictive and recommended that the rule take into account the threat environment at the national, state, or local level, rather than just the circumstances of the individual.²⁷

Another commenter suggested that the proposed rule should focus on whether the expense for the security measure would exist irrespective of the individual's status or duties as a candidate or officeholder rather than requiring any specific danger or threat.

Two commenters argued that the rule should not require a showing of heightened threat environment for candidates and officeholders to spend campaign funds on security measures. One of the commenters specifically opposed requiring that a heightened threat environment be demonstrated prior to spending on security measures. The other commenter explained that many security measures are reasonable under any conditions and should be treated as ordinary and

²⁶ Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee, Comment at 3 (June 10, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425203>.

²⁷ Brennan Center for Justice, Comment at 12 (June 10, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425200>.

necessary expenses, while the nature of any threat environment should be a consideration in the reasonableness test in the proposed rule language.

The Commission agrees with the comments that supported adopting the proposed rule and does not find the need to change the “ongoing dangers or threats” limitation. The Commission determines that the proposed rule as drafted appropriately encompasses the scope of dangers or threats faced by candidates and officeholders while establishing a limit to prevent the abuse and personal use of campaign funds. The Commission also agrees that a showing of a heightened threat environment should not be required prior to spending of campaign funds on security measures. Therefore, the Commission adopts the rule as proposed in the NPRM regarding ongoing dangers or threats.

Family and Staff Security Measures

In the NPRM, the Commission’s proposed rule did not explicitly provide for the use of campaign funds for security measures for family members or staff of federal candidates and officeholders. The Commission, however, sought comment on whether the proposed rule should be expanded to cover family members and staff.

Most of the commenters generally supported adopting the proposed rule without commenting on whether family members and staff should be explicitly covered. Four comments specifically supported it, while none opposed it. Various commenters cited to media coverage of incidents of threats and violence faced by the family members and staff of candidates and officeholders, including the attack on the husband of former House Speaker Nancy Pelosi and a death threat received by a Congressional staff member.²⁸ One of the comments supporting the

²⁸ See Campaign Legal Center, Comment at 3 (June 10, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425201>; Citizens for Responsibility & Ethics in Washington, Comment at 2 (June 5, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425202>.

inclusion of family members and staff argued that such expenses should be specifically included because the need for the security expenses for family members and staff would not exist irrespective of the status of the individual as a candidate or officeholder. One comment suggested that the final rule should specify that “family” may include family members who do not reside with the candidate or officeholder; another comment recommended covering, at a minimum, the immediate family members who reside with the officeholder or candidate.

The Commission agrees that the proposed rule should be extended to permit the use of campaign funds for security measures for the family and staff of candidates and officeholders, in addition to the candidates and officeholders themselves. The Commission acknowledges the concerns raised by the commenters that the safety and security threats faced by candidates and officeholders may also extend to their families and staff, and in prior advisory opinions the Commission has authorized the use of campaign funds to address such security concerns.²⁹ The Commission also agrees that, as with threats to candidates and officeholders themselves, in such cases, those threats to family members and staff would not exist irrespective of the individual’s status or duties as a federal candidate or federal officeholder.

The Commission therefore amends the proposed rule to permit the use of campaign funds for reasonable security measures to address ongoing dangers or threats to candidates and officeholders as well as members of the candidate or officeholder’s family and staff. The Commission emphasizes that, as with candidates and officeholders, a security expense for a member of the candidate or officeholder’s family or staff must satisfy the irrespective test,

²⁹ See Advisory Opinion 2021-03 (NRSC *et al.*) at 2 (concluding that Members of Congress may use campaign funds to pay for bona fide, legitimate, professional personal security personnel to protect themselves and their immediate families due to threats arising from their status as officeholders); Advisory Opinion 2022-17 (Warren) at 5 (concluding that candidate and officeholder may use campaign funds for cybersecurity measures to protect her home network, notwithstanding that family members and visitors may also connect their personal devices to candidate’s home network, so long as any benefit to others are incidental).

meaning that expenditures on such security measures could only be made if the threats to the family member or staff did not exist irrespective of the individual's status or duties as a candidate or officeholder.

Regarding the scope of the term “family member,” for purposes of this provision, the Commission will use the existing definition of “members of the candidate’s family” in 11 CFR 113.1(g)(8). For this section, the term “employee” is used as defined at 26 CFR 31.3401(c)-1, as that is a well-recognized definition used elsewhere in Commission regulations, such as in 11 CFR Part 114. This definition generally does not include campaign volunteers.³⁰ However, candidates or officeholders may request advisory opinions in circumstances where they seek to use campaign funds for such security measures.

In sum, the Commission adopts the new rule as amended to permit the use of campaign funds to pay for security measures for federal candidates, officeholders, and their family and staff.

Law Enforcement Requirement

The proposed rule did not require law enforcement involvement or assessment in permitting the use of campaign funds to pay for security measures for federal candidates and officeholders. However, the Commission sought comment on whether such a law enforcement requirement would be appropriate.

Most of the comments generally supported adopting the proposed rule without specifically commenting on whether law enforcement threat assessments should be required.

³⁰ The Commission has previously stated that the fact that individuals other than the intended protectee will benefit from a security measure does not preclude the Commission from determining that the use of campaign funds for such security measure is not personal use. *See* Advisory Opinion 2022-17 (Warren Democrats, Inc.) at 5 (concluding that authorized committee may use campaign funds to pay for costs of reasonable cybersecurity measures to protect officeholder’s home network, even though the benefits of such measures would necessarily extend to other members of the household and visitors to the home).

Although various comments acknowledged that law enforcement assessments may play a useful role in demonstrating the existence of threats to candidates and officeholders, three comments opposed requiring them. One comment recommended that a police report be required if the campaign wished to spend above a certain limit established by the Commission. Another comment explained that although law enforcement assessment of a candidate or officeholder's circumstances and any security recommendations will be relevant to the determination of whether security expenses are reasonable, as was the case in prior Commission advisory opinions, the Commission never suggested that a law enforcement threat assessment was required to permit spending of campaign funds on security expenses.

After considering the arguments for and against requiring law enforcement threat assessments, the Commission has decided not to impose such a requirement in the final rule. As many commenters have noted, law enforcement threat assessments may play a useful role in determining whether a particular security measure is reasonable, and the Commission encourages candidates and officeholders to obtain such assessments when possible. However, imposing such a requirement in the regulation would be too restrictive, as it would deny the use of campaign funds for security measures in the absence of a law enforcement threat assessment even when an actual threat is genuine. Accordingly, the Commission adopts the rule as proposed in the NPRM, which does not require candidates or officeholders to obtain a law enforcement threat assessment to spend campaign funds on security measures.

Other Issues Raised by Comments

In the NPRM, the proposed rule did not address the ownership of tangible security devices, such as security cameras installed on a candidate's property. One comment argued that the final rule should treat security devices purchased with campaign funds as the property of the

candidate's principal campaign committee, citing to Advisory Opinion 1994-20 (Charlie Rose). The comment asserted that tangible security items should remain the campaign's property and be sold at fair market value or otherwise disposed of when the campaign winds down. The Commission disagrees with this comment because the ownership of tangible goods including those purchased for security measures remain subject to other provisions of the Act and Commission regulations, including prior advisory opinions that have treated non-cash assets as excess campaign funds. Accordingly, the Commission adopts the proposed rule without the amendment to address the ownership of tangible goods.

Several commenters urged the Commission to ensure campaign funds for security measures are not used for personal enrichment, especially when security measures or services are provided by candidates' family members. The Commission agrees with these comments that raised concerns about personal enrichment and potential abuse of campaign funds but finds that the proposed rule language, along with the other provisions of the Act and regulations, sufficiently addresses these concerns. The Commission therefore adopts the rule language as proposed.

Finally, one comment urged the Commission to explicitly acknowledge that even if campaign funds may be used for security expenses, campaigns are not required to pay for security expenses at the homes of candidates, officeholders, or their families, and such expenses can be paid for by candidates, officeholders, or their family members. The Commission declines to adopt this recommendation because it views it as unnecessary.

B. New 11 CFR 113.1(g)(10)(i) — Non-Structural Security Devices

In the NPRM, the Commission proposed to treat non-structural security devices as a permissible category of security measures that candidates and officeholders could pay for using

campaign funds. As proposed, 11 CFR 113.1(g)(10)(i) also provides several examples of permissible non-structural security devices, namely security hardware, locks, alarm systems, motion detectors, and security cameras.

Commenters generally supported adopting this provision. One comment, however, suggested adding “security training” to the list of examples of permissible non-structural security devices.

The Commission declines to do so. As acknowledged by the commenter, “training” is not a security measure that would generally be categorized as a device. Accordingly, consistent with the comments that support adopting the proposed rule, the Commission is adopting new 11 CFR 113.1(g)(10)(i) as proposed in the NPRM.

C. New 11 CFR 113.1(g)(10)(ii) —Structural Security Devices

In the NPRM, the Commission proposed to treat structural security devices as permissible security measures that candidates and officeholders may pay for with campaign funds. The proposed subparagraph also listed several examples of permissible structural security devices, including wiring, lighting, gates, doors, and fencing. The proposed rule, however, required such devices to be “intended solely to provide security and not to improve the property or increase its value.”

The commenters generally supported adopting this provision. One comment recommended that the rule not require structural security devices to be intended “solely” to provide security. Another comment recommended allowing structural security devices at locations such as campaign headquarters, event spaces, and residences of staff and family members who received threats arising from their connection with the candidate or officeholder and not limiting the permissible use of such security devices to the candidate or officeholder’s

residence. This comment also recommended clarifying that incidental increases in value to a property from structural security devices do not necessarily make the use of campaign funds an impermissible personal use. However, the comment noted that additional costs for features or aesthetic options that do not serve a security purpose should not be permissible expenses to be paid using campaign funds.

The Commission declines to adopt a rule that would allow the installation of structural security devices for reasons other than security. In the Commission's view, the proposed rule appropriately restricts expenses to those that are solely intended to provide security. Expenses for structural security devices incurred for purposes other than security, such as to improve the property or increase property values, do not fall within the authority of this rule and may constitute the prohibited personal use of campaign funds. However, the Commission agrees that, as noted by another commenter, incidental increases in property value due to the installation of a device solely intended to provide security would be permissible. After considering all of the comments, the Commission is adopting new 11 CFR 113.1(g)(10)(ii) as proposed in the NPRM.

D. New 11 CFR 113.1(g)(10)(iii) —Security Personnel and Services

In the NPRM, the Commission proposed to treat professional security personnel and services as a category of security measures for which candidates and officeholders may use campaign funds.

The Commission received several comments on this proposed rule. One comment urged the Commission to provide strict guidance as to who constitutes professional security personnel under the proposed rule so that private militias would not be hired in the guise of security measures. Another comment recommended that the professional security personnel and services be limited to only bona fide, legitimate, professional security personnel as articulated in

Advisory Opinion 2021-03 (NRSC, et. al). Two comments argued that security personnel paid for with campaign funds must be licensed by a government entity and be up to date on all required certifications to prevent untrained personnel from providing candidate and officeholder security. Two other comments stated that spending on professional security personnel should not be limited to candidates or officeholders who are not otherwise protected by law enforcement or federal agents. And one comment would require security firms to have no connection with candidates or their staff to avoid unjust enrichment by them.

The Commission agrees that additional guidance would be helpful in determining what are permissible security personnel and services under this rule. As identified by one of the commenters, limiting the rule to security personnel and services that are bona fide, legitimate, and professional would be consistent with the limitation the Commission previously approved in Advisory Opinion 2021-03 (NRSC, et. al). Adopting this proposed limitation would also address various concerns raised by commenters regarding the hiring of private militias, use of untrained personnel, and unjust enrichment under the pretext of security expenses. Therefore, the Commission adopts the proposed rule language as amended to require security personnel and services be bona fide, legitimate, and professional.

E. New 11 CFR 113.1(g)(10)(iv) — Cybersecurity Software, Devices, and Services

In the NPRM, the Commission proposed to treat cybersecurity software, devices, and services as a category of security expenses for which candidates and officeholders may use campaign funds.

The comments received in response to the NPRM generally agreed with treating cybersecurity protection measures as a permissible type of security measure in the new rule. One comment specifically expressed support for identifying cybersecurity measures in the new rule.

None of the comments received opposed including cybersecurity measures in the new rule.

Accordingly, the Commission adopts new 11 CFR 113.1(g)(10)(iv) as proposed in the NPRM.

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

The Commission certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would provide flexibility to principal campaign committees that choose to use campaign funds to pay for security measures for federal candidates or officeholders. Any proposed rule that could be construed as placing an obligation on a principal campaign committee would apply only to campaigns that choose to pay for security measures for federal candidates or officeholders. The proposed rule would not impose any new recordkeeping, reporting, or financial obligations on principal campaign committees that do not choose to pay for security measures for federal candidates or officeholders, and any such new obligations that may be imposed on principal campaign committees that do choose to pay for such security measures would be minimal. Thus, to the extent that any entities affected by this proposed rule might fall within the definition of “small businesses” or “small organizations,” the economic impact of complying with this rule would not be significant.

List of Subjects in

11 CFR Part 113

Campaign funds.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR part 113 as follows:

Part 113 – PERMITTED AND PROHIBITED USES OF CAMPAIGN FUNDS

1. The authority citation for part 113 continues to read as follows:

Authority: 52 U.S.C. 30102(h), 30111(a)(8), 30114, and 30116.

§ 113.1 [Amended]

2. In Section 113.1:

- a. Add new paragraph (g)(10) to read as follows:

(10) *Candidate and federal officeholder security.* The use of campaign funds to pay for the reasonable costs of security measures for a federal candidate, federal officeholder, member of their family, and employees — as defined in 26 CFR 31.3401(c)-1) — of the candidate's campaign or the federal officeholder's office, is not personal use, so long as the security measures address ongoing dangers or threats that would not exist irrespective of the individual's status or duties as a federal candidate or federal officeholder. Disbursements for security measures must be for the usual and normal charge for such goods or services. *Usual and normal charge* means, in the case of goods, the price of those goods in the market in which they are ordinarily purchased, and, in the case of services, the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. Examples of such security measures include, but are not limited to:

- (i) Non-structural security devices, such as security hardware, locks, alarm systems, motion detectors, and security camera systems;
- (ii) Structural security devices, such as wiring, lighting, gates, doors, and fencing, so long as such devices are intended solely to provide security and not to

improve the property or increase its value;

(iii) Security personnel and services that are bona fide, legitimate, and professional; and

(iv) Cybersecurity software, devices, and services.

Dated: September 19, 2024.

On behalf of the Commission,

Sean J. Cooksey,

Chairman,

Federal Election Commission.