MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel
Rosemary C. Smith
Associate General Counsel
Brad C. Deutsch
Assistant General Counsel
Amy L. Rothstein
Attorney

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

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

Recommendation:

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

Attachment
FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 2005 - >]

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

AGENCY: Federal Election Commission.

ACTION: Final Rules and Transmittal of Rules to Congress.

SUMMARY: The Federal Election Commission is amending its rules
regarding contributions to the separate segregated fund
(“SSF”) of a trade association by employee-stockholders
and executive and administrative personnel (collectively,
“solicitable class employees”) of corporations that are
members of the trade association. The revised rules will no
longer prohibit corporate members of a trade association
from using a payroll deduction or check-off system for
employee contributions to the trade association’s SSF.

Instead, these final rules will allow a corporate member of a
trade association to provide incidental services to collect and
forward contributions from its solicitable class employees to
the SSF of the trade association, including use of a payroll
deduction or check-off system, upon written request of the
trade association. These final rules will also require any
corporate member of a trade association that provides
incidental services for contributions to a trade association’s SSF to provide the same services for contributions to the SSF of any labor organization that represents employees of the corporation, upon written request of the labor organization and at a cost not to exceed actual expenses incurred. Additional information appears in the Supplementary Information that follows.

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

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

SUPPLEMENTARY INFORMATION:

The Commission is promulgating final rules at 11 CFR 114.2 and 114.8 as the last step in a rulemaking process that began in 2003, when the Commission received a petition for rulemaking (the “Petition”) from America’s Community Bankers and its SSF, the America’s Community Bankers Community Campaign Committee (collectively, “Petitioners”). Petitioners asked the Commission to change its rules to allow a corporate member of a trade association to make payroll deductions and check-off systems available to the corporation’s restricted class employees for their voluntary contributions to the trade association’s SSF.
The Commission issued a Notice of Availability stating that the Petition was available for public review and comment. See Notice of Availability, 68 FR 60887 (October 24, 2003). The comment period closed on November 24, 2003. The Commission received 30 comments in response to the Notice of Availability. All of the comments supported the Petition.

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

The Commission received 34 comments in response to the NPRM. None of the comments opposed the proposed changes to the Commission’s rules, including a letter from the Internal Revenue Service stating that it had “no comments at this time.” The comments are discussed further in the Explanation & Justification, below.
The Commission held a public hearing on May 17, 2005, on this 
rulemaking.\(^1\) At the hearing, representatives of Petitioner and two other 
commenters testified. For purposes of this document, the terms “comment” and 
“commenter” apply to both written comments and oral testimony at the public 
hearing. The written comments and the transcripts of the hearing are available at 

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

**Explanation and Justification**

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

\(^1\) See Notice of Public Hearing, Candidate Solicitation at State, District and Local Party Fundraising 
Events; Definition of “Agent” for BCRA Regulations; Payroll Deductions By Member 
Corporations for Contributions to a Trade Association’s Separate Segregated Fund, 70 FR 21,163 
(April 25, 2005).
soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use.” 11 CFR 114.8(e)(3).

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

In recent years, the Commission has recognized that corporations have some latitude in collecting and forwarding contributions to a trade association’s SSF, so long as the collection does not involve employee payroll deductions. For example, in AO 2003-22, the Commission interpreted the regulations to permit a corporate member of a trade association to collect voluntary contributions in the form of paper checks from its executive and administrative personnel, and to forward the contributions to the trade association’s SSF. In that advisory opinion, the Commission also interpreted the regulations to permit corporate executives who were collecting employee contribution checks to use the member
corporation’s inter-office mail system to help collect the checks, and to provide envelopes and postage in which contributors could send their contributions to the trade association’s SSF. See also AO 2000-4 (incorporated credit union members of a trade association permitted to deduct and transfer contributions to the trade association’s SSF from the share accounts of the credit unions’ individual members).

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

- Remove the prohibition on corporate use of a payroll deduction or check-off system for solicitable class employee contributions to the SSF of a trade association of which the corporation is a member (11 CFR 114.8(e)(3));
- Specifically authorize a member corporation to provide incidental services to collect and forward contributions from its solicitable class employees to a trade association’s SSF, including a payroll deduction or check-off system, upon written request of the trade association (new 11 CFR 114.8(e)(4));
- Require any corporation that provides these incidental services also to make the same services available to a labor organization representing members who work for the corporation, upon written request by the labor organization and at a cost not to exceed any actual expenses incurred (new 11 CFR 114.8(e)(4)); and
• Clarify that the provision of incidental services pursuant to new 11 CFR 114.8(e)(4) is not prohibited corporate facilitation (new 11 CFR 114.2(f)(5)).

1. 11 CFR 114.8 – Trade associations

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

A. 11 CFR 114.8(e)(3)

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

B. 11 CFR 114.8(e)(4)

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

(i) Incidental services

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

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

2 Explanation and Justification, Federal Election Regulations, House Document No. 95-44, 95th
Cong., 1st Session at 114 (1977).
the trade association’s [SSF].”) (citation omitted); and AO 1979-8 (“Since [the
trade association] is permitted to spend dues monies from its corporate members
for the establishment, administration, and solicitation of contributions to the PAC,
it may also have the benefit of incidental services . . . provided by executive and
administrative personnel of its member corporations who conduct those same
activities.”).

The Act, too, recognizes the special relationship between trade associations
and their member corporations. Although the Act generally prohibits a corporation
and its SSF from soliciting contributions from anyone other than the corporation’s
own stockholders, executive and administrative personnel, and their families, the
Act specifically allows a trade association, including an incorporated trade
association and its SSF, to solicit contributions from the stockholders, executive
and administrative personnel, and their families, of the trade association’s member
corporations to the extent specifically permitted by these corporations. See 2

(ii) Payroll deductions

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

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

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

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

3 Remarks by Alan Greenspan at the Federal Reserve Payments System Development Committee
4 Federal Reserve Board Press Release: Federal Reserve Studies Confirm Electronic Payments
Exceed Check payments for the First Time (Dec. 6, 2004), available at
http://www.federalreserve.gov/boarddocs/press/other/2004/20041206/default.htm (viewed June 2,
2005).
through payroll deductions or check-off systems to the SSF of a trade association of which their corporation is a member. By permitting solicitable class employees to sign up for automatic payroll deductions, rather than requiring them to write a contribution check, these employees may spread out their contributions over time, thereby potentially enhancing their participation in the political process.

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

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

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

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

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

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

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

(iii) Equal access for labor organizations

In addition to permitting a member corporation to provide incidental
services to collect and forward employee contributions to a trade association’s
SSF, new 11 CFR 114.8(e)(4) requires any corporation that provides these services
to make the same services available to a labor organization representing employees
of the corporation, upon written request of the labor organization and at a cost that
does not exceed any actual expenses incurred. The Commission considers this
requirement to be necessary, in light of the acknowledgements by Petitioners and
other commenters that corporations that do not have their own SSFs often rely
exclusively on their trade associations’ SSFs to represent their corporate interests
in the political arena. Absent such a requirement, a corporation could allow
solicitable class employees to contribute through payroll deductions to the corporation’s “proxy SSF” administered by a trade association, without permitting employees who are members of a labor organization to contribute to their labor organization’s SSF through payroll deductions. This outcome would be inconsistent with the careful balance struck in the Act and Commission regulations between corporate SSFs and labor organization SSFs. See 2 U.S.C. 441b(b)(6); 11 CFR 114.5(k)(1); see also 2 U.S.C. 441b(b)(5).

This final rule distinguishes between providing incidental services to collect and forward employee contributions to a trade association’s SSF on the one hand, and providing incidental services to collect and forward employee contributions to a labor organization’s SSF on the other hand, only with regard to the requirement for reimbursement by the recipient SSF. As noted above, “incidental services by corporate members would not require reimbursement by the trade association since, in any event, reimbursement if required would come from membership dues paid to the trade association by its corporate members.” AO 1979-8 (citation omitted); see also AO 1978-13. A labor organization or its SSF that receives incidental services from a corporate employer of members of the labor organization, by contrast, is required to reimburse the corporation for the cost of providing those services. See AOs 1981-39 and 1979-21. The Commission has previously found that a prohibited corporate contribution would result from a failure by a labor organization to reimburse a corporation for actual expenses incurred by the corporation in providing a payroll deduction or check-off system for contributions to the labor organization’s SSF. Id.
One commenter asked the Commission to change the proposed rule, so that
if a corporation or any of its subsidiaries, divisions, branches or affiliates uses a
payroll deduction or check-off system to collect and forward voluntary employee
contributions to a trade association’s SSF, then any labor organization representing
any employees that work for the corporation or for any of its subsidiaries,
divisions, branches or affiliates would be entitled to have all of its member-
employees’ contributions to the labor organization’s SSF collected and forwarded
via payroll deduction or check-off. This commenter asserted that the change is
required by 2 U.S.C. 441b(b)(6), which provides that “[a]ny corporation, including
its subsidiaries, branches, divisions, and affiliates,” that uses a method of soliciting
voluntary contributions or of facilitating the making of voluntary contributions,
must make that method available to a labor organization “representing any
members working for such corporation, its subsidiaries, branches, divisions, and
affiliates,” upon written request of the labor organization and at a cost sufficient
only to reimburse the corporation for its expenses. 2 U.S.C. 441b(b)(6).

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

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

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

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

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

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

---

5 The result would be different if the trade association in question were found to be affiliated with
its corporate member(s), but this finding would depend upon the specific facts of the given case.
See 11 CFR 100.5(g).
contrast, the new regulation involves the provision of incidental services by a
corporate member of a trade association to collect and forward contributions to the
trade association’s SSF. The provision of incidental services pursuant to new 11
CFR 114.8(e)(4) is neither a method of soliciting voluntary contributions, nor a
method of facilitating the making of voluntary contributions, as described further
below.

Accordingly, the Commission declines to adopt the commenter’s approach.

2. 11 CFR 114.2 – Prohibitions on contributions and expenditures

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

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

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

3. Other issues

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

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

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

List of Subjects

11 CFR Part 114

Business and industry, elections, labor.
For the reasons set out in the preamble, subchapter A of chapter 1 of title 11 of the Code of Federal Regulations is amended as follows:

PART 114 – CORPORATE AND LABOR ORGANIZATION ACTIVITY

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

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

2. Section 114.2 is amended by revising the second sentence of paragraph (a) and by adding new paragraph (f)(5), to read as follows:

§ 114.2 Prohibitions on contributions and expenditures.

(a) *

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

(f) *

(5) Facilitating the making of contributions also does not include the provision of incidental services by a corporation to collect and forward contributions from its employee stockholders and executive and administrative personnel to the separate segregated fund of a trade association of which the corporation is a member, including
collection through a payroll deduction or check-off system, pursuant to 11 CFR 114.8(e)(4).

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

§ 114.8 Trade associations.

(e) There is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use. The member corporation may not use a payroll deduction or check-off system for executive or administrative personnel contributing to the separate segregated fund of the trade association.

A corporation may provide incidental services to collect and forward contributions from its employee stockholders and executive and administrative personnel to the separate segregated fund of a trade association of which the corporation is a member, including a payroll deduction or check-off system, upon written request of the trade association. Any corporation that provides such incidental services shall make those incidental services available to a labor organization representing any members working for the
corporation, upon written request of the labor organization and at a
cost sufficient only to reimburse the corporation for the expenses
incurred thereby.

(5) * * *

* * * *

scott e. thomas
chairman
federal election commission

dated __________________
billing code: 6715-01-u