



Wiley Rein & Fielding LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

Virginia Office
7925 JONES BRANCH DRIVE
SUITE 6200
MCLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wrf.com

January 19, 2005

Jan Witold Baran
202.719.7330
jbaran@wrf.com

Mr. Brad C. Deutsch
Assistant General Counsel
Federal Election Commission
999 E. Street N.W.
Washington, D.C. 20463

Re: Notice of Proposed Rulemaking: Payroll Deductions by Member Corporations to a Trade Association's Separate Segregated Fund
11 CFR Part 114 (December 22, 2004)

Dear Mr. Deutsch:

On behalf of the Chamber of Commerce of the United States, I am writing to express support for the proposed rule, which would bring legal and practical consistency to an area of law vital to trade associations' ability to engage in political and expressive activities.

The Chamber's position is based on its perspective as the world's largest not-for-profit business federation. The Chamber represents over three million businesses, 3,000 state and local chambers, 830 business associations, and 87 American Chambers of Commerce abroad. The Chamber's members include business of all sizes and in industries from all over the nation. On their behalf, the Chamber engages in various lobbying, educational, electoral and litigation activities. To fund some of these activities, the Chamber solicits and accepts contributions to its PAC from the executive and administrative personnel of its member corporations. 11 CFR 114.8(c).

The Commission proposes amending 11 CFR 114.8(e) to eliminate the current prohibition on a corporation's use of payroll deductions or check-offs for contributions by restricted class employees to the separate segregated fund ("SSF") of a trade association of which the corporation is a member. After reviewing the proposed rule, and considering its implications for members' activities and operations, the Chamber of Commerce fully supports the rule change. Not only will it bring legal sense to a regulatory area characterized by an outdated and illogical prohibition, it will increase the efficiency and effectiveness of associations' fundraising, and thus empower both the associations and the constituencies they serve.

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**THE PROPOSED RULE IS CONSISTENT WITH THE FECA AND WILL BE IN THE
PUBLIC INTEREST**

Nothing in the Federal Election Campaign Act of 1971, as amended (the "Act") prohibits trade associations from soliciting contributions to the association's SSF from appropriate personnel working at member corporations, provided the member corporation has approved the solicitation and has not approved a solicitation by another trade association in the same year. See 2 U.S.C. § 441b(b)(4)(D)¹; 11 CFR 114.8(c).

Indeed, the Commission long ago recognized that "[t]here 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." 11 CFR 114.8(e)(3). However, despite the clarity of this conclusion, the Commission has expressly prohibited, in the very next sentence of the same subsection, member corporations from using a particular method – payroll deductions – of collecting those contributions from covered personnel seeking to contribute to a trade association's SSF. Id. ("The member corporation may not use a payroll deduction or checkoff system for executive or administrative personnel contributing to the separate segregated fund of the trade association.") (emphasis added).

This prohibition is legally unsupportable, as it squarely conflicts with the regulatory language that immediately precedes it and is not compelled by anything in the Act itself. To the contrary, the Act is permissive and logically implies no restriction on the methods utilized by trade associations and corporations to collect properly solicited funds. Specifically, the Act imposes restrictions on who may be solicited by trade associations with corporate members, see 2 U.S.C. 441b(b)(4)(D), but is silent on how that solicitation may be conducted once the statutorily-required approval is received. Thus, in explicitly forbidding payroll deductions and checkoffs, the Commission has embraced precisely the sort of limitation on the

¹ § 441b(b)(4)(D) provides: "This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year."

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method of facilitating voluntary contributions that is not compelled by the Act and which 11 CFR 114.8(e)(3) clearly states does not exist.

Furthermore, this restriction is unnecessary in light of the other substantive regulatory restrictions which govern the solicitation and collection of voluntary contributions to SSFs. See 11 CFR 114.8(e)(4) ("A trade association and/or its separate segregated fund is subject to the provisions of § 114.5(a)."). The Commission in 11 CFR 114.5(a) established stringent restrictions on solicitations by SSFs, including lengthy disclosure obligations on the materials sent to employees or members, presumably to protect those individuals solicited from inappropriate pressure and to ensure informed decision-making. The specificity of these restrictions demonstrates that the approved process by which contributions to SSFs are solicited and eventually made is purposeful, highly controlled and not susceptible to abuse. By contrast, the restriction on payroll deductions serves no similar purpose and seems utterly useless in light of the many procedural and substantive protections the Commission has imposed on the process.

Not only do the statute and the Commission's regulations cast serious doubt on the necessity and validity of the prohibition on payroll deductions contained in 11 CFR 114.8(e)(3), numerous Advisory Opinions of the Commission are in tension with the current regulation. In repeated Opinions, the Commission has approved of member corporations' efforts to aid in the solicitation, collection and transmission of voluntary contributions to trade association SSFs. The distinction that currently exists elevates form over substance to discourage the most efficient way of accomplishing that which the Commission has already found to be permissible activity by a member corporation. In Advisory Opinion 2003-22, the Commission noted that 11 CFR 114.8(e)(3) "appears to contemplate that executives of member corporations may collect and forward contribution checks for a trade association's SSF." In that Opinion, the Commission approved of the physical collection and forwarding of contribution checks by a member corporation to a trade association SSF. This method included manual collection of the checks themselves, using the member corporation's inter-office mail system, and the provision of envelopes and postage by the corporation to help contributors send in their contributions. By contrast, the payroll deduction which has heretofore been denied these same member corporations is much more efficient and in many cases will impose fewer costs on the member corporation to achieve the very same permissible end: the gathering and sending of contributions to the trade association SSF.

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Likewise, in Advisory Opinion 2000-4, the Commission approved of automatic deductions from credit union members' share accounts to a trade association SSF, distinguishing the deduction at issue there from that forbidden by 11 CFR 114.8(e)(3) on the ground that the acceptable deduction was from "the share account and not from an employee payroll account." This distinction appears to be one of form and not substance, driven in circular fashion by the language of the outdated regulatory prohibition of 11 CFR 114.8(e)(3) rather than any clear policy or principle. See also Advisory Opinion 1998-19. Similarly, in Advisory Opinion 1999-35, the Commission found an automated collection scheme, whereby voluntary contributions to a trade association from covered members' personal checking accounts at a bank, did not run afoul of 11 CFR 114.8(e)(3). This Opinion turned on the superficial distinction between an automatic payroll deduction and an automatic deduction from the same person's checking account. None of these Opinions attempt to grapple with or explain the purposes behind or the ends served by the prohibition on payroll deductions and checkoffs set forth in 11 CFR 114.8(e)(3).

Taken together, these Opinions reflect years of fact-specific hair splitting necessary to get around the restriction on payroll deductions. In the face of so many Opinions permitting functionally equivalent arrangements, the preservation of this narrow prohibition serves no logical or principled purpose. As such, it is time for the Commission to remedy this anomalous legal distinction by formally changing the rule and eliminating the prohibition on payroll deductions and checkoffs for otherwise permissible contributions to trade association SSFs.

Not only will the proposed rule rectify current inconsistencies in the regulatory treatment of voluntary contributions to trade association SSFs, it will further the public interest in additional ways. Given the increasing restrictions on political fundraising by corporations and their associations, this rule change will allow associations' SSFs greater access to individual contributions from corporate members' restricted classes. Further, given the size of many trade associations and their related SSFs, the use of this technology will dramatically increase the efficiency of current fundraising activities.

For all these reasons, the Chamber strongly supports the elimination of this anachronistic restriction on contribution methods. The Commission's own opinions confirm that the prohibition is one of form and not substance and is unsupported by any compelling textual, legal or policy rationale. It is time for the Commission to

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amend 11 CFR 114.8(e) to permit corporations' use of payroll deductions or check-offs for contributions by restricted class employees to a corporate trade association's SFF.

Sincerely,



Jan Witold Baran
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006
Counsel for the Chamber of Commerce of the United States

OF COUNSEL
Stephen A. Bokat
Senior Vice President and General Counsel
Chamber of Commerce of the United States
1615 H Street, NW
Washington, DC 20062