



CUNA & Affiliates
A Member of the Credit Union System

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VIA E-MAIL: paydeduct@fec.gov

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 Deduction Contributions to a Trade Association's Separate Segregated Fund
11 CFR Part 114 (December 22, 2004)

Dear Mr. Deutsch:

The Credit Union National Association, Inc. ("CUNA") supports the FEC's proposed rule on payroll deductions by member corporations to a trade association's separate segregated fund ("SSF").

CUNA is a federation of trade associations, representing over 90% of the country's more than 9,300 state and federal credit unions. Among other priorities, CUNA was organized to promote and improve business conditions related to the operation of its members. CUNA's members include state and federally chartered credit unions as well as fifty-one credit union leagues representing the fifty states and the District of Columbia. The Credit Union Legislative Action Council ("CULAC") is the federal PAC established and administered by CUNA. CUNA solicits and accepts contributions to CULAC from the executive and administrative personnel of CUNA and its member credit unions and leagues. 11 CFR 114.8(c).

The Commission proposes amending 11 CFR 114.8(e). In so doing, the Commission would 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.



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CUNA fully supports this rule change, as it is currently operating under conflicting standards that demonstrate the need to eliminate the prohibition in 11 CFR 114.8(e). CUNA has sought guidance from the FEC on its operations and the coverage of 11 CFR 114.8(e). In Advisory Opinion 2000-15, the FEC allowed a state league member of CUNA to use payroll deductions to collect contributions to CULAC from the league's executive and administrative personnel. Though 11 CFR 114.8(e) prohibits payroll deductions, the FEC concluded the prohibition was inapplicable because the league and CUNA were "affiliated" under 11 CFR 100.5(g)(4). Credit union members of CUNA would like to collect CULAC contributions from appropriate personnel through payroll deductions, but the credit unions cannot rely on Advisory Opinion 2000-15 because they are not "affiliated" with CUNA under 11 CFR 100.5(g)(4). Thus, 11 CFR 114.8(e) bars the use of payroll deductions for credit union personnel, but not for state league personnel. This inconsistency is unsupported by law or policy and thus untenable.

The Federal Election Campaign Act of 1971, as amended (the "Act") nowhere prohibits trade associations from soliciting contributions to the association's SSF from appropriate personnel working at member corporations, under certain conditions.¹

The Commission has stated 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). In the very same regulation, however, the Commission has expressly prohibited member corporations from using payroll deductions to collect those contributions. *Id.* ("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.") (emphasis added). In prohibiting payroll deductions and check-offs, the Commission has enacted precisely the sort of limitation that 11 CFR 114.8(e)(3) clearly states does not exist.

Not only is 11 CFR 114.8(e)(3) internally inconsistent, several Advisory Opinions of the Commission demonstrate that the current regulatory prohibition elevates form over substance to eliminate the most effective method of accomplishing that which the Commission has found to be permissible activity. In repeated Opinions, the Commission has approved of corporations' efforts to aid in the solicitation, collection and transmission of voluntary contributions to trade association SSFs. For example, the Commission has explained 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." Advisory Opinion 2003-22. There, the Commission approved of the collection and forwarding of physical checks (including the manual collection of the checks themselves, using the member corporation's inter-office mail system, and the provision of envelopes and postage) by a corporation to its trade association SSF. By contrast, the payroll deduction barred by the present regulation is a much more efficient way to achieve the very same – appropriate – goal: the gathering and sending of contributions to the trade association SSF.

¹ The member corporation must approve the solicitation and can only approve a solicitation by one trade association in any given year. See 2 U.S.C. § 441b(b)(4)(D)¹; 11 CFR 114.8(c).

Similarly, the Commission has 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." Advisory Opinion 2000-4; see also Advisory Opinion 1998-19. This distinction thus is driven, not by policy or logic, but by the language of the outdated regulatory prohibition of 11 CFR 114.8(e)(3). The Commission has also approved of voluntary contributions to a trade association from covered members' personal checking accounts at a bank. Advisory Opinion 1999-35. This Opinion turned on the superficial distinction between an automatic payroll deduction, prohibited by 11 CFR 114.8(e)(3), and an automatic deduction from the same person's checking account, which the Commission concluded did not run afoul of 11 CFR 114.8(e)(3).

The Commission has thus gone to great lengths to get around the restriction it presently proposes eliminating, even allowing different treatment of CUNA members, depending on whether the member organization is "affiliated" or not. In light of so many Opinions blessing functionally equivalent methods of collecting contributions, the preservation of this prohibition apparently serves no purpose. The Commission should eliminate this absurd legal distinction by changing the rule to permit payroll deductions and check-offs for otherwise permissible contributions to trade association SSFs.

Sincerely,



Valerie Y. Moss
Director of Compliance Information
CUNA & Affiliates