



January 21, 2005

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

Re: Payroll Deductions by Member Corporations for Contributions to a
Trade Association's Separate Segregated Fund [Notice 2004-18]
69 FR 76628 (December 22, 2004)

Dear Mr. Deutsch:

America's Community Bankers ("ACB")¹ welcomes the opportunity to offer its comments in support of the proposed rulemaking by the Federal Election Commission (the "Commission") to amend the Commission's regulations and thereby permit the use of payroll deduction as a method by which member companies can make voluntary contributions to a trade association's separate segregated fund ("SSF").² Specifically, the proposed rule would amend 11 C.F.R. § 114.8(e)(3) to remove the current prohibition on corporate use of a payroll deduction or check-off system for employee contributions to the SSF of a trade association, of which the corporation is a member.

The proposed rule also would require that any corporation that provides this incidental service must make the same service available to a labor organization representing members who work for the corporation, upon written request. Finally, the proposed rule would make conforming amendments to clarify that the provision of these incidental services is not a prohibited corporate facilitation under the Federal Election Campaign Act (the "Act") and the Commission's regulations.

ACB Position

ACB strongly supports the proposed rule change. ACB filed a petition on September 3, 2003, requesting that the Commission undertake this rulemaking, and we encourage the Commission to finalize the proposed rule as soon as possible.

¹ America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit www.AmericasCommunityBankers.com.

² 69 Fed. Reg. 76628 (December 22, 2004).

In the preamble to the proposed rule, the Commission noted that ACB's petition and comments submitted in support of the petition "raise a reasonable question as to whether the regulatory prohibition against payroll deduction and check-off systems continues to make sense."³ ACB believes the answer to this question is definitively "no." The proposed rule represents a common-sense change that will eliminate an unnecessary and outdated restriction, and one that is supported by strong legal, policy and practical arguments.

As we have previously commented, ACB believes the proposed rulemaking is authorized under the Act and Commission regulations because:

- Nothing in the language of the Act or its legislative history requires exclusion of payroll deduction as a permissible method for trade associations to obtain contributions;
- In addition, the current prohibition is inconsistent with the Act and other FEC regulations governing the provision of incidental services relating to voluntary contributions; and
- The proposed rule logically builds on recent FEC advisory opinions, including Advisory Opinion 2003-22 (permitting a member company to collect and forward employee contributions in the form of checks) and earlier opinions, which permit contributions to be automatically debited from contributors' accounts.

In addition to the legal and regulatory support, the Commission's proposed rule is supported by strong factual and policy considerations. As ACB noted in our petition and others have echoed in subsequent comments, the use of the electronic methods for making and receiving payments has grown tremendously since the prohibition took effect. In fact, the use of paper checks has been in steady decline since 1995. The most recent Federal Reserve study confirms this. In its study released on December 6, 2004, the Federal Reserve reported that in 2003 – for the first time – the number of electronic payment transactions for the study period totaled 44.5 billion, while the number of checks paid totaled 36.7 billion. Between 2000 and 2003, electronic payments increased at an average rate of 13.2 percent while checks declined at an average rate of 4.3 percent during the same period. Electronic payments include such payment methods as credit cards, debit cards and automated clearinghouse ("ACH") transactions, like direct debit.

Moreover, as the Commission notes, these statistics support the fact that payroll deduction is a common method employed by millions of Americans for a variety of regular payments, including health care savings accounts, mortgage and insurance payments and other regularly scheduled payments. The proposed rule will provide individuals who wish to make voluntary contributions an easy method by which to support the electoral process.

Equally important, following changes to the nation's campaign finance laws, it is today harder for individuals to participate in the electoral process. The proposed rule change

³ *Id.* At 76631.

would help promote fairness and increased participation. Payroll deduction allows more individuals to make voluntary contributions and to be able to do so more easily. At the same time, the proposed rule would support smaller organizations whose only access to the political process is through their trade association.

ACB appreciates this opportunity to comment in support of the proposed rule. We look forward to working with the Commission to finalize this important rulemaking.

Should you have any questions, please contact the undersigned at (202) 857-3122 or via email at mbriggs@acbankers.org.

Sincerely,



Michael W. Briggs
Chief Legal Officer