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2005 JAN 21 P 2: 56

January 21, 2005

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

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2005 JAN 21 P 4: 00

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:

The National Restaurant Association ("NRA") fully supports the proposed rule, which would bring clarity and uniformity to an area of regulation critical to trade associations' ability to exercise their expressive and political rights.

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, the NRA fully supports the change. The NRA encourages the Commission to adopt the proposed rule for several compelling reasons.

First, the Federal Election Campaign Act of 1971, as amended ("FECA") nowhere prohibits payroll deductions by member corporations of trade associations. FECA contains no restrictions on the means of soliciting contributions from the stockholders and executive or administrative personnel of a member corporation for a trade association's PAC. Rather, the only restriction found in FECA on trade associations is that they must first obtain the separate and specific approval of the member corporation to engage in solicitations on behalf of the trade association's separate segregated fund, and that the member corporation cannot approve more than one trade association's solicitation per year. 2 U.S.C. § 441b(b)(4)(D).<sup>1</sup> This

<sup>1</sup> Specifically, § 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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provision demonstrates that had Congress wanted to further limit the ability of trade associations to solicit contributions from the restricted class of the member corporation it could easily have written the restriction into the law. However, payroll deductions are not mentioned in FECA, or in its legislative history as it pertains to trade associations. In fact, the 1976 draft FEC regulations would have permitted such payroll deductions.

Second, the Explanation and Justification in support of this regulation identifies no policy or legal reason for excluding payroll deductions from the otherwise permissive regulation. Indeed, the regulation and the Explanation are internally inconsistent, on the one hand stating 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" and on the other hand stating that payroll deductions by member corporations are not permissible, without explanation as to why. See 11 C.F.R. § 114.8(e)(3), and Explanation and Justification of Regulations, H.R. Doc. No. 95-44 (1977).

Third, since the FEC passed this regulation, there have been numerous Advisory Opinions, starting with FEC Advisory Opinion 1980-59, Fed. Election Camp. Fin. Guide (CCH) ¶ 5515 (1980), that have permitted a corporate member of a trade association to make direct and in-kind payments to the trade association to help defray the establishment, administrative, and solicitation costs of the trade association PAC, as well as to specifically facilitate the making of contributions to the trade association PAC. Further, these Advisory Opinions go out of their way to distinguish between the prohibition on payroll deductions by member corporations and any other type of facilitation by the member which are permissible. For example, the Commission has 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." Advisory Opinion 2003-22 (approving the physical collection and forwarding of contribution checks by a member corporation to a trade association SSF, including manual collection of the checks themselves, use of the member corporation's inter-office mail system, and the provision of envelopes and postage by the corporation to help contributors send in contributions). By contrast, the payroll deduction which has until now been denied these same member corporations can achieve the same acceptable end (the gathering and sending of contributions to the trade association SSF) at a lower cost.

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Likewise, the Commission has approved of automatic deductions from credit union members' *share accounts*, as distinguished from employee payroll accounts, to a trade association SSF. Advisory Opinion 2000-4. This distinction is one of form and not substance, necessitated by the language of the outdated regulatory prohibition of 11 CFR 114.8(e)(3) rather than any policy or principle. See also Advisory Opinion 1998-19. Similarly, the Commission has found an automated collection scheme, whereby voluntary contributions to a trade association from covered members' personal checking accounts, did not run afoul of 11 CFR 114.8(e)(3). Advisory Opinion 1999-35.

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). These Opinions reflect years of fact-specific but unprincipled distinctions necessary to get around the restriction on payroll deductions. Indeed, it is obvious that, but for this unexplained restriction on payroll deductions by member corporations, the Commission would likely now permit such a means of facilitating contributions to the trade association PAC. As such, the NRA respectfully urges the Commission to eliminate this arbitrary legal distinction by formally changing the rule and ending prohibition on payroll deductions and checkoffs for otherwise permissible contributions to trade association SSFs.

Finally, in evaluating the proposed rule, NRA believes the FEC must consider carefully its responsibilities pursuant to the Administrative Procedures Act to provide the requisite justification for any regulatory restriction. At present, there is no stated legal or policy reason for the restriction and as such the prohibition on payroll deductions is unlikely to withstand scrutiny.

For all these reasons, the NRA strongly supports the proposed rule change.

Sincerely,



Peter Kilgore  
Senior Vice President, General Counsel and Corporate Secretary  
National Restaurant Association



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VIA E-MAIL

January 21, 2005

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

Re: Payroll Deductions by Member Corporations for Contributions to a Trade Association's Separate Segregated Fund (Notice 2004-18)  
68 FR 294, December 22, 2004

Dear Mr. Deutsch:

The New Jersey League of Community Bankers\* ("the League") and the League's separate segregated fund, SAPEC-New Jersey, support the proposed rule by the Federal Election Commission ("the Commission") to amend 11 C.F.R. § 114.8(e)(3) to remove the current prohibition on corporate use of the payroll deduction system for employee contributions to a trade association's separate segregated fund ("SSF"). The proposed regulations would allow a corporation that is a member of a trade association, upon written request of the trade association, to take the steps necessary to allow "restricted class employees" (employee-stockholders and executive and administrative personnel) to use a payroll deduction or check-off system for making voluntary contributions to the trade association's SSF and to forward those contributions to the SSF. The rule would also require that any corporation that provides this incidental service must make the same service available to a labor organization representing members employed by the corporation, upon written request.

As we noted in our letter of December 19, 2003 in support of America's Community Bankers' petition for rulemaking, much has changed since 1976 when the current prohibition was adopted. There is a growing trend toward electronic payments and recently enacted legislation

\* The New Jersey League of Community Bankers, founded in 1908, is a trade association representing 67 of New Jersey's savings banks, savings & loan associations and commercial banks with total assets of over \$75 billion. The League's wholly-owned subsidiary, the Thrift Institutions Community Investment Corporation ("T.I.C.I.C.") assists League members in forming consortia to make loans on low-to-moderate income housing and economic development projects throughout New Jersey. Since its founding in September 1991, T.I.C.I.C. has facilitated loans on over 4,500 affordable housing units and has loans in process on over 600 more affordable housing units. Loans made and loans in process total over \$300 million.

**Gary T. Jolliffe**  
**Chairman**  
President/CEO  
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**Raymond G. Hallock**  
**First Vice Chairman**  
President/CEO  
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Fair Lawn, NJ 07410

**Robert S. Monteith**  
**Second Vice Chairman**  
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**Samuel J. Damiano**  
**President**  
New Jersey League  
of Community Bankers  
Cranford, NJ 07016

allows financial institutions to replace actual checks with electronic images. The use of direct deposit and payroll deductions is now widespread and cost-efficient and the enactment of the Bipartisan Campaign Reform Act of 2002 has made individual contributions to political campaigns much more important.

Permitting the use of payroll deductions would provide employees of corporations that are members of a trade association with a separate segregated fund an easy method of participating in the trade association's PAC and would encourage their participation in the political process. The proposed rule would be of particular help to smaller corporations whose only effective access to the political process is through their trade association.

Again, we support the proposed rule and encourage its adoption as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Silkensen", with a long horizontal flourish extending to the right.

James R. Silkensen  
Executive Vice President

JRS/jz