



Valerie Moss <VMoss@cuna.coop> on 11/20/2003 02:49:23 PM

To: payrollded03@fec.gov
cc:

Subject: Rulemaking Petition: Payroll Deduction

The Credit Union National Association, Inc. respectfully submits the attached comments in support of the Rulemaking Petition seeking to rescind the regulation at 11 C.F.R. § 114.8(e)(3) that prohibits trade association member corporations from using payroll deductions to collect trade association PAC contributions.

Valerie Moss
CUNA & Affiliates



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November 20, 2003

VIA E-MAIL: payrollded03@fec.gov

Mr. John C. Vergelli
Acting Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20008

Re: Rulemaking Petition: Payroll Deduction Contributions to a Trade Association's
Separate Segregated Fund

Dear Mr. Vergelli:

The Credit Union National Association, Inc. ("CUNA") respectfully submits these comments in support of the Rulemaking Petition ("Petition") seeking to rescind the regulation at 11 C.F.R. § 114.8(e)(3) that prohibits trade association member corporations from using payroll deductions to collect trade association PAC contributions.¹

BACKGROUND

CUNA is a federation of trade associations that represents over 90% of the nation's more than 10,400 state and federal credit unions. CUNA was organized to, among other things, promote and improve business conditions relating to the operation of its members. CUNA's members consist of 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. *See* 11 C.F.R. 114.8(c).²

¹ *See* 68 Fed. Reg. 60,887 (October 24, 2003).

² CUNA also solicits and accepts contributions to CULAC from the individual account holders of its member credit unions. *See* FEC Advisory Opinion 1998-19.



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Given its size and the relative complexity of its structure, CUNA has a long-standing interest in efficiently soliciting and collecting contributions to CULAC, and has repeatedly sought and received formal advice from the Commission to do so. Of particular relevance is FEC Advisory Opinion 2000-15 that allowed a state league member of CUNA to use payroll deductions to collect contributions to CULAC from the league's executive and administrative personnel. The Commission recognized that 11 C.F.R. § 114.8(e)(3) prohibited such use of payroll deductions, but nonetheless concluded that the prohibition was inapplicable because the league and CUNA were "affiliated" according to 11 C.F.R. § 100.5(g)(4).

Like the league in Advisory Opinion 2000-15, credit union members of CUNA would also like to collect CULAC contributions from their executive and administrative personnel by payroll deduction. However, the credit unions cannot rely upon Advisory Opinion 2000-15 because, unlike the league, the credit unions are not "affiliated" with CUNA. Hence, 11 C.F.R. § 114.8(e)(3) applies to the credit unions and prohibits them from collecting contributions to CULAC by payroll deduction.

DISCUSSION

CUNA supports the Petition and its effort to eliminate the payroll deduction prohibition at 11 C.F.R. § 114.8(e)(3). First, the prohibition is not mandated by the Federal Election Campaign Act ("FECA"). The FECA places no limitations on the use of payroll deductions. Instead, the FECA contemplates the use of "any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation." 2 U.S.C. § 441b(b)(5). Furthermore, the FECA expressly permits a trade association to solicit the restricted class of a member corporation. *Id.* § 441b(b)(4)(D). The FECA's only limitation is that the trade association's solicitation must be "separately and specifically approved by the member corporation involved," and that a member corporation may provide prior approval to only one trade association per calendar year. *Id.* The FECA neither explicitly nor implicitly requires the payroll deduction prohibition found in 11 C.F.R. § 114.8(e)(3).

Second, the Commission has never articulated a policy basis for maintaining the payroll deduction prohibition. The Explanation and Justification that accompanied 11 C.F.R. § 114.8(e)(3) provided no additional insight except to say that the Commission rejected a contrary proposal to allow trade association PAC contributions to be collected via member corporation payroll deductions. *Explanation and Justification of Regulations*, H.R. Doc. No. 95-44 (1977), *reprinted in* 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 930 at 3153. Though various concerns were raised during the Commission meeting at which this proposal was defeated and the prohibition was ultimately adopted, the Commission did not reach a consensus regarding the underlying policy purpose for the prohibition. *See* Petition 7-9.

Indeed, the Commission has since tacitly conceded that there is no apparent justification for the prohibition. The Commission has issued a series of Advisory Opinions in which it has limited the payroll deduction prohibition to the strict meaning of its terms. Without

an underlying policy purpose, the Commission has been unable to extend the prohibition to similar means of collecting trade association PAC contributions. In fact, the Commission's analyses have disproportionately discussed policies motivating regulations that conflict with the payroll deduction prohibition without mentioning a single policy purpose served by it.

FEC Advisory Opinion 1999-35 is exemplary. It permitted a trade association to receive PAC contributions from the restricted class of member corporations via a program that automatically deducted funds from executive and administrative employees' personal checking accounts. The program differed from a payroll deduction only in the sense that it deducted funds from an account into which a corporate paycheck could be deposited, instead of deducting the funds directly from the corporate paycheck itself. The Commission did not articulate a policy reason to justify this apparent distinction without a difference.

Similarly, the Commission's determination in Advisory Opinion 2000-15 that an "affiliated" credit union league could use payroll deductions to collect CULAC contributions was also devoid of any policy discussion of the payroll deduction prohibition that otherwise would have applied. The Commission explained its result by referring only to the policy and practical implications of the "affiliation" regulations. It was silent with regard to any possible policy purpose embodied by the payroll deduction prohibition.

CONCLUSION

The prohibition at 11 C.F.R. § 114.8(e)(3) is not required by the FECA. Furthermore, the Commission has not articulated a justification for the prohibition, and one is not readily apparent. For these reasons, the Commission should issue a Notice of Proposed Rulemaking to assess the appropriateness of the prohibition at 11 C.F.R. § 114.8(e)(3), and to ultimately rescind it.

Sincerely,



Valerie Y. Moss
Director of Compliance Information
CUNA & Affiliates