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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

**AGENDA DOCUMENT NO. 24-11-A**  
**AGENDA ITEM**  
**For meeting of Mar. 27, 2024**

March 20, 2024

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*  
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SUBJECT: REG 2024-01 (Candidate Security) Draft NPRM

Attached is draft NPRM for REG 2024-01 (Candidate Security). One or more Commissioners have asked for this draft to be made public and placed on the agenda for the Commission's March 27, 2024, Open Meeting.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 113**

3 **[Notice 2024-XX]**

4 **Use of Campaign Funds for Candidate and Officeholder Security**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Notice of proposed rulemaking.

7 **SUMMARY:** The Federal Election Commission proposes to amend its regulations regarding  
8 the use of campaign funds to pay for security measures for federal candidates and officeholders.  
9 The proposed rule would codify several Commission advisory opinions that authorized the use of  
10 campaign funds to pay for certain security measures and address additional issues raised in those  
11 advisory opinions. The Commission seeks comment on the proposed rule and has made no final  
12 decision on the issues presented in this rulemaking.

13 **DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE  
14 OF PUBLICATION IN THE *FEDERAL REGISTER*]. The Commission may hold a public  
15 hearing on this Notice. Commenters wishing to testify at a hearing must so indicate in their  
16 comments. If a hearing is to be held, the Commission will publish a notice in the *FEDERAL*  
17 *REGISTER* announcing the date and time of the hearing.

18 **ADDRESSES:** All comments must be in writing. Commenters are encouraged to submit  
19 comments electronically via the Commission's website at <http://sers.fec.gov/fosers>, reference  
20 REG 2024-01. Alternatively, comments may be submitted in paper form addressed to the  
21 Federal Election Commission, Attn.: Mr. Robert M. Knop, Assistant General Counsel for Policy,  
22 1050 First Street, NE, Washington, DC 20463.

1 Each commenter must provide, at a minimum, his or her first name, last name, city, and  
2 state. All properly submitted comments, including attachments, will become part of the public  
3 record, and the Commission will make comments available for public viewing on the  
4 Commission’s website and in the Commission’s Public Records Office. Accordingly,  
5 commenters should not provide in their comments any information that they do not wish to make  
6 public, such as a home street address, personal email address, date of birth, phone number, social  
7 security number, or driver’s license number, or any information that is restricted from disclosure,  
8 such as trade secrets or commercial or financial information that is privileged or confidential.

9 **FOR FURTHER INFORMATION CONTACT:** Robert M. Knop, Assistant General Counsel  
10 for Policy, Luis M. Lipchak, Attorney, Anthony T. Buckley, Attorney, or Joseph P. Wenzinger,  
11 Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

12 **SUPPLEMENTARY INFORMATION:** The Commission proposes to amend its regulations  
13 to clarify that federal candidates and officeholders may use campaign funds to pay for security  
14 measures so long as the security measures address ongoing dangers or threats that would not  
15 exist irrespective of the individual’s status or duties as a federal candidate or federal  
16 officeholder. The proposed rule would be consistent with Commission advisory opinions that  
17 authorized such spending and would address additional issues raised in those advisory opinions.

18 The Commission invites public comments on this proposed rule.

19 **I. Background**

20 **A. Act and Commission Regulations**

21 The Federal Election Campaign Act (the “Act”)<sup>1</sup> identifies six categories of permissible  
22 uses of contributions accepted by a federal candidate, two of which are “ordinary and necessary

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<sup>1</sup> 52 U.S.C. 30101-45.

1 expenses incurred in connection with the duties of the individual as a holder of Federal office,”  
2 and “any other lawful purpose not prohibited by 52 U.S.C. § 30114(b).”<sup>2</sup> Under 52 U.S.C.  
3 § 30114(b), contributions accepted by a candidate may not be converted to “personal use” by any  
4 person.

5 The Act and Commission regulations define “personal use” as the use of campaign funds  
6 “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the  
7 candidate’s election campaign or individual’s duties as a holder of Federal office.”<sup>3</sup> The Act and  
8 Commission regulations provide a non-exhaustive list of expenses that, when paid using  
9 campaign funds, constitute *per se* conversion of those funds to personal use.<sup>4</sup> The Commission  
10 determines on a case-by-case basis whether the use of campaign funds to pay expenses other  
11 than those listed would be a prohibited conversion of the funds to personal use.<sup>5</sup>

12 The Commission has long recognized that if a candidate “can reasonably show that the  
13 expenses at issue resulted from campaign or officeholder activities, the Commission will not  
14 consider the use to be personal use.”<sup>6</sup>

## 15 **B. Security Measures**

16 Neither the Act nor Commission regulations identify the use of campaign funds to pay for  
17 the costs of security measures for federal candidates or officeholders as *per se* personal use. In

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<sup>2</sup> 52 U.S.C. 30114(a); *see also* 11 CFR 113.2(a)-(e).

<sup>3</sup> 52 U.S.C. 30114(b)(2); *see also* 11 CFR 113.1(g) (defining “personal use”).

<sup>4</sup> *See* 52 U.S.C. 30114(b)(2); 11 CFR 113.1(g)(1)(i).

<sup>5</sup> *See* 11 CFR 113.1(g)(1)(ii) (providing non-exhaustive list of expenses to be determined for personal use on a case-by-case basis).

<sup>6</sup> Personal Use of Campaign Funds, 60 FR 7862, 7867 (Feb. 9, 1995).

1 several advisory opinions, however, the Commission has permitted the use of campaign funds to  
2 pay for various security measures for federal candidates or officeholders.

3         The Commission has issued several advisory opinions authorizing the use of campaign  
4 funds for certain home security upgrades to protect against threats to the physical safety of  
5 federal officeholders and their families.<sup>7</sup> The facts presented in those advisory opinions  
6 indicated that the threats were motivated by the requestors' public roles as federal officeholders,  
7 candidates, or both. The Commission determined in each instance that the expenses for the  
8 proposed security upgrades would not have existed irrespective of the requestors' duties as  
9 federal officeholders or candidates.<sup>8</sup> Therefore, the Commission concluded that the use of  
10 campaign funds to pay for the security upgrades was permissible under the Act and Commission  
11 regulations.<sup>9</sup>

12         The Commission also has previously considered the implications of the heightened threat  
13 environment faced by Members of Congress collectively, necessitating increased residential  
14 security measures even if an individual Member has not received direct threats. For example, in  
15 Advisory Opinion 2017-07 (Sergeant at Arms), the Commission considered information from the

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<sup>7</sup> See Advisory Opinion 2022-02 (Steube) at 5 (approving use of campaign funds for the cost of a locking steel security gate at the federal officeholder's residence); Advisory Opinion 2020-06 (Escobar) at 2 (authorizing the use of campaign funds for security lighting and wiring at a federal officeholder's residence); Advisory Opinion 2011-17 (Giffords) at 3 (approving use of campaign funds for installing improved exterior lighting, improved locks, and a duress alarm button); Advisory Opinion 2011-05 (Terry) at 4 (approving use of campaign funds for installation of an exterior closed circuit television monitor); Advisory Opinion 2009-08 (Gallegly) at 4 (approving use of campaign funds for non-structural upgrades to home security system).

<sup>8</sup> Additionally, in Advisory Opinion 2020-06 (Escobar), the Commission specified that the requested wiring and lighting costs "constitute an integral part of an ordinary and necessary expense that may be paid with campaign funds." Advisory Opinion 2020-06 (Escobar) at 4. Likewise, in Advisory Opinion 2022-02 (Steube), the Commission stated that the requested locking steel gate at the entrance to the property was a "necessary component" of a residential security system and the costs of which "constitute an integral part of an ordinary and necessary expense that may be paid with campaign funds." Advisory Opinion 2022-02 (Steube) at 5.

<sup>9</sup> See Advisory Opinion 2022-02 (Steube) at 5; Advisory Opinion 2020-06 (Escobar) at 2; Advisory Opinion 2011-17 (Giffords) at 3; Advisory Opinion 2011-05 (Terry) at 4; Advisory Opinion 2009-08 (Gallegly) at 4.

1 House Sergeant at Arms about the threats faced by Members of Congress due to their status as  
2 federal officeholders, and the recommendations of the Capitol Police that Members of Congress  
3 install or upgrade residential security systems to protect themselves and their families in  
4 response to those threats. In light of that information, the Commission concluded that certain  
5 costs of installing or upgrading home security systems in and around a Member’s residence  
6 would constitute ordinary and necessary expenses incurred in connection with Members’ duties  
7 as federal officeholders and that, therefore, Members of Congress may use campaign funds to  
8 pay reasonable costs associated with such home security systems.<sup>10</sup>

9 In two advisory opinions, the Commission has also considered whether campaign funds  
10 may be used to pay for window security film as an authorized security enhancement in response  
11 to a heightened threat environment faced by federal officeholders.<sup>11</sup> In Advisory Opinion 2022-  
12 05 (Crapo), the Commission considered whether campaign funds could be used to pay for a  
13 series of residential security enhancements recommended by the U.S. Capitol Police, including  
14 the installation of security film “on all accessible windows to prevent surreptitious observation  
15 into the residence.”<sup>12</sup> Similarly, in Advisory Opinion 2023-04 (Guy for Congress), the  
16 Commission considered whether campaign funds could be used to pay for the costs to purchase  
17 and install a security window film to protect a Member of Congress’s home. The Commission  
18 determined in both instances that window security film, as a removeable security measure  
19 designed to mitigate potential threats stemming from the Members’ duties as federal

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<sup>10</sup> Advisory Opinion 2017-07 (Sergeant at Arms) at 3.

<sup>11</sup> See Advisory Opinion 2022-05 (Crapo) at 3 (approving use of campaign funds for the cost of window security film at the federal officeholder’s residence); Advisory Opinion 2023-04 (Guy for Congress) at 4 (authorizing the use of campaign funds for window security film at a federal officeholder’s residence).

<sup>12</sup> Advisory Opinion 2022-05 (Crapo) at 3.

1 officeholders, falls within the category of “non-structural security devices” for which campaign  
2 funds could be used, citing Advisory Opinion 2017-07 (Sergeant at Arms).<sup>13</sup>

3 The Commission also has permitted the use of campaign funds to pay for security  
4 measures beyond home security upgrades.<sup>14</sup> In Advisory Opinion 2021-03 (NRSC *et al.*), the  
5 Commission authorized the use of campaign funds to pay for “bona fide, legitimate, professional  
6 personal security personnel” as ordinary and necessary expenses incurred in connection with an  
7 officeholder’s duties.<sup>15</sup> The Commission concluded that such expenses were permissible due to  
8 the threats arising from members’ status as federal officeholders, including the heightened threat  
9 environment faced by Members of Congress collectively.<sup>16</sup>

10 Last, in two advisory opinions the Commission authorized the use of campaign funds to  
11 pay for reasonable cybersecurity expenses as ordinary and necessary expenses incurred in  
12 connection with duties as a federal officeholder.<sup>17</sup> In those opinions, the Commission also  
13 determined that the incidental benefit to others of cybersecurity measures, like the incidental  
14 benefit to others of home security measures to protect against physical harm, do not change the  
15 conclusion that such expenses are ordinary and necessary expenses incurred in connection with a  
16 federal officeholder’s duties.<sup>18</sup>

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<sup>13</sup> Advisory Opinion 2022-05 (Crapo) at 5; Advisory Opinion 2023-04 (Guy for Congress) at 4.

<sup>14</sup> See Advisory Opinion 2021-03 (NRSC *et al.*) at 2 (concluding that Members of Congress may use campaign funds to pay for bona fide, legitimate, professional personal security personnel to protect themselves and their immediate families due to threats arising from their status as officeholders).

<sup>15</sup> *Id.*

<sup>16</sup> See *id.* at 3.

<sup>17</sup> See Advisory Opinion 2018-15 (Wyden) at 4 (permitting use of campaign funds for cybersecurity expenses including hardware, software, consulting services, and emergency assistance); Advisory Opinion 2022-17 (Warren) at 5 (approving use of campaign funds for the incremental costs of professionally managed cybersecurity services for ongoing network monitoring, patch management, backup management, and remote incident remediation).

<sup>18</sup> See Advisory Opinion 2022-17 (Warren) at 5.

1 **II. Proposed Rule**

2 Consistent with the advisory opinions described above authorizing the use of campaign  
3 funds to pay for security measures to protect federal candidates and federal officeholders, the  
4 Commission proposes to amend the regulatory definition of personal use to clarify that campaign  
5 funds may be spent on certain security measures. A general overview of the proposed rule is  
6 followed by specific details of each proposal. The Commission seeks comments on the proposed  
7 rule and emphasizes that it has not made any final decisions on whether or how to amend its  
8 regulations.

9 **A. Overview**

10 The Commission’s current regulations at 11 CFR 113.1(g)(1) through (9) address the  
11 personal use of campaign funds. The Commission proposes to add a new paragraph (g)(10) to  
12 address the use of campaign funds for security measures.

13 Proposed 11 CFR 113.1(g)(10) would provide that the use of campaign funds to pay for  
14 the reasonable costs of security measures for a federal candidate or federal officeholder is not  
15 personal use. The new regulation would only permit the use of campaign funds to pay for  
16 security measures that address ongoing dangers or threats that would not exist irrespective of the  
17 individual’s status or duties as a federal candidate or federal officeholder. The proposed  
18 regulation would require that disbursements for security measures be for the usual and normal  
19 charge for such goods and services. Categories of permissible security measures and examples  
20 of such measures would be listed in the following subparagraphs.

21 Although the advisory opinions discussed above explicitly addressed only federal  
22 officeholders or individuals who were both federal candidates and federal officeholders, the  
23 proposed rule would apply to all candidates, including those who are not officeholders. This is



1 consistent with the statutory and regulatory framework on the personal use of campaign funds,  
2 which generally treats candidates and officeholders the same. Should the rule, if adopted,  
3 nonetheless distinguish between a federal officeholder and a candidate who is not a federal  
4 officeholder as it pertains to the permissible use of campaign funds to pay for security measures,  
5 for example on the grounds that candidates may not necessarily face the same heightened threat  
6 environment as sitting Members of Congress?

7 Proposed 11 CFR 113.1(g)(10)(i) would identify **non-structural security devices** as a  
8 category of security measures for which reasonable expenses would not be personal use and  
9 provides a non-exhaustive list of examples of non-structural security devices.

10 Proposed 11 CFR 113.1(g)(10)(ii) would identify **structural security devices** as a  
11 category of security measures for which reasonable expenses would not be personal use and  
12 include a non-exhaustive list of examples of structural security devices. This regulation would  
13 only permit structural security measures that are intended solely to provide security and not to  
14 improve the property or increase its value.

15 Proposed 11 CFR 113.1(g)(10)(iii) would identify **professional security personnel and**  
16 **services** as a category of security measures for which reasonable expenses would not be personal  
17 use.

18 Last, proposed 11 CFR 113.1(g)(10)(iv) would identify **cybersecurity software, devices,**  
19 **and services** as a category of security measures for which reasonable expenses would not be  
20 personal use.

21 **B. Proposed 11 CFR 113.1(g)(10) — candidate and federal officeholder security.**

22 Consistent with the advisory opinions described above, the proposed rule would permit  
23 the use of campaign funds to pay for the reasonable costs of security measures so long as the

1 security measures address ongoing dangers or threats that would not exist irrespective of the  
2 individual’s status or duties as a federal candidate or federal officeholder. The proposed  
3 regulation would require that disbursements for security measures be for the usual and normal  
4 charge for such goods or services. The usual and normal charge would be defined as, in the case  
5 of goods, the price of those goods in the market in which they are ordinarily purchased, and, in  
6 the case of services, the hourly or piecework charge for the services at a commercially  
7 reasonable rate prevailing at the time the services were rendered. The proposed rule would  
8 provide a non-exhaustive list of permissible security measures based on the security measures  
9 that the Commission has previously approved via advisory opinions. Are “reasonable costs” an  
10 appropriate standard for determining the amount in campaign funds that may be used to pay for  
11 the security measures, or does a reasonableness test invite uncertainty? Should the regulation  
12 apply a reasonableness standard to the amount of expenses overall or to the types of security  
13 measures for which campaign funds are used? How would the Commission evaluate the  
14 reasonableness of overall costs or of costs for specific security measures? What kind of  
15 guidelines could the Commission use to evaluate the reasonability of a given expense or of  
16 aggregate expenses for security measures? Should the Commission consider different limitations  
17 on the security measures or “ordinary and necessary costs of security measures”?<sup>19</sup> Apart from  
18 the reasonability of the amount in campaign funds used to pay for security measures, the  
19 Commission is proposing to require that disbursements be for the usual and normal charge for  
20 such goods or services. The proposed definition of “usual and normal charge” is derived from  
21 the Commission’s regulation at 11 CFR 100.52(d), describing in-kind contributions. This  
22 definition is also consistent with the requirement in 11 CFR 113.1(g)(1)(H), which prohibits a

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<sup>19</sup> See, e.g., 11 CFR 100.52(d)(2), 11 CFR 100.111(e)(2).

1 candidate from paying a salary to a family member unless the salary is in exchange for *bona fide*  
2 services and the salary payment is for the fair market value of the services. This is intended to  
3 prevent candidates or officeholders from converting campaign funds to personal use by paying  
4 friends or family members above-market rates for security-related goods and services and to  
5 ensure that candidates and officeholders do not receive a potentially impermissible in-kind  
6 contribution from vendors.<sup>20</sup> Should the Commission consider any other limitations to ensure  
7 that candidates and officeholders don't enrich friends and family members?

8           The requirement that threats be “ongoing” is meant to be flexible and permissive, but to  
9 still set some concrete limits on uses, such as after threats subside or the person is no longer an  
10 officeholder or candidate. Is “ongoing” appropriate limiting language to qualify under the rule?  
11 Should the Commission use different limiting language on the nature of the threats in addition to  
12 or instead of “ongoing” (e.g., “direct,” “specific” or “persistent”)? If a security measure is taken  
13 in response to a specific threat, as opposed to the “heightened threat environment” discussed  
14 below, should the Commission require that such threat or threats be reported to law enforcement  
15 before a committee may use campaign funds to pay for security measures related to that threat?

16           Several advisory opinions have approved the use of campaign funds for security  
17 measures due to ongoing — but not necessarily specific — threats to the requestors due to their  
18 status as federal officeholders and considering the “heightened threat environment” in recent  
19 years.<sup>21</sup> Should the rule explicitly require that candidates or officeholders face a “heightened  
20 threat environment”? If so, should the rule explain how the Commission will evaluate whether

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<sup>20</sup> See Advisory Opinion 2022-17 (Warren) fn. 22.

<sup>21</sup> See Advisory Opinion 2021-03 (NRSC *et al.*); Advisory Opinion 2017-07 (Sergeant at Arms).

1 there is a “heightened threat environment”? How would the Commission evaluate whether a  
2 “heightened threat environment” no longer exists?

3 The Commission has followed Advisory Opinion 2017-07 (Sergeant at Arms) in  
4 concluding there is a “heightened threat environment” in more recent advisory opinions, but  
5 should the rule allow other bases for establishing threats or dangers, such as a law enforcement  
6 opinion or some other standard? Should a law enforcement or a professional security firm’s  
7 recommendation be required before a candidate or officeholder may purchase security measures  
8 with campaign funds, or should such recommendation at least establish a presumption that the  
9 security measures do “address” an ongoing danger or threat? The Commission does not intend  
10 for the proposed rule to encompass privacy measures that do not provide a security function, *e.g.*  
11 privacy hedges or one-way mirror glass. Does the use of the term “security measures” in the  
12 proposed rule address that distinction or is additional clarification needed in the rule?

13 In addition to candidates and officeholders, should the rule also permit campaign funds to  
14 be used to pay for security measures specifically for staff members of a candidate or  
15 officeholder, for example, to pay for security measures to protect a staff member’s house?  
16 Further, should the rule also permit campaign funds to be used to pay for security measures for  
17 the candidate or officeholder’s family, including family members that do not reside with the  
18 candidate or officeholder? To ensure that security measures are primarily for the protection and  
19 benefit of a federal candidate or federal officeholder and no other persons, should the rule further  
20 stipulate that any benefits accruing to other household members or visitors from the security  
21 measures must be “incidental” to the protection of the candidate or officeholder?<sup>22</sup> Should

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<sup>22</sup> See Advisory Opinion 2022-17 (Warren) at 5 (concluding that candidate and officeholder may use campaign funds for cybersecurity measures to protect her home network, notwithstanding that family members and

1 certain security measures be explicitly permitted for the family members of candidates or  
2 officeholders?<sup>23</sup>

3 Finally, should the Commission require any recordkeeping requirements beyond those  
4 that apply to all disbursements by an authorized committee?<sup>24</sup>

5 **C. Proposed 11 CFR 113.1(g)(10)(i) — non-structural security devices.**

6 Under existing regulations, the Commission has authorized the use of campaign funds for  
7 non-structural security devices in several prior advisory opinions under the rationale that  
8 expenses for such security measures would not exist irrespective of the duties of a federal  
9 officeholder or candidate.<sup>25</sup>

10 Proposed 11 CFR 113.1(g)(10)(i) would identify non-structural security devices as a  
11 category of security measures for which reasonable expenses would not be personal use and  
12 provides a non-exhaustive list of examples of non-structural security devices that includes  
13 security hardware, locks, alarm systems, motion detectors, and security camera systems.

14 Are there additional examples of “non-structural security devices” that should be  
15 explicitly listed in this category? For example, should the rule explicitly allow payments for  
16 “training and equipment for personal defense?” Should the use of these devices be further

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visitors may also connect their personal devices to candidate’s home network, so long as any benefit to others are incidental).

<sup>23</sup> See Advisory Opinion 2021-03 (NRSC *et al.*) at 2.

<sup>24</sup> See 11 CFR 102.9.

<sup>25</sup> See Advisory Opinion 2011-17 (Giffords) at 3 (approving use of campaign funds for security expenses that would not exist irrespective of duties as a federal officeholder or candidate); Advisory Opinion 2011-05 (Terry) at 4 (same); and Advisory Opinion 2009-08 (Gallegly) at 4 (same). See also 2017-07 (Sergeant at Arms) at 2 (concluding that Members of Congress may use campaign funds for security expenses as ordinary and necessary expenses); Advisory Opinion 2018-15 (Wyden) at 3 (concluding that campaign funds can be used to pay for cybersecurity expenses as they are ordinary and necessary expenses in connection with duties of a federal office holder).

1 limited in any way, for example limiting the use of transportable security devices only to  
2 residences or offices?

3 **D. Proposed 11 CFR 113.1(g)(10)(ii) — structural security devices.**

4 The Commission has previously concluded that the use of campaign funds for certain  
5 structural security devices, such as wiring, lighting, gates, doors, and fencing, would not be  
6 personal use so long as they are not intended to improve the property or increase its value. The  
7 Commission reasoned that such expenses were ordinary and necessary expenses related to the  
8 duties of a federal candidate or federal officeholder.<sup>26</sup> Proposed 11 CFR 113.1(g)(10)(ii) would  
9 identify structural security devices as a category of security measures for which reasonable  
10 expenses may be paid for using campaign funds by federal officeholders and candidates.

11 Proposed 11 CFR 113.1(g)(10)(ii) would also include a non-exhaustive list of examples of  
12 structural security devices. The proposed rule would only permit structural security measures  
13 that are intended solely to provide security and not to improve the property or increase its value.

14 Should the use of structural security devices be limited to particular properties, such as a  
15 candidate or officeholder’s residence, which are the only properties for which the Commission  
16 has specifically approved structural security devices?<sup>27</sup> Is the limitation on the use of structural  
17 security devices — namely that the devices may not be intended to improve the property or  
18 increase its value — sufficient or should the Commission use a different limiting language?<sup>28</sup>

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<sup>26</sup> See Advisory Opinion 2020-06 (Escobar) at 3 (authorizing the use of campaign funds for security lighting and wiring at member’s residence); Advisory Opinion 2022-02 (Steube) at 5 (permitting the use of campaign funds for the installation of a security gate at member’s residence).

<sup>27</sup> See Advisory Opinion 2020-06 (Escobar) at 3 (authorizing the use of campaign funds for security lighting and wiring at member’s residence); Advisory Opinion 2022-02 (Steube) at 5 (permitting the use of campaign funds for the installation of a security gate at member’s residence); Advisory Opinion 2022-05 (Crapo) at 5 (concluding that campaign funds can be used for various security upgrades at member’s residences).

<sup>28</sup> See Advisory Opinion 2022-02 (Steube) at 4-5 (“[T]he purchase and installation of the gate is intended to provide an effective security system and is not intended for the purpose of improving your home.”); Advisory

1 Should the proposed rule provide that an incidental improvement to the property or the increase  
2 in its value as a result of an installation of a structural security device nonetheless would be an  
3 acceptable use of campaign funds?<sup>29</sup>

4 **E. Proposed 11 CFR 113.1(g)(10)(iii) — professional security personnel and**  
5 **services.**

6 The Commission has previously authorized the use of campaign funds for personal  
7 security expenses for Members of Congress and their families as ordinary and necessary  
8 expenses arising from their status as officeholders when they are not under the protection of  
9 federal agents.<sup>30</sup> Proposed 11 CFR 113.1(g)(10)(iii) would establish professional security  
10 personnel and services as a category of security expenses for which campaign funds may be  
11 used.

12 Under the proposed rule, campaign funds could be used to pay for personal security  
13 expenses of federal candidates and officeholders so long as the security measures address  
14 ongoing dangers or threats that would not exist irrespective of the individual’s status or duties as  
15 a federal candidate or federal officeholder. Should this proposed rule be further limited such that  
16 payment for professional security personnel or similar services is permitted only when  
17 candidates or officeholders are not already receiving protection from law enforcement?<sup>31</sup> Should  
18 the proposed rule explicitly permit the use of campaign funds for professional security personnel

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Opinion 2020-06 (Escobar) at 3 (approving use of campaign funds for installation of security lighting and wiring “meant solely for supporting the effectiveness of the security system and not as an ‘improvement’ to your home.”).

<sup>29</sup> *Id.*

<sup>30</sup> *See* Advisory Opinion 2021-03 (NRSC *et al.*) at 3 (concluding that Members of Congress may use campaign funds to pay for security personnel to protect themselves and their immediate families due to threats arising from their status as officeholders “when federal agents are not protecting the Members or the Members’ families.”).

<sup>31</sup> *Id.*

1 or similar services for the immediate family members of federal candidates or federal  
2 officeholders?<sup>32</sup> Should the proposed rule require that professional security personnel be *bona*  
3 *fide*, legitimate, professional personal security or have additional qualifications or licenses?

4 **F. Proposed 11 CFR 113.1(g)(10)(iv) — cybersecurity software, devices, and**  
5 **services.**

6 Lastly, in two prior instances, the Commission has authorized the use of campaign funds  
7 for cybersecurity measures including software, devices, and services as ordinary and necessary  
8 expenses related to a federal officeholder’s duties.<sup>33</sup> Proposed 11 CFR 113.1(g)(10)(iv) would  
9 establish cybersecurity software, devices, and services as a category of security measures that  
10 may be paid for using campaign funds for federal officeholders and candidates. Should this  
11 proposed rule be further limited to only those that provide “incidental” benefits to persons other  
12 than the candidate or officeholder, such as family members or campaign staff, who might also  
13 benefit from enhanced cybersecurity” when using the software, devices, or services provided to  
14 the candidate or officeholder?<sup>34</sup> And, if so, should the Commission define the scope of  
15 permissible “incidental” benefits?

16 **Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

17 The Commission certifies that the proposed rules, if adopted, would not have a  
18 significant economic impact on a substantial number of small entities. The proposed rules would

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<sup>32</sup> *Id.*

<sup>33</sup> *See* Advisory Opinion 2022-17 (Warren) at 5 (concluding that federal officeholder could use campaign funds for cybersecurity improvements to her home network without violating the prohibition against personal use “so long as the benefits accruing to household members and visitors required by the protection of the home network are incidental.”); Advisory Opinion 2018-15 (Wyden) at 4 (concluding that the use of campaign funds to pay for certain cybersecurity measures for United States Senators would constitute ordinary and necessary expenses incurred in connection with their duties as federal officeholders.)

<sup>34</sup> *See* Advisory Opinion 2022-17 (Warren) at 5.



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1 provide flexibility to principal campaign committees that choose to use campaign funds to pay  
2 for security measures for federal candidates or officeholders. Any proposed rule that could be  
3 construed as placing an obligation on a principal campaign committee would apply only to  
4 campaigns that choose to pay for security measures for federal candidates or officeholders. The  
5 proposed rules would not impose any new recordkeeping, reporting, or financial obligations on  
6 principal campaign committees that do not choose to pay for security measures for federal  
7 candidates or officeholders, and any such new obligations that may be imposed on principal  
8 campaign committees that do choose to pay for such security measures would be minimal. Thus,  
9 to the extent that any entities affected by these proposed rules might fall within the definition of  
10 “small businesses” or “small organizations,” the economic impact of complying with these rules  
11 would not be significant.

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1 **List of Subjects in**

2 *11 CFR Part 113*

3 Campaign funds.

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1 For the reasons set out in the preamble, the Federal Election Commission proposes to  
2 amend 11 CFR part 113 as follows:

3 **Part 113 – PERMITTED AND PROHIBITED USES OF CAMPAIGN FUNDS**

4 1. The authority citation for part 113 continues to read as follows:

5 **Authority:** 52 U.S.C. 30102(h), 30111(a)(8), 30114, and 30116.

6 **§ 113.1 [Amended]**

7 2. In Section 113.1:

8 a. Add new paragraph (g)(10) to read as follows:

9 (10) *Candidate and federal officeholder security.* The use of campaign funds to pay for the  
10 reasonable costs of security measures for a federal candidate or federal officeholder is not  
11 personal use, so long as the security measures address ongoing dangers or threats that would not  
12 exist irrespective of the individual’s status or duties as a federal candidate or federal  
13 officeholder. Disbursements for security measures must be for the usual and normal charge for  
14 such goods or services. *Usual and normal charge* means, in the case of goods, the price of those  
15 goods in the market in which they are ordinarily purchased, and, in the case of services, the  
16 hourly or piecework charge for the services at a commercially reasonable rate prevailing at the  
17 time the services were rendered. Examples of such security measures include, but are not limited  
18 to:

- 19 (i) Non-structural security devices, such as security hardware, locks, alarm  
20 systems, motion detectors, and security camera systems;
- 21 (ii) Structural security devices, such as wiring, lighting, gates, doors, and fencing,  
22 so long as such measures are intended solely to provide security and not to  
23 improve the property or increase its value;

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- 1           (iii)       Professional security personnel and services;
- 2           (iv)       Cybersecurity software, devices, and services.

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5   Dated: \_\_\_\_\_

6   On behalf of the Commission,

7   **Sean J. Cooksey,**

8

9   *Chairman,*

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11   *Federal Election Commission.*

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