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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 21-14-B
AGENDA ITEM
For meeting of March 25, 2021
SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Shana M. Broussard *SMB*
Chair

Ellen L. Weintraub *ELW*
Commissioner

DATE: March 19, 2021

RE: Revised Draft Interpretive Rule on Use of Campaign Funds by Members of
Congress for Personal and Residential Security

Attached is a Revised Draft Interpretive Rule on the Use of Campaign Funds by Members of Congress. We request that this draft be placed on the Agenda for the March 25, 2021 Open Meeting.

1 **FEDERAL ELECTION COMMISSION**

2 **[Notice 2021-XX]**

3 **Use of Campaign Funds by Members of Congress for Personal and Residential**
4 **Security**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Notice of interpretive rule.

7 **SUMMARY:** The Federal Election Commission is providing guidance to members of
8 Congress on the use of campaign funds to pay for personal and residential security.

9 **DATES:** Effective on [Insert date of publication in *FEDERAL REGISTER*].

10 **FOR FURTHER INFORMATION CONTACT:** Robert Knop, Assistant General
11 Counsel, rknop@fec.gov, (202) 694-1650 or (800) 424-9530.

12 **SUPPLEMENTARY INFORMATION:** The Federal Election Campaign Act (the
13 “Act”) identifies six categories of permissible uses of contributions accepted by a federal
14 candidate. One applies specifically to federal officeholders, allowing “ordinary and
15 necessary expenses incurred in connection with the duties of the individual as the holder
16 of Federal office.” 52 U.S.C. 30114(a)(2); 11 CFR 113.2(a).

17 In recent years, the Commission has issued a number of advisory opinions
18 authorizing the use of campaign funds for the installation of, or improvements to, a
19 residential security system to protect against threats to officeholders’ physical safety, on
20 the grounds that the need for such security expenses would not exist if not for the
21 officeholders’ activities or duties. The Commission first considered this issue in the
22 context of direct threats to individual officeholders, and then with respect to the
23 heightened threat environment experienced by federal officeholders as a group.

1 In Advisory Opinion 2020-06 (Escobar), Advisory Opinion 2011-17 (Giffords), Advisory
2 Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly), members of
3 Congress faced specific and ongoing threats to the safety of themselves and their
4 families. The facts presented in those advisory opinions suggested that the threats were
5 motivated by the members' public roles as federal officeholders, candidates, or both. In
6 all four instances, the U.S. Capitol Police or the House Sergeant at Arms recommended
7 specific security upgrades to the members' homes due to the continuing threats.

8 The Commission concluded in each instance that the expenses for the proposed
9 security upgrades would not have existed irrespective of the members' duties as federal
10 officeholders or candidates. Therefore, the Commission concluded that the use of
11 campaign funds to pay for the non-structural security upgrades or lighting and wiring
12 improvements recommended by the Capitol Police and Sergeant at Arms would not
13 constitute a prohibited personal use of campaign contributions under the Act or
14 Commission regulations. *See* Advisory Opinion 2020-06 (Escobar) at 3; Advisory
15 Opinion 2011-17 (Giffords) at 3; Advisory Opinion 2011-05 (Terry) at 4; Advisory
16 Opinion 2009-08 (Gallegly) at 4.

17 The Commission has also previously considered the implications of the
18 heightened threat environment faced by members of Congress collectively, necessitating
19 increased residential security measures even if an individual member has not received
20 direct threats. In Advisory Opinion 2017-07 (Sergeant at Arms), the Commission
21 considered information from the House Sergeant at Arms about the threats faced by
22 members of Congress due to their status as federal officeholders, and his
23 recommendation, as chief law enforcement official for the U.S. House of

1 Representatives, that members of the U.S. House of Representatives use residential
2 security systems due to the threat environment. Advisory Opinion Request, Advisory
3 Opinion 2017-07 (Sergeant at Arms) (June 21, 2017). In light of that information, the
4 Commission concluded that certain costs of installing or upgrading home security
5 systems would constitute ordinary and necessary expenses incurred in connection with
6 members' duties as federal officeholders, and that therefore members of Congress may
7 use campaign funds to pay for reasonable costs associated with home security
8 systems. *See* Advisory Opinion 2017-07 (Sergeant at Arms) at 3. The Commission's
9 conclusion in that advisory opinion was limited to the use of campaign funds for
10 residential "non-structural security devices" and the Commission specifically authorized
11 the use of campaign funds for the installation or upgrade of "cameras, sensors, distress
12 devices, and similar non-structural security devices, as well as locks, in and around a
13 member's residence." *Id.*

14 In recent years, the incidence of threats against members of Congress has
15 increased. In his 2017 request, the House Sergeant at Arms characterized the increase in
16 threats as "the new daily threat environment faced by Members of Congress." Advisory
17 Opinion Request at AOR001, Advisory Opinion 2017-07 (Sergeant at
18 Arms). Specifically, the House Sergeant at Arms stated that in calendar year 2016, the
19 United States Capitol Police investigated 902 threatening communications received by
20 members, and in the first six months of 2017, they investigated 950 such
21 communications. *Id.* A letter received in January 2021 from the National Republican
22 Senatorial Committee and the National Republican Congressional Committee seeking an
23 advisory opinion request from the Commission identified multiple instances of threats

1 against members of Congress, including incidences of vandalism at the homes of Senator
2 Mitch McConnell and Speaker of the House Nancy Pelosi¹, confrontations of members of
3 Congress at airports in the D.C. region², and threats against members of Congress related
4 to the second impeachment trial of President Donald Trump, including “plots to attack
5 members of Congress during travel to and from the Capitol complex during the
6 trial.”³ Letter from Jessica Johnson, Chris Winkelman, Ryan Dollar, and Erin Clark at 6
7 (January 26, 2021) (“NRSC and NRCC Letter”)⁴. On January 6, 2021, an armed mob
8 stormed the U.S. Capitol, temporarily stopping Congress’ counting of the Electoral
9 College results of the November 2020 presidential election.⁵ Following the insurrection
10 attempt at the U.S. Capitol, members of Congress reportedly told their party leadership
11 that they were “in fear for their lives and the lives of their families.”⁶

¹ See Allyson Waller, Homes of Mitch McConnell and Nancy Pelosi Are Reported Vandalized, New York Times, Jan. 2, 2021, <https://www.nytimes.com/2021/01/02/us/mcconnell-pelosi-house-vandalized.htm>

² Alex Moe and Alicia Victoria Lozano, Travel security tightened for members of Congress after harassment, NBC News, Jan. 9, 2021, <https://www.nbcnews.com/politics/congress/travel-security-tightened-members-congress-after-harassment-n1253647>

³ Michael Balsamo, AP source: Lawmakers threatened ahead of impeachment trial, Associated Press, Jan. 25, 2021, <https://apnews.com/article/lawmakers-trump-impeachment-trial-b9a44a269d6cfeee28e79b46572d28a6>

⁴ https://www.fec.gov/files/legal/aos/2021-03/202103_R1.pdf

⁵ AP Photos: Scenes of violence at U.S. Capitol shock world, Associated Press, Jan. 6, 2021, <https://apnews.com/article/joe-biden-donald-trump-electoral-college-elections-de812995a8c7cbea5c1de56a3d1aa007>

⁶ Jamie Gangel, Marshall Cohen, and Annie Grayer, Members of Congress fear for their lives and security after deadly riot, sources say, CNN, Jan. 15, 2021, <https://www.cnn.com/2021/01/14/politics/capitol-hill-lawmakers-security-concerns/index.html>

1 The Commission is cognizant that “these types of threats necessitate a proactive
2 rather than reactive response. Members are unfortunately no longer able to wait until
3 confirmation of a threatening communication before taking prudent steps to protect
4 themselves and their family.” Advisory Opinion 2017-07 (Sergeant at Arms) (citing
5 Comment of Rep. Gregg Harper (July 12, 2017)). The Commission believes that
6 guidance describing examples of circumstances in which the use of campaign funds for
7 security purposes is permissible will assist members to expeditiously take safety
8 measures recommended by the U.S. Capitol Police.

9 As described above, the Commission has previously addressed requests to use
10 campaign funds for security purposes through the advisory opinion process. However,
11 the Act only authorizes the Commission to issue an advisory opinion in response to a
12 “complete written request” from a person about “a specific transaction or activity by the
13 person.” 52 U.S.C. 30108(a); *see also* 11 CFR 112.1(b). “Requests presenting a general
14 question of interpretation, or posing a hypothetical situation, or regarding the activities of
15 third parties, do not qualify as advisory opinion requests.” 11 CFR 112.1(b); *see also*
16 H.R. Rep. 96-422 at 20 (“Advisory Opinions may not be issued in response to a request
17 posing a hypothetical situation or to a request regarding the activities of third
18 parties”). Although advisory opinions may be relied upon by “any person involved in
19 any specific transaction or activity which is indistinguishable in all its material aspects
20 from the transaction or activity with respect to which [the] advisory opinion is rendered,”
21 *see* 52 U.S.C. 30108(c)(1)(B), the Commission cannot issue general guidance not tied to
22 a specific transaction or activity through an advisory opinion.

1 In light of the seriousness and immediacy of the current threat environment, the
2 Commission is issuing this interpretive rule to provide guidance to all members of
3 Congress on examples of circumstances under which they may use campaign funds to
4 pay for security purposes.

5 **I. Residential Security**

6 One example of an expense interpreted by the Commission as an “ordinary and
7 necessary expense[] incurred in connection with duties of [an] individual as a holder of
8 Federal office,” 52 U.S.C. 30114(a)(2), is an expense for the installation (or upgrade) and
9 monitoring costs of cameras, sensors, distress devices, and similar non-structural security
10 devices (including any wiring and lighting necessary for the function of such security
11 devices), as well as locks, in and around a member’s residence when: (1) the U.S.
12 Capitol Police, the Office of the Sergeant at Arms of the U.S. House of Representatives,
13 or the Office of the Sergeant at Arms of the U.S. Senate (collectively, “U.S. Capitol Law
14 Enforcement Offices”) has recommended that members of Congress use residential
15 security systems and (2) the use of campaign funds for residential security is for the
16 installation or upgrading of residential security systems at the member’s home, including
17 necessary lighting and wiring enhancements necessary for the proper functioning of a
18 residential security system.

19 House Sergeant at Arms Paul D. Irving, in his request in AO 2017-07 (Sergeant at
20 Arms), stated, “It is my position that Members of the U.S. House of Representatives
21 require a residential security system due to the threat environment.” It is the
22 Commission’s understanding that this recommendation remains active. To the extent that
23 this understanding is correct, the condition that a U.S. Capitol Law Enforcement Office

1 recommend that members of Congress use a residential security system remains
2 satisfied.

3 **II. Personal Security Personnel**

4 Another example of an expense interpreted by the Commission as an “ordinary
5 and necessary expense[] incurred in connection with duties of [an] individual as a holder
6 of Federal office,” 52 U.S.C. 30114(a)(2), is an expense for personal security personnel
7 when: (1) one or more of the U.S. Capitol Law Enforcement Offices has recommended
8 that members of Congress use personal security personnel due to the heightened threat
9 environment facing members of Congress generally or that the individual member use
10 personal security personnel due to a specific threat to the member related to his or her
11 officeholder status and (2) the use of campaign funds for personal security personnel is
12 for the member or the member’s immediate family, including a spouse, minor children, or
13 other relatives residing with the member.

14 The Commission is issuing this interpretive rule in light of the current heightened
15 threat environment. This interpretive rule will expire two years after the effective date;
16 the Commission may issue a new interpretive rule based on the threat environment facing
17 members of Congress at that time.

18 The Commission emphasizes that the use of campaign funds for security purposes
19 is not limited to the circumstances described above. This interpretive rule sets out two
20 examples of conditions under which security expenses will constitute ordinary and
21 necessary expenses of a federal officeholder. Any individual who wishes to use
22 campaign funds for security expenses not covered by this interpretive rule may submit an

1 advisory opinion request to the Commission pursuant to 52 U.S.C. 30108 and 11 CFR
2 112.1.

3 This document is an interpretive rule explaining the Commission’s interpretation
4 of existing statutory and regulatory provisions and, therefore, does not constitute an
5 agency action requiring notice of proposed rulemaking, opportunities for public
6 participation, prior publication, or delay in effective date under 5 U.S.C. 553 of the
7 Administrative Procedure Act. It does not bind any members of the general public, nor
8 does it create or remove any rights, duties, or obligations. The provisions of the
9 Regulatory Flexibility Act, which apply when notice and comment are required by the
10 Administrative Procedure Act or another statute, do not apply. *See* 5 U.S.C. 603(a).

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On behalf of the Commission,

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Shana M. Broussard
Chair
Federal Election Commission

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DATED: _____
BILLING CODE: 6715-01-P

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