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FEDERAL ELECTION REGULATIONS

COMMUNICATION

FROM

THE CHAIRMAN, FEDERAL ELECTION COMMISSION

TRANSMITTING

THE COMMISSION'S PROPOSED REGULATIONS GOVERNING FEDERAL ELECTIONS, PURSUANT TO SECTION 316(c) OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED

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FEDERAL ELECTION COMMISSION,
Washington, D.C., January 11, 1977.

Hon. THOMAS P. O'NEILL,
Speaker, House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: In accordance with § 316(c) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 438, the Federal Election Commission transmits herewith a set of separate proposed regulations which comprehensively treat that Act's requirements, including notably the requirements imposed by the 1976 Amendments. Specifically, the enclosures include the Disclosure Regulation, Parts 100 through 108, which elaborate on the registration and reporting requirements to which all Federal candidates are subject; the Independent Expenditure Regulation, Part 109, delineating the conditions of and restrictions on independent expenditures; the Contribution and Expenditure Limitation Regulation, Part 110, describing the Act's limitations on contributions and expenditures by candidates, committees and other persons; the Compliance Procedure Regulation, Part 111, which sets forth the Commission's procedures for treating all enforcement activity; the Advisory Opinion Procedure Regulation, Part 112, reflecting the Commission's advisory opinion function; the Office Account Regulation, Part 113, establishing reporting requirements for office accounts pursuant to 2 U.S.C. § 439a; the Corporate and Labor Organization Activity Regulation, Part 114, which elaborates the right and duties attendant upon participation in the electoral process by corporations, unions, membership organizations and similar entities; the Federal Contractor Regulation, Part 115, implementing the limitations on Federal contractor election activities; the Convention Financing Regulation, Parts 120 through 125, the Presidential Primary Matching Fund Regulation, Parts 130 through 134, and the General Election Public Financing Regulation, Parts 140 through 146, which respectively reflect the requirements of chapters 95 and 96 of Title 26, United States Code, with regard to public financing of national party conventions, the presidential primary process and the presidential general election. These proposed regulations were published for comment in the *Federal Register* on May 26, 1976 (41 FR 21572), on June 25, 1976 (41 FR 26396) and on July 9, 1976 (41 FR 28413). Extensive hearings were held by the Commission on June 7 through 11, 1976, and on July 7, 1976.

This transmittal represents a resubmission of the regulations originally submitted to the Congress on August 3, 1976, as supplemented by transmittals dated August 5, August 6, and August 26, 1976. We now resubmit them with two modifications: an addition permitting the distribution of voter registration materials in § 114.4(c)(2) of the regulation pertaining to corporate and labor organization activity, published for public comment on September 10, 1976 (41 FR 38522); and amendments to the disclosure regulation in §§ 102.9, 102.10 and 104.2 pertaining to the specificity of expenditure information re-

ported to the Commission, published for public comment on October 18, 1976 (41 FR 45932).

It is the Commission's hope that these regulations will provide persons subject to this Act with a readable and practical guide for effective participation in the Federal election process. We trust they will assist persons subject to the Act, and the public in general, in going forward with the campaign process in a manner in which all citizens may have confidence.

Sincerely yours,

VERNON W. THOMSON,
Chairman for the Federal Election Commission.

Enclosure.

EXPLANATION AND JUSTIFICATION OF THE DISCLOSURE REGULATIONS, PARTS 100–108

§ 100.1 Scope.

These regulations implement sections 431–456 of Title 2 of the United States Code. and Chapters 95 and 96 of Title 26. United States Code. Contributions and expenditures required to be disclosed under Title 2 and under these regulations do not necessarily count for limitation purposes under 2 U.S.C. § 441a.

These regulations are issued pursuant to the authority of the Commission codified in 2 U.S.C. §§ 437d(a)(9), 438(a)(10) and 26 U.S.C. §§ 9009(b) and 9039(b).

§ 100.2 Candidate.

There are three ways for an individual to become a candidate: (1) take action under state law; (2) receive contributions or make expenditures or give consent to another person to do so: and (3) fail to disavow the activity of another person making contributions or expenditures after the Commission has given the individual written notice.

The first two methods follow the statutory language of 2 U.S.C. § 431(b). The third route to become a candidate is necessary to prevent persons from taking unauthorized action which would result in an individual meeting the statutory definition of candidate. If the

Commission becomes aware of such activity, it can give the indivdual an opportunty to disavow the activity.

§ 100.3 Commission.

This section notifies the public of the Federal Election Commission's address to facilitate full disclosure.

§ 100.4 Contribution.

This definition parallels the statute, 2 U.S.C. § 431(e). Subsidiary terms, such as "loan," "money" and "anything of value," and "usual and normal charge" have been defined to implement the statute. A loan is a contribution only to the extent of the unrepaid portion.

The donation of costs of fundraising has been added in the regulation, as has the exclusion of legal and accounting services from the definition of contribution.

A transfer of funds from a political committee or other similar source to another committee or candidate is reportable as a contribution. The statute says "committee or other source." Read literally, this would mean every contribution to a political committee or candidate would be a transfer. The definition has therefore been narrowed to sources similar to political committees or organizations.

"Personal services rendered without charge" is defined in the regulations as services provided when the volunteer is not being compensated by an employer for the time used for campaign activity.

Payments for the purpose of determining whether an individual should become a candidate if the individual does not subsequently become a candidate is excluded from the definition of contribution. This exception was made so that an individual is not discouraged from "testing the waters" to determine whether his candidacy is feasible.

The rental value of the use of an individual's residence is excluded from the definition of contribution. This exception was made because requiring disclosure in the instance is truly a *de minimis* matter. Computation of the value of a residence would also be exceedingly burdensome to the candidate and contributor alike.

Also excluded from the definition of contribution is a donation to cover costs of recounts and election contests, since, though they are related to elections, are not Federal elections as defined by the Act.

§ 100.5 Support.

"Support" is defined in the regulations to mean the making of any contribution or any expenditure on behalf of a candidate or political committee.

§ 100.6 Election.

General election is defined to include not only the normal November election but also an election where the result will cause an individual to assume an office vacant prior to the election for whatever reason. This will cover situations like the New Hampshire Senate race. an election which is the result of the death or resignation of the incumbent. and even the unusual case where an election to fill a two and one-half month term occurs on the same day as the normal November election.

The definitions under "election" are designed to be neutral as between party affiliated and independent candidates. Generally, each candidate will participate in two elections: The primary (for inde-

pendents, a comparable period during which he or she may secure a position on the general election ballot) and the general election.

The terms "run off election," "caucus or convention" and "special election" are defined in the regulations to facilitate implementation of the statute.

Non-major party candidates are treated the same as independent candidates. This was done because non-major parties usually do not have actual primary elections and spend a great deal of effort to secure a ballot position. Therefore, their primary is considered to occur on the last day for a ballot position in the general election or on the date of the last party primary in that state, or on the date of their nomination, at the choice of the candidate.

§ 100.7 Expenditure.

The definition of expenditure parallels the statute, 2 U.S.C. § 431(f). As with the definition of contribution (§ 100.4), the subdefinitions of "payment," "money" and "anything of value" have been clarified.

It was suggested that only the payment of interest on the loan be treated as an expenditure and not the repayment of the loan itself. For purposes of the limitations under 2 U.S.C. § 441a(b), we agree. Nevertheless, for purposes of the disclosure regulations, the creation of an obligation to repay should constitute an expenditure and must be reported. The reporting forms provide for the reporting of loan repayments in a way to eliminate double-counting.

The regulations provide that only a *written* contract, promise, or agreement to make any expenditure is included in the definition of "expenditure." This is because such written promises are likely to be fulfilled while oral commitments are not.

Specifically excluded from the definition of "expenditure" are contributions by an individual from personal funds to a political committee or candidate, to clear up confusion caused by the fact that a contribution and expenditure are identically defined by the Act.

Also excluded from the definition are payments for "testing the waters" to determine the feasibility of candidacy as under § 100.4(b)(1).

Definitions of terms such as "labor organization," "election," and "members" are supplied to help implement 2 U.S.C. § 431(f)(4)(C), and the reporting obligations are set out. The regulation provides that all primaries are one election, and that all general elections are one election, for purposes of the $2,000 reporting floor. It is the Commission's intention that spending by one subsidiary of a corporation, or local of a union, shall not be attributed to the parent corporation or union unless the communication was funded or otherwise caused by the parent.

The rental value of an individual's residence used for campaign-related activities, from non-campaign funds for routine living expenses by a candidate, and legal and accounting services are excluded.

A definition is supplied for the phrase "in connection with the solicitation of contributions" as used under 2 U.S.C. § 431(f)(4)(I). It is provided that fundraising expenditures need not be allocated on a state by state basis except where the fundraising is aimed at a particular state and takes place within 28 days of a primary, convention or caucus.

§ 100.8 Federal office.
Follows 2 U.S.C. § 431(c).

§ 100.9 File, filed or filing.
Time and place of filing are specified so as to provide for uniformity. The authority for such a regulation is 2 U.S.C. § 438(a)(10).

§ 100.10 Identification.
Follows 2 U.S.C. § 231(j).

§ 100.11 Occupation.
This term is used in the statute, but is not defined in it.

§ 100.12 Principal place of business.
This term is used in the statute, but is not defined in it.

§ 100.13 Person.
This definition follows 2 U.S.C. § 431(h).

§ 100.14 Political committee.
The definition of principal campaign committee follows 2 U.S.C. (d). The four types of political committees are:

(1) principal campaign committee;
(2) single candidate committee;
(3) multicandidate committee; and
(4) party committee.

The definition of principal campaign committee follows 2 U.S.C. § 431(n).
A single candidate committee is a political committee other than a principal committee which supports only one candidate.
The definition of "multicandidate political committee" follows 2 U.S.C. § 441a(a)(4).
The definition of party committee is needed so that it can be distinguished from other multicandidate committees.
The term "authorized" is used in the Act but is not defined in it.
The term "affiliated" is used in the Act but not defined in it. This definition follows the anti-proliferation language in 2 U.S.C. § 441(a)(4), and parallels the definition in § 110.3.

§ 100.15 Connected organization.
This term is defined for purposes of the Statement of Organization. 2 U.S.C. § 433(b)(2).

§ 100.16 Political party.
This definition follows 2 U.S.C. § 431(m).

§ 100.17 National committee.
This definition follows 2 U.S.C. § 431(k).

§ 100.18 State.
This definition follows 2 U.S.C. § 431(i).

§ 100.19 State committee, subordinate committee.
This definition identifies those party organizations responsible for party activity below the statewide level.

§ 100.20 Act.
This definition follows 2 U.S.C. § 431(o), and includes reference to Chapters 95 and 96 of Title 26.

PART 101—CANDIDATE STATUS AND DESIGNATIONS

§ 101.1 Duration of candidate status.

Candidates, unless their personal reporting requirement is waived, continue to report until all of their personal debts concerning their election are extinguished. They may terminate candidate status by letter.

§ 101.2 Candidate designations.

After becoming a candidate an individual is required within 30 days to designate a principal campaign committee, and campaign depositories. This is accomplished on one form, which also contains the waiver request. These designations are necessary to implement 2 U.S.C. §§ 432(e) and 437b(a)(1).

If a candidate receives contributions designated for the general election prior to the primary election, the candidate is required to use acceptable accounting methods to separate these contributions. Candidates have the option, among others, of maintaining separate checking accounts or keeping separate records and ledgers.

This section allows the receipt of contributions for the general election prior to the primary election but creates safeguards which minimize the possibility of general election receipts being commingled with primary election receipts.

§ 101.3 Waiver of candidate reporting.

This section provides for the waiver of a candidate personally reporting if the candidate does not make expenditures or receive contributions. This section is based on 2 U.S.C. § 436(b)(1). The waiver becomes effective at the time the application is filed.

PART 102—REGISTRATION AND ORGANIZATION OF POLITICAL COMMITTEES

§ 102.1 Registration of political committees.

Political committees are required to file a Statement of Organization with the Commission, the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate, pursuant to 2 U.S.C. § 433(a). Existing committees which have registered with the supervisory officers do not have to re-register. Relief has been given to affiliated committees so that all affiliates do not have to list all other affiliates. Only the parent has that responsibility.

§ 102.2 Forms and filing.

This section follows 2 U.S.C. § 433(b).

§ 102.3 Changes or correction in information.

This section follows 2 U.S.C. § 433(c).

§ 102.4 Discontinuance of registration.

This section follows 2 U.S.C. § 433(d).

§ 102.5 Identification number.

Each political committee is assigned an identification number to implement the full disclosure principles of the Act, and for ease in clearly identifying committees with similar names.

§ 102.6 Federal committees and accounts; separation of Federal and non-Federal funds.

This section provides two options for political committees which participate in state political campaigns. They can either report all receipts and expenditures or establish a separate Federal committee and report only Federal activity. This should be especially beneficial for state political party committees, the bulk of whose activity is typically on behalf of non-Federal candidates. The segregation of funds prevents the commingling of contributions which may be lawful for state candidates but unlawful for Federal candidates.

§ 102.7 Organization of political committees.

This section follows 2 U.S.C. §432(b).

This section follows 2 U.S.C. § 432(a), and provides for continuity in the offices of chairman and treasurer.

§ 102.8 Receipts of contributions.

§ 102.9 Accounting for contributions and expenditures.

This section follows 2 U.S.C. § 432(c) and (d). Subsection (e) recognizes that, even with a treasurer's best efforts, some information cannot be obtained. In that case, the treasurer is to keep a record of the efforts to obtain it.

§ 102.10 Petty cash fund.

A political committee may maintain a petty cash fund for making expenditures of less than $100. This section implements 2 U.S.C. § 437b(b).

§ 102.11 Designation of principal campaign committee.

This section follows 2 U.S.C. § 432(e), and requires that a principal campaign committee defined as a political committee, must register and report. The phrase "occasional, isolated or incidental support" as used in the statute is defined, and is limited to $1,000 per candidate per election.

§ 102.12 Authorization of political committee.

This section provides a procedure for authorization as referred to in 2 U.S.C. § 437b(c).

§ 102.13 Notice; solicitation of contributions.

This section follows 2 U.S.C. §435(b).

§ 102.14 Records; retention.

This section provides a cross-reference for convenience.

§ 102.15 Segregated funds.

This section follows 2 U.S.C. § 432(b).

PART 103—CAMPAIGN DEPOSITORIES

§ 103.1 Notification of the Commission.

This section provides that the Commission be notified of the campaign depositories which are designated pursuant to § 101.2 and § 102.3.

§ 102.2 Depositories

The section permits only State and nationally chartered banks to be used as campaign depositories as required by 2 U.S.C. § 437b (a) (1) and (a) (2).

§ 103.3 Deposits and expenditures.

All contributions must be deposited in the appropriate campaign depository within 10 days. All expenditures must be made by check drawn on the appropriate account in the depository except that expenditures for $100 or less may be made from a petty cash fund.

Subsection (a) follows the requirements of 2 U.S.C. § 437b(b) (2). The 10-day deposit requirement was designed to encourage the prompt disposition of contributions rather than permit "stale" checks to be kept lying around or lost. In addition, some large campaigns have used the date of deposit as the date of receipt for reporting purposes. The 10-day requirement would mean reported receipt dates would be close to actual receipt.

Contributions of questionable legality shall either be returned to the contributor or deposited while the treasurer determines the validity of the contribution. This subsection was added by the Commission at the suggestion of many committees as a guide to the proper handling of questionable contributions.

§ 103.4 Vice-Presidential candidate campaign deposities.

This section follows 2 U.S.C. § 437b(c).

PART 104—REPORTS BY POLITICAL COMMITTEES AND CANDIDATES

§ 104.1 General.

Quarterly reports are required by political committees until all debts and obligations are extinguished and a Notice of Termination is filed. Candidates must also continue to report until all debts are extinguished unless a waiver is granted. Quarterly reports are required only if contributions exceed $1,000 or expenditures exceed $1,000.

Quarterly reports are required from candidates and their committees in a non-election year only if contributions and expenditures together exceed $5,000. If the candidate's authorized committees receive or expend in excess of these amounts, the principal campaign committee must file a consolidated report.

The reporting of debts and obligations is required by the Commission under the authority of 2 U.S.C. § 434(b) (12). The quarterly report exemption is required under 2 U.S.C. § 434(a) (1) (C). The requirement for notifying the Commission that a committee is exempted from filing quarterly reports is to prevent the committee from being considered in violation for late filing. The Commission otherwise has no way to know the committee is exempt.

§ 104.2 Form and content of reports.

This section generally follows 2 U.S.C. § 434(b). Subsection (b) (1) requires a statement of cash on hand, to provide a starting point for each report. Subsection (b) (3) (ii) is to prevent a recurrent problem: when committees reported all contributions—not just those over $100—the inclusion of large numbers of the small contributions made it more

difficult to isolate large contributions. Reports may contain all contributions, but the over $100 contributions must be on a separate schedule from the under $100.

Subsection (b)(7)(i) makes it explicit that campaign funds may be taken out of depositories for investment purposes. The interest or other proceeds from an investment must be reported.

Subsection (c)(1) provides for consolidated reports by principal campaign committees. The consolidation will include the candidate's report (unless waived) and the reports of authorized committees. While the statute does not specifically include the candidate's report in the consolidation, the Commission believes that it would be best to include it since the expenditure limit can be most easily tracked that way by the principal campaign committee.

Subsection (c)(2) sets out an exception for the consolidation requirement, for the 10-day pre-election report only. Because principal campaign committees must file the consolidated report on the same day as authorized committees must file with it, and because there are only five days between the close of books and the date of filing (three days if the report is mailed), the Commission is permitting the principal campaign committee, if it chooses, to file only a summary sheet on the 10th day, and a complete consolidated report five days before the election. The Commission believes this meets the requirement for public disclosure and relieves the committees of a difficult burden.

§ 104.3 Disclosure of receipt and consumption of in-kind consumptions.

This section provides for the valuation and disclosure of in-kind contributions, (contributions other than cash or check). The valuation is determined by the usual and normal charge at the time of the contribution. Since § 100.4(b) excludes certain kinds of in-kind donations from the definition of contribution, those donations need not be reported. Furthermore, in-kind contributions need not be separately listed in reports if the aggregate value is less than $100 from a single contributor. The regulation distinguishes between goods and services, and contributions to be liquidated, such as stock or art objects.

§ 104.4 Filing dates.

All political committees and candidates are required to file pre-election, post-election and quarterly reports, and an annual report when appropriate.

The pre-election report of a principal campaign committee must be a consolidated report of all authorized political committees of a candidate or a detailed report, as provided for in § 104.2(c). Authorized political committees must file pre- and post-election reports with the principal campaign committee or the Clerk of the House or the Secretary of the Senate.

Provision is made for pre- and post-election reporting by those political committees not reporting monthly who make contributions to Presidential candidates.

The filing dates are required by the statute, 2 U.S.C. § 434(a), except that this section requires that the 4th quarterly report be filed by January 31 instead of January 10 for election years even though a close reading of the statute would set it for January 10. Congressional intent seems to be for January 31. This was done at the request of many

witnesses who wanted the 4th quarter due date to coincide with the annual report due date.

Under § 104.4(e), contributions of $1,000 or more received subsequent to the 15th day, but more than 48 hours before an election, must be specifically reported, but only if the $1,000 was given for that election. The Commission felt that a strict requirement of specially reporting the $1,000 received even if it was for a different election, would place an unnecessary reporting requirement on candidates or committees involved in presidential primaries. The section further provides for monthly reporting under 2 U.S.C. § 434(a)(3) in certain cases instead of the usual reporting dates.

Monthly reporting is mandatory for Presidential candidates and their committees, but is optional for all other multi-state committees. This provision would greatly ease the reporting burden during the primaries since the number of pre- and post-primary election reports otherwise required could total 56.

§ 104.5 Uniform reporting of contributions.

This provision, which requires reporting the identification of all individuals by whom a contribution over $100 was made, follows 2 U.S.C. § 434(b)(2).

§ 104.6 Uniform reporting of expenditures.

This provision, which requires reporting the identification of all individuals to whom an expenditure over $100 was made, follows 2 U.S.C. § 434(b)(9).

§ 104.7 Allocation of expenditures among candidates.

This section informs committees of their need to allocate expenditures made for the purpose of supporting more than one Federal candidate.

§ 104.8 Continuous reporting of debts and obligations.

Debts and obligations which remain outstanding after the election shall be continuously reported on separate schedules, with explanation, until extinguished, under 2 U.S.C. § 434(b)(12).

A debt or obligation to make an expenditure of $500 or less is required to be reported at the time of payment or no later than 60 days after the incurrence of the debt or obligation, whichever comes first. A loan of money or debt or obligation over $500 is reported as an expenditure as of the time of the transaction. This section is designed to prevent unnecessary duplication of reporting operating expenditures, *i.e.*, once as a debt when incurred and again as an expenditure when paid, for small obligations.

§ 104.9 Waiver of reporting requirements.

The Commission may waive under 2 U.S.C. § 436(b)(2) at its discretion the reporting requirements of political committees that primarily support persons seeking State or local office and do not operate in more than one State.

§ 104.10 Political committees; cash on hand.

The first report of a committee following its registration shall disclose the cash on hand at the time of its registration. In order to determine the legality of the source of the cash on hand, it is assumed that

the cash on hand represents those contributions most recently received by the committee, *i.e.*, the "first-in, first-out" method of accounting. This provision is necessary, especially for political committees, which may register with substantial cash on hand.

§ 104.11 Members of Congress; reporting exemption.

This section follows 2 U.S.C. § 434(d), and provides the reporting procedures. If a member is not a candidate, no reporting is required.

§ 104.12 Formal requirements regarding reports and statements.

This section requires the individual responsible for submitting a report to sign it. This prevents the shifting of responsibility onto others who are not required under the Act to do the actual filing.

The reporting person must retain all records relating to the reports that are filed, and the reports themselves for a period not less than three years from the end of the year in which the report is filed. Under 2 U.S.C. § 455, the statute of limitations for criminal prosecution is three years. Accordingly, to prevent the destruction of possible evidence and to assist in the routine auditing of a report, supporting records are required to be kept for three years.

The acknowledgement by the Commission of the receipt of any report does not constitute any approval of the contents of the report.

The responsibility for the timely filing of reports and their accuracy is placed upon those persons who are required to submit them, namely, the treasurer of a political committee, or a candidate or other person as appropriate.

§ 104.13 Sale or use restriction.

This section interprets 2 U.S.C. § 438(a)(4), prohibiting the sale or use of information on file with the Commission, Clerk, Secretary or a state officer. It defines commercial use to exclude use in news media and books.

Part 105—Document Filing

§ 105.1 Place of filing; House candidates and committees.

The place of filing for House candidates and their principal campaign committees is the Clerk of the House of Representatives, as custodian for the Commission, under 2 U.S.C. § 438(d)(1)(A).

§ 105.2 Place of filing; Senate candidates and committees.

This section provides for similar filing by Senate candidates and their committees with the Secretary of the Senate, under 2 U.S.C. § 438(d)(1)(B).

§ 105.3 Place of filings; President candidates and committees.

This section provides that Presidential candidates and their principal campaign committees file reports and statements with the Commission.

§ 105.4 Place and filing; committees and others.

This section provides that political committees (other than candidate's committees) which only support House candidates file with the Clerk, and those supporting only Senate candidates file with the Secretary.

All other political committees, and persons making independent contributions and expenditures, file with the Commission.

This section eliminates the multiplicity of filing by political committees which has occurred in the past, in some cases requiring filing in three places. Under this regulation, committees which support candidates for more than one Federal office file only with the Commission.

§ 105.5 Transmittal of microfilm copies and photocopies of original reports filed with the Clerk and the Senate Secretary to the Commission.

This section, which requires the Clerk and the Secretary to furnish microfilm and photocopies of reports and statements, will permit the Commission to carry its statutory duties to enforce the statute (2 U.S.C. § 437g) and to make documents available for public inspection and copying (2 U.S.C. § 438(a)(4)).

The Commission, the Clerk, and the Secretary will work out mutually agreeable procedures for implementing these sections.

Part 106—Allocation of Candidate and Committee Activities

§ 106.1 Allocation of expenditures among (or between) candidates and activities.

Expenditures made on behalf of more than one candidate are to be allocated between the candidates based on the proportion of the benefit which each can reasonably be expected to derive. For example, a billboard which advertised Senate candidate Smith and House candidate Jones in equal prominence should be allocated 50%–50%.

Authorized expenditures by a committee or candidate on behalf of another candidate are reported as a contribution to the authorizing candidate. However, expenditures by political parties under 2 U.S.C. § 441a(d) will only be reported by the party.

The administrative expenses and other non-candidate related expenses of a multicandidate committee do not have to be allocated among candidates, as long as they are not made on behalf of a specific candidate. Where such a committee has both Federal and non-Federal activity, administrative expenses have to be allocated between the two activities on a reasonable basis.

§ 106.2 Allocation of expenditures among states by candidates for presidential nomination.

This section covers the allocation of expenditures of presidential candidates by state. Generally, expenditures must be attributed to the individual states based on the voting age population likely to be influenced by the expenditure. There are two exceptions: (1) expenditures relating to a national campaign headquarters need not be attributed to individual states and (2) expenditures for travel between states need not be attributed to individual states.

§ 106.3 Allocation of expenses between campaign and non-campaign related travel.

All travel paid for by a candidate's authorized committees must be reported.

A candidate's campaign-related travel is reportable, no matter who pays for it. Where a candidate makes one campaign-related appearance in a city, the trip to that city is considered campaign-related. Incidental contacts on an otherwise non-campaign stop do not make the stop campaign-related. For example, if a candidate makes a non-political speech to a civic association luncheon, and on the way out chats with a few attendees about his upcoming campaign, that conversation would not convert the appearance into a campaign-related event. However, if during the course of the speech the candidate asks for support, that would convert an otherwise non-campaign event into one which is campaign related, and would require that travel costs be allocated, and reported as expenditures.

Individuals other than candidates have to allocate their mixed campaign/non-campaign travel expenses on a reasonable basis. If a candidate's spouse and children travel with a candidate but do not campaign, their expenses are not reportable as expenditures.

Expenses incurred by a candidate for the House or Senate for travel to or from his state or district and Washington, D.C., are not reportable as an expenditure unless paid from a campaign account.

Candidates using a government conveyance for campaign travel must report as an expenditure the comparable commercial rate for the travel. For candidates required by law or by national security to have special staff and equipment, the cost of that travel is excluded from reportable expenditures.

Part 107—Convention Reports

§ 107.1 Reports by Municipal and Private Host Commitees.

This Section follows 2 U.S.C. § 437.

§ 107.2 Reports by political parties.

This section follows 2 U.S.C. § 437 but exempts the reporting requirement for state and subordinate party committees that spend funds for delegate and alternate travel expenses and for certain events at the convention such as receptions. The Commission believes that these types of expenditures were not intended by the statute to be reported under 2 U.S.C. § 434.

§ 107.3 Convention report; time and content of filing.

This section requires the convention report to be filed no later than 60 days after the convention but not later than 20 days before the general election in accordance with 2 U.S.C. § 437. If there is financial activity subsequent to this report, quarterly reports are required to reflect those transactions in order to obtain full disclosure.

§ 107.4 Convention expenses; definition.

This section merely refers to Part 120 of the convention financing proposed regulation, which contains a detailed definition of convention expenses.

Note: The reporting requirements for conventions receiving Federal funds under 26 U.S.C. § 9008 are treated in Part 124.

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS

§ 108.1 Filing requirements.

Follows 2 U.S.C. § 439(a).

§ 108.2 Filing copies of reports by Presidential and Vice-Presidential candidates.

This section basically follows 2 U.S.C. § 439(a)(1) except that the copy of reports need be filed with the appropriate state officer only if an expenditure is made in that State during the reporting period. This eliminates the unnecessary filing of reports with a state which, although at one time may have received a copy of a report, has no real concern in receiving other copies of future reports where no expenditures are made in that state during those subsequent reporting periods.

§ 108.3 Filing copies of reports by other Federal candidates and committees.

This section follows 2 U.S.C. § 439(a)(2).

§ 108.4 Filing copies of reports by committees supporting Presidential candidates.

This section permits committees which support Presidential candidates, other than the Presidential principal campaign committee, to file a copy of their reports only in the state in which they are headquartered and in which the recipient committee is headquartered. This prevents committees which make one contribution to a Presidential candidate from having to file in every state in which the Presidential candidate files, which would serve no public purpose.

§ 108.5 Time and manner of filing copies.

This section requires the filing of a copy of the report with the appropriate state at the same time the original report is filed on the Federal level.

§ 108.6 Duty of State officers.

This section follows 2 U.S.C. § 439(b).

§ 108.7 Effect on State law.

This section follows 2 U.S.C. § 453. Specifically, Federal law supersedes state law concerning the organization and registration of political committees supporting federal candidates, disclosure of receipts and expenditures by Federal candidates and committees, and limitations on contributions and expenditures regarding Federal candidates and committees.

However, the Act does not supersede state laws concerning the manner of qualification of candidates, dates and places of elections, voter registration, voting fraud or candidates' personal financial disclosure not superseded by Federal law. These types of electoral matters are interests of the states and are not covered in the act.

§ 109.8 Exemption for the District of Columbia.

Since all reports are filed with the Commission, Clerk or Secretary, filing copies with the District of Columbia government seemed to be a needless burden.

Explanation and Justification for Part 109 Independent Expenditures

§ 109.1 Definitions.

100.1. This definition parallels 2 U.S.C. § 431(p) with additional language from *Buckley* v. *Valeo* requiring that the expenditure be communicative in nature. The Act is implemented by defining terms used in this statutory definition.

"Person" is defined in accordance with 2 U.S.C. § 431(h).

"Expressly advocating" is defined consistent with the Supreme Court in *Buckley* v. *Valeo*.

"Clearly identifiable" is defined consistent with both *Buckley* v. *Valeo* and 2 U.S.C. § 431(g).

The definition of "made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate" implements the statute by describing specifically arrangements or conduct that remove the independent nature of the expenditures.

The definition of "agency" imputes agency power not only to persons actually authorized, but also to persons who appear to have such power, in accordance with general principles of the law of agency. § 109.1(d) parallels 2 U.S.C. § 441a(a)(7)(C). However, such expenditures could be made without the knowledge or control of the candidate, and this section affects only the person making the expenditure absent candidate cooperation or consent.

§ 109.1(e) clarifies the limitation on political committees with respect to independent expenditures.

§ 109.2 Reporting.

§ 109.2(a) This section follows 2 U.S.C. 434(b)(13). It requires political committees to report each independent expenditure that exceeds $100 as well as the total of unitemized expenditures. These reports, which are filed during a period in which such independent expenditures is made, must contain the amount and date of the expenditure, the name of the person to whom it was made, the name and office sought by the candidate, and whether it was in support of or in opposition to such candidate.

§ 109.2(b) This section follows 2 U.S.C. § 434(e) requiring a person to report in a manner similar to a political committee when independent expenditures and contributions toward independent expenditures aggregate more than $100.

§ 109.4 This section follows 2 U.S.C. § 441d.

§ 109.5 This section provides for the reporting of "independent contributions" under 2 U.S.C. § 434(e).

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Explanation and Justification, Part 110 Construction and Expenditure Limitations and Prohibitions

§ 110.1

This section covers the limitations on contributions by persons, other than multicandidate committees. It follows the statutory provisions in 2 U.S.C. § 441a(a)(1) on the amounts which individuals and other persons may contribute to a campaign, to party committees, and to any other political committee. Where needed, specific definitions have been added, in particular to make it clear that each of the national committee, House campaign committee and Senate campaign committee of a party may receive up to the $20,000 contributions limitation from a single contributor.

This section also provides that contributions made to committees which themselves are making independent expenditures are subject to limitations in this section on contributions to committees. This section also makes clear the treatment of such contributions as: those from partnerships, those to dual Federal candidates, those to retire debts, and those related to spouses and minor children. It also provides that for contribution limitation purposes an election occurs even if a candidate is unopposed; it sets a date for the cutoff of primary receipts and the beginning of general election receipts in the case where, because a candidate is unopposed, no actual election is held.

§ 110.2 Contributions by multicandidate committees

This section, covering 2 U.S.C. § 441a(a)(2) limits the contributions by multicandidate committees, making it clear that a multicandidate committee may contribute up to $15,000 to each of a party's national committees, Senate campaign committees and House campaign committee. A cross-reference is contained to the statutory definition of multicandidate committee, which appears in § 100.14(a)(3). This section also covers the special treatment for Senate candidates, and has identical provisions to those in § 110.1 regarding elections and unopposed candidates.

NOTE:
E&J for 110.3

This section contains the Act's anti-proliferation provisions under 2 U.S.C. § 441a(a)(4)(5) and pulls into § 110.3(a)(1)(ii) the examples of single limitations found in the conference report. This section also sets out indicia of common control for those entities not covered by the per se definition in the statute. It provides that the national committee and House campaign committee of a party each have a separate contribution limit, and that a state committee and each independent subordinate state committee have separate contribution limits.

This section makes clear that transfers are not limited in several cases, including the proceeds of joint fundraising, authorized committees of the same candidate, previous and current campaign committees, primary candidate and the general election campaign and the statutory provision regarding transfers of funds between two principal campaign committees of a dual Federal candidate. This section also makes it clear that party committee transfers are unlimited.

§ 110.4 Prohibited contributions

This section covers several miscellaneous provisions, including the prohibition of contributions by foreign naitonals, contributions in the name of another and contributions of currency. The currency pro-

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vision makes clear that a campaign must dispose of anonymous cash contributions in excess of $50.

§ 110.5 Annual limitation

This section covers the limitation on individual contributions of $25,000 to candidate and committees in a calendar year found in 2 U.S.C. § 441a(a)(3). This section provides that this limitation applies to contributions made to a person who is making independent expenditures.

§ 110.6 Earmarked contributions

This section sets out the statutory requirements in 2 U.S.C. § 441a (a)(e)(8) for the reporting of earmarked contributions and fills in the details of to whom reports are to be filed, when and what information reports are to contain. This section further provides that in the case where a conduit exercises direction or control over the choice of the ultimate recipient, the contribution will be treated as a contribution from both the original contributor and the conduit.

§ 110.7 Party expenditures

This section follows the statutory provisions in 2 U.S.C. § 441a(d) for the national committee and the state and subordinate state committees of a political party to make coordinated expenditures in the general election on behalf of presidential, Senate and House candidates. It further provides that the committees may not make independent expenditures on behalf of candidates on whose behalf the statute explicitly permits them to make coordinated expenditures. The section provides suggested schemes for a state and subordinate state committees to coordinate their expenditures on behalf of candidates. It further provides that subordinate state party committees may make coordinated or uncoordinated expenditure of up to $1,000 on behalf of the party's Presidential ticket. These expenditures are reported to the Presidential candidate's principal campaign committee, but do not count against any spending limitations. This provision is derived from 26 U.S.C. § 9012f.

§ 110.8 Presidential candidate expenditure limitations

This section follows the statutory provisions in 2 U.S.C. § 441a(b) regarding the limitation on campaign expenditure for a candidate receiving Federal funds. It sets out Commission interpretations of when expenditures limits are counted, and in particular focuses on the question of fundraising expenditures which may in fact be a campaign expenditure. It provides for the separation of campaign activities for dual candidates, and reflects Commission policy on party building activities.

§ 110.9 Miscellaneous

This section covers the statutory provisions regarding violation of limitations, fraudulent misrepresentation of campaign authority, and the publication of consumer price index and voting age population statistics.

§ 110.10 Expenditures by candidates

This section concerns candidates' expenditures from personal funds, and contains a definition of personal funds comporting with the statute and the Supreme Court decision in *Buckley* v. *Valeo*, and in particular

sets forth what funds are permissible personal funds to be used in a campaign.

§ 110.11 Communications; advertising

This section pulls together the various statutory provisions regarding the disclaimers and advertising, and follows the statutory scheme of providing details for the required disclaimers.

§ 110.12 Honorariums

This section contains the definition of the term honorarium, sets forth the limitations on the receipt of honorariums contained in the Act, and defines the various terms involved in the honorarium situation.

Explanation and Justification for Compliance Regulations—Part 111

§ 111.1 The compliance regulations set forth the procedures for processing possible violations of the Federal Election Campaign Act, as amended, and of chapter 95 and 96 of the Internal Revenue Code of 1954. They explain to the public the steps by which the Commission will exercise the power to investigate, conciliate and prosecute cases involving violations of those statutory provisions.

§ 111.2 Provision for a complaint by a member of the public is made in § 111.2 which reflects the statutory requirement that a complaint be sworn to and notarized and requires a complainant to set forth specific facts substantiating the complaint, not merely conclusionary allegations.

§ 111.3 Initial processing will be handled by the General Counsel's Office, which will prepare a report on each complaint or possible vio-

lation discovered by the staff in the conduct of the Commission's supervisory responsibilities, as set forth in § 111.3. This report will enable the Commission to determine if there is reason to believe that the Act or chapters 95 or 96 of the Internal Revenue Code of 1954 has been or may be violated or whether it should authorize initial inquiries. As required by the statute for all Commission determinations in the compliance area, the Commission vote to determine whether it has "reason to believe" requires the affirmative vote of four members.

§ 111.4 The statutory requirement that the Commission notify anyone whose alleged conduct has given the Commission reason to believe that the statutory provisions have been or may be violated is reflected in § 111.4. That regulation also provides for the statutorily required opportunity for a respondent to demonstrate that no action should be taken against him or her.

§ 111.5 Similarly, § 111.5 provides for any investigation the Commission finds necessary, including either the statutorily mandated investigation of a complaining candidate or any necessary investigation of another candidate for the same office.

§ 111.6 Subsequent to any investigation, the Commission may not proceed unless it finds reasonable cause to believe that the statutory provisions have been or may be violated and attempts to adjust the matters by informal methods of conference, conciliation, and persuasion. §§ 111.6 and 111.7 provide for these steps in the Commission's processing of cases.

§ 111.7 While the Commission, of course, considers that any case may be settled at any time, § 111.7 provides public notice of the mandatory certification period established by Congress in the 1976 amendments.

§ 111.8 The statute also mandates that the Commission will disclose its findings that no violation has occurred, and its attempts to secure conciliation agreements, including any agreement entered into. Inasmuch as the statute very specifically requires keeping all notifications of apparent violations and investigations secret, and then requires full publicity after any investigation and conciliation, the Commission has included § 111.8 specifically to reflect that policy here, while reserving for later regulation a full statement of its disclosure policies under the Freedom of Information Act.

§ 111.9 Finally, § 111.9 provides for the Commission's exercise of its discretionary power to bring civil proceedings in the event that it has been unable to obtain a conciliation agreement which satisfactorily adjusts the matter in question.

§§ 111.10–14 §§ 111.10 through 111.14 provides for the Commission's exercise of its power to require persons to testify or produce records, either by way of subpoena or deposition, and provides, as the statute sets forth, that any subpoena may be issued over the signature of the Chairman or Vice Chairman. These regulations also reflect the fact that subpoenas or depositions are an adjunct of the Commission's investigatory powers and that their issuance remains at the discretion of the Commission.

Justification for Regulation 111.15

§ 111.15 In the Commission's view, the nature of enforcement actions under 2 U.S.C. § 437g(a)(3) is such that the investigative proceedings and subsequent Commission actions require that parties out-

side the agency not make ex parte communications on the merits of individual cases to the Commissioners and staff responsible for deciding how those cases should be disposed of.

Explanation and Justification of Part 112—Advisory Opinion Procedure

§ 112.1 Requests for advisory opinions

This section provides guidance for the proper submission of advisory opinion requests. It allows an authorized agent, such as an attorney, to request an advisory opinion on behalf of the principal if the principal is disclosed and has standing as a person identified in the Act. The section also states that advisory opinions must concern application of a general rule of law, which is stated in the Act, chapters 95 or 96 of the Internal Revenue Code of 1954 or a rule or regulation prescribed by the Commission, to a specific factual situation involving the requestor.

This section implements 2 U.S.C. § 437f(a).

§ 112.2 Public availability of requests

This section provides for the public availability of advisory opinion requests. Requests will be made available to the public at the Commission for inspection and purchase. They may also be published by other methods and in original, edited or paraphrased form, as the Commission considers appropriate.

This section implements 2 U.S.C. § 437f(c).

§ 112.3 Written comments on requests

This section provides for the submission of written comments by the public on advisory opinion requests within 10 days after publication, which the Commission may increase or decrease. It also gives instructions for submitting the written comments and provides authority to extend the comment period in a particular case.

This section implements 2 U.S.C. § 437f(c).

§ 112.4 Issuance of advisory opinions

This section provides for the manner of issuance of advisory opinions. These opinions will be sent to the requesting party and made public. The section points out that opinions can only pertain to the Act, chapters 95 or 96 of the Internal Revenue Code of 1954, and prescribed regulations of the Commission. The section also follows the language of the 1976 Amendments and Conference Report (p. 44) concerning restrictions on the use of the advisory opinion procedure to state certain general rules of law until they are prescribed as a rule or regulation. The statutory language restricting opinions of an advisory nature is recited in § 112.4(d) of the regulation.

This section further implements 2 U.S.C. § 437f(a).

§ 112.5 Reliance on advisory opinions

This section closely follows the language of the 1976 Act regarding those persons who may rely on an advisory opinion. It provides that a person is not subject to any sanction in the Act (or chapters 95 or 96 of the IRC) if that person (1) is involved in a specific transaction or activity which is indistinguishable from the transaction related in the request, and (2) acts in good faith and consistent with the advisory opinion.

This section implements 2 U.S.C. § 437f(b).

§ 112.6 Reconsideration of advisory opinions

This section allows the Commission to reconsider advisory opinions upon request of the party who submitted the original request or by a Commissioner who voted with the majority which approved the opinion.

This section generally implements 2 U.S.C. § 437f. See also 2 U.S.C. § 437c(e) which relates to written rules for the conduct of the Commission's activities.

Explanation and Justification Part 113 Office Accounts: Excess Campaign Funds

§ 113.1 Definitions

(a) This subsection defines "funds donated" as all funds donated for the purpose of supporting a Federal or state officeholder's activities except for appropriated funds or personal funds of the officeholder.

(b) Office account is defined as an account established for the purpose of supporting an officeholder's activities, but does not include accounts containing appropriated funds or accounts consisting exclusively of the personal funds of the officeholder. Because of recent changes to the House Rules regarding the funding of officeholding support activities, the concept of "franking account" has been eliminated.

(c) and (d) Federal and state officeholder are defined separately to mean the President, members of the House or Senate, or any elected state officeholder.

(e) Excess campaign funds is defined as funds which exceed the amount needed by a candidate to defray campaign expenditures. and the uses to which excess campaign funds may be put are set out.

§ 113.2 Use of funds

This section makes clear that any excess campaign funds and funds donated may be used to defray expenses incurred in the ordinary course of holding federal office. They may also be donated to a charity or may be used for any other lawful purpose including campaign contributions to other candidates. Such contribution would, of course, be subject to the normal limitations on amount.

§ 113.3 Deposits of funds donated to a Federal or tSate officeholder

This section provides that all funds donated must be deposited in either a campaign committee's account or an office account.

§ 113.4 Reports of office accounts

The reporting provisions in the regulations require two reports per year, due on April 15 and October 15. The reports are filed in the same places as campaign reports, both for Federal officeholders and state officeholders, who begin to report when attaining candidate status. The reports must contain the same information as would be filed by a political committee regarding all receipts and disbursements, except that cash contributions over $50 must be reported.

§ 113.5 Contribution and Expenditures limitations

This section provides that contributions to or expenditures from an office account are subject to contribution and expenditure limitations if they are made for the purpose of influencing a Federal election. This section also provides that an office account may except treasury funds from a corporation or union, but if those funds are received by an office account, the office account may not be used for campaign related purposes. This provision is consistent with the Commission's treatment of any committee or account containing funds which, though acceptable under state law or Federal law other than election law, may not be used in connection with a Federal election.

Explanation and Justification for Part 114

§ 114.1 Definitions.

(a) *Contribution and Expenditure.*—The Commission has set forth in this definition all of the various provisions of the Act and of the regulations which are applicable to corporation and labor organization activity in connection with a Federal election. In § (a)(1) the words "or any other person" were added to the basic definition in 2 U.S.C. § 441b(b)(2) to make clear that corporations or labor organizations may not make independent expenditures on behalf of Federal candidates. The prohibition on independent expenditures is based on the legislative history of the section. For a discussion of the legislative history see *U.S. v. International Union, Etc.*, 352 U.S. 567, 77 S. Ct. 529 (1967). As the Court stated in that case,

> The evil at which Congress has struck in § 313 is the use of corporation or union funds *to influence the public at large* to vote for a particular candidate or a particular party. 352 U.S. at 539, 77 S.Ct. at 540 (emphasis added).

Subsection (2), by exempting the listed activities from the definition of contribution and expenditure, sets forth the permissible bounds of corporate and labor organization activity in connection with a Federal election. The specific exemptions contained in 2 U.S.C. § 441b(b)(2)(A), (B), and (C) are in § (a)(2)(i), (ii), and (iii). Since the payment of honorarium (within the meaning of 2 U.S.C. § 441i) is ex-

empted from the definition of contribution in 2 U.S.C. § 431(e)(5)(I), the Commission excluded the payment of honoraria, including actual travel and subsistence expenses, by corporations or labor organizations from the prohibitions of this Part. In addition, the vendor exemption in 2 U.S.C. § 431(e)(5)(C) is made applicable to corporate vendors by § (a)(2)(v).

The exclusion of payment for legal or accounting services by the regular employer [2 U.S.C. § 431(e)(4) and (f)(4)(J)] from the general definitions of contribution and expenditure was, in the absence of legislative history to the contrary, extended to corporations and labor organizations if they are the regular employers of the persons providing the services. The last sentences in § (a)(2)(vi) and (vii) were added to make clear that extra personnel may not be hired by the corporation or labor organization to provide the services.

Subsection (a)(2)(viii) exempts certain activities in connection with national nominating conventions. Subsection (ix) extends the exemption in 2 U.S.C. § 431(e)(5)(H) to corporations and labor organizations. Finally, § (a)(2)(x) makes clear that any activity permitted by Part 114 is not considered a contribution or expenditure.

The Commission rejected amendments to this section which would, under limited circumstances, have allowed a corporation or labor organization to place ads in programs of political parties for national, state or local conventions. The Commission partially based its decision on Int. Rev. Code of 1954, § 276, in which Congress viewed advertising in a convention program of a political party as an indirect contribution if any part of the proceeds directly or indirectly inures to or for the use of a political party.

(b) *Establishment, Administration and Solicitation Costs.*—The purpose of this section is to indicate the scope of the establishment, administration and solicitation exemption in (a)(2)(iii). The question of the deductibility of the establishment, administration and solicitation costs should be addressed to the Internal Revenue Service.

(c) *Executive or Administrative Personnel.*—This definition incorporates the statutory definition and the explanation in the Conference Report. *H. Conf. Report* 1057, 94th Congress, 2d Sess., p. 62 (1976). The exclusion of former or retired personnel who are not stockholders [§ (c)(2)(iii)] is based on the ordinary meaning of the word employee and personnel—one who works for another. Cf. *Allied Chemical & Alkali Workers* v. *Pittsburgh Plate Glass Company*, 404 U.S. 157, 92 S.Ct. 383 (1971).

The references to consultants, in § (c)(2)(iv), and to individuals on commission, in § (c)(3), means that such persons may be considered employees if the corporation has the responsibility for the collection of, and liability for, that person's withholding tax under the Internal Revenue Code. If such relationship exists and if the individual has policy making, managerial, professional or supervisory responsibilities, then the individual will be considered to be within the definition of executive or administrative personnel.

The reference to the Fair Labor Standards Act and the regulations issued pursuant to that Act serving as a guideline is based on a discussion of Senators Packwood and Cannon in the conference debates. 122 *Cong. Record* 56367 (daily ed. May 3, 1976).

(d) *Labor Organization.*—This definition is the definition in 2 U.S.C. § 441b(b)(1).

(e) *Members.*—This definition generally means that an individual will be considered a member if he or she satisfies the membership requirements of the organization. The reference to membership in a federation of unions is based on a reference in the 1974 legislative history which indicates that the communication exemption extends to communications by a federated organization of labor unions. 120 *Cong. Record* H10330 (daily ed. October 10, 1974). The Commission is of the opinion that a membership organization, which is subject to 2 U.S.C. § 441b, must have been established for purposes other than making contributions to a Federal election. This is supported by the communication exemption for membership groups in 2 U.S.C. § 431 (f) (4) (C) which does not apply to a membership organization which is organized primarily for the purpose of influencing a Federal election. Accordingly, the last sentence of the definition of member was added to indicate that a person will not be considered a member for the purposes of the communication and solicitation rights of 2 U.S.C. § 441b if the only requirement for membership in the organization is a contribution to the organization's separate segregated fund.

(f) *Method of Facilitating the Making of Voluntary Contributions.*—This section defines the term used in 2 U.S.C. § 441b to mean the manner in which contributions are collected or received.

(g) *Method of Soliciting Voluntary Contributions.*—This section provides examples of the term used in the statute.

(h) *Stockholder.*—This definition is based on an explanation by Senator Cannon of the conferees' intent. 122 *Cong. Record* S6481 (daily ed. May 4, 1976). This definition would include employees who have purchased stock through an employee stock ownership plan if the employee has a vested beneficial interest in the stock, the control over any voting rights, and the right to receive dividends directly.

(i) *Voluntary Contributions.*—This section defines the term used in 2 U.S.C. § 441b to mean generally contributions which were given by individuals who were told of the political purpose of the fund and of their right to refuse without reprisal and who freely gave without any coercion or the threat thereof. See 114.5(a) *infra.*

§ 114.2 Prohibitions on Contributions and Expenditures.

This section sets forth the statutory prohibition on contributions and expenditures made by corporations and labor organizations. The prohibition on contributions and expenditures by national banks and corporations organized by authority of any law of Congress runs to state and local elections, as well as Federal elections. Subsection (a) (1) allows national banks and corporations organized by any law of Congress to engage in the activities permitted to corporations generally under this Part if other laws which these entities are subject to so permit. The term corporation, as used in this part, includes national banks and corporations organized by the authority of any law of Congress.

§ 114.3 Partisan Communications.

This section concerns partisan communications by a corporation to its stockholder and executive or administrative personnel and their families or by a labor organization to its members and their families. Subsection (b) indicates that such communications are subject to the reporting requirement of 2 U.S.C. § 431(f) (4) (C).

Examples of the manner in which partisan communications may be made are set forth in § (c). It is clear that a corporation or labor organization may express its views on candidates. *U.S.* v. *C.I.O.*, 335 U.S. 106, 68 S. Ct. 1349 (1948). However, it is the Commission's view that this provision extends to the corporation or labor organization's distribution of *its views* as, for example, to why a particular candidate will best serve the interests of the corporation or labor organization and is not intended to be simply a means for distributing campaign materials produced by the candidate, his or her campaign committee, or authorized agents. This position is analogous to the statutory treatment of independent expenditures which allows a person to make unlimited independent expenditures expressing his or her views on a particular candidate but removes expenditures for the production and distribution of a candidate's campaign materials from the independent expenditure category and treats such as contributions to the candidate. 2 U.S.C. § 441a (7) (B).

Subsection (c) (1) allows, for example, a corporation or labor organization to distribute to its permissible group editorials supporting particular candidates; pamphlets stating that the corporation or labor organization supports the views of a particular candidate and quoting from campaign literature prepared by the candidate which sets forth the candidate's views on a particular issue of importance to the corporation or labor organization; or sending a letter stating that the corporation or labor organization supports a particular candidate's position on certain issues and enclosing a copy of a speech given by the candidate on those particular issues. All materials distributed in the above examples would, of course, have to be printed or reproduced at the expense of the corporation, labor organization, or the separate segregated fund of either. Materials which do not support particular candidates do not have to be printed or reproduced at the expense of the corporation, labor organization, or the separate segregated fund of either.

Although recognizing that allowing a corporation or labor organization to invite a candidate to address its respective permissible group is not, in the strictest sense, a communication of the corporation or labor organization, the Commission, nonetheless, chose to allow for such activity [§ (c) (2)]. Candidates appear frequently at labor organization conventions, corporate executives' meetings, and similar functions. Such appearances are clearly distinquishable from the republication of a candidate's campaign materials in that "overruns" of such materials can easily be waylaid for distribution to the general public. The potential for evasion of the prohibition on contributions and expenditures is virtually non-existent since the provisions of § (c) (2) apply only to functions by a corporation for its stockholders and executive or administrative personnel and their families or by a labor organization for its members and their families.

The corporation or labor organization may suggest in a communication sent to stockholders, executive or administrative personnel or members that they contribute to a particular candidate or political committee and provide the candidate's address. The corporation or labor organization may not, however, facilitate the making of contributions to a particular candidate or political committee, other than its separate segregated fund, as by providing envelopes addressed to

the candidate or committee or enrolling persons in a payroll deduction plan for contributions to that candidate or committee.

The provision for phone banks, § (c)(3), is based on discussion in legislative history. See, for example, statement of Senator Packwood, 122 *Cong. Record* S3555 (daily ed. March 16, 1976).

Subsection (c)(4) provides for registration and get-out-the-vote drives by a corporation aimed at its stockholders and executive or administrative personnel and their families or by a labor organization aimed at its members and their families. The provision provides that the "pure speech" aspects of the drives may be partisan, such as urging individuals to vote for a particular candidate, but that when the drive involves "speech-plus" activity, the drive must be conducted in a nonpartisan manner. The nonpartisan requirement is based on 2 U.S.C. § 441b(b)(2)(B) and a discussion of this provision by Congressman Hansen in the 1971 Amendments. 117 *Cong. Record* H11478 (daily ed. November 30, 1971).

§ 114.4 Nonpartisan Communications.

As provided in 2 U.S.C. § 441b(b)(1)(A), nonpartisan communications on any subject may be made by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families. [§ (a)].

(b) *Candidate and Party Appearances.*—Subsection (b) allows a corporation to permit candidates or political party representatives on the corporate premises to address or meet employees in addition to stockholders and executive or administrative personnel and a labor organization to permit candidate or political party representatives on the labor organizations premises to address or meet employees other than members. This provision is based on traditional types of "good government" programs established by corporations for all employees and the traditional practice of candidates touring the facilities to shake hands with employees. In the conference debates, Congressmen Wiggins and Hays agreed that the bill would allow such activities to continue if the programs were conducted on an equitable and nonpartisan basis. 122 *Cong. Record* H3781 (daily ed. May 3, 1976). To comply with the nonpartisan requirement, the regulation requires the corporation or labor organization which has permitted a candidate (or party representative) on its premises to permit all other candidates (or party representatives) for that seat the same opportunity to appear.

The Commission recognizes that, for example, the separate segregated fund of a corporation may have contributed to one of the candidates or the corporation may have sent a partisan communication to its executive or administrative personnel endorsing one of the candidates prior to the appearances of all the candidates for that seat. However, since the group addressed by the candidates consists of employees outside the partisan communication exemption, the corporation may not make any endorsement of any of the candidates in conjunction with the appearances under this section. This limitation, of course, applies to appearances by candidates on labor organization facilities before employees who are not members. [§ (b)(4) and (5) and (c)(1) and (2)]. If the audience consists of both executive and administrative personnel and other employees who are not stockholders

or employees who are not members, the nonpartisan requirements of this section override the right to make partisan communications to the more limited group. Clearly, the separate segregated fund of a corporation or labor organization may not make a contribution to any of the candidates at the time of the appearances; the corporation or labor organization or its separate segregated fund may not endorse one of the candidates at the time of such appearances.

If representatives of political parties make appearances on behalf of candidates for a particular seat such an appearance would be considered a candidate appearance to the extent that independent candidates for that seat who request must be given the same opportunity to appear.

(c) *Nonpartisan Registration and Voting Information.*—Subsections (c) and (d) draw the line between "pure speech" and "speech plus" activity as was done in § 114.3(3) between § (c)(3), phone banks, and § (c)(4), get-out-the-vote drives. Under § (c), a corporation or labor organization may, in clearly defined nonpartisan fashion urge the employees of a corporation or labor organization to register or vote. If the communication is directed to both executive or administrative personnel and other employees who are not stockholders, the nonpartisan requirements of this section are applicable. This section is limited to posters, newsletters, or the like which state, for example, "vote", "support the candidate of your choice", "contribute to the candidate of your choice", or similar nonpartisan messages. Information about particular candidates is limited to either the reproduction of the entire list of candidates on the official ballot or to the distribution of voter guides prepared by organizations that do not endorse candidates or political parties. A corporation or labor organization may distribute to the general public, where State law permits, official registration-by-mail forms, if the distribution is done in a wholly nonpartisan manner.

(d) *Nonpartisan Registration and Get-Out-The-Vote Drives.*—Subsection (d) pertains to actual registration and get-out-the-vote drives, such as assisting persons to register, transporting voters to the polls, and providing babysitting service to enable voters to go to the polls. This regulation follows the Conference Report language which requires the drives to be jointly sponsored with an organization that does not endorse candidates or political parties and conducted by that organization. *H. Conf. Report, supra*, pp. 63–64. These drives need not be limited to employees of the corporation or labor organization but may reach the general public.

Subsection (4) allows the organization conducting the drive to use the facilities of the corporation or labor organization, such as setting up a table in a department store to register voters. This subsection allows the employees of a corporation or the members or employees of a labor organization to assist the organization which is conducting the drive. The employees or members must, of course, be under the direct supervision of the organization conducting the drive and must adhere to the nonpartisan requirements of that organization.

§ 114.5 Separate Segregated Funds.

(a) *Voluntary Contributions to a Separate Segregated Fund.*—This section centralizes the requirements of the Act relating to separate segregated funds established by corporations, labor organizations, membership organizations, cooperatives, or corporations without capi-

tal stock. Subsection (a)(1) sets forth the statutory prohibition in 2 U.S.C. § 441(b)(3)(A) on the use of money obtained by coercion or money required as a condition of membership in a labor organization. This section specifically prohibits the use of a reverse check-off system. The Commission interprets the statutory term "condition of membership" to include plans under which individuals must make a contribution in order to acquire or retain membership even if the contribution is refundable at a later date upon the request of the contributor.

A corporation or labor organization may, under § (2), suggest a guideline for contributions to its separate segregated fund. However, the enforcement of any guideline is strictly prohibited, and if enforced, the resulting contribution would no longer be voluntary. Cf. *Pipefitters Local Union No. 562* v. *U.S.*, 407 U.S. 385, 92 S.Ct. 2247 (1972).

Subsections (3), (4), and (5) incorporate the requirements of 2 U.S.C. § 441b(b)(3)(B) and (C). Because the Act requires the disclosures to be made *at the time* of the solicitation, § (5) requires all written solicitations to contain the required disclosures. The Act requires the disclosures to be made by anyone soliciting employees. Accordingly, the disclosure requirements apply to solicitation by a membership organization, such as a trade association, of the executive or administrative personnel of its member corporations.

Language in the Conference Report indicates that the disclosures are to be made by a labor organization when soliciting members who are also employees of a corporation or labor organization. *H. Conf. Report, supra*, p. 64. The regulation, accordingly, adds the word "member" to the statutory language. These disclosure requirements also apply to the solicitation of members of a membership organization, cooperative, or corporation without capital stock. The fact that the political purpose of the fund must be disclosed is in accord with § 102.5 of the regulations. These solicitations must also inform the member of his or her right to refuse without reprisal. This was done to make clear that the membership organization, cooperative, or corporation without capital stock may not cancel membership, policies, or take other similar actions against members who do not contribute.

It is the Commission's opinion that a supervisor may, subject to the requirements of this subsection, solicit a subordinate. This opinion is based on the decision in *Pipefitters* and the conferees rejection of the section of the Senate bill which would have prohibited such solicitation.

(b) *Use of Treasury Monies.*—This provision sets forth the prohibition on "trading" treasury monies for contributions. Raffles are specifically allowed subject, of course, to other applicable Federal statutes and state law. The prizes may not be so numerous or so disproportionately valuable in relation to the cost of the raffle ticket that the raffle is, in effect, a "trading" money situation. The Commission has provided a reasonable standard, one-third of the money contributed, as a guide to corporations or labor organizations using these fundraising devices. Under this guide, a separate segregated fund could offer prizes valued at $300 purchased with treasury money. If the fund received $900 in voluntary contributions, the fund would not, under this guide, replace the treasury money. If, however, only $600 was contributed, the fund would use $100 of voluntary contributions to replace the treasury money since the cost of raising the money exceeded one-third of the money contributed by $100.

(c) *Membership in Separate Segregated Funds.*—The Commission had been informed that corporations or labor organizations which have established separate segregated funds have utilized the form of "membership" in the separate segregated fund as a means of encouraging participation. This section specifically allows separate segregated funds to provide "membership" status to contributors provided that the fund accepts all contributions within the contribution limitations and that the member-contributor is not given items of value in exchange for his or her contribution. No greater rights of communication to or solicitation from "members" of the separate segregated fund accrue to the corporation or labor organization as a result of using the "membership" form.

(d) *Control of Funds.*—A corporation, labor organization, membership organization, cooperative, or corporation without capital stock may direct the disbursement of the voluntary contributions to its separate segregated fund, including the determination of the candidates to whom the contributions are made. *Pipefitters* v. *U.S.*, *supra*, 407 U.S. at 426, 92 S. Ct. at 2270.

(e) *Disclosure.*—This section brings together the various disclosure requirements for separate segregated funds.

(f) *Contribution Limits.*—Separate segregated funds as political committees are subject to the applicable contribution limits.

(g) *Solicitations.*—This subsection sets forth the limitations on solicitations by corporations and labor organizations and their separate segregated funds as provided in 2 U.S.C. § 441b(b)(4)(A). This subsection specifically allows a corporation to solicit the stockholders and executive or administrative personnel of its subsidiaries, branches, divisions and affiliates. There is language in the 1974 debates that indicates that the communication exemption extends to communications by a parent corporation on behalf of its subsidiaries to stockholders (the permissible group under that amendment). 120 *Cong. Record* H10330 (daily ed. October 10, 1974). The Commission's rationale for the solicitation right is that all of the political committees set up by the corporation, its subsidiaries, branches, divisions and affiliates will, under the anti-proliferation provisions of the Act, be subject to a single contribution limitation.

The Commission considered and rejected an option to permit a labor organization to solicit the executive and administrative personnel of a labor organization who are not also members. The basis for that decision was that the statute refers only to members.

(h) *Accidental or Inadvertent Solicitation.*—The Commission recognizes that because of sales of stock or turnover in employees or members a corporation or labor organization may accidentally or inadvertently solicit an individual beyond its permissible group. If the corporation or labor organization has used its best efforts to maintain updated information and if the error is corrected immediately, accidental or inadvertent solicitation will not be deemed a violation.

(i) *Communications Paid for With Voluntary Contributions.*—This subsection was added to make clear that there is no restriction on the group to whom a separate segregated fund may communicate so long as voluntary contributions are used for the communications. The Act places a limitation on the type of communication in that a separate segregated fund is restricted in whom it may solicit by 2 U.S.C. § 441b(b)(4)(A), (B), (C), and (D).

(j) *Acceptance of Contributions.*—A separate segregated fund may accept *unsolicited* contributions from persons otherwise permitted by the Act to make contributions. Informing persons of the right to accept such contributions is, however, a solicitation.

(k) *Availability of Methods.*—This subsection follows the language of 2 U.S.C. § 441b(b)(6) and sets forth the requirement that a corporation, including any of its subsidiaries, branches, divisions, or affiliates, that uses a method for its stockholders and executive or administrative personnel is required to make that method available to a labor organization representing any members working for the corporation or any of its subsidiaries, branches, divisions, or affiliates. The method is to be made available to the labor organization for soliciting or facilitating voluntary contributions from its members. This subsection does not reach the question of making methods available for the written solicitation under 2 U.S.C. § 441b(b)(4)(B). The availability of methods for that written solicitation is in § 114.6(e).

The Commission has set forth in the regulation several examples to illustrate the operation of this provision of the Act.

(l) *Methods Permitted by Law to Labor Organizations.*—This subsection is 2 U.S.C. § 441b(b)(1)(5). The Commission interprets this provision of the Act as a repeal of Section 302 of the Taft-Hartley Act which prohibited labor organizations subject to that Act from using a check-off for voluntary contributions. The legal impediments to a labor organization's use of any method permitted by law to a corporation is eliminated by this provision. Such methods are not, however, automatically made available to a labor organization. *H. Conf. Report, supra*, p. 64.

§ 114.6 Twice Yearly Solicitations.

This section pertains to solicitations under 2 U.S.C. § 441b(b)(4)(B). The corporation and/or its separate segregated fund has the right under § (a) to make two written solicitations under the provisions of this section in any calendar year, of employees, other than stockholders and executive or administrative personnel, and their families. A labor organization has the right to make two written solicitations under the provisions of this section of employees who are not members, the executive and administrative personnel, and the stockholders, and the families of each) of a corporation at which the labor organization represents members.

(c) *Written Solicitation.*—This subsection sets forth the statutory requirement that all solicitation be by mail addressed to the employees' or stockholders' homes. The solicitation must disclose the anonymity requirements of the Act and the existence of the custodial arrangement for preserving anonymity.

A mailing by a corporation or labor organization to individuals who may be solicited under this section announcing the establishment of a separate segregated fund constitutes a solicitation. Senator Allen. 122 *Cong. Record* S4155 (daily ed. March 24, 1976).

(d) *The Custodial Arrangement.*—This subsection is the "spelling out" of the anonymity requirement of the Act. See statement of Senator Cannon, 122 *Cong. Record* S4154 (daily ed. March 24, 1976). The corporation or labor organization must establish a custodial arrangement. The written solicitation (or return envelopes enclosed therein) must give the return address of the custodian. The custodian will re-

ceive all contributions; keep the required records; deposit all contributions received in a separate account; forward the total amount of contributions received by check drawn on that account, to the separate segregated fund; and provide the separate segregated fund only the information that it is required to disclose under the Act. The custodian may not be an officer, stockholder, executive or administrative personnel or member of the corporation or the labor organization conducting the solicitation. In addition, the custodian may not be an officer or employee of the separate segregated fund except that a custodian (who is *not* one of the persons above) may serve as the treasurer of the separate segregated fund and perform all of the recordkeeping and reporting requirements of the Act.

If the custodian is *not* the treasurer of the separate segregated fund, the treasurer must provide the custodian with the identification and amount contributed directly to the fund by individuals solicited under these provisions. The custodian needs this information to comply with his or her recordkeeping and reporting obligations.

(e) *Availability of Methods.*—A corporation or labor organization may not use a payroll deduction plan for facilitating contributions solicited under this section. See statements of Senator Cannon, 122 *Cong. Record* S4156 (daily ed. March 24, 1976). The Commission is of the opinion that the required anonymity is not maintained if a payroll deduction plan is used.

Subsections (e) (2) and (3) follow the expressed intent of the conferees. *H. Conf. Report, supra*, p. 64. If the corporation uses an in-house method, it will be required to make that method available to a labor organization which has the right to make a solicitation under this section. If the corporation does not wish to disclose the names and addresses to any labor organization, the corporation and labor organization are required to retain an independent mailing service. The independent mailing service will make the mailing for for the corporation. The corporation is required to make the names and addresses of the individuals the labor organization is entitled to solicit available to the independent mailing service so that the service may do a mailing for the labor organization.

Subsection (e) (4) requires a corporation to notify a labor organization prior to the time any solicitation is made under this section. This provision was adopted by the Commission to prevent the situation arising where a corporation sends a solicitation so late in the calendar year that the labor organization does not have the necessary time to make a solicitation in that calendar year. If this were to occur in the year preceding the election, the practical effect would be that the corporation would have had three opportunities to solicit contributions for the election year. If the labor organization, due to the constraints of time, were unable to make a solicitation in the calendar year before the election, the labor organization would be limited to two solicitations for that election year. With the addition of this section, the corporation is required to notify the labor organization of its intent to make a solicitation. This notification must be given in advance so that the labor organization has a reasonable opportunity to make a solicitation during the calendar year in which the corporation makes a solicitation.

Subsection (e) (5) incorporates the conference report language in that regardless of the number of labor organizations which represent members at a given corporation, only two letters requesting contribu-

tions for labor organizations' separate segregated funds may be sent to employees who are not members of that union and the stockholders of the corporation and their families. Since the various labor organizations all have the right to make a solicitation, § 114.6(b), the Commission focused on the fact that any given employee or stockholder could receive only two mailings per calendar year from labor organizations. Consequently, this subsection allows several labor organizations to join together, and a single mailing may contain requests for contributions to each of the labor organization's separate segregated fund.

§ 114.7 Membership Organizations, Cooperatives, or Corporations without Capital Stock.

The provisions of 2 U.S.C. § 441b(b)(4)(C) are contained in § (a). Although corporations, national banks, or labor organizations may be members, this section in no way waives the prohibition on contributions by such entities. § (b).

Subsection (c) follows language in the Conference Report and an explanation of the conferees' intent by Senator Cannon. *H. Conf. Rept.*, *supra*, p. 63 and 122 *Cong. Record* S6365 (daily ed. May 3, 1976). The Commission rejected a proposed amendment to this section which would have allowed a trade association to solicit the executive and administrative personnel of its noncorporate members. The Commission could find no legislative history supporting the proposed amendment. The Commission has elsewhere followed a strict reading of the statutory word member, as was the case with the question of extending solicitation rights to the executive or administrative personnel of a labor organization who are not members. In addition, a sole proprietor or partnership which is a member is not subject to provisions of this Part and may, therefore, solicit its partners and employees on behalf of the trade association.

Subsection (d) recognizes that certain professional groups or firms, such as doctors, lawyers, or accountants, may have corporate status under State law. The provisions of this Part on voluntary contributions to separate segregated funds, § 114.5(a), are applicable to membership organizations, cooperatives, and corporations without capital stock and their separate segregated funds. § (g).

The right of a membership organization, cooperative, or corporation without capital stock to communicate with its members is based on 2 U.S.C. § 431(f)(4)(C) which exempts communications by a membership organization to its members from the definition of expenditure if the membership organization is not organized primarily for the purpose of influencing Federal elections. (The 1976 amendment to this section make certain of these costs reportable.) Again, this communication right distinguishes between a communication of the organization's own views and the use of the organization's resources to aid in the distribution of a candidate's material. Under the Act, expenditures for the dissemination, distribution, or republication of candidate material are considered a contribution to the candidate. 2 U.S.C. § 441a(a)(1) and *H. Conf. Rept.*, *supra*, pp. 55 and 59. Consequently, such expenditures are not within the communication exemption to the definition of expenditure. There is no corresponding exemption for membership organizations to the definition of contribution.

The reference to mutual life insurance companies in §(i) is based on a discussion in the conference debates. 122 *Cong. Record* S6478 (daily ed. May 4, 1976), discussion between Senators Cannon and Allen.

Subsection (j) prohibits a membership organization, cooperative, or corporation without capital stock or a separate segregated fund established by such organizations from soliciting contributions from separate segregated funds established by its members. This subsection is based on the statute which extended the solicitation right to members or to the stockholders and executive or administrative personnel of corporate members only. This prohibition applies equally to membership organizations which are trade associations and would prevent a trade association or its separate segregated fund from soliciting contributions from separate segregated funds (political committees) established by its corporate or noncorporate members. Although the separate segregated fund of a membership organization, cooperative, or corporation without capital stock may accept unsolicited contributions, informing persons of the right to accept unsolicited contributions is in itself a solicitation. This subsection would not prevent a trade association, once it has obtained the required approval, from working with the officers or employees of a corporation's separate segregated fund when making its solicitation of the stockholders or executive or administrative personnel of the corporation.

§ 114.8 Trade Associations.

(a) *Definition.*—The general definition of a trade association is based on the treatment in the tax code of business associations. See Regulation Section 501(c)(6) of the Internal Revenue Code of 1954.

(c) *Limitations.*—The statutory limit on solicitations by trade associations of the stockholders and executive or administrative personnel of member corporations is contained in § (c). 2 U.S.C. § 441b (b)(4)(D). Since only one trade association has the right, after approval has been obtained, to solicit a member corporation, two trade associations could not engage in a joint fundraising of the stockholders and executive or administrative personnel of a member corporation.

(d) *Separate and Specific Approval.*—The Commission has interpreted the statute as requiring a two step process: (1) the member corporation must first approve the solicitation; and (2) after the approval has been received, the trade association may solicit the persons approved by the member corporation. The trade association is required to keep a copy of all approvals which it receives for three years from the date of the approval. § (d)(2). Three years is the standard record maintenance requirement of the regulations. 2 U.S.C. § 436(a) and § 104.12.

Because corporations may wish to see the solicitation materials a trade association would use to solicit its employees, the trade association may enclose *one* copy of proposed solicitation materials in its request for approval. § (d)(3). Such a mailing will not be deemed a solicitation. However, any mailing which contains solicitation materials in bulk or any reproduction by corporate personnel for distribution to the stockholders or executive or administrative personnel to solicit contributions will be deemed a solicitation and subject to the limitations of this section. The trade association may address the request for approval or communications other than solicitations to

the designated representative with whom the corporation regularly corresponds.

The Commission rejected an option which would have provided an exemption from the two step approval/solicitation process for trade associations with corporate members of fewer than ten stockholders or five executive or administrative personnel. Under the option, a trade association could have made a simultaneous request for approval and enclosed materials for solicitations of the stockholders and executive or administrative personnel of member corporations of this size, and if 90% of the corporate members were corporations falling within this size range, the trade association could have used its membership mailing list to make the simultaneous request and solicitation. Although adherence to the two step approval process may cause some administrative burden for trade associations with small corporate members, the Commission could find no legislative history which would have supported the exemption from the statutory requirement for separate approval. Additionally, the principal stockholder or president of a small corporation, who will likely receive the request for approval, is often the only stockholder or employee who contributes to the trade association's separate segregated fund. Any solicitation of other stockholders or executive or administrative personnel is subject to the separate approval requirements of this section.

The member corporation may limit the group which the trade association may solicit, but once a corporation has given a trade association approval to solicit—even to a limited extent—the corporation may not approve a solicitation for any other trade association. § (d)(5). An approval lasts through the calendar year in which it was given unless withdrawn at an earlier date by the corporate member. § (d)(4). A corporation may withdraw an approval at any time. However, if any solicitation has been made for the trade association's segregated fund prior to the corporation's withdrawal of the approval, the corporation may not approve any other solicitation for a trade association during the calendar year.

The Commission rejected a proposed amendment to this section which would have allowed a trade association to solicit contributions from individuals present at a trade association's meeting if the individuals present were the persons who customarily represented the member corporations in dealings with the trade association and if the meetings were regularly scheduled meetings of the association and not held for the predominant purpose of raising Federal campaign funds. The trade association is not prevented from making solicitations at trade association meetings but the prior approval of the member corporation is required.

(e) *Solicitation.*—Once approval has been obtained, there is no limitation on the number of times a trade association may solicit the persons approved by the member corporation and there is no restriction on the method of solicitating voluntary contributions or the method of facilitating the making of voluntary contributions used by a trade association. § (e)(1)(3). The Commission specifically rejected a proposal which would have allowed a member corporation to use a payroll deduction or checkoff system for executive or administrative personnel contributing to the separate segregated fund of a trade association.

There was no legislative history on the extent of corporate participation in the trade association's solicitation of the stockholders and executive or administrative personnel of the corporation. An argument can be made from the statutory language that the exemption for solicitation costs applies only to solicitations by a corporation to its separate segregated fund. Under this interpretation, a trade association would be required to reimburse the corporation for any expenditure or assistance by the corporation. To require a trade association to reimburse the corporation for incidental services, such as the distribution of the association's material via the corporation's internal mailing system, seemed tenuous since the trade association will be paying for the substantial costs of the solicitation with the membership fees from corporations. Consequently, the Commission has not required the trade association to reimburse the corporation for such incidental expenditures.

The Commission has, however, followed a strict reading of what constitutes a solicitation for a trade association's separate segregated fund for the purpose of the limitation in 2 U.S.C. § 441b(b)(4)(C). Any solicitation or distribution of material soliciting contributions for a trade association by the corporation or its personnel to the stockholders or executive or administrative personnel of the corporation is considered a solicitation subject to the limitations of 2 U.S.C. § 441b (b)(4)(D) and § 114.8(c). If, for example, a corporation had approved a solicitation by one trade association, the corporation or its personnel could not solicit the stockholders and executive personnel for contributions to the separate segregated fund to another trade association.

(f) *Solicitation of a Subsidiary Corporation.*—If the subsidiary, branch, division, or affiliate of a parent corporation is itself a separate corporate entity and a member of a trade association, that trade association may, subject to the limitation and approval requirements, solicit the stockholders and executive or administrative personnel of the subsidiary, branch, division, or affiliate corporation. This provision is based on a discussion between Senators Cannon and Packwood in the conference debates. 122 *Cong. Record* S6367 (daily ed. May 3, 1976).

(g) *Federations of Trade Associations.*—In the absence of any legislative history on the treatment of solicitation by federations of trade associations, the Commission followed the rationale of the anti-proliferation provisions of the Act in this provision. If all of the political committees established by the federation and its regional, state or local affiliates are one committee for the purposes of contribution limitations. the federation may, under the provisions of this subsection, solicit the members of its regional, state or local affiliates. If the members of the regional, state or local affiliates are corporations, the federation may solicit the stockholders and executive or administrative personnel of the corporations subject to the requirements of this section. This subsection applies only to a federation of trade associations in the same line of industry or commerce.

(h) *Communications Other Than Solicitations.*—Solicitations for contributions to the trade association's separate segregated funds are subject to the limitations of this section. Other types of communications in connection with a Federal election may be sent to the designated representative of the corporate member. There is no limitation

on the number of trade associations which may make communications other than solicitations to its corporate members.

(i) *Trade Association Employees.*—Subsection (j) specifically sets forth the communication and solicitation rights of trade associations with their own employees. Since trade associations will presumably be using corporate money, communications and solicitations by the trade association are subject to the limitations of § 114.8.

§ 114.9 Use of Corporate or Labor Organization Facilities And Means of Transportation.

(a) *Use of Corporate Facilities for Individual Volunteer Activity by Stockholders and Employees.*—

(b) *Use of Labor Organization Facilities for Individual Volunteer Activity by Officials, Members and Employees.*—

These subsections apply to individual volunteer activity such as an employer using his or her office telephone to make calls in connection with a Federal election. These sections are not applicable to a corporation's or labor organization's use of facilities for activities specifically permitted to the corporation or labor organization by this Part. The use of the corporate or labor organization's facilities for the exempted activities is permitted. In addition, these sections only go to the question of whether such use would violate Federal law; they do not provide a stockholder, employee or member with a right to the use of the facilities. Indeed, these regulations are subject to the rules and practices of the corporation or labor organization which may in fact prohibit any use of the facilities in connection with a Federal election.

The Commission rejected an option which would have prohibited the use of corporate labor organization facilities for individual volunteer activity. The Commission took the position that if the stockholder, employee or member reimburses the corporation or labor organization for the use, such use will not be a violation of Federal law. In determining the proper formula for reimbursement, the Commission rejected an option which would have required the stockholder, employee, or member to reimburse for all use even if the use did not result in any increased cost to the corporation or labor organization. Rather, the Commission adopted the present subsections which require an individual to reimburse for occasional, isolated or incidental use only to the extent that the corporation or labor organization incurrs expenses, above its normal operating costs as a result of such activity. The amount of the required reimbursement would be the amount of the increased costs. A description of occasional, isolated, or incidental use is contained in §§ (a)(1)(i)-(ii) and (b)(1)(i)-(ii) and a "safe harbor" is provided in §§ (a)(1)(iii). If the activity is more than occasional, isolated or incidental, the corporation or labor organization must be reimbursed for the normal and usual rental charge, as defined in § 100.4(a)(1)(iii)(B), for the use of the facilities.

Subsection (c) pertains to the use of corporate or labor organization facilities, such as xeroxing or mimeograph machines, to produce election materials. If, for example, a candidate had his or her handbills reproduced on a mimeograph machine owned by a labor organization, the candidate would be required to reimburse the labor organization in the amount of the normal and usual charge for pro-

ducing the handbills in the commercial market. The reimbursement must be made within a commercially reasonable time.

Under subsection (d), a person—other than a stockholder, employee, official, or member—who makes any use of corporate or labor organization facilities will be required to reimburse in the amount of the normal and usual rental for the facilities. Any person who rents corporate or labor organization equipment or furniture, as for example a corporation might loan a candidate office furniture, is required to pay the normal and usual rental charge for the equipment or furniture used.

(e) *Use of Airplanes and Other Means of Transportation.*—Subsection (e) allows candidates, candidate's agent or persons traveling on behalf of candidates to use airplanes owned or leased by a corporation or labor organization which is not licensed to offer commercial services provided that the corporation or labor organization is reimbursed in advance for the use. The advance reimbursement is required because the corporation or labor organization is not in the regular business of offering commercial transportation for credit. Under the standard reimbursement formula provided in § (e)(1)(i) and (ii), the amount of the required reimbursement will be known in advance.

Candidates or persons traveling on behalf of candidates who use cars or other means of transportation owned or leased by a corporation or labor organization must reimburse the corporation or labor organization at the normal and usual rental charge. The reimbursement is required within a commercially reasonable time since the amount (such as mileage charges) will not be known prior to the use.

§ 114.10 Extension of Credit and Settlement of Corporate Debts.

This section, which is a modification of Advisory Opinion 1975–39, provides that a corporation may extend credit to a candidate, political committee or other person in connection with a Federal election provided that the extension of credit is in the ordinary course of the corporation's business and that the terms of the credit are substantially similar to extensions to nonpolitical debtors. § (a). Procedures for the settlement of corporate debts are set forth in § (c). If a corporate debt is settled in a commercially reasonable manner, following the procedures in § (c), the settlement will not be considered an illegal corporate contribution.

§ 114.11 Employee Participation Plan.

This section embodies a portion of Advisory Opinion 1975–23 pertaining to the establishment of an employee participation plan by Sun Oil Company. The Commission found no legislative history dealing with that portion of the Sun Oil opinion.

Under the provisions of this section, the corporation may establish an employee savings plan and pay for the cost of maintaining separate bank accounts for participating employees. The plan must be made available to all employees of the corporation including employees who are members of a labor organization (§ (b)). The employees' money is deposited in a separate bank account and the employee must maintain complete control over disbursements from the account. Communications about participation in the plan may be conducted by either the corporation or the labor organization or both (§ (c)).

The basis for this section is that the corporate expenditure for establishing and administering the plan is nonpartisan, in that the plan

does not favor one candidate or party over another. Accordingly, the corporation may not direct, control or suggest to the employee the eventual recipient of the employee's contribution. If the corporation were to exercise any direction or control over the contribution or suggest the candidate or party to which the employee should give, the corporation would no longer be operating the plan in a nonpartisan fashion. Consequently, the monies expended for the establishment and administrative costs of the plan would be an illegal corporate expenditure.

A labor organization may establish and administer an employee participation plan. A labor organization which establishes a plan at a corporation in which it represents members is required to make the plan available to all employees of the corporation including employees who are not members of the labor organization. The cost of establishing and administering such a plan must be borne by the labor organization.

Under subsection (d), the method used to transmit contributions to the candidate or political committee may not identify the corporation or labor organization which established the employee participation plan. For example, the check may not bear the corporation or labor organization's name. Any correspondence accompanying the contribution may not be under the corporation or labor organization's letterhead. This subsection is based on the fact that the contribution is viewed as an individual contribution from the employee to the candidate or political committee. The participation of the corporation or labor organization is limited to establishing the plan and does not extend to participation in forwarding the contribution to the candidate or political committee. The individual contributor should supply the identification required by the Act.

§ 114.12 Miscellaneous Privisions.

Subsection (a) provides that political committees may incorporate and not be subject to the prohibitions of 2 U.S.C. § 441b and this Part if they incorporate for liability purposes only. As a political committee, the monies coming into the organization will be subject to the contribution limitations of the Act and also to the prohibitions on contributions by corporations, labor organizations, government contractors, and foreign nationals. It is the Commission's opinion that 2 U.S.C. § 441b should not be viewed as a bar to the incorporation of political committees for liability purposes only.

Subsection (b) recognized the fact that, particularly in small towns, meeting rooms in corporations or labor organization halls are customarily used as community meeting rooms. This subsection allows corporations or labor organizations to make meeting rooms which are customarily made available to the public available to political committees or candidates provided that the rooms are made available on the same terms given to nonpolitical groups and provided that the rooms are made available without regard to the political affiliation of the candidate or committee.

The prohibition in subsection (c) applies to corporations or labor organizations paying the cost of fringe benefits for employees or members who take leave-without-pay to work in political campaigns. It does not apply to the payment of fringe benefits for employees on annual leave or other leave which the employee has the right to take as a result of a contract and which may be used by the employee for any purpose.

Subsection (d) pertains to those corporations who, prior to the effective date of this Act, established a payroll deduction plan for employees other than stockholders and executive or administrative personnel. If the employees were solicited and signed up for the payroll deduction prior to the date of the Act, the corporation may continue the plan until December 31, 1976.

PART 115—FEDERAL CONTRACTORS

EXPLANATION AND JUSTIFICATION

§ 115.1 Definitions.

(a) *Federal Contractor.*—This definition incorporates the statutory language. 2 U.S.C. § 441c(a)(1). The Commission has used the term "Federal contractor" rather than the term "Government contractor" used in the caption of § 441c to make clear that the Part applies only to persons who are negotiating with or have contracts with the Federal government. See discussion in § 115.2(a).

(b) *Period of Prohibition.*—This subsection, which follows § 441c (a)(1), sets forth the time during which the prohibition is in effect.

(c) *Contracts.*—The prohibition covers all contracts entered into with the Federal government, including contracts as defined in 41 CFR § 1-1.208.

(d) *Contractual Relationship.*—This subsection follows language in the 1974 Conference Report on the coverage of 18 U.S.C. § 611. *S. Conf. Report* 93-1237, 93d Congress, 2d Sess., 68-69 (1974). The report stated:

> A question was raised in the House committee during the consideration of the amendment to section 611 as to whether doctors receiving payments under the so-called Medicare and Medicaid programs are prohibited from making political contributions as government contractors. The House committee was of the opinion that nothing in the existing section 611, nor in the amendment thereto included in the House amendments, would prohibit a doctor from making a political contribution solely because he was receiving payments for medical services rendered to patients under either the Medicare or Medicaid program. Under the Medicare program the basic contractual relationship is between the Federal Government and the individual receiving the medical services. The individual receiving the medical services may be reimbursed directly by the Federal Government for amounts paid for such services, or he may assign his claim against the Federal Government to the doctor who rendered the services, but in the latter case the doctor merely stands in the shoes of the claimant for payment. This relationship is not altered by the fact that a Federal agency may retain a right to audit the accounts of a medical practitioner to protect the Federal Government against fraudulent claims for medical services.
>
> Under so-called Medicaid programs, it is true that doctors may have specific contractual agreements to render medical services, but such agreements are with State agencies and not with the Federal Government. Medicaid programs are administered by State agencies using Federal funds. The House committee did not believe that section 611 prohibiting political contributions by government contractors has any application to doctors rendering medical services pursuant to a contract with a State agency. *S. Conf. Report*, *supra*, p. 68.

Subsection (c) and this subsection follow Advisory Opinion 1975-110.

(e) *Labor Organization.*—The statutory definition in 2 U.S.C. § 441b(b)(1) is incorporated in this subsection.

§115.2 Prohibitions.

The general prohibition of § 441c(a)(1) is set forth in § (a). The Commission has added the term expenditure to this regulation. The statutory language, which is based on Title 18, U.S.C., 1940 Ed., § 61m–1 (July 19, 1940, c. 640, § 5, 54 Stat. 772), is

> It shall be unlawful for any person * * * directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use.

It is the Commission's opinion that the use of the term "indirectly" and the phrase "to any person for any political purpose or use" in the original statutory language indicates a Congressional intent to include expenditures as now defined in the Act.

The original version of this section, which included the term "indirectly" was contained in the 1940 extension of the Hatch Act, 53 Stat. 1147. Section 13 of the 1940 Act made it unlawful "for any person directly or indirectly, to make contributions in an aggregate amount in excess of $5,000 . . ." Senator Bankhead, who offered § 13 as an amendment, stated on the Senate floor:

> We all know that money is the chief source of corruption. We all know that large contributions to political campaigns not only put the political party under obligation to the large contributors, who demand pay in the way of legislation, but we also know that large sums of money are used for the purpose of conducting expensive campaigns through the newspapers and over the radio; in the publication of all sorts of literature, true and untrue; and for the purpose of paying the expenses of campaigners sent out into the country to spread propaganda, both true and untrue. 86 *Cong. Record* 2720.

The inference is that, by the use of the term indirect, Congress intended the prohibition to extend to the spending of funds by a government contractor for campaign purposes regardless of whether the funds were given to the candidates or spent by the government contractor. This argument is strengthened by the fact that contribution and expenditure were not precisely defined as they now are.

Indeed, there was some question in the early forties as to whether 18 U.S.C. § 610 prohibited expenditures. The language of the statute clearly forbids gifts *directly* made to a candidate or his campaign organization. The House Special Committee to Investigate Campaign Expenditures studied the scope of the term contribution in § 610 and concluded that the Act was intended to prohibit such expenditures. H.R. Rep. No. 2739, 79th Cong., 2d Sess. 40. The language of § 441c has always been broader in that it prohibited indirect contributions and contributions to any person for any political purpose or use.

In addition, the present Act recognizes that expenditures made by a person in cooperation, consultation, or concert with a candidate or committee is a contribution. 2 U.S.C. § 441(a)(7)(B).

This subsection also incorporates the Commission's earlier Advisory Opinion 1975–99 in which it determined that the prohibition extended only to Federal elections and did not include state or local elections.

§ 115.3 Corporations, Labor Organizations, Membership Organizations, Cooperatives and Corporations without Capital Stock.

This section incorporates the statutory language of 2 U.S.C. § 441c(b), the practical effect of which is to make corporations and labor corporations subject to the provisions of § 441b irrespective of whether the corporation or labor organization is a Federal contractor. As Senator Cannon stated:

> The substitute also makes a modification of the section permitting solicitation to segregated funds by government contractors so that it conforms to and is governed by the revised provisions which relate to corporations and labor organizations. 122 *Cong. Record* S4151 (daily ed. March 24, 1976).

§ 115.5 Partnerships.

Subsection (b) incorporates Advisory Opinion 1975–31. The Commission rejected an amendment to this section which would have allowed a partnership to use partnership assets to establish a political committee to make contributions or expenditures in Federal elections. It was the Commission's opinion that the statutory prohibition on indirect contributions would prohibit the use of partnership assets to set up a political committee.

§ 115.5 Individuals and Sole Propriators.

This section follows Advisory Opinion 1975–31. A spouse of a Federal contractor may make a contribution or expenditure in his or her name regardless of whether the family is a single or double income family.

§ 115.6 Employee Contributions or Expenditures.

This section makes clear that the prohibitions of this Part do not extend to employees of Federal contractors.

Explanation and Justification of the Proposed Regulation on Convention Financing, Parts 120–125

Part 120—General Provisions

§ 120.1 Scope.

This regulation is intended to interpret and apply 26 U.S.C. § 9008 and 2 U.S.C. § 437 which provide for optional public financing of presidential nominating conventions for both major and minor parties.

reporting requirements, as well as limit the amount of expenditures that the parties may incur for the convention. Major parties are entitled to $2 million each from the Presidential Election Campaign Fund; minor parties are entitled to a proportionate share of $2 million based upon the ratio of votes received in the preceding presidential election to the votes received by major party candidates. Since no major party presidential candidate received the statutory minimum of 5 percent of the total popular vote in 1972, there is no minor party that can qualify for convention funds for the 1976 convention. In any event, major and minor parties may not spend more than $2 million for the convention, whether or not they participate in public financing.

§ 120.2 Definitions.

The definitions found in 26 U.S.C. § 9002 are applicable to § 9008. Accordingly, those definitions in § 9002 which are relevant to convention financing have been selected and incorporated into the regulation.

(a) *Commission.*—This paragraph defines the Federal Election Commission.

(b) *Fund.*—This definition which follows 26 U.S.C. § 9002(5) describes the Presidential Election Campaign Fund within which the Secretary of the Treasury has established separate accounts in the name of the national party for convention financing.

(c) *Major Party.*—This definition follows 26 U.S.C. § 9002(6) and is pertinent with respect to the entitlements provisions of this regulation.

(d) *Minor Party.*—This definition follows 26 U.S.C. § 9002(7) and is pertinent with respect to the entitlement provisions of this regulation.

(e) *New Party.*—This definition follows 26 U.S.C. § 9002(8).

(f) *Convention Expenses.*—This definition does not appear in the statute as does, for example, "qualified campaign expense" in 26 U.S.C. § 9032(9) with respect to the primary matching payment account. Accordingly, one was fashioned based upon the input received by the Commission from the major parties describing the various expenses incurred in conducting a convention.

Subsections (e)(1)–(e)(11) are not exclusive expenditure categories yet they do give the national parties guidance for determining what is or is not a convention expense, since no national party may incur convention expenses in excess of $2 million.

(g) *Secretary.*—This paragraph defines the Secretary of the Treasury of the United States.

(h) *Host Committee.*—This definition relates to Part 121 as to the permissible scope of host committee activity.

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PART 121—LIMITATION OF EXPENDITURES

Subpart A—National Party Limitations

§ 121.1 Major Parties.

This section follows 26 U.S.C. § 9008(d)(1) which states that major parties may not incur expenditures that exceed their entitlement, namely $2 million.

§ 121.2 Minor Parties.

This section follows 26 U.S.C. § 9008(d)(2) which allows minor parties to spend the same amount for their convention as major parties.

§ 121.3 Exception.

This section follows 26 U.S.C. § 9008(d)(3) which gives the Commission the power to authorize the national committee of a national party to exceed its $2 million expenditure ceiling due to extraordinary and unforeseen events. In no event will additional federal money be certified. Such extra expenses must be defrayed with private funds.

§ 121.4 Expenditures by Municipal Corporations and Agencies.

This section allows for certain expenditures to be made by municipal corporations and agencies without the value of those expenditures being counted toward the national party's $2 million expenditure ceiling. For example, a city may contract with the national party to provide certain municipal services and facilities as part of an overall package in attracting the convention to that city. Indeed, a rough estimate shows at least $4 million worth of expenditures. If this expense were imputed to be an expense by the national party, the $2 million statutory expenditure ceiling would be unrealistically low. See also a similar justification for § 121.5.

§ 121.5 Discounts by Retail Business Concerns.

This section merely provides that normal business discounts given to the national party for the purchase of goods or services for the convention will not count toward the expenditure limitation of the national party. If the discount is greater than the normal one based upon the quantity sold, then that excessive discount becomes, in effect, a contribution, and thereby reduces the public fund entitlement by that amount. This language is similar to that which appeared in Advisory Opinion 1975–1, published in the *Federal Register* on July 15, 1975.

§ 121.6 Samples and Promotional Material.

This section basically permits businesses to give away free samples of their products to the convention attendees provided that such practice is in the ordinary course of business and is nonpolitical in nature. These expenditures will not be considered an impermissible contribution to the national party since it appears that Congress did not intend to restrict normal commercial practices that are nonpolitical. Consequently, the value of the samples, products and promotional material do not count toward the $2 million expenditure ceiling.

§ 121.7 In-Kind Contributions to the Host Committee.

This section permits local private businesses and labor organizations to contribute office space, typewriters, and the like to the host committee for its administrative use. Such in-kind contributions are presumably not politically motivated but are undertaken chiefly to promote economic activity and good will of the host city.

Subpart C—Donation of Funds by Local Businesses and Labor Organization; Advertising

§ 121.8 Donation of Funds to Host Committee.

This section permits local businesses and labor organizations to make donations of money to the host committee to be used for purposes de-

signed to promote a good image of the host city to the convention attendees. The section will further permit the donor to place nonpolitical restrictions on its contribution, such as earmarking the gift for a particular project (e.g., to pay for "Welcome" signs, etc.) or to allow the donor to receive some type of acknowledgement such as a "Courtesy of X, Y, Z Companies" notation or reference. As provided in the explanation for § 121.7, these donations are presumably commercially motivated rather than politically, and thus will not be considered an unlawful contribution.

§ 121.9 Use of Funds by Host Committee.

Subsection (a) allows the host committee to use the contributed funds to defray expenditures made for the purpose of promoting a good image of the city to the convention attendees.

Subsection (b) further expands the scope of host committee activity to allow the committee, if it so chooses, to use its funds to defray convention expenses of the national party, provided that the source of these funds was local retail businesses (whether incorporated or not) and provided further that the amount contributed was proportionate to a reasonably expected commercial return. Funds used in this fashion shall be made from a separate account maintained by the host committee.

An argument could be made that the dollar amount of convention expense, such as renting a convention hall, should count toward the $2 million ceiling whether or not the convention hall or seats were rented directly by the national party or by the host city and given to the national party. Otherwise, a national party could avoid the $2 million limit just by having someone else (e.g., the host committee) pay for the convention expense. However, it appears from the testimony of the major parties before the Commission that the Congress in deciding upon a dollar figure for expenditure limitations, took into consideration only those expenses actually paid by the national party for the 1972 convention and ignored in its computation the value of services provided by host cities and committees. Section 121.9, therefore, represents an interpretation of 26 U.S.C. § 9008(1) that the $2 million limit applies only to expenditures made *by the national party*, and that expenditures made *by private host committees* under certain restrictions will not be counted toward the ceiling.

§ 121.10 Expenditures by Individuals.

Subsection (a) provides that if persons attending the convention, including candidates and delegates, pay their own way, or if paid on their behalf by the State or local committees of a political party, those expenditures will not count toward the party's limitation.

Subsection (b) concerning legal and accounting fees reflect the 1976 amendments and provide that the payment by the regular employer of a lawyer or accountant will not count as an expenditure toward the $2 million limit and that, unlike the similar provision in Title 2 for legal and accounting services, expenditures are *not* reportable. However, any payment made by the national committee for legal and accounting services *do* count against the expenditure limitation and are thus reportable.

PART 122—ENTITLEMENT TO AND DISPOSITION OF PAYMENTS FROM THE FUND

§ 122.1 Major Parties.

This section follows 26 U.S.C. § 9008(b)(1) which entitles major parties to receive payments not exceeding, in the aggregate, $2 million.

§ 122.2 Minor Parties.

This section follows 26 U.S.C. § 9008(b)(2) which entitles minor parties to receive a proportionate share of $2 million based upon the number of votes they received in the preceding election.

§ 122.3 Adjustment of Entitlements.

Subsection 122.3(a) follows 26 U.S.C. § 9008(b)(5) which provides for a cost-of-living adjustment identical to the adjustment found in 2 U.S.C. § 441a. Subsections (b) and (c) provide for further adjustments, if necessary, due to any interest received on the investment of public funds and the receipt and use of any private funds.

§ 122.4 Investment of Funds.

This section permits the national committee to invest their public funds, for example, in a savings account or Treasury bonds but deducts the income so generated from the party's entitlements in order to preclude an overpayment.

§ 122.5 Use of Funds; Candidates and Delegate Expenses.

This section follows and interprets 26 U.S.C. § 9008(c) which limits the committee's use of public funds received, including the prohibition against paying for candidate and delegate expenses with public funds. Both parties have informed the Commission that some delegates are also simultaneously serving as official convention personnel, and thus, their expenses should not be considered ineligible to be defrayed with public funds. The Commission felt that this exception would be in keeping with the intent of Congress of prohibiting the use of public funds for candidates and delegates since a delegate/convention employee would have incurred a properly defrayable expense anyway even if he or she were not a delegate.

The Commission also provided for a prohibition in this section against the use of public funds to incur expenses that violate Federal and State law. Such provision is found in 26 U.S.C. § 9002(11)(C) and § 9032(9)(B), the other two categories for public financing, and is considered by the Commission to be sound public policy to include it in this section also.

PART 123—PAYMENT PROCEDURE FOR PRESIDENTIAL NOMINATING CONVENTIONS

§ 123.1 Optional Payments; Private Contributions.

This section makes clear that the public financing of conventions is optional, and accordingly, national parties may elect to receive all, part, or none of the amounts that they are entitled to receive. A party is free to accept contributions for the convention so long as the amount of contributions when added to the amount of public funds requested, does not exceed the expenditure limitation of $2 million.

§ 123.2 Transfer to the Fund.

This section follows 26 U.S.C. § 9008(f) which directs the Secretary to transfer to the Presidential Election Campaign Fund any amounts remaining in the treasury accounts of the respective parties after the convention. Funds found remaining in the party's account could exist, for example, where the national committee elected not to receive its full entitlement or where its full entitlement was not paid due to adjustments because of any interest generated from investment of public funds of the national party's receipt of private contributions.

§ 123.3 Information Required to Qualify for Public Funds.

This section as well as § 123.4 interprets 26 U.S.C. § 9008(g) which empowers the Commission to devise a payment procedure "in such form and manner and at such times as it may require." Section 123.3 outlines its procedure whereby the national committee of a major or minor party files an application statement to qualify for public financing, including the pertinent information specified in 2 U.S.C. § 433(b) as required by 26 U.S.C. § 9008(g).

§ 123.4 Payment Schedule.

This section provides that payments be discussed in installments rather than in a lump-sum payment of $2 million. The statutory justification for the installment method of payment derives from the language of 26 U.S.C. § 9008(b)(1)–(2), namely, that a party is entitled "to *payments* in *amounts* which, in the *aggregate* shall not exceed" a specified amount (emphasis added).

Subsection (a) thus outlines the steps a national committee must follow in order to properly submit an initial payment request. The national committee must set up a separate bank account solely for the deposit of public funds to prevent commingling with private funds in order to ascertain that public funds are used only in accordance with the law. The initial payment request may not exceed 30 percent of the party's full entitlement and must be submitted by a statement of projected expenses for the quarter in which the request is made. In conformity with the statute, payments are made available on July 1 of the calendar year preceding the year of the convention.

Subsection (b) provides for a system of quarterly payments beginning with October 1 of the year prior to the convention and after the national committee has qualified for public financing and received its initial payment.

Subsection (c) permits the national committee to request payments more frequently than quarterly if it appears a deficit will occur.

Subsection (d) directs the Commission to certify for payment the amount requested based upon the projected expenses, subject to deductions as the Commission may determine.

Subsection (e) permits the Commission to withhold payment of 10 percent of the national party's entitlement (e.g., $200,000) until the national committee has submitted their post-convention financing report required by 2 U.S.C. § 437, in order to assure that if any repayments are required, there will be some unexpended funds available for repayment purposes.

Subsection (f) requires the Commission to certify all payment requests within 5 working days after their submission.

PART 124—POST-DISBURSEMENT PROCEDURES

§ 124.1 Repayments.

This section implements 26 U.S.C. § 9008(h) which gives the Commission the same authority to require repayments as it has under 26 U.S.C. § 9007(b). Accordingly, this section follows § 9007(b) by requiring repayments if (a) the payments to the national committee exceed its entitlement, (b) if the national committee's convention expenses exceed its entitlement, (c) if the national committee accepted private contributions which when added to the payments received exceed its expenditure limitation, or (d) if any public funds were used for unlawful purposes. Repayments may be either deducted from any payment due the national party or be made payable by the national party to the Secretary of Treasury.

§ 124.2 Notification of Need for Repayment.

This section follows 26 U.S.C. § 9008(h) which refers to the requirement of § 9007(c) that the statute of limitations for notifications by the Commission for repayment is 3 years from the close of the convention.

§ 124.3 Examinations and Audits.

This section follows the mandate of 26 U.S.C. § 9008(g) that the Commission shall conduct an audit no later than December 31 after the convention. The discretionary audits and examinations provided for in this section are authorized under 26 U.S.C. § 9009(b).

PART 125—CONVENTION REPORTS

§ 125.1 Reports by municipal and private host committees.

This section is required by 2 U.S.C. § 437 and specifies that any group in dealing with officials of a national political party, including cities, to file convention reports. However, no report is required by a municipality if the convention is not held in that city.

§ 125.2 Reports by political parties.

This section is required by 2 U.S.C. § 437 and specifies that the national political party file convention reports, but exempts those local party committees from reporting under this section that only defray delegate expenses or sponsor activities at the convention.

§ 125.3 Post-convention reports; time and content of filing.

Subsection (a) is required by 2 U.S.C. § 437 and specifies the filing date and content of the post-convention report required by the groups indicated in § 125.1–.2.

Subsection (b) provides for continuous quarterly reporting after the convention until the reporting committee has ceased activity.

Subsection (c) provides for the filing of a final convention report.

§ 125.4 Committees receiving Federal funds; quarterly reports.

Although not explicitly required by the statute, this section requires committees receiving public funds to file quarterly reports in order for the Commission to monitor the spending of those funds. The Commission's authority in this area is found in 26 U.S.C. § 9009(b).

§ 125.5 Convention expenses; definition.

This section merely cross-references the definition of convention expenses to Part 120.

EXPLANATION AND JUSTIFICATION OF THE PRESIDENTIAL PRIMARY MATCHING FUND REGULATION, PARTS 130–134

PART 130—DEFINITIONS

§ 130.1 Authorized committee.

This definition generally follows 26 U.S.C. § 9032(1).

§ 130.2 Political committee.

This definition follows 26 U.S.C. § 9032(8). It differs from the definition of "political committee" in 2 U.S.C., § 431(d) in that there is no $1,000 minimum activity requirement and that an individual may be a political committee under this definition, but could not be under Title 2.

§ 130.3 Candidate.

This definition follows 26 U.S.C. § 9032(2), as amended by the 1976 amendments to exclude a person who is no longer an active candidate in more than one State.

§ 130.4 Commission.

This definition follows the Federal Election Commission.

§ 130.5 Matching payment account.

This definition follows 26 U.S.C. § 9032(5).

§ 130.6 Matching payment period.

This definition follows 26 U.S.C. § 9032(6).

§ 130.7 Primary election.

This definition follows 26 U.S.C. § 9032(7) and incorporates by reference the definition of "election" in § 100.6 of the proposed disclosure regulations.

§ 130.8 Matchable campaign contribution.

Although the title of this definition does not appear explicitly in the statute, the language of 26 U.S.C. § 9034 makes it clear that not all contributions are matchable. The major statutory restrictions redected in this definition are that contributions must be a gift of money made by a written instrument, and only the first $250 is to be considered matchable. Under § 130.8(a)(3) and 26 U.S.C. § 9034. the contribution must be received by the candidate on or after the first day of the calendar year immediately preceding the presidential election. However, the statute is silent as to the cut-off date for receiving a matchable contribution. Considering the testimony received on this point from the public the Commission believes that designating December 31 following the last day of the matching period as the cut-off date is equitable since, to use the last day of the matching period as controlling, would be unfair to the national party who held their convention earlier than another party. However, Part 133 makes clear that contributions received after a candidate is nominated will be matched only to the extent of outstanding debts incurred before the nomination.

Within this definition, a "gift of money made by a written instrument" has been defined in § 130.8(c) to mean a check. money order. or any other negotiable instrument payable on demand to the candidate or his or her committee. The contributor's full name, signature. mail-

ing address, the amount and date of the gift, must appear on the instrument or on an attached record.

Furthermore, this definition provides for matching contributions in the form of checks drawn on partnership accounts or accounts of incorporated associations and businesses so long as the aggregate amount of the check(s) does not exceed $1,000 and that it be accompanied by documentation signed by the individuals to whom the contribution is attributable. This policy is in accordance with the Commission's decision in Advisory Opinion 1975–17, published in the *Federal Register* on September 3, 1975 at page 40674. The Commission's position in the regulation that contributions from political committees are not matchable is based on its interpretation of the last sentence in 26 U.S.C. § 9034(a).

§ 130.9 Nonmatchable contributions.

This section reflects the last sentence in 26 U.S.C. § 9034(a) which explicitly excludes certain categories of contributions from being matchable.

Subsections (g)–(i) reflect the Commission's opinion that certain "gifts of money" are, on closer examination, not really gifts since the donative intent necessary to make a gift is lacking. Particularly, subsections (h)–(i) follow Internal Revenue Service Rulings 72–411 and 72–412 which exclude certain contributions from the category of political contributions that are deductible.

§ 130.10 Qualified campaign expense.

This definition follows 26 U.S.C. § 9032(9).

§ 130.11 State.

This definition follows 26 U.S.C. § 9032(10).

Part 131—Eligibility for Payments

§ 131.1 Candidate agreements.

This section generally follows 26 U.S.C. § 9033(a) and adds the additional requirement that the candidate agree to comply with the disclosure requirement of Title 2. From the Commission's experience, it is believed that such a condition is necessary to ensure prompt disclosure by the candidate. The authority for adding this extra requirement is found in 26 U.S.C. § 9033(a) (1), (2).

§ 131.2 Candidate certifications, threshold amount.

This section basically follows 26 U.S.C. § 9033(b) and provides for the orderly procedure of submitting to the Commission the necessary information and documentation, to include photocopies of checks as well as the residential address of every contributor. The Commission concluded, and the candidates concurred, that photo or microfilm copies of the checks is the best way to assure that only acceptable contributions are being matched. Although 26 U.S.C. § 9034 requires "mailing address", the Commission felt it necessary to require the residential address, at least for purposes of the $100,000 threshold, in order to verify the state residency requirement since the mailing address of a contributor could very well be an out-of-state post office box.

Section 131.2(d) permits the Commission to conduct audits under the authority of 26 U.S.C. § 9039(b), and may, in that case, choose

to waive the candidate submission procedure of § 131.2 (c)(1) and (c)(2).

Section 131.2(f) gives the Commission the power to cut-off matching funds if a candidate knowingly exceeds the expenditure limit in each State. The Commission believes this section will not only be the best deterrent to overspending but that it is also implied by the statute since the candidate breaches that agreement, he or she is no longer eligible for matching.

§ 131.3 Matching payment threshold requirements.

Once the candidate makes the submission that he or she has met the threshold, this section provides for the procedure for promptly determining whether or not the candidate has in fact met the threshold.

§ 131.4 Matching payments in excess of threshold.

Once the threshold determination has been made under § 131.3. the candidate is notified that he or she should make a submission in good order of the documentation of all matchable contributions up to a specified date. The formal determination by the Commission that the candidate has met all the requirements of 26 U.S.C. § 9033 is provided by § 132.1 below.

§ 131.5 Candidate Entitlements.

This section follows 26 U.S.C. § 9034.

§ 131.6 Expenditure limitation.

This section follows 26 U.S.C. § 9035(a).

Part 132—Certification and Disbursement

§ 132.1 Initial certification.

This section follows 26 U.S.C. § 9036(a).

§ 132.2 Additional certifications.

This section allows for the submission of requests for additional certification on the first and third Mondays of each month and requires the Commission to certify to the Treasury within 15 calendar days the amount to which the candidate is entitled.

§ 132.3 Payments and Deposits of Presidential Primary Matching Funds.

This section follows 26 U.S.C. § 9037(b) and 2 U.S.C. § 437b(a)(1)(a)(1).

§ 132.4 Insufficient Documentation.

This section provides for the authority of the Commission to reject for matching a contribution which lacks sufficient documentation to ensure that the contribution meets the definition of "matchable" in § 130.8.

§ 132.5 Certification Review.

This section provides for an internal Commission review to settle disagreements over what is and what is not matchable. Although the statute does not provide for such a provision, some type of Commission review was suggested by nearly all those who testified at the hearings as being a practical procedure which would provide a middle ground and hopefully obviate the need to resort to judicial review under 26

U.S.C. § 9041. If the candidate is not satisfied with the Commission decision, judicial review of course, remains available.

Part 133—Termination of Payments

This entire part is made necessary by the 1976 amendments which added a new subsection (c) to 26 U.S.C. § 9033.

§ 133.1 Contribution of Certification.

This section allows the certification process to continue for 21 days past the cut-off date of December 31 as the last date a contribution must be received in order to be matched.

§ 133.2 Ineligibility dates defined.

This entire section follows 26 U.S.C. § 9033(c)(1). Subsection (a) defines the date that a candidate is ineligible to receive matching funds to be the date upon which the candidate is no longer actively conducting campaigns in more than one State, either because the candidate admits the fact or upon a finding by the Commission of the inactive status.

Subsection (b) defines the other ineligibility date to be 30 days following the date on the Second Consecutive Primary Election in which the individual receives less than 10 percent of the number of popular votes cast in that primary. Although subsection (b) allows the candidate to certify to the Commission that he or she is not active in that primary and therefore should not be counted, the Commission is given the authority in Subsection (b)(2) to make a contrary finding.

§ 133.3 Use of Matching Payments; Net Outstanding Campaign Obligations.

Subsection (a) follows 26 U.S.C. § 9038(b)(2) that matching funds can only be used to defray "qualified campaign expenses". Because "qualified campaign expenses" can only be incurred by a candidate or authorized committees, subsection (b) states that expenses incurred after the date a person is no longer a candidate are simply not qualified. Therefore, matching funds can only be used to defray expenses incurred while the person was a candidate.

Subsection (c) provides for an accounting definition of outstanding debts which is designed to maximize the use of private funds to liquidate debts rather than plan an undue burden on public funds.

Subsection (d) follows the legislative intent of cutting off funds to inactive candidates except to defray expenses incurred before their ineligibility. Therefore, if a campaign has no debts on the date the candidate becomes ineligible, no further matching funds are forthcoming. Instead a repayment is required based on a percentage of the surplus in the campaign account as authorized and computed by 26 U.S.C. § 9038(b)(3).

If the campaign is in the deficit on the date the candidate becomes ineligible, subsection (e) provides for the continuation of the matching process until the debts are liquidated.

§ 133.4 Determination of Inactive Candidacy.

This section gives the Commission the authority to find that a candidate is no longer active in more than one State with proper safeguards for notice and due process. Paragraph (e) provides suggested

criteria which the Commission may rely on in determining whether a candidate is active or not.

§ 133.5 Determination of Active Candidacy.

This section is basically a cross-reference to § 133.2(b) (2).

§ 133.6 Reestablishment of Eligibility dates.

This section generally follows 26 U.S.C. § 9033(c) (4).

§ 133.7 Suspension of payments.

This section is intended to encourage the candidate to comply with the agreement of § 131.1(a) (4) that the Title 2 disclosure requirements are followed.

Part 134—Examinations and Audits

§ 134.1 Audit.

This section follows 26 U.S.C. §§ 9038(a) and 9039(b).

§ 134.2 Repayments.

Section 134.2(a) follows 26 U.S.C. § 9038(b) (1) and (2). Section 134.2(b) provides for Commission review and hearing on repayment disputes, a provision not expressly in the statute but strongly suggested by the public in its written comments and testimony at the hearings.

§ 134.3 Liquidation of obligations; repayment.

This section generally follows 26 U.S.C. § 9038(b) (3).

EXPLANATION AND JUSTIFICATION OF THE GENERAL ELECTION FINANCING

PART 140—DEFINITIONS

§ 140.1 Authorized committee.
This definition follows 26 U.S.C. § 9002(1).

§ 140.2 Candidate.
This definition generally follows 26 U.S.C. § 9002(2).

§ 140.3 Commission.
This section defines the Federal Election Commission.

§ 140.4 Eligible candidates.
This definition follows 26 U.S.C. § 9002(4).

§ 140.5 Funds.
This definition follows 26 U.S.C. § 9002(5).

§ 140.6 Major party.
This definition follows 26 U.S.C. § 9002(6).

§ 140.7 Minor party.
This definition follows 26 U.S.C. § 9002(7).

§ 140.8 New party.
This definition follows 26 U.S.C. § 9002(8).

§ 140.9 Political committee.
This definition follows 26 U.S.C. § 9002(9) and differs from the definition of political committee under 2 U.S.C. § 431(d) in that there is no $1,000 threshold of activity.

§ 140.10 Presidential election.
This definition follows 26 U.S.C. § 9002(10).

§ 140.11 Qualified campaign expense.
This definition generally follows 26 U.S.C. § 9002(11). Subsection (d) has been added to clarify the proper categorization of travel expenditures by including in the definition only those travel expenditures that are incurred by the candidate for his staff and guests. Travel expenses paid by media and Secret Service personnel to the campaign are reimbursements and should not be counted as a qualified campaign expense merely because the campaign made the initial outlay to the airlines to cover the expenses of all persons transported.

The alternative formulation in subsection (d)(2) is provided in order to prevent the campaign from overcharging the media and Secret Service which would have the effect of reducing the cost that should be chargeable to the campaign. This section is not incompatible with rulings by the Civil Aeronautics Board on political travel.

Section 140.11(e) states what is *not* a qualified campaign expense. For example, since the statute defines qualified campaign expense to be one that is incurred within the expenditure report period. an expense incurred *after* the period would not be considered a qualified campaign expense. Hence. subsection (e)(1) is proposed. Although not explicitly provided for in Title 26, subsection (e)(2) excludes certain legal and accounting services from the definition of qualified campaign expense in keeping with the Congressional intent expressed in Title 2. See 2 U.S.C. § 431(f)(4)(J).

§ 140.12 Expenditure report period.
This definition follows 26 U.S.C. § 9002(12).

§ 140.13 Contribution; exclusions.
This definition is provided because there is no statutory definition of "contribution" in Chapter 95 of Title 26 even though that word is used in § 9003(b)(2) where candidates must agree not to accept contributions if they elect to receive public funds. Therefore, the definition most likely to comport with Congressional intent is that found in 2 U.S.C. § 431(e) and § 100.4 of the proposed regulations. However. that definition of "contribution includes a loan which the statute implicitly allows in 26 U.S.C. § 9004(c)(2). To reconcile this apparent contradiction, subsection (b)(1) excludes from the definition of con-

tribution a bank loan to a candidate which if endorsed by the candidate cannot exceed $50,000, an amount which may be spent by the candidate himself under the 1976 Amendments. See 26 U.S.C. § 9004(d). Finally, the definition excludes reimbursements from contributions because reimbursements are not made for the purpose of influencing an election but are rather an accounting or billing procedure.

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PART 141—ELIGIBILITY FOR PAYMENTS

§ 141.1 Candidate agreements.

This section basically follows 26 U.S.C. § 9003(a).

§ 141.2 Candidate certifications.

Subsection (a) basically follows 26 U.S.C. § 9003(b). Subsection (b) follows 26 U.S.C. § 9003(c). Subsection (c) follows the 1976

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amendment codified at 26 U.S.C. §§ 9004(d), (e). Subsection (d) is authorized by the last sentence in 26 U.S.C. § 9003(b).

§ 141.3 Allowable contributions.

This section recognizes that candidates may receive private contributions to defray non-qualified campaign expenses and sets out the restrictions on the handling of such moneys to prevent any improper commingling with public funds.

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PART 142—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

§ 142.1 Major parties.

This section follows 26 U.S.C. § 9004(a)(1).

§ 142.2 Minor parties.

This section follows 26 U.S.C. § 9004(a)(2).

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PART 143—CERTIFICATION BY COMMISSION

§ 143.1 Initial certification.

This section follows 26 U.S.C. § 9005(a).

§ 143.2 Payments from the fund.

This section follows 26 U.S.C. § 9006(c) and also 2 U.S.C. § 437b with respect to the use of campaign depositories.

§ 145.3 Finality of certification; hearings.

This section generally follows 26 U.S.C. § 9005(b) and adds a provision for an opportunity for a hearing if certifications are contested.

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PART 144—REPORTS AND RECORD KEEPING

§ 144.1 Separate reports.

This section requires the candidates to report the general election campaign separately from any other reports in order to keep an accurate accounting of the use of public funds.

§ 144.2 Allocation of administrative expenses.

This section is authorized by the last sentence in 26 U.S.C. § 9002(11) and seems to be the easiest method of computation.

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PART 145—EXAMINATIONS AND AUDITS, REPAYMENTS

§ 145.1 Audits, records and investigations.

This section follows 26 U.S.C. § 9007(a) and § 9009(b).

§ 145.2 Repayments.

This section follows 26 U.S.C. § 9007(b) and the repayment scheme in the Matching Fund regulation, § 134.2.

§ 145.3 Notification.

This section follows 26 U.S.C. § 9007(c).

PART 146—OTHER EXPENDITURES

§ 146.1 Expenditures by political party committees.

Notwithstanding the expenditure limitation applicable to the candidates, national, State, and subordinate committees of a political party may make expenditures in connection with a presidential general election in amounts that do not exceed those specified in § 110.7.

This section basically cross-references the party spending limits found in § 110.7

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