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FEDERAL ELECTION COMMISSION
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For meeting of September 19, 2024

Sept. 12, 2024

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*
Acting General Counsel

Neven F. Stipanovic *NFS*
Associate General Counsel

Robert Knop *RMK*
Assistant General Counsel

Luis Lipchak *LML*
Attorney

Joseph Wenzinger *LML for JW*
Attorney

SUBJECT: REG 2024-01 (Candidate Security) Draft Final Rule and E&J

Attached is a draft Final Rule and E&J for REG 2024-01 (Candidate Security). One or more Commissioners have asked for this draft to be made public and placed on the agenda for the Commission's September 19, 2024, Open Meeting.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 113**

3 **[Notice 2024-##]**

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

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Final Rule.

7 **SUMMARY:** The Federal Election Commission is amending its regulations regarding the use
8 of campaign funds to pay for security measures for federal candidates, officeholders, and
9 members of their family and staff. The Commission is adopting this rule to codify several
10 Commission advisory opinions that authorize the use of campaign funds to pay for certain
11 security measures and address additional issues raised in those advisory opinions.

12 **DATES:** The effective date is [DATE].

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

16 **SUPPLEMENTARY INFORMATION:** The Commission is amending its regulations at 11
17 CFR 113 to clarify that federal candidates and officeholders may use campaign funds to pay for
18 security measures so long as the security measures address ongoing dangers or threats that would
19 not exist irrespective of the individual's status or duties as a federal candidate or officeholder.
20 The Commission is amending its regulations consistent with prior advisory opinions that
21 authorized such spending on certain security measures, including non-structural security devices;
22 structural security devices; security personnel and services; and cybersecurity software, devices,

1 and services. The Commission’s amendments to the regulations also address additional issues
2 raised in prior advisory opinions.

3 **Transmitting Final Rules to Congress**

4 Before promulgating rules or regulations to carry out the provisions of the Federal
5 Election Campaign Act of 1971, as amended (the “Act”),¹ the Commission transmits the rules or
6 regulations to the Speaker of the House of Representatives and the President of the Senate for a
7 thirty-legislative-day review period.² The effective date of the final rule is [DATE].

8 **Explanation and Justification**

9 **I. Background**

10 **A. Act and Commission Regulations**

11 The Act identifies six categories of permissible uses of contributions and donations
12 accepted by a federal candidate, two of which are “ordinary and necessary expenses incurred in
13 connection with the duties of the individual as a holder of Federal office,” and “any other lawful
14 purpose not prohibited by 52 U.S.C. § 30114(b).”³ Under 52 U.S.C. § 30114(b), contributions
15 accepted by a candidate may not be converted to “personal use” by any person.

16 The Act and Commission regulations define “personal use” as the use of campaign funds
17 “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the
18 candidate’s election campaign or individual’s duties as a holder of Federal office.”⁴ The Act and
19 Commission regulations provide a non-exhaustive list of expenses that, when paid using

¹ 52 U.S.C. 30101–45.

² *Id.* 30111(d).

³ 52 U.S.C. 30114(a); *see also* 11 CFR 113.2(a)–(e).

⁴ 52 U.S.C. 30114(b)(2); *see also* 11 CFR 113.1(g) (defining “personal use”).

1 campaign funds, constitute *per se* conversion of those funds to personal use.⁵ The Commission
2 determines on a case-by-case basis whether the use of campaign funds to pay expenses other
3 than those listed would be a prohibited conversion of the funds to personal use.⁶

4 The Commission has long recognized that if a candidate “can reasonably show that the
5 expenses at issue resulted from campaign or officeholder activities, the Commission will not
6 consider the use to be personal use.”⁷

7 **B. Security Measures**

8 Neither the Act nor Commission regulations identify the use of campaign funds to pay for
9 the costs of security measures for federal candidates or officeholders as *per se* personal use. In
10 numerous advisory opinions, however, the Commission has permitted the use of campaign funds
11 to pay for various security measures for federal candidates or officeholders.

12 The Commission has issued several advisory opinions authorizing the use of campaign
13 funds for certain home security upgrades to protect against threats to the physical safety of
14 federal officeholders and their families.⁸ The facts presented in those advisory opinions
15 indicated that the threats were motivated by the requestors’ public roles as federal officeholders,
16 candidates, or both. The Commission determined in each instance that the expenses for the

⁵ See 52 U.S.C. 30114(b)(2); 11 CFR 113.1(g)(1)(i).

⁶ See 11 CFR 113.1(g)(1)(ii) (providing non-exhaustive list of expenses to be determined for personal use on a case-by-case basis).

⁷ Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995).

⁸ See Advisory Opinion 2022-02 (Steube) at 5 (approving use of campaign funds for the cost of a locking steel security gate at the federal officeholder’s residence); Advisory Opinion 2020-06 (Escobar) at 2 (authorizing the use of campaign funds for security lighting and wiring at a federal officeholder’s residence); Advisory Opinion 2011-17 (Giffords) at 3 (approving use of campaign funds for installing improved exterior lighting, improved locks, and a duress alarm button); Advisory Opinion 2011-05 (Terry) at 4 (approving use of campaign funds for installation of an exterior closed circuit television monitor); Advisory Opinion 2009-08 (Gallegly) at 4 (approving use of campaign funds for non-structural upgrades to home security system).

1 proposed security upgrades would not have existed irrespective of the candidate’s election
2 campaign or the individual’s duties as a federal officeholder.⁹ Therefore, the Commission
3 concluded that the use of campaign funds to pay for the security upgrades was permissible under
4 the Act and Commission regulations.¹⁰

5 The Commission has also previously considered the implications of the heightened threat
6 environment faced by Members of Congress collectively, necessitating increased residential
7 security measures even if an individual Member has not received direct threats. For example, in
8 Advisory Opinion 2017-07 (Sergeant at Arms), the Commission considered information from the
9 House Sergeant at Arms about the threats faced by Members of Congress due to their status as
10 federal officeholders and the recommendations of the Capitol Police that Members of Congress
11 install or upgrade residential security systems to protect themselves and their families in
12 response to those threats. In light of that information, the Commission concluded that certain
13 costs of installing or upgrading home security systems in and around a Member’s residence
14 would constitute ordinary and necessary expenses incurred in connection with that Member’s
15 duties as a federal officeholder and that, therefore, Members of Congress may use campaign
16 funds to pay reasonable costs associated with such home security systems.¹¹

17 In two advisory opinions, the Commission has also considered whether campaign funds
18 may be used to pay for window security film as an authorized security enhancement in response

⁹ Additionally, in Advisory Opinion 2020-06 (Escobar), the Commission specified that the requested wiring and lighting costs “constitute an integral part of an ordinary and necessary expense that may be paid with campaign funds.” Advisory Opinion 2020-06 (Escobar) at 4. Likewise, in Advisory Opinion 2022-02 (Steube), the Commission stated that the requested locking steel gate at the entrance to the property was a “necessary component” of a residential security system and the costs of which “constitute an integral part of an ordinary and necessary expense that may be paid with campaign funds.” Advisory Opinion 2022-02 (Steube) at 5.

¹⁰ See Advisory Opinion 2022-02 (Steube) at 5; Advisory Opinion 2020-06 (Escobar) at 2; Advisory Opinion 2011-17 (Giffords) at 3; Advisory Opinion 2011-05 (Terry) at 4; Advisory Opinion 2009-08 (Gallegly) at 4.

¹¹ Advisory Opinion 2017-07 (Sergeant at Arms) at 3.

1 to a heightened threat environment faced by federal officeholders. In Advisory Opinion 2022-05
2 (Crapo), the Commission considered whether campaign funds could be used to pay for a series of
3 residential security enhancements recommended by the U.S. Capitol Police, including the
4 installation of security film “on all accessible windows to prevent surreptitious observation into
5 the residence.”¹² Similarly, in Advisory Opinion 2023-04 (Guy for Congress), the Commission
6 considered whether campaign funds could be used to pay for the costs to purchase and install a
7 security window film to protect a Member of Congress’s home. The Commission determined in
8 both instances that window security film, as a removeable security measure designed to mitigate
9 potential threats stemming from the Members’ duties as federal officeholders, falls within the
10 category of “non-structural security devices” for which campaign funds could be used, citing
11 Advisory Opinion 2017-07 (Sergeant at Arms).¹³

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

¹² Advisory Opinion 2022-05 (Crapo) at 3.

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

¹⁴ *Id.*

¹⁵ *See id.* at 3.

1 Last, in two advisory opinions, the Commission authorized the use of campaign funds to
2 pay for reasonable cybersecurity expenses as ordinary and necessary expenses incurred in
3 connection with the requestors' duties as federal officeholders.¹⁶ In those opinions, the
4 Commission also determined that the incidental benefit to others of cybersecurity measures, like
5 the incidental benefit to others of home security measures to protect against physical harm, do
6 not change the conclusion that such expenses are ordinary and necessary expenses incurred in
7 connection with a federal officeholder's duties.¹⁷

8 C. Notice of Proposed Rulemaking

9 On April 9, 2024, the Commission published a Notice of Proposed Rulemaking
10 ("NPRM") in the *Federal Register* proposing to amend its regulations to authorize the use of
11 campaign funds to pay for security measures to protect federal candidates and officeholders.¹⁸

12 The Commission's regulations at 11 CFR 113.1(g)(1) through (9) address the personal
13 use of campaign funds. In the NPRM, the Commission proposed adding a new paragraph
14 (g)(10) to address the use of campaign funds for security measures.

15 Proposed paragraph (g)(10) provided that federal candidates and officeholders may use
16 campaign funds to pay for the reasonable costs of security measures so long as the security
17 measures address ongoing dangers or threats that would not exist irrespective of the individual's
18 status or duties as a federal candidate or officeholder.¹⁹

¹⁶ See Advisory Opinion 2018-15 (Wyden) at 4 (permitting use of campaign funds for cybersecurity expenses including hardware, software, consulting services, and emergency assistance); Advisory Opinion 2022-17 (Warren) at 5 (approving use of campaign funds for the incremental costs of professionally managed cybersecurity services for ongoing network monitoring, patch management, backup management, and remote incident remediation).

¹⁷ See Advisory Opinion 2022-17 (Warren) at 5.

¹⁸ Candidate Salary, Notice of Proposed Rulemaking ("NPRM"), 89 Fed. Reg. 24738 (April 9, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425136>.

¹⁹ New paragraph (g)(10) also requires disbursements for security measures to be for the usual and normal charge and explains the meaning of usual and normal charge.

1 It included four subparagraphs as follows:

2 • New 11 CFR 113.1(g)(10)(i), to identify non-structural security devices as a
3 category of security measures for which reasonable expenses would not be personal use and
4 provide a non-exhaustive list of examples of non-structural security devices.

5 • New 11 CFR 113.1(g)(10)(ii), to identify structural security devices as a
6 category of security measures for which reasonable expenses would not be personal use and
7 include a non-exhaustive list of examples of structural security devices.

8 • New 11 CFR 113.1(g)(10)(iii), to identify security personnel and services as a
9 category of security measures for which reasonable expenses would not be personal use.

10 • New 11 CFR 113.1(g)(10)(iv), to identify cybersecurity software, devices and
11 services as a category of security measures for which reasonable expenses would not be personal
12 use.

13 **D. Public Comments on the NPRM**

14 The Commission received 14 timely comments and two late comments in response to the
15 NPRM. Seven comments were submitted by or on behalf of organizations, and nine were from
16 individuals.

17 The comments universally supported the Commission’s proposal to authorize the use of
18 campaign funds to pay for certain security measures for federal candidates and officeholders and
19 the Commission’s proposal to include a non-exhaustive list of examples for which reasonable
20 expenses would not be deemed personal use.²⁰ Commenters agreed with the Commission’s
21 rationale that federal candidates and officeholders should be able to spend campaign funds for
22 security measures given the safety and security threats that are faced by individuals running

²⁰ Three comments received from individuals were not responsive to the NPRM.

1 campaigns and holding federal office. And commenters broadly cited the threats faced by
2 candidates and officeholders and referred to specific incidents of threats and harassment that
3 have occurred involving candidates and officeholders at the local, state, and federal levels.

4 Although the comments broadly supported the Commission’s proposal, some raised
5 concerns, particularly regarding the risks of improper use of campaign funds under the pretext of
6 security spending, such as for security services that may not be bona fide, legitimate, and
7 professional, as discussed further below. Commenters also suggested two additions to the
8 proposed rule, most notably (1) to allow campaign funds to be used to pay for security expenses
9 for the staff and family of candidates and officeholders in addition to the candidates and
10 officeholders themselves, and (2) to clarify that any security services used by the federal
11 candidate or officeholder must be bona fide, legitimate, and professional. The Commission
12 agrees with these commenters and, accordingly, adopts the proposed rule with these two
13 additions, as discussed below.

14 **II. Revised 11 CFR Part 113.1 – Definitions**

15 After reviewing public comments received in response to the NPRM, the Commission is
16 amending its regulations regarding the use of campaign funds to allow the use of campaign funds
17 to pay for certain security measures for candidates, officeholders, members of their family, and
18 employees — as the term is defined at 26 CFR 31.3401 (c)-1 — of the campaign or office
19 (hereinafter also referred to as “staff”). The Commission has long recognized that if a candidate
20 “can reasonably show that the expenses at issue resulted from campaign or officeholder
21 activities, the Commission will not consider the use to be personal use.”²¹ Consistent with this
22 rationale and prior advisory opinions that have authorized the use of campaign funds to pay for

1 security measures, the Commission is amending the regulatory definition of personal use to
2 clarify that campaign funds may be spent on certain security measures.

3 As proposed in the NPRM, the Commission is adding a new paragraph at 11 CFR
4 113.1(g)(10) to address the use of campaign funds for security measures. Paragraph (g)(10)
5 states the basic rule and personal use standard. Subparagraphs (g)(10)(i) through (iv) provide a
6 non-exhaustive list of examples that would not be deemed personal use.

7 **A. New 11 CFR 113.1(g)(10) — Candidate and Federal Officeholder Security**

8 The Commission is adopting paragraph (g)(10) as proposed, with the exception that the
9 final rule will also cover family members and staff of candidates and officeholders.

10 Accordingly, the Commission’s new regulation provides that the use of campaign funds to pay
11 for the reasonable costs of security measures for a federal candidate or officeholder or their
12 family and staff is not personal use, so long as the security measures address ongoing dangers or
13 threats that would not exist irrespective of the individual’s status or duties as a federal candidate
14 or officeholder. The new regulation also requires that the payment for security measures be
15 made at the usual and normal charge for such goods or services.²²

16 Reasonable Costs

17 In the NPRM, the Commission proposed to limit the use of campaign funds for security
18 measures to cover only the “reasonable costs” of such security measures.

19 The Commission received five comments on the proposed “reasonable cost” standard,
20 four of which supported the proposal and one that opposed it. One of the commenters supporting
21 the proposal urged the Commission to issue guidance or factors to consider in determining

²² The new regulation defines “usual and normal charge” as, in the case of goods, the price of those goods in the market in which they are ordinarily purchased and, in the case of services, the hourly or piecemeal charge for the services at a commercially reasonable rate prevailing at the time the services are rendered. *See also* 11 CFR 100.52(d)(2) (defining “usual and normal charge” generally).

1 reasonableness of security expenses. This commenter suggested that the Commission take into
2 account several factors in determining whether a security expense is reasonable, including: (1)
3 the nature of the specific threat environment faced by the candidate or officeholder, (2) the cost
4 of the security measure and how commonly it is used, (3) whether the security measure was
5 recommended as part of a qualified security assessment, (4) whether the candidate or
6 officeholder (or a member of their immediate family or staff) is a vulnerable person, and (5)
7 whether the candidate’s or officeholder’s personally identifiable information is publicly
8 available.²³

9 Another commenter suggested that a “tailoring requirement” should be added, *i.e.*,
10 candidates and officeholders should only be permitted to spend campaign funds on security
11 measures that are “reasonably tailored to addressing ongoing dangers or threats.”²⁴ In the
12 commenter’s view, the tailoring requirement would prevent abuse of campaign funds and ensure
13 that they are used in both a reasonable and limited manner.²⁵

14 The commenter opposing the reasonableness standard viewed it as unnecessary. This
15 commenter asserted that the irrespective test in the personal use regulations should be used to
16 determine whether a security expense is permissible rather than adopting a new reasonableness
17 standard.

18 The Commission agrees with the comments that support the use of the reasonable cost
19 standard in the proposed rule. The Commission finds that the reasonable cost standard is a fair

²³ Brennan Center for Justice, Comment at 11–12 (June 10, 2024),
<https://sers.fec.gov/fosers/showpdf.htm?docid=425200>.

²⁴ Campaign Legal Center, Comment at 3 (June 10, 2024),
<https://sers.fec.gov/fosers/showpdf.htm?docid=425201>.

²⁵ *Id.*

1 standard that provides appropriate notice to candidates, officeholders, and the public at large, and
2 that the standard strikes the appropriate balance between granting candidates and officeholders
3 the authority to use campaign funds for security needs while limiting such authority to prevent
4 the misuse of campaign funds in the name of security. Therefore, the Commission adopts the
5 rule as proposed in the NPRM, which authorizes the use of campaign funds for reasonable costs.

6 Candidates and Officeholders

7 As proposed in the NPRM, the rule would authorize the use of campaign funds to pay for
8 certain security expenses for both candidates and federal officeholders so long as the security
9 measures address ongoing dangers or threats that would not exist irrespective of the individual's
10 status or duties as a federal candidate or federal officeholder.

11 The Commission sought comment on whether any distinction should be made between
12 federal candidates and officeholders in how campaign funds may be used to pay for security
13 measures. Most of the commenters agreed that the rule should authorize the use of campaign
14 funds for security expenses for both candidates and officeholders, and none suggested that a
15 distinction should be made between the two.

16 The Commission agrees. As is well documented in the comments and in prior advisory
17 opinions discussed above, both federal candidates and officeholders face safety and security
18 threats due to running campaigns or holding federal office. Accordingly, the Commission adopts
19 the proposed rule authorizing the use of campaign funds for certain security measures by both
20 candidates and officeholders.

1 Ongoing Dangers or Threats

2 As proposed in the NPRM, the new regulation would only permit the use of campaign
3 funds to pay for security measures that address *ongoing dangers or threats* that would not exist
4 irrespective of the individual’s status or duties as a federal candidate or federal officeholder.

5 Most of the commenters generally supported the proposed rule without commenting on
6 the ongoing dangers or threats limitation. Several commenters, however, questioned whether the
7 *ongoing dangers or threats* language was appropriate. One commenter recommended expanding
8 the rule to include “reasonably likely future threats or dangers, or past threats or dangers that
9 may reoccur.”²⁶ Another commenter expressed concern that the proposed rule was too
10 restrictive and recommended that the rule take into account the threat environment at the
11 national, state, or local level, rather than just the circumstances of the individual.²⁷

12 Another commenter suggested that the proposed rule should focus on whether the
13 expense for the security measure would exist irrespective of the individual’s status or duties as a
14 candidate or officeholder rather than requiring any specific danger or threat.

15 Two commenters argued that the rule should not require a showing of heightened threat
16 environment for candidates and officeholders to spend campaign funds on security measures.
17 One of the commenters specifically opposed requiring that a heightened threat environment be
18 demonstrated prior to spending on security measures. The other commenter explained that many
19 security measures are reasonable under any conditions and should be treated as ordinary and

²⁶ Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee, Comment at 3 (June 10, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425203>.

²⁷ Brennan Center for Justice, Comment at 12 (June 10, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425200>.

1 necessary expenses, while the nature of any threat environment should be a consideration in the
2 reasonableness test in the proposed rule language.

3 The Commission agrees with the comments that supported adopting the proposed rule
4 and does not find the need to change the “ongoing dangers or threats” limitation. The
5 Commission determines that the proposed rule as drafted appropriately encompasses the scope of
6 dangers or threats faced by candidates and officeholders while establishing a limit to prevent the
7 abuse and personal use of campaign funds. The Commission also agrees that a showing of a
8 heightened threat environment should not be required prior to spending of campaign funds on
9 security measures. Therefore, the Commission adopts the rule as proposed in the NPRM
10 regarding ongoing dangers or threats.

11 Family and Staff Security Measures

12 In the NPRM, the Commission’s proposed rule did not explicitly provide for the use of
13 campaign funds for security measures for family members or staff of federal candidates and
14 officeholders. The Commission, however, sought comment on whether the proposed rule should
15 be expanded to cover family members and staff.

16 Most of the commenters generally supported adopting the proposed rule without
17 commenting on whether family members and staff should be explicitly covered. Four comments
18 specifically supported it, while none opposed it. Various commenters cited to media coverage of
19 incidents of threats and violence faced by the family members and staff of candidates and
20 officeholders, including the attack on the husband of former House Speaker Nancy Pelosi and a
21 death threat received by a Congressional staff member.²⁸ One of the comments supporting the

²⁸ See Campaign Legal Center, Comment at 3 (June 10, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425201>; Citizens for Responsibility & Ethics in Washington, Comment at 2 (June 5, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425202>.

1 inclusion of family members and staff argued that such expenses should be specifically included
2 because the need for the security expenses for family members and staff would not exist
3 irrespective of the status of the individual as a candidate or officeholder. One comment
4 suggested that the final rule should specify that “family” may include family members who do
5 not reside with the candidate or officeholder; another comment recommended covering, at a
6 minimum, the immediate family members who reside with the officeholder or candidate.

7 The Commission agrees that the proposed rule should be extended to permit the use of
8 campaign funds for security measures for the family and staff of candidates and officeholders, in
9 addition to the candidates and officeholders themselves. The Commission acknowledges the
10 concerns raised by the commenters that the safety and security threats faced by candidates and
11 officeholders may also extend to their families and staff, and in prior advisory opinions the
12 Commission has authorized the use of campaign funds to address such security concerns.²⁹ The
13 Commission also agrees that, as with threats to candidates and officeholders themselves, in such
14 cases, those threats to family members and staff would not exist irrespective of the individual’s
15 status or duties as a federal candidate or federal officeholder.

16 The Commission therefore amends the proposed rule to permit the use of campaign funds
17 for reasonable security measures to address ongoing dangers or threats to candidates and
18 officeholders as well as members of the candidate or officeholder’s family and staff. The
19 Commission emphasizes that, as with candidates and officeholders, a security expense for a
20 member of the candidate or officeholder’s family or staff must satisfy the irrespective test,

²⁹ See Advisory Opinion 2021-03 (NRSC *et al.*) at 2 (concluding that Members of Congress may use campaign funds to pay for bona fide, legitimate, professional personal security personnel to protect themselves and their immediate families due to threats arising from their status as officeholders); Advisory Opinion 2022-17 (Warren) at 5 (concluding that candidate and officeholder may use campaign funds for cybersecurity measures to protect her home network, notwithstanding that family members and visitors may also connect their personal devices to candidate’s home network, so long as any benefit to others are incidental).

1 meaning that expenditures on such security measures could only be made if the threats to the
2 family member or staff did not exist irrespective of the individual’s status or duties as a
3 candidate or officeholder.

4 Regarding the scope of the term “family member,” for purposes of this provision, the
5 Commission will use the existing definition of “members of the candidate’s family” in 11 CFR
6 113.1(g)(8). For this section, the term “employee” is used as defined at 26 CFR 31.3401(c)-1, as
7 that is a well-recognized definition used elsewhere in Commission regulations, such as in 11
8 CFR Part 114. This definition generally does not include campaign volunteers.³⁰ However,
9 candidates or officeholders may request advisory opinions in circumstances where they seek to
10 use campaign funds for such security measures.

11 In sum, the Commission adopts the new rule as amended to permit the use of campaign
12 funds to pay for security measures for federal candidates, officeholders, and their family and
13 staff.

14 Law Enforcement Requirement

15 The proposed rule did not require law enforcement involvement or assessment in
16 permitting the use of campaign funds to pay for security measures for federal candidates and
17 officeholders. However, the Commission sought comment on whether such a law enforcement
18 requirement would be appropriate.

19 Most of the comments generally supported adopting the proposed rule without
20 specifically commenting on whether law enforcement threat assessments should be required.

³⁰ The Commission has previously stated that the fact that individuals other than the intended protectee will benefit from a security measure does not preclude the Commission from determining that the use of campaign funds for such security measure is not personal use. *See* Advisory Opinion 2022-17 (Warren Democrats, Inc.) at 5 (concluding that authorized committee may use campaign funds to pay for costs of reasonable cybersecurity measures to protect officeholder’s home network, even though the benefits of such measures would necessarily extend to other members of the household and visitors to the home).

1 Although various comments acknowledged that law enforcement assessments may play a useful
2 role in demonstrating the existence of threats to candidates and officeholders, three comments
3 opposed requiring them. One comment recommended that a police report be required if the
4 campaign wished to spend above a certain limit established by the Commission. Another
5 comment explained that although law enforcement assessment of a candidate or officeholder's
6 circumstances and any security recommendations will be relevant to the determination of
7 whether security expenses are reasonable, as was the case in prior Commission advisory
8 opinions, the Commission never suggested that a law enforcement threat assessment was
9 required to permit spending of campaign funds on security expenses.

10 After considering the arguments for and against requiring law enforcement threat
11 assessments, the Commission has decided not to impose such a requirement in the final rule. As
12 many commenters have noted, law enforcement threat assessments may play a useful role in
13 determining whether a particular security measure is reasonable, and the Commission encourages
14 candidates and officeholders to obtain such assessments when possible. However, imposing
15 such a requirement in the regulation would be too restrictive, as it would deny the use of
16 campaign funds for security measures in the absence of a law enforcement threat assessment
17 even when an actual threat is genuine. Accordingly, the Commission adopts the rule as proposed
18 in the NPRM, which does not require candidates or officeholders to obtain a law enforcement
19 threat assessment to spend campaign funds on security measures.

20 Other Issues Raised by Comments

21 In the NPRM, the proposed rule did not address the ownership of tangible security
22 devices, such as security cameras installed on a candidate's property. One comment argued that
23 the final rule should treat security devices purchased with campaign funds as the property of the

1 candidate's principal campaign committee, citing to Advisory Opinion 1994-20 (Charlie Rose).
2 The comment asserted that tangible security items should remain the campaign's property and be
3 sold at fair market value or otherwise disposed of when the campaign winds down. The
4 Commission disagrees with this comment because the ownership of tangible goods including
5 those purchased for security measures remain subject to other provisions of the Act and
6 Commission regulations, including prior advisory opinions that have treated non-cash assets as
7 excess campaign funds. Accordingly, the Commission adopts the proposed rule without the
8 amendment to address the ownership of tangible goods.

9 Several commenters urged the Commission to ensure campaign funds for security
10 measures are not used for personal enrichment, especially when security measures or services are
11 provided by candidates' family members. The Commission agrees with these comments that
12 raised concerns about personal enrichment and potential abuse of campaign funds but finds that
13 the proposed rule language, along with the other provisions of the Act and regulations,
14 sufficiently addresses these concerns. The Commission therefore adopts the rule language as
15 proposed.

16 Finally, one comment urged the Commission to explicitly acknowledge that even if
17 campaign funds may be used for security expenses, campaigns are not required to pay for
18 security expenses at the homes of candidates, officeholders, or their families, and such expenses
19 can be paid for by candidates, officeholders, or their family members. The Commission declines
20 to adopt this recommendation because it views it as unnecessary.

21 **B. New 11 CFR 113.1(g)(10)(i) — Non-Structural Security Devices**

22 In the NPRM, the Commission proposed to treat non-structural security devices as a
23 permissible category of security measures that candidates and officeholders could pay for using

1 campaign funds. As proposed, 11 CFR 113.1(g)(10)(i) also provides several examples of
2 permissible non-structural security devices, namely security hardware, locks, alarm systems,
3 motion detectors, and security cameras.

4 Commenters generally supported adopting this provision. One comment, however,
5 suggested adding “security training” to the list of examples of permissible non-structural security
6 devices.

7 The Commission declines to do so. As acknowledged by the commenter, “training” is
8 not a security measure that would generally be categorized as a device. Accordingly, consistent
9 with the comments that support adopting the proposed rule, the Commission is adopting new 11
10 CFR 113.1(g)(10)(i) as proposed in the NPRM.

11 **C. New 11 CFR 113.1(g)(10)(ii) —Structural Security Devices**

12 In the NPRM, the Commission proposed to treat structural security devices as
13 permissible security measures that candidates and officeholders may pay for with campaign
14 funds. The proposed subparagraph also listed several examples of permissible structural security
15 devices, including wiring, lighting, gates, doors, and fencing. The proposed rule, however,
16 required such devices to be “intended solely to provide security and not to improve the property
17 or increase its value.”

18 The commenters generally supported adopting this provision. One comment
19 recommended that the rule not require structural security devices to be intended “solely” to
20 provide security. Another comment recommended allowing structural security devices at
21 locations such as campaign headquarters, event spaces, and residences of staff and family
22 members who received threats arising from their connection with the candidate or officeholder
23 and not limiting the permissible use of such security devices to the candidate or officeholder’s

1 residence. This comment also recommended clarifying that incidental increases in value to a
2 property from structural security devices do not necessarily make the use of campaign funds an
3 impermissible personal use. However, the comment noted that additional costs for features or
4 aesthetic options that do not serve a security purpose should not be permissible expenses to be
5 paid using campaign funds.

6 The Commission declines to adopt a rule that would allow the installation of structural
7 security devices for reasons other than security. In the Commission’s view, the proposed rule
8 appropriately restricts expenses to those that are solely intended to provide security. Expenses
9 for structural security devices incurred for purposes other than security, such as to improve the
10 property or increase property values, do not fall within the authority of this rule and may
11 constitute the prohibited personal use of campaign funds. However, the Commission agrees that,
12 as noted by another commenter, incidental increases in property value due to the installation of a
13 device solely intended to provide security would be permissible. After considering all of the
14 comments, the Commission is adopting new 11 CFR 113.1(g)(10)(ii) as proposed in the NPRM.

15 **D. New 11 CFR 113.1(g)(10)(iii) —Security Personnel and Services**

16 In the NPRM, the Commission proposed to treat professional security personnel and
17 services as a category of security measures for which candidates and officeholders may use
18 campaign funds.

19 The Commission received several comments on this proposed rule. One comment urged
20 the Commission to provide strict guidance as to who constitutes professional security personnel
21 under the proposed rule so that private militias would not be hired in the guise of security
22 measures. Another comment recommended that the professional security personnel and services
23 be limited to only bona fide, legitimate, professional security personnel as articulated in

1 Advisory Opinion 2021-03 (NRSC, et. al). Two comments argued that security personnel paid
2 for with campaign funds must be licensed by a government entity and be up to date on all
3 required certifications to prevent untrained personnel from providing candidate and officeholder
4 security. Two other comments stated that spending on professional security personnel should not
5 be limited to candidates or officeholders who are not otherwise protected by law enforcement or
6 federal agents. And one comment would require security firms to have no connection with
7 candidates or their staff to avoid unjust enrichment by them.

8 The Commission agrees that additional guidance would be helpful in determining what
9 are permissible security personnel and services under this rule. As identified by one of the
10 commenters, limiting the rule to security personnel and services that are bona fide, legitimate,
11 and professional would be consistent with the limitation the Commission previously approved in
12 Advisory Opinion 2021-03 (NRSC, et. al). Adopting this proposed limitation would also address
13 various concerns raised by commenters regarding the hiring of private militias, use of untrained
14 personnel, and unjust enrichment under the pretext of security expenses. Therefore, the
15 Commission adopts the proposed rule language as amended to require security personnel and
16 services be bona fide, legitimate, and professional.

17 **E. New 11 CFR 113.1(g)(10)(iv) — Cybersecurity Software, Devices, and Services**

18 In the NPRM, the Commission proposed to treat cybersecurity software, devices, and
19 services as a category of security expenses for which candidates and officeholders may use
20 campaign funds.

21 The comments received in response to the NPRM generally agreed with treating
22 cybersecurity protection measures as a permissible type of security measure in the new rule. One
23 comment specifically expressed support for identifying cybersecurity measures in the new rule.

1 None of the comments received opposed including cybersecurity measures in the new rule.
2 Accordingly, the Commission adopts new 11 CFR 113.1(g)(10)(iv) as proposed in the NPRM.

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

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

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1 **List of Subjects in**

2 *11 CFR Part 113*

3 Campaign funds.

4

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

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

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

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

6 **§ 113.1 [Amended]**

7 2. In Section 113.1:

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

9 (10) *Candidate and federal officeholder security.* The use of campaign funds to pay for the
10 reasonable costs of security measures for a federal candidate, federal officeholder, member of
11 their family, and employees — as defined in 26 CFR 31.3401(c)-1 — of the candidate’s
12 campaign or the federal officeholder’s office, is not personal use, so long as the security
13 measures address ongoing dangers or threats that would not exist irrespective of the individual’s
14 status or duties as a federal candidate or federal officeholder. Disbursements for security
15 measures must be for the usual and normal charge for such goods or services. *Usual and normal*
16 *charge* means, in the case of goods, the price of those goods in the market in which they are
17 ordinarily purchased, and, in the case of services, the hourly or piecework charge for the services
18 at a commercially reasonable rate prevailing at the time the services were rendered. Examples of
19 such security measures include, but are not limited to:

20 (i) Non-structural security devices, such as security hardware, locks, alarm
21 systems, motion detectors, and security camera systems;

22 (ii) Structural security devices, such as wiring, lighting, gates, doors, and fencing,
23 so long as such devices are intended solely to provide security and not to

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1 improve the property or increase its value;

2 (iii) Security personnel and services that are bona fide, legitimate, and
3 professional; and

4 (iv) Cybersecurity software, devices, and services.

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7 Dated: [DATE]

8 On behalf of the Commission,

9 **Sean J. Cooksey,**

10

11 *Chairman,*

12

13 *Federal Election Commission.*

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