

Federal Election Commission

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unrelated to any Federal election, campaign, or candidate.

[54 FR 34112, Aug. 17, 1989, and 54 FR 48580, Nov. 24, 1989, as amended at 54 FR 48582, Nov. 24, 1989; 55 FR 1139, Jan. 11, 1990; 67 FR 69948, Nov. 19, 2002]

§ 110.5 Aggregate bi-annual contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

(a) *Scope.* This section applies to all contributions made by any individual, except individuals prohibited from making contributions under 11 CFR 110.19 and 110.20 and 11 CFR part 115.

(b) *Bi-annual limitations.* (1) In the two-year period beginning on January 1 of an odd-numbered year and ending on December 31 of the next even-numbered year, no individual shall make contributions aggregating more than \$95,000, including no more than:

(i) \$37,500 in the case of contributions to candidates and the authorized committees of candidates; and

(ii) \$57,500 in the case of any other contributions, of which not more than \$37,500 may be attributable to contributions to political committees that are not political committees of any national political parties.

(2) Contributions to candidates made under the increased contribution limitations under 11 CFR part 400, during periods in which such candidates may accept such contributions, are not subject to the contribution limitations of paragraph (b)(1) of this section.

(3) The contribution limitations in paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased contribution limitations shall be in effect for the two calendar years starting on January 1 of the year in which the contribution limitations are increased.

(4) In every odd-numbered year, the Commission will publish in the FEDERAL REGISTER the amount of the contribution limitations in effect and place such information on the Commission's Web site.

(c) *Contributions made in a nonelection year.* (1) For the purposes of this section, *nonelection year* means a year other than the calendar year in which a particular election is held.

(2) For purposes of this section, any contribution to a candidate or his or her authorized committee with respect to a particular election made in a non-election year shall be considered to be made during the calendar year in which such election is held.

(3) For purposes of this section, any contribution to an unauthorized committee which is made in a nonelection year shall not be considered to be made during the calendar year in which an election is held unless:

(i) The political committee is a single candidate committee which has supported or anticipates supporting the candidate; or

(ii) The contribution is earmarked by the contributor for a particular candidate with respect to a particular election.

(d) *Independent expenditures.* The bi-annual limitation on contributions in this section applies to contributions made to persons, including political committees, making independent expenditures under 11 CFR part 109.

(e) *Contributions to delegates and delegate committees.* The bi-annual limitation on contributions in this section applies to contributions to delegate and delegate committees under 11 CFR 110.14.

[54 FR 34112, Aug. 17, 1989 and 54 FR 48580, Nov. 24, 1989, as amended at 67 FR 69948, Nov. 19, 2002]

§ 110.6 Earmarked contributions (2 U.S.C. 441a(a)(8)).

(a) *General.* All contributions by a person made on behalf of or to a candidate, including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate.

(b) *Definitions.* (1) For purposes of this section, *earmarked* means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

(2) For purposes of this section, *conduit or intermediary* means any person

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who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee, except as provided in paragraph (b)(2)(i) of this section.

(i) For purposes of this section, the following persons shall not be considered to be conduits or intermediaries:

(A) An individual who is an employee or a full-time volunteer working for the candidate's authorized committee, provided that the individual is not acting in his or her capacity as a representative of an entity prohibited from making contributions;

(B) A fundraising representative conducting joint fundraising with the candidate's authorized committee pursuant to 11 CFR 102.17 or 9034.8;

(C) An affiliated committee, as defined in 11 CFR 100.5(g);

(D) A commercial fundraising firm retained by the candidate or the candidate's authorized committee to assist in fundraising; and

(E) An individual who is expressly authorized by the candidate or the candidate's authorized committee to engage in fundraising, and who occupies a significant position within the candidate's campaign organization, provided that the individual is not acting in his or her capacity as a representative of an entity prohibited from making contributions.

(ii) Any person who is prohibited from making contributions or expenditures in connection with an election for Federal office shall be prohibited from acting as a conduit for contributions earmarked to candidates or their authorized committees. The provisions of this section shall not restrict the ability of an organization or committee to serve as a collecting agent for a separate segregated fund pursuant to 11 CFR 102.6.

(iii) Any person who receives an earmarked contribution shall forward such earmarked contribution to the candidate or authorized committee in accordance with 11 CFR 102.8, except that—

(A) A fundraising representative shall follow the joint fundraising procedures set forth at 11 CFR 102.17.

(B) A person who is prohibited from acting as a conduit pursuant to paragraph (b)(2)(i) of this section shall re-

turn the earmarked contribution to the contributor.

(c) *Reporting of earmarked contributions*—(1) *Reports by conduits and intermediaries.* (i) The intermediary or conduit of the earmarked contribution shall report the original source and the recipient candidate or authorized committee to the Commission or the Secretary of the Senate, as appropriate (see 11 CFR part 105), and to the recipient candidate or authorized committee.

(ii) The report to the Commission or Secretary shall be included in the conduit's or intermediary's report for the reporting period in which the earmarked contribution was received, or, if the conduit or intermediary is not required to report under 11 CFR part 104, by letter to the Commission within thirty days after forwarding the earmarked contribution.

(iii) The report to the recipient candidate or authorized committee shall be made when the earmarked contribution is forwarded to the recipient candidate or authorized committee pursuant to 11 CFR 102.8.

(iv) The report by the conduit or intermediary shall contain the following information:

(A) The name and mailing address of each contributor and, for each earmarked contribution in excess of \$200, the contributor's occupation and the name of his or her employer;

(B) The amount of each earmarked contribution, the date received by the conduit, and the intended recipient as designated by the contributor; and

(C) The date each earmarked contribution was forwarded to the recipient candidate or authorized committee and whether the earmarked contribution was forwarded in cash or by the contributor's check or by the conduit's check.

(v) For each earmarked contribution passed through the conduit's or intermediary's account, the information specified in paragraph (c)(1)(iv) (A) through (C) of this section shall be itemized on the appropriate schedules of receipts and disbursements attached to the conduit's or intermediary's report, or shall be disclosed by letter, as appropriate. For each earmarked contribution forwarded in the form of the

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contributor's check or other written instrument, the information specified in paragraph (c)(1)(iv) (A) through (C) of this section shall be disclosed as a memo entry on the appropriate schedules of receipts and disbursements attached to the conduit's or intermediary's report, or shall be disclosed by letter, as appropriate.

(2) *Reports by recipient candidates and authorized committees.* (i) The recipient candidate or authorized committee shall report each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any calendar year.

(ii) The report by the recipient candidate or authorized committee shall contain the following information:

(A) The identification of the conduit or intermediary, as defined in 11 CFR 100.12;

(B) The total amount of earmarked contributions received from the conduit or intermediary and the date of receipt; and

(C) The information required under 11 CFR 104.3(a) (3) and (4) for each earmarked contribution which in the aggregate exceeds \$200 in any calendar year.

(iii) The information specified in paragraph (c)(2)(ii) (A) through (C) of this section shall be itemized on Schedule A attached to the report for the reporting period in which the earmarked contribution is received.

(d) *Direction or control.* (1) A conduit's or intermediary's contribution limits are not affected by the forwarding of an earmarked contribution except where the conduit or intermediary exercises any direction or control over the choice of the recipient candidate.

(2) If a conduit or intermediary exercises any direction or control over the choice of the recipient candidate, the earmarked contribution shall be considered a contribution by both the original contributor and the conduit or intermediary. If the conduit or intermediary exercises any direction or control over the choice of the recipient candidate, the report filed by the conduit or intermediary and the report filed by the recipient candidate or authorized committee shall indicate that the earmarked contribution is made by

both the original contributor and the conduit or intermediary, and that the entire amount of the contribution is attributed to each.

[54 FR 34113, Aug. 17, 1989 and 54 FR 48580, Nov. 24, 1989; 61 FR 3550, Feb. 1, 1996]

§ 110.7 [Reserved]

§ 110.8 Presidential candidate expenditure limitations.

(a)(1) No candidate for the office of President of the United States who is eligible under 26 U.S.C. 9003 (relating to conditions for eligibility for payments) or under 26 U.S.C. 9033 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury and has received payments, may make expenditures in excess of—

(i) \$10,000,000 in the case of a campaign for nomination for election to the office, except the aggregate of expenditures under this paragraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State or \$200,000; or

(ii) \$20,000,000 in the case of a campaign for election to the office.

(2) The expenditure limitations in paragraph (a)(1) of this section shall be increased in accordance with 11 CFR 110.17.

(3) Voting age population is defined at 11 CFR 110.18.

(b) The expenditure limitations shall not be considered violated if, after the date of the primary or general election, convention or caucus, receipt of refunds and rebates causes a candidate's expenditures to be within the limitations.

(c) For the State limitations in paragraph (a)(1) of this section—

(1) Expenditures made in a State after the date of the primary election, convention or caucus relating to the primary election, convention or caucus count toward that State's expenditure limitation;

(2) The candidate may treat an amount that does not exceed 50% of the candidate's total expenditures allocable to a particular State under 11 CFR 106.2 as exempt fundraising expenses, and may exclude this amount from the candidate's total expenditures attributable to the expenditure limitations for that State. The candidate