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(2) Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(b) Notwithstanding any other provision of law, any person who relies upon an advisory opinion in accordance with 11 CFR 112.5(a) and who acts in good faith in accordance with that advisory opinion shall not, as a result of any such act, be subject to any sanction provided by the Federal Election Campaign Act of 1971, as amended, or by chapters 95 or 96 of the Internal Revenue Code of 1954.

§ 112.6 Reconsideration of advisory opinions.

(a) The Commission may reconsider an advisory opinion previously issued if the person to whom the opinion was issued submits a written request for reconsideration within 30 calendar days of receipt of the opinion and if, upon the motion of a Commissioner who voted with the majority that originally approved the opinion, the Commission adopts the motion to reconsider by the affirmative vote of 4 members.

(b) The Commission may reconsider an advisory opinion previously issued if, upon the motion of a Commissioner who voted with the majority that originally approved the opinion and within 30 calendar days after the date the Commission approved the opinion, the Commission adopts the motion to reconsider by the affirmative vote of 4 members.

(c) In the event an advisory opinion is reconsidered pursuant to 11 CFR 112.6(b), the action taken in good faith reliance on that advisory opinion by the person to whom the opinion was issued shall not result in any sanction provided by the Act or chapters 95 or 96 of the Internal Revenue Code of 1954. 11 CFR 112.6(c) shall not be effective after the date when the person to whom the advisory opinion was issued has received actual notice of the Commission's decision to reconsider that advisory opinion.

(d) Adoption of a motion to reconsider vacates the advisory opinion to which it relates.

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PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT FEDERAL OFFICEHOLDER ACTIVITIES (2 U.S.C. 439a)

Sec.

113.1 Definitions (2 U.S.C. 439a).

113.2 Use of funds (2 U.S.C. 439a).

113.3 Deposits of funds donated to a Federal or State officeholder (2 U.S.C. 432(h)).

113.4 Contribution and expenditure limitations (2 U.S.C. 441a).

AUTHORITY: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

SOURCE: 45 FR 15124, Mar. 7, 1980, unless otherwise noted.

§ 113.1 Definitions (2 U.S.C. 439a).

When used in this part—

(a) *Funds donated.* *Funds donated* means all funds, including, but not limited to, gifts, loans, advances, credits or deposits of money which are donated for the purpose of supporting the activities of a Federal or State officeholder; but does not mean funds appropriated by Congress, a State legislature, or another similar public appropriating body, or personal funds of the officeholder donated to an account containing only those personal funds.

(b) *Office account.* *Office account* means an account established for the purposes of supporting the activities of a Federal or State officeholder which contains campaign funds and funds donated, but does not include an account used exclusively for funds appropriated by Congress, a State legislature, or another similar public appropriating body, or an account of the officeholder which contains only the personal funds of the officeholder.

(c) *Federal officeholder.* *Federal officeholder* means an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

(d) *State officeholder.* *State officeholder* means an individual elected to or serving in any elected public office within a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any subdivision thereof.

(e) [Reserved]

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(f) *Qualified Member.* *Qualified Member* means an individual who was serving as a Senator or Representative in, or Delegate or Resident Commissioner to, Congress, on January 8, 1980.

(g) *Personal use.* *Personal use* means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder.

(1)(i) Personal use includes but is not limited to the use of funds in a campaign account for any item listed in paragraphs (g)(1)(i)(A) through (J) of this section:

(A) Household food items or supplies.

(B) Funeral, cremation or burial expenses except those incurred for a candidate (as defined in 11 CFR 100.3) or an employee or volunteer of an authorized committee whose death arises out of, or in the course of, campaign activity.

(C) Clothing, other than items of *de minimis* value that are used in the campaign, such as campaign "T-shirts" or caps with campaign slogans.

(D) Tuition payments, other than those associated with training campaign staff.

(E) Mortgage, rent or utility payments—

(1) For any part of any personal residence of the candidate or a member of the candidate's family; or

(2) For real or personal property that is owned by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.

(F) Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign or officeholder activity.

(G) Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.

(H) Salary payments to a member of the candidate's family, unless the family member is providing *bona fide* services to the campaign. If a family member provides *bona fide* services to the campaign, any salary payment in ex-

cess of the fair market value of the services provided is personal use.

(I) Salary payments by a candidate's principal campaign to a candidate in excess of the lesser of: the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks; or the earned income that the candidate received during the year prior to becoming a candidate. Any earned income that a candidate receives from salaries or wages from any other source shall count against the foregoing limit of the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks. The candidate must provide income tax records from the relevant years and other evidence of earned income upon the request of the Commission. Salary shall not be paid to a candidate before the filing deadline for access to the primary election ballot for the Federal office that the candidate seeks, as determined by State law, or in those states that do not conduct primaries, on January 1 of each even-numbered year. See 11 CFR 100.24(a)(1)(i). If the candidate wins the primary election, his or her principal campaign committee may pay him or her a salary from campaign funds through the date of the general election, up to and including the date of any general election runoff. If the candidate loses the primary, withdraws from the race, or otherwise ceases to be a candidate, no salary payments may be paid beyond the date he or she is no longer a candidate. In odd-numbered years in which a special election for a Federal office occurs, the principal campaign committee of a candidate for that office may pay him or her a salary from campaign funds starting on the date the special election is set and ending on the day of the special election. See 11 CFR 100.24(a)(1)(ii). During the time period in which a principal campaign committee may pay a salary to a candidate under this paragraph, such payment must be computed on a pro-rata basis. A Federal officeholder, as defined in 11 CFR 100.5(f)(1), must not receive salary payments as a candidate from campaign funds.

(J) A vacation.

(ii) The Commission will determine, on a case-by-case basis, whether other

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uses of funds in a campaign account fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder, and therefore are personal use. Examples of such other uses include:

- (A) Legal expenses;
- (B) Meal expenses;
- (C) Travel expenses, including subsistence expenses incurred during travel. If a committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or officeholder-related activities, the incremental expenses that result from the personal activities are personal use, unless the person(s) benefiting from this use reimburse(s) the campaign account within thirty days for the amount of the incremental expenses, and
- (D) Vehicle expenses, unless they are a *de minimis* amount. If a committee uses campaign funds to pay expenses associated with a vehicle that is used for both personal activities beyond a *de minimis* amount and campaign or officeholder-related activities, the portion of the vehicle expenses associated with the personal activities is personal use, unless the person(s) using the vehicle for personal activities reimburse(s) the campaign account within thirty days for the expenses associated with the personal activities.

(2) *Charitable donations.* Donations of campaign funds or assets to an organization described in section 170(c) of Title 26 of the United States Code are not personal use, unless the candidate receives compensation from the organization before the organization has expended the entire amount donated for purposes unrelated to his or her personal benefit.

(3) *Transfers of campaign assets.* The transfer of a campaign committee asset is not personal use so long as the transfer is for fair market value. Any depreciation that takes place before the transfer must be allocated between the committee and the purchaser based on the useful life of the asset.

(4) *Gifts.* Gifts of nominal value and donations of a nominal amount made on a special occasion such as a holiday, graduation, marriage, retirement, or death are not personal use, unless

made to a member of the candidate's family.

(5) *Political or officially connected expenses.* The use of campaign funds for an expense that would be a political expense under the rules of the United States House of Representatives or an officially connected expense under the rules of the United States Senate is not personal use to the extent that the expense is an expenditure under subpart D of part 100 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office. Any use of funds that would be personal use under paragraph (g)(1) of this section will not be considered an expenditure under subpart D of part 100 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office.

(6) *Third party payments.* Notwithstanding that the use of funds for a particular expense would be a personal use under this section, payment of that expense by any person other than the candidate or the campaign committee shall be a contribution under subpart B of part 100 to the candidate unless the payment would have been made irrespective of the candidacy. Examples of payments considered to be irrespective of the candidacy include, but are not limited to, situations where—

(i) The payment is a donation to a legal expense trust fund established in accordance with the rules of the United States Senate or the United States House of Representatives;

(ii) The payment is made from funds that are the candidate's personal funds as defined in 11 CFR 110.10(b), including an account jointly held by the candidate and a member of the candidate's family;

(iii) Payments for that expense were made by the person making the payment before the candidate became a candidate. Payments that are compensation shall be considered contributions unless—

(A) The compensation results from *bona fide* employment that is genuinely independent of the candidacy;

(B) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and

(C) The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

(7) *Members of the candidate's family.* For the purposes of paragraph (g) of this section, the candidate's family includes:

- (i) The spouse of the candidate;
- (ii) Any child, step-child, parent, grandparent, sibling, half-sibling or step-sibling of the candidate or the candidate's spouse;
- (iii) The spouse of any child, step-child, parent, grandparent, sibling, half-sibling or step-sibling of the candidate; and
- (iv) A person who shares a residence with the candidate.

(8) *Recordkeeping.* For those uses of campaign funds described in proposed paragraphs (g)(1)(i) and (g)(1)(ii) of this section that involve both personal use and either campaign or office-holder use, a contemporaneous log or other record must be kept to document the dates and expenses related to the personal use of the campaign funds. The log must be updated whenever campaign funds are used for personal expenses, as described in paragraph (g)(1) of this section, rather than for campaign or office-holder expenses. The log or other record must also be maintained and preserved for 3 years after the report disclosing the disbursement is filed, pursuant to 11 CFR 102.9 and 104.14(b).

[45 FR 15124, Mar. 7, 1980, as amended at 56 FR 34126, July 25, 1991; 60 FR 7874, Feb. 9, 1995; 67 FR 38361, June 4, 2002; 67 FR 76978, Dec. 13, 2002]

§ 113.2 Permissible non-campaign use of funds (2 U.S.C. 439a).

In addition to defraying expenses in connection with a campaign for federal office, funds in a campaign account or an account described in 11 CFR 113.3:

(a) May be used to defray any ordinary and necessary expenses incurred in connection with the recipient's duties as a holder of Federal office, if applicable, including:

(1) The costs of travel by the recipient Federal officeholder and an accompanying spouse to participate in a function directly connected to *bona fide*

official responsibilities, such as a fact-finding meeting or an event at which the officeholder's services are provided through a speech or appearance in an official capacity; and

(2) The costs of winding down the office of a former Federal officeholder for a period of 6 months after he or she leaves office; or

(b) May be contributed to any organization described in section 170(c) of Title 26, of the United States Code; or

(c) May be transferred without limitation to any national, State, or local committee of any political party; or

(d) [Reserved]

(e)(1) Except as limited by paragraph (e)(5) of this section, a qualified Member who serves in the 102d or an earlier Congress may convert to personal use no more than the unobligated balance of excess funds as of November 30, 1989. This unobligated balance shall be calculated under either paragraph (e)(1) (i) or (ii) of this section.

(i) Cash assets the Member may convert any excess campaign or donated funds in an amount up to the Member's authorized committee(s)' cash on hand, determined under 11 CFR 104.3(a)(1), as of November 30, 1989, less the committee(s)' total outstanding debts as of that date.

(ii) *Cash Plus Nonliquid Assets.* (A) The Member may convert unliquidated committee assets held by his or her authorized committee(s) on November 30, 1989; or the value of such assets may be added to the value of the committee(s)' cash assets under paragraph (e)(1)(i) of this section to determine the amount which is eligible for conversion. In either case, prior to conversion, the committee shall amend its 1989 year end reports to indicate, as memo entries to Schedule A, the assets to be converted. These amendments shall list each asset, give its date of acquisition, its fair market value as of November 30, 1989, and a brief narrative description of how this value was ascertained. The committee shall also disclose the disposition made of each such asset, including its fair market value on the date of sale or other disposition, in its termination report, unless the asset was sold or otherwise disposed of during an earlier period and included in the report covering that period.