

### § 116.3

transferor committee has net debts outstanding at the time of the transfer under the formula described in 11 CFR 110.1(b)(3)(ii).

(3) An authorized committee that qualifies as a terminating committee may assign debts to another authorized committee of the same candidate to the extent permitted under applicable state law provided that the authorized committee assigning the debts has no cash on hand or assets available to pay any part of the outstanding debts, and provided that the authorized committee assigning the debts was not organized to further the candidate's campaign in an election not yet held. If a Presidential candidate elects to receive federal funds pursuant to 11 CFR part 9001 *et seq.* or 11 CFR part 9031 *et seq.*, the authorized committee(s) of the Presidential candidate shall not assign debts or receive assigned debts until after the authorized committee(s) or the Presidential candidate has made all required repayments pursuant to 11 CFR parts 9007 and 9038 and has paid all civil penalties pursuant to 2 U.S.C. 437g. An authorized committee that has assigned all its outstanding debts may terminate if—

(i) The authorized committee that has assigned the debts otherwise qualifies for termination under 11 CFR 102.3; and

(ii) The authorized committee that received the assigned debts notifies the Commission in writing that it has assumed the obligation to pay the entire amount owed and that it has assumed the obligation to report the debts, and any contributions received for retirement of the assigned debts, in accordance with 11 CFR part 104. The assigned debts shall be disclosed on a separate schedule of debts and obligations attached to the authorized committee's reports. Contributions received for retirement of the assigned debts shall be disclosed on a separate schedule of receipts attached to the authorized committee's reports. See 11 CFR 110.1 (b)(3) and (b)(4) and 110.2 (b)(3) and (b)(4). The authorized committee that has assigned the debts shall notify each creditor in writing of the assignment no later than thirty days before the assignment takes effect and shall include the name and address of the authorized

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committee that will receive the assigned debts.

#### § 116.3 Extensions of credit by commercial vendors.

(a) *Unincorporated vendor.* A commercial vendor that is not a corporation may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee. An extension of credit will not be considered a contribution to the candidate or political committee provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

(b) *Incorporated vendor.* A corporation in its capacity as a commercial vendor may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

(c) *Ordinary course of business.* In determining whether credit was extended in the ordinary course of business, the Commission will consider—

(1) Whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit;

(2) Whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and

(3) Whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.

(d) *Extension of credit by regulated industries.* The Commission may rely on the regulations prescribed by the Federal Communications Commission, the Interstate Commerce Commission, and the Department of Transportation on behalf of the Civil Aeronautics Board, issued pursuant to 2 U.S.C. 451 and any other regulations prescribed by other Federal agencies to determine whether extensions of credit by the entities regulated by those Federal agencies were

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made in the ordinary course of business.

### § 116.4 Forgiveness or settlement of debts owed to commercial vendors.

(a) *Unincorporated vendor.* A commercial vendor that is not a corporation may forgive or settle a debt incurred by a candidate, a political committee or another person on behalf of a candidate or political committee for less than the entire amount owed on the debt. The amount forgiven will not be considered a contribution by the commercial vendor to the candidate or political committee if—

(1) The amount forgiven is exempted from the definition of contribution in 11 CFR part 100, subpart C; or

(2) The commercial vendor has treated the debt in a commercially reasonable manner and the requirements of 11 CFR 116.7 or 116.8, as appropriate, are satisfied.

(b) *Incorporated vendor.* A corporation may not forgive or settle a debt incurred by a candidate, a political committee or another person on behalf of a candidate or political committee for less than the entire amount owed on the debt unless—

(1) The amount forgiven is exempted from the definition of contribution in 11 CFR part 100, subpart C; or

(2) The corporation has treated the debt in a commercially reasonable manner and the requirements of 11 CFR 116.7 or 116.8, as appropriate, are satisfied.

(c) *Reasonable efforts by a political committee.* A debt or obligation owed by a candidate or a political committee may be totally forgiven (see 11 CFR 116.8), or settled (see 11 CFR 116.7), provided that—

(1) The amount forgiven is exempted from the definition of contribution in 11 CFR part 100, subpart C; or

(2) The candidate and the political committee have undertaken all reasonable efforts to satisfy the outstanding debt and the requirements of 11 CFR 116.7 or 116.8, as appropriate, including the submission of the information specified in those sections and Commission review, are satisfied.

(d) *Commercially reasonable.* The Commission will determine that a debt settlement between a political committee

and a commercial vendor is commercially reasonable if—

(1) The initial extension of credit was made in accordance with 11 CFR 116.3;

(2) The candidate or political committee has undertaken all reasonable efforts to satisfy the outstanding debt. Such efforts may include, but are not limited to, the following—

(i) Engaging in fundraising efforts;

(ii) Reducing overhead and administrative costs; and

(iii) Liquidating assets; and

(3) The commercial vendor has pursued its remedies as vigorously as it would pursue its remedies against a nonpolitical debtor in similar circumstances. Such remedies may include, but are not limited to, the following—

(i) Oral and written requests for payment;

(ii) Withholding delivery of additional goods or services until overdue debts are satisfied;

(iii) Imposition of additional charges or penalties for late payment;

(iv) Referral of overdue debts to a commercial debt collection service; and

(v) Litigation.

(e) *Settlement or forgiveness not required.* The provisions of this part shall not be construed to require a commercial vendor to forgive or settle the debt for less than the entire amount owed.

(f) *Reporting.* The political committee shall continue to report the debt in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to 11 CFR 116.7(f) or until the Commission has completed a review of the request to forgive the debt pursuant to 11 CFR 116.8, or until the political committee pays the debt, whichever occurs first.

[55 FR 26386, June 27, 1990, as amended at 67 FR 78682, Dec. 26, 2002]

### § 116.5 Advances by committee staff and other individuals.

(a) *Scope.* This section applies to individuals who are not acting as commercial vendors. Individuals who are acting as commercial vendors shall follow the requirements of 11 CFR 116.3 and 116.4.