

However, such coordination may compromise the ability of a corporation's or labor organization's separate segregated fund to make independent expenditures to those outside the restricted class in the future.

Additional changes to the rules covering candidate debates, candidate appearances, colleges and universities, voting records, voting guides, voter registration and get-out-the-vote drives, endorsements, trademarks and letterhead, and facilitation are described below.

### 3. Facilitating the Making of Contributions

As part of the revisions to 11 CFR Part 114, the Commission has reassessed the prohibition against corporations and labor organizations facilitating the making of contributions, and is adding a new provision which modifies its prior interpretation. Previously, in AOs 1987-29, 1986-4 and 1982-2, MUR 3540 and in the 1989 and 1977 Explanation and Justifications of sections 110.6 and 114.3, the Commission has stated that corporations and labor organizations may not facilitate the making of contributions to particular candidates or political committees other than their own separate segregated funds. *Explanation and Justification of Regulations*, H. Doc. No. 95-44, 95th Cong., 1st Sess. at 104-105 (1977); 54 F.R. 34106 (Aug. 17, 1989).

The NPRM contemplated adding new language to 11 CFR 114.3(d) to set forth the current policies regarding facilitating the making of contributions. Please note that the new facilitation rules have been relocated to 11 CFR 114.2(f), since section 114.3 covers activities involving only the restricted class, and facilitation can involve activities that are directed to the restricted class or that go beyond the restricted class.

The comments addressing this topic reflected a diversity of opinion. Some felt it was helpful to include the Commission's policies on facilitation in the regulations. Others felt the proposals would restrict the ability of corporations to engage in activities that were permissible, and would drive political fundraising underground, and thwart public disclosure. Another concern was that the rules would discourage corporations and labor organization from supporting the political activities of their employees in situations where the corporation or labor organizations does not take a position on the election. The Internal Revenue Service found no conflict with its requirements covering nonprofit corporations.

The revised facilitation provisions attempt to address a variety of concerns. First, section 114.2(f)(1) sets out the general prohibition, and explains that facilitation means using corporate resources or facilities to engage in fundraising for candidates. However, this is not intended to negate the range of permissible activities found in other portions of the rules. For example, individual volunteer activity using corporate or labor organization facilities is still permissible under 11 CFR 100.7, 1008, and 114.9 (a), (b), and (c), provided it meets the conditions set forth in those rules. Similarly, there are no changes to the regulations governing the rental or use of corporate or labor organization facilities or aircraft by other persons. 11 CFR 114.9 (d) and (e).

The new rules at 11 CFR 114.2(f)(1) also explain that commercial vendors, such as hotels or caterers, would not facilitate the making of corporate contributions if in the ordinary course of their business they provide meeting rooms or food for a candidate's fundraiser and receive the usual and normal charge. The term "commercial vendor" is defined in 11 CFR 116.1(c).

In the past, the Commission has also addressed situations where a candidate owns or operates a corporation. *E.g.* AOs 1995-8, 1994-8 and 1992-24. Nothing in the new facilitation rules would modify the conclusions of these opinions that these corporations may serve as a commercial vendor or lessor to the candidate's committee as long as the transactions are consistent with the corporation's ordinary course of business.

New paragraph (f)(2) of section 114.2 gives several examples of facilitation. Some of these include activities that do not fall within the "safe harbors" provided by other regulations. For example, facilitation would occur if a corporation or labor organization makes its meeting room available for a candidate's fundraiser, but has not made the room available for community or civic groups. *Compare* 11 CFR 114.2(f)(2)(i)(D) with 11 CFR 114.13. The permissibility of using such room when the corporation or labor organization receives payment would be governed by 11 CFR 114.9(a), (b) or (d). Similarly, facilitation would result if other facilities, such as telephones and copiers, are used by campaign committee staff for a fundraiser, and the corporation is not reimbursed within a commercially reasonable time for the normal and usual rental charge. *Compare* 11 CFR 114.2(f)(2)(i)(B) with 11 CFR 114.9(d).

Other examples of facilitation include directing corporate or union employees

to work on a fundraiser for a candidate; using a mailing, telephone or computer list of customers, vendors, or others outside the restricted class to distribute invitations and solicit contributions; and providing in-house or external catering and food services for the fundraiser. 11 CFR 114.2(f)(2)(i) (A), (C), and (E). However, in these three situations, the new rules allow either the candidate, or the organization's separate segregated fund, or the official directing the activity to pay the corporation or labor organization in advance for the fair market value of the services or the list. Such payment by a separate segregated fund or official would constitute an in-kind contribution subject to the individual's or the separate segregated fund's contribution limits, and is not treated as facilitation. The candidate's authorized committee must report receiving these in-kind contributions.

A more limited advance payment method was approved by the Commission with regard to employee services in AO 1984-37. The new rules go beyond this advisory opinion with regard to the source of the advance payment and the types of services for which advance payment may be made. "In advance" means prior to when the list is provided, or the catering or food services are obtained, or the employees perform the work. Fair market value consists of the price that would normally be paid in the marketplace where the corporation or labor organization would normally obtain these goods or services, if reasonably ascertainable. However, in no case is the fair market value less than the corporation's or labor organization's actual cost, which includes total compensation earned by all employees directed or ordered to engage in fundraising, plus benefits and overhead.

These new rules modify, to some extent, the interpretation applied in prior enforcement matters, including MUR 3540. The conciliation agreement for MUR 3540 stated that, "[t]he 'individual volunteer activity' exemption does not, however, extend to collective enterprises where the top executives of a corporation direct their subordinates in fundraising projects, use the resources of the corporation, such as lists of vendors and customers, or solicit whole classes of corporate executives and employees. See MURs 1690 and 2668. The individual volunteer activity exemption also does not apply when an employee uses the facilities of a corporation in connection with a Federal election and the corporation is reimbursed by a political committee or