a candidate's committee [emphasis added]. *See* MUR 2185.''

However, the new facilitation regulations now provide another exemption where an individual or a candidate's committee or other political committee pays in advance for the use of corporate personnel who are directed to organize or conduct a fundraiser for the candidate as part of their job, and hence are not volunteers. Although employees may be asked to undertake such activity, under new language in paragraph (f)(2)(iv) of this section, it is not permissible to use coercion, threats, force or reprisal to urge any individual to contribute to a candidate or engage in fundraising activities. Thus, employees who are unwilling to perform these services as part of their job have a right to refuse to do so.

Under new paragraphs (f)(2)(iii) and (f)(4)(iii), facilitation includes corporate or labor organization solicitation of earmarked contributions that will be collected and forwarded by the organization's separate segregated fund (whether or not deposited in the separate segregated fund's account), unless the earmarked contributions are treated as contributions both by and to that separate segregated fund. The corporation or labor organization may name in the solicitation the candidate(s) for whom an earmarked contribution is sought. Space may be left on the contribution response card for contributors to designate candidates of their choice, but no candidates are suggested in the accompanying solicitation materials. The latter situation was presented in AO 1995–15. In both cases, under new paragraphs (f)(2)(iii) and (f)(4)(iii), the contributions must be counted against the separate segregated fund's limits to avoid facilitation, which is impermissible. Hence these new provisions supersede those portions of AOs 1991–29, 1981–57 and 1981–21 which indicate that a conduit separate segregated fund's contribution limits under 2 U.S.C. 441a are only affected if it exercises direction or control over the choice of the recipient candidate. Please note that 11 CFR 110.6(b)(2)(ii) has not been changed, and therefore continues to prohibit corporations or labor organizations, themselves, from acting as conduits for contributions earmarked to candidates. *See* AO 1986–4. However, in AO 1983–18, the Commission recognized that a trade association political action committee may collect and forward contributions to other trade association political action committees where directed by member corporation executives. A corporation or union employee may still utilize the volunteer exemption found at 11 CFR 100.7(b)(3) to collect earmarked contributions on their own time and forward such contributions to a specific candidate or committee. Such earmarked contributions would not be considered as contributions by the separate segregated fund.

Paragraph (f)(3) lists two examples of separate segregated fund activity that do not constitute corporate or labor organization facilitation. First, separate segregated funds may continue to solicit or make contributions in accordance with the requirements of 11 CFR 110.1, 110.2, and 114.5 through 114.8. Secondly, separate segregated funds may continue to solicit, collect and forward earmarked contributions to candidates under 11 CFR 110.6. The money expended by the separate segregated fund to solicit earmarked contributions must come from permissible funds received under the FECA, and will count against the separate segregated fund's contribution limit for the candidate(s) involved. These examples contrast with new paragraphs (f)(2)(iii) and (f)(4)(iii), under which a solicitation by the corporation or labor organization would either constitute facilitation or result in the contribution being counted against the separate segregated fund's contribution limits.

In addition to the latter example discussed above, paragraph (f)(4) lists two other examples of corporate or labor organization activity which do not result in facilitation. The first preserves the practice of enrolling the restricted class in a payroll deduction plan or check-off system, or an employee participation plan. No changes are being made in the operation of employee participation plans under 11 CFR 114.11 or payroll deduction plans. The second example permits solicitations of the restricted class for contributions that contributors will send directly to candidates, without being bundled or forwarded through the separate segregated fund. This situation was presented in AO 1989–29, and falls within the corporation's or labor organization's right to communicate with its restricted class on any subject under 2 U.S.C. 441b(b)(2)(A).

Section 114.3 Disbursements for Communications to the Restricted Class in Connection With a Federal Election

1. Express Advocacy, Coordination, and Reporting Internal Communications

The revised rules preserve several distinctions between communications and other activities directed solely to the restricted class (set forth at 11 CFR 114.3) and those directed to the general public or other individuals outside the restricted class (set forth at 11 CFR 114.4). Section 114.3 continues to recognize that the FECA permits corporations and labor organizations to communicate with their restricted classes on any subject. 2 U.S.C. 441b(b)(2)(A). However, in light of the *MCFL* decision, the references to ''partisan'' activities have been replaced with narrower provisions that only apply to communications containing express advocacy. For example, in paragraph (c) of section 114.3, revised language makes clear that communications directed solely to the restricted class may contain express advocacy. In addition, amended section 114.3(b) now states more explicitly that only communications expressly advocating the election or defeat of a clearly identified candidate are subject to the reporting requirements of 11 CFR 100.8(b)(4) and 104.6. Similarly, the revisions delete the more restrictive language in previous section 114.3(a)(1) that had prohibited corporate and labor organization expenditures for ''partisan'' communications to the general public because revised section 114.4 establishes that such communications are only prohibited if they contain express advocacy or are impermissibly coordinated with candidates or political committees.

In contrast, under revised section 114.3(a)(1), communications directed solely to the restricted class may be coordinated with candidates and political committees. For example, they may involve discussions with campaign staff regarding a candidate's plans, projects, or needs. Such coordination will not transform that restricted class communication into an in-kind contribution. Nor will it affect subsequent activities directed only to the restricted class. However, communications to the restricted class that are based on a candidate's plans, projects and needs may jeopardize the independence of subsequent communications or activities, including those financed from the separate segregated fund, which extend to anyone outside the restricted class.

One witness at the hearing objected to labor organizations' use of general treasury funds which could come from compulsory union dues to subsidize new forms of election-related activity, or even the activities set out in sections 114.3 and 114.4. This is an area over which the Department of Labor has jurisdiction, and recently it issued final rules removing 29 CFR part 470, in response to Executive Order 12836 revoking Executive Order 12800. 58 FR