

and Senate candidates remain subject to the requirement that all candidates for the seat must be given a similar opportunity to appear, upon request. Similarly, the provisions governing appearances by political party representatives in paragraph (b)(1)(iii) generally follow the previous regulations.

Comments were also requested on new language in section 114.4(b)(1)(vi) that would not allow the corporation or labor organization to favor one candidate through the structure or format of the candidate appearance. One example cited was giving rank and file employees time off to listen to one candidate but not to listen to others. Another example arises where candidates receive unequal time or facilities, unless it is clearly impractical to provide all candidates with similar opportunities, such as where a candidate requests to appear after a labor organization's convention is over. In response to another comment which objected to consideration of the format and timing of a candidate appearance, the Commission is revising the language in section 114.4(b)(1)(vi) to clarify that candidates cannot be given unequal amounts of time or substantially different locations for their appearances, unless the corporation can show it is impractical to give each candidate a similar time and location.

In addition, paragraph (b)(1) of section 114.4 allows guests who are being honored or speaking or participating in the event (i.e. those who are part of the program), to be present during the candidate appearance. This provision follows similar language in 11 CFR 114.3(c)(2)(i).

b. Collection of Contributions by Candidates and Party Representatives During the Appearance

A question presented in the NPRM was whether the candidate or party representative may solicit and collect contributions during an appearance before employees who are not in the restricted class. Although this has been specifically allowed under section 114.3(c)(2) for appearances before the restricted class, there was no provision in former section 114.4 either allowing or disallowing this practice when the audience extends to all employees. The NPRM sought comments on whether the candidate should be able to pass the hat or place donation boxes in the room.

Some comments supported allowing candidates to request contributions, but indicated that the rules needed to clarify that this would not constitute facilitation by the corporation or labor organization. The Internal Revenue

Service found no conflict between the provisions regarding candidate appearances and its rules.

Section 114.4(b)(1)(iv) of the final rules provides that a candidate or party representative may ask for contributions, may provide information on how to make contributions, and may leave campaign materials and envelopes for making contributions. See, e.g., AO 1987-29, n. 2. However, this provision also specifies that candidates and party representatives may not collect contributions during the event.

Moreover, the corporation or labor organization, and its officers and employees, may not solicit or collect these contributions. This restriction includes corporate and union officials who may also serve on a fundraising committee for the candidate or otherwise be active in the campaign. The collection of contributions by corporate or union officials would, in essence, turn the candidate appearance into a general fundraising event sponsored by the corporation or labor organization, in violation of the new facilitation regulations of section 114.2(f).

c. Presence of the News Media

The Notice presented several issues regarding the presence of news media at candidate appearances before employees outside the restricted class. For the reasons stated above, the final rules regarding these appearances follow the new regulations applicable to appearances before the restricted class. See discussion of 11 CFR 114.3(c)(2)(iv), including NPRM and comments, *supra*.

3. Use of Logos, Trademarks and Letterhead

Another topic addressed in this rulemaking concerns the use of corporate or labor organization logos, trademarks and letterhead. The Commission has encountered situations in which executives of corporations or labor organizations use official corporate or labor organization stationery, whether or not reproduced at the executive's personal expense, to solicit funds or support for a candidate. E.g., MURs 3066, 1690 and 1261. The question presented in the NPRM was whether such a logo, trademark or letterhead may be used if the corporation or labor organization is reimbursed for the intangible value of the item(s), or whether their use (except through ordinary commercial transactions in the usual course of business) should be prohibited.

Comments were sought on two alternative approaches. The first option, Alternative B-1, was to amend the

definition in section 114.1(a)(1) to treat logos, trademarks and letterhead as something of value and a contribution or expenditure if provided without charge or at less than the fair market value. That approach would have allowed individuals and candidates to reimburse corporations and labor organizations for the cost of the stationery plus the value of using the corporate or union symbol, name, etc. One difficulty, however, would have been ascertaining the fair market value, given subjective consideration such as goodwill. Thus, the second option, which was set forth as Alternative B-2 in section 114.4(c)(1), was to prohibit such uses, whether or not the corporation or labor organization is reimbursed, with four exceptions for: corporations qualifying for the *MCFL* exception; communications to the restricted class, as described under 11 CFR 114.3; communications beyond the restricted class, as permitted under 11 CFR 114.4; and solicitations made in accordance with 11 CFR 114.5 through 114.8.

The Commission received comments supporting and opposing both options. The Internal Revenue Service stated that alternative B-1 may conflict with the Internal Revenue Code requirements applicable to section 501(c)(3) corporations. Other commenters claimed that logos and letterhead were not corporate resources, or were of no value or of *de minimis* value, or that it is too difficult to assign a monetary value.

The Commission considered the alternatives regarding the use of logos, letterhead and trademarks when it prepared the final rules, but could not reach a majority decision by the required four affirmative votes. See 2 U.S.C. 437c(c). Consequently, neither alternative has been included in the final rules.

Both alternatives in the NPRM also indicated that when individuals make communications either by using personal stationery or by appearing in a campaign ad, the letter or advertisement cannot indicate that the individual is acting on behalf of the corporation or labor organization, and cannot include references to the individual's official title at that organization. Thus, these proposals were intended to preclude an individual from including an identification such as "Vice President of XYZ Automobile Corporation." However, a general identification such as "auto maker" would be acceptable.

Several commenters opposed this restriction on various grounds, including that the corporate title is part of the individual's identity, the use of