

**FEDERAL ELECTION COMMISSION**

[Notice 1995-5]

**11 CFR Parts 100, 104 and 113****Expenditures; Reports by Political Committees; Personal Use of Campaign Funds****AGENCY:** Federal Election Commission.**ACTION:** Final rules; transmittal of regulations to Congress.

**SUMMARY:** The Federal Election Commission has revised its regulations governing the personal use of campaign funds. These regulations implement portions of the Federal Election Campaign Act of 1971, as amended. The new rules insert a definition of personal use into the Commission's regulations. The rules also amend the definition of expenditure and the reporting requirements for authorized committees in the current regulations.

**EFFECTIVE DATES:** Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is today publishing the final text of revisions to its regulations at 11 CFR parts 100, 104 and 113. These revisions implement section 439a of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* ["FECA" or "the Act"]. Section 439a states that no amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may be converted by any person to any personal use, other than to defray and ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office. The new rules insert a definition of personal use into Part 113 of the current regulations. The rules also amend the reporting requirements for authorized committees at 11 CFR 104.3, and the definition of expenditure at 11 CFR 100.8.

The final rules published today are the result of an extended rulemaking process. In August of 1993, the Commission published a Notice of Proposed Rulemaking ["NPRM"] seeking comment on proposed rules governing the conversion of campaign

funds to personal use. 58 FR 45463 (August 30, 1993). The NPRM contained a proposed general definition of personal use, several enumerated examples, and other provisions for the administration of the personal use prohibition. The Commission subsequently granted a request for a 45 day extension of the comment period. 58 FR 52040 (Oct. 6, 1993). The Commission received 32 comments from 31 commenters in response to the NPRM. The Commission also held a public hearing on January 12, 1994, at which it heard testimony from five witnesses on the proposed rules.

After reviewing the comments received and the testimony given, Commission staff prepared draft final rules, which were considered at an open meeting held on May 19, 1994. The Commission also considered at that time several requests it had received for an additional opportunity to comment on the rules before they were finally promulgated. The Commission decided to seek additional comment on the rules, and published a Request for Additional Comments on August 17, 1994 ["RAC"]. 59 FR 42183 (August 17, 1994). The RAC contained a revised set of draft rules, including a revised definition of personal use that differed significantly from the general definition set out in the 1993 NPRM. The Commission received 31 comments from 34 commenters in response to the Request.

The comments received provided valuable information that serves as the basis for the final rules published today. Elements of both sets of draft rules have been incorporated into the final rules.

Section 438(d) of Title 2, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on February 3, 1995.

**Explanation and Justification**

The 1979 amendments to the Federal Election Campaign Act, Pub. L. No. 96-187, 93 Stat. 1339, 1366-67, amended 2 U.S.C. § 439a to prohibit the use of campaign funds by any person for personal use, other than an individual serving as a Member of Congress on January 8, 1980. Under this provision, the Commission must determine whether a disbursement of campaign funds is a campaign expenditure, a permissible expense connected to the duties of a holder of Federal office, or

a conversion to personal use. The Commission undertook this rulemaking in an effort to provide additional guidance on these issues to the regulated community.

Some of the comments received contained general observations on the Commission's effort to promulgate personal use rules. Many commenters expressed general support for the Commission's efforts, but other commenters objected to Commission action in this area. One commenter expressed doubt that the Commission would be able to regulate personal use with these kinds of rules. A number of commenters argued that this entire area should be left to Congress. Two of these commenters objected to the rulemaking on the grounds that it is an expansion of Commission authority that is not mandated by Congressional action, one saying Congressional inaction does not confer jurisdiction on the Commission to take action.

However, this rulemaking is clearly within the Commission's jurisdiction and authority. Section 438(a)(8) of Title 2 states that "[t]he Commission shall prescribe rules, regulations and forms to carry out the provisions of [the Federal Election Campaign Act] \* \* \*." This rulemaking is an effort by the Commission to carry out the provisions of section 439a by more clearly defining personal use. Thus, it is precisely the kind of rulemaking contemplated by Congress when it enacted section 438(a)(8).

In addition, this rulemaking is prompted, in large part, by more recent Congressional action, specifically, the Ethics Reform Act of 1989, Pub. L. No. 101-194, 103 Stat. 1716. Section 504 of the Ethics Reform Act repealed a "grandfather" provision that Congress included in section 439a when it enacted the personal use prohibition in 1979. This grandfather provision exempted any person who was a "Senator or Representative in, or Delegate or Resident Commissioner to, the Congress" on January 8, 1980 from the personal use prohibition. By repealing the grandfather provision, Section 504 of the Ethics Reform Act limited conversions to personal use by grandfathered Members and former Members to the unobligated balance in their campaign accounts on November 30, 1989. It also completely prohibited conversions of campaign funds by anyone serving in the 103rd or any later Congress. Thus, any grandfathered Members who returned to Congress in January, 1993 gave up the right to convert funds to personal use.

Many of the enforcement actions and advisory opinions the Commission