

officeholder, that use is not personal use. However, if the obligation would exist even in the absence of the candidacy or even if the officeholder were not in office, then the use of funds for that obligation generally would be personal use.

In contrast, determining whether an expense is primarily related to a campaign or the duties of an officeholder, or instead is primarily related to some other activity, would force the Commission to draw conclusions as to which relationship is more direct or significant. The Commission has been reluctant to make these kinds of subjective determinations in the past. Moreover, any rule that requires these kinds of determinations can result in more *ad hoc* decisionmaking. The Commission initiated this rulemaking in order to reduce piecemeal resolution of personal use issues, and to provide more prospective guidance to the regulated community as to the kinds of uses that will be considered personal use. The Commission has concluded that the irrespective definition will more successfully achieve these goals.

The general definition of personal use originally proposed by the Commission in the 1993 NPRM applied to any use of campaign funds, regardless of whether the use benefited the candidate, a family member, a campaign employee or an unrelated party. However, under the revised draft rules set out in the RAC, the general definition would have been more limited. This definition would have covered only those uses of campaign funds that benefit the candidate or members of the candidate's family.

The final rules return to the original approach because this approach is more consistent with the FECA. Section 439a states that no campaign funds "may be converted by any person to any personal use." Thus, under the final rules, any use of campaign funds that would exist irrespective of the campaign or the duties of a Federal officeholder is personal use, regardless of whether the beneficiary is the candidate, a family member of the candidate, or some other person.

Paragraph (g)(1)(i)

Paragraph (g)(1)(i) of the final rules contains a list of expenses that are considered personal use. The list includes household food items, funeral expenses, clothing, tuition payments, mortgage, rent and utility payments, entertainment expenses, club dues, and salary payments to family members. The rule assumes that, in the indicated circumstances, these expenses would

exist irrespective of the candidate's campaign or duties as a Federal officerholder. Therefore, the rule treats the use of campaign funds for these expenses as *per se* personal use.

In adopting a *per se* list, the Commission rejected the alternative approach set out in the RAC. Under the alternative approach, the expenses on the list were not presumed to fall within the general definition of personal use. Instead, they were merely examples of expenses to which the "primarily related" standard would then be applied on a case by case basis.

Most of the commenters that addressed this issue preferred the list of *per se* personal uses that has been incorporated into the final rules. These commenters characterized the alternative version as a return to case by case review that would not provide any useful guidance to the regulated community and would not make it any easier to enforce the personal use prohibition. These commenters urged the Commission to use the *per se* approach and write whatever exceptions are necessary into the specific provisions of the list. The Commission used this approach in drafting the final rules.

However, two commenters went a step further. They urged the Commission to limit the rule to a list of specific uses that would be personal use, and eliminate the general definition of personal use that would apply to other situations. However, the Commission decided not to adopt this approach. It is doubtful that the agency could draft a complete list of the kinds of uses that raise personal use issues under section 439a. In addition, the Commission has identified some situations that warrant allocation between permissible and personal expenses. See section 5 of the discussion of paragraph (g)(1)(ii), below. Therefore, the rules would be incomplete without a general definition that could be applied to other situations.

One commenter argued that the *per se* list will reduce candidate flexibility in determining how to use campaign resources, and urged the Commission to adopt the alternative proposal because it strikes what the commenter believes is the appropriate balance.

However, a list of *per se* personal uses is preferable to a list of examples to which a "primarily related" test would be applied. By listing those uses that will be considered personal use and setting out the exceptions that apply, the *per se* list draws a clearer line and reduces the need or case by case review. A committee or a candidate can examine the rules and be much more

certain about what constitutes personal use.

In contrast, the alternative approach undercuts the Commission's efforts to provide clearer guidance. Under the alternative approach, the Commission would have to examine the facts and circumstances of each situation in order to determine whether a particular use is personal use. Thus, the alternative approach would require more Commission involvement in the resolution of personal use issues.

1. Household Food Items and Supplies. Under paragraph (g)(1)(i)(A) of the final rules, the use of campaign funds for household food items and supplies is personal use. This provision covers any food purchased for day to day consumption in the home, and any supplies purchased for use in maintaining the household. The need for these items would exist irrespective of the candidate's campaign or duties as a Federal officeholder. Therefore, the Commission regards them as inherently personal and subject to the personal use ban.

However, this provision would not prohibit the purchase of food or supplies for use in fundraising activities, even if the fundraising activities take place in the candidate's home. Items obtained for fundraising activities are not household items within the meaning of this provision. Similarly, refreshments for a campaign meeting would not be covered by this paragraph.

In addition, this provision does not apply to the use of campaign funds for meal expenses incurred outside the home. The use of campaign funds for these expenses is governed by section 113.1(g)(1)(ii)(B), which will be discussed further below. Similarly, this provision does not apply to the use of campaign funds for subsistence expenses, that is, food and shelter, incurred during travel. Section 113.1(g)(1)(ii)(C) specifically addressed this situation, and will be discussed in greater detail below.

2. Funeral, Cremation and Burial Expenses. Paragraph (g)(1)(i)(B) of the final rules indicates that the use of campaign funds to pay funeral, cremation or burial expenses is personal use. Campaign funds have been used for these expenses in the past by the estates of former Members of Congress who were covered by the grandfather provision and therefore could convert campaign funds to personal use. The Commission believes that these expenses are inherently personal in nature, and, under the current state of the law, should be covered by the personal use ban. The Commission