received no comments on this provision.

Section 113.1(g)(4) of the final rules contains an exception to the personal use definition that is relevant here. Section 113.1(g)(4), which will be discussed further below, states that gifts and donations of nominal value made on special occasions are not personal use, unless they are made to a member of the candidate's family. Under this provision, campaign funds can be used to send flowers to a constituent's funeral as an expression of sympathy without violating section 439a. However, if campaign funds are used to pay for costs of the funeral, that use is personal use under paragraph (g)(1)(i)(B)

3. Clothing. Under paragraph (g)(1)(i)(C) of the final rules, the use of campaign funds to purchase clothing is generally personal use. However, the rule contains an exception for clothing items of de minimis value that are used in the campaign. Thus, if a campaign committee uses campaign funds to purchase campaign T-shirts and caps with campaign slogans, the purchase is not personal use. One commenter expressed support for this provision.

This rule supersedes Advisory Opinion 1985–22 to the extent that opinion can be read to allow the use of campaign funds for these purposes. In that opinion, the requester sought to use campaign funds to purchase ''specialized attire'' to wear at "politically related functions which [were] both social and official business." The Commission concluded that the requester's committee could use the funds for these purposes because the requester was grandfathered. However, the language of the opinion suggests that the use of campaign funds for these purposes would also have been permissible if the clothing was to be used in connection with the campaign. Under paragraph (g)(1)(i)(C), the use of campaign funds for these purposes is personal use.

4. Tuition Payments. Under paragraph (g)(1)(i)(D) of the final rules, the use of campaign funds for tuition payments is personal use. However, this provision contains an exception that allows a committee to pay the costs of training campaign staff members, including candidates and officeholders, to perform the tasks involved in conducting a campaign. The Commission received no comments on this provision.

The Commission has concluded that only those tuition payments that fall within the narrow exception set out in the rule are campaign related and should be payable with campaign funds. Other tuition costs, whether for members of the campaign staff or other

persons, are subject to the personal use prohibition.

5. Mortgage, Rent and Utility Payments. Paragraph (g)(1)(i)(E) of the final rules addresses the use of campaign funds for mortgage, rent or utility payments on real or personal property owned by the candidate or a member of the candidate's family. In the past, the Commission has generally allowed campaigns to rent property owned by the candidate or a family member for use in the campaign, so long as the campaign did not pay rent in excess of the usual and normal charge for the kind of property being rented. See Advisory Opinions 1993–1, 1988– 13, 1985–42, 1983–1, 1978–80, 1977–12, and 1976-53.

The new rule changes the Commission's policy with regard to rental of all or part of a candidate or family member's personal residence. Under paragraph (g)(1)(i)(E)(1), the use of campaign funds for mortgage, rent or utility payments on any part of a personal residence of the candidate or a member of the candidate's family is personal use, even if part of the personal residence is being used in the campaign. This paragraph supersedes Advisory Opinions 1988–13, 1985–42, 1983–1 and 1976–53, since they allow the use of campaign funds for these purposes.

In contrast, paragraph (g)(1)(i)(E)(2) continues the Commission's current policy in situations where the property being rented is not part of a personal residence of the candidate or a member of the candidate's family. Thus, a campaign committee can continue to rent part of an office building owned by the candidate for use in the campaign, so long as the committee pays no more than fair market value for the property usage.

Paragraph (g)(1)(i)(E)(2) is consistent with Advisory Opinions 1977-12 and 1978–80. It is also consistent with the result reached in Advisory Opinion 1993-1, in which the Commission allowed a candidate to rent a storage shed that was not part of his or her personal residence for use in the campaign. However, Advisory Opinion 1993–1 cites Advisory Opinions 1988– 13, 1985-42, and 1983-1 as authority for this conclusion. As indicated above, these opinions are superseded by paragraph (1). Consequently, they should no longer be regarded as authority for the result reached in AO 1993-1.

The use of campaign funds to make mortgage, rent or utility payments on real or personal property that is not used in the campaign would be reviewed under the general definition of personal use. These expenses presumably would exist irrespective of the candidacy, so the use of campaign funds to pay these expenses would be personal use.

The Commission received a number of comments on its proposed rules in this area. Four commenters urged the Commission to prohibit all transactions between the campaign committee and the candidate, saying that the rules should require the committee to enter into arms length transactions with unrelated third parties. Two of these commenters said the prohibition should be extended to transactions with any member of the candidate's family unit. In contrast, four other commenters urged the Commission to continue to allow these transactions so long as they involve bona fide rentals at fair market value.

The Commission has adopted what is essentially a middle ground. The rule prohibits payments for use of a personal residence because the expenses of maintaining a personal residence would exist irrespective of the candidacy or the Federal officeholder's duties. Thus, the rule draws a clear line, and avoids the need to allocate expenses associated with the residence between campaign and personal use.

At the same time, the Commission believes it is unnecessary to change its current policy regarding payments for the use of other property. These arrangements more closely resemble arms length transactions in that the property in question is available on the open market. Also, these arrangements generally do not raise the same kinds of allocation issues. Consequently, so long as the campaign pays fair market value, these payments will not be considered personal use.

It is important to note that paragraph (g)(1)(i)(E)(1) does not prohibit the campaign from using a portion of the candidate's personal residence for campaign purposes. It merely limits the committee's ability to pay rent for such a use. The candidate retains the option of using his or her personal residence in the campaign, so long as it is done at no cost to the committee. The Commission specifically allowed such an arrangement in Advisory Opinion 1986–28. That opinion is not affected by the new rules.

Nor should this rule be read to prohibit a campaign committee from paying the cost of long distance telephone calls associated with the campaign, even if those calls are made on a telephone located in a personal residence of the candidate or a member of the candidate's family. Since these calls are separately itemized on the residential telephone bill, they can