

depreciated fair market value, the candidate receives the asset at a substantially reduced cost but with significant time remaining in its useful life. Thus, the cost of the depreciation falls disproportionately upon the campaign committee. This would effectively be a conversion of campaign funds to personal use.

Section 113.1(g)(3) addresses this situation by requiring that any depreciation that takes place before the transfer be allocated between the committee and the purchaser based on the useful life of the asset. Thus, the committee should absorb only that portion of the depreciation that is attributable to the time period during which it uses the asset. This approach is consistent with Advisory Opinion 1992-12, in which the Commission required a Congressman who was assuming a lease of a van from his campaign committee to "accept a pro rata share of the financial obligations and charges attending the lease \* \* \*." The Commission also noted that "the lease may provide for a discount on the purchase price of the van at the conclusion of the agreement. In that event, a portion of the discount may belong to the committee." Advisory Opinion 1992-12, n.3.

Two commenters expressed views on this provision. One commenter argued that, even if the asset's depreciation is allocated between the committee and the purchaser, the purchaser is still getting a bargain. This commenter urged the Commission to require the committee to sell its assets to third parties and use the proceeds to pay campaign debts or to make contributions to charities.

The Commission has decided not to require committees to sell their assets only to third parties, because such a requirement would not serve the purposes of the personal use prohibition. Section 439a prohibits conversions of campaign funds to any person's personal use. Thus, a violation of section 439a occurs whenever an asset is transferred for less than fair market value. It makes no difference whether the purchaser is the candidate or an unrelated third party. Consequently, a rule that requires that all transfers of campaign assets be for fair market value will fully serve the purposes of section 439a.

#### *Section 113.1(g)(4) Gifts*

As indicated above, the final rules generally apply with equal force to uses of campaign funds that benefit third parties as they do to uses of campaign funds that benefit the candidate or a member of the candidate's immediate

family. However, the final rules also contain a provision that allows a committee to use campaign funds to benefit constituents or supporters on certain occasions without violating the personal use prohibition. Section 113.1(g)(4) indicates that gifts or donations of nominal value given on special occasions to persons other than family members of the candidate are not personal use. This will allow a committee to use campaign funds to send flowers to a constituent's funeral without violating the personal use prohibition.

The Commission recognizes that candidates and officeholders frequently send small gifts to constituents and supporters on special occasions as gestures of sympathy or goodwill, and that such an expense would not exist irrespective of the candidate's or officeholder's status. The Commission has included this provision in the rules to specifically indicate that the use of campaign funds for this purpose is permitted.

However, the exception does not cover gifts that are of more than nominal value. For example, using campaign funds for other expenses associated with special occasions, such as the funeral and burial expenses covered under section 113.1(g)(1)(i)(B), would be personal use. Nor does this exception allow the committee to use campaign funds to send gifts to members of the candidate's family. Presumably, the candidate would give such a gift irrespective of whether he or she were a candidate or Federal officeholder. Therefore, the use of campaign funds for such a gift would be personal use.

#### *Section 113.1(g)(5) Political or Officially Connected Expenses*

Section 113.1(g)(5) explains how the personal use rules interact with the rules of the U.S. House of Representatives and the United States Senate. Under House rules, a Member "shall convert no campaign funds to personal use \* \* \* and shall expend no funds from his campaign account not attributable to bona fide campaign or political purposes." House Rule 43, clause 6. Senate Rule 38 also prohibits personal use, but allows a Member to use campaign funds to defray "expenses incurred \* \* \* in connection with his official duties." Senate Rule 38, clause 1(a). Thus, these rules allow Members to use campaign funds for what are described as "political" and "officially connected" expenses. Several commenters have raised the question of how the personal use rules would apply to the use of campaign funds for these purposes.

Section 113.1(g)(5) indicates that the use of campaign funds for a political or officially connected expense is not personal use to the extent that it is an expenditure under 11 CFR 100.8 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office. The rule also reiterates that any use of funds that would be personal use under § 113.1(g)(1) will not be considered an expenditure or an ordinary and necessary expense incurred in connection with the duties of a Federal officeholder.

One commenter urged the Commission to be consistent with House and Senate rules in this area, saying that, since House rules specifically allow Members to use campaign funds for political expenses, the Commission's rules should specifically exclude these uses from the definition of personal use. Two other commenters agreed, and urged the Commission not to introduce additional confusion into this area.

In contrast, two commenters rejected the suggestion that the Commission should defer to House and Senate rules in this area. They asserted that enforcement of the personal use ban is the Commission's responsibility, and that, since Congressional precedents are based on rules with different language than section 439a, the Commission should not look to those precedents for guidance.

Other commenters expressed their views on the specific language of the rule. One commenter urged the Commission to treat what the commenter referred to as campaign disbursements and political disbursements as synonymous, and to treat what the commenter referred to as political and officially connected expenses as permissible ordinary and necessary expenses under section 439a. Another commenter criticized the provision as tautological, and cited this as an area in which the Commission should reaffirm that candidates and officeholders have wide discretion.

Two commenters said the rule is an improvement over a previous draft that was read to have ceded authority for determining whether uses by incumbents are personal use to the House and Senate. However, one said that the rule still defers too much to Congress because it still says political and officially connected expenses are not personal use to the extent that they are expenditures or the ordinary and necessary expenses of a Federal officeholder. The other commenter said the rule is acceptable so long as the list of uses is truly a per se list.