

compensation payments. Compensation payments that were made before the candidacy and continue during the candidacy will be considered contributions to the candidate unless three conditions are met: the compensation results from *bona fide* employment that is genuinely independent of the candidacy, the compensation is exclusively in consideration of services provided by the candidate as part of the employment, and the compensation does not exceed the amount that would be paid to a similarly qualified person for the same work over the same period of time. The Commission assumes that, when these three conditions exist, the compensation payment would have been made irrespective of the candidacy and should not be treated as a contribution. This rule is based on Advisory Opinion 1979-74, and is consistent with Advisory Opinions 1977-45, 1977-68, 1978-6 and 1980-115.

Section 113.1(g)(7) Members of the Candidate's Family

Section 113.1(g)(7) lists the persons who are members of the candidate's family for the purposes of §§ 113.1(g) and 100.8(b)(22). This list is significant for several provisions of the rules. Under § 113.1(g)(7), the candidate's family includes those persons traditionally considered part of an immediate family, regardless of whether they are of whole or half blood. Consistent with the laws of most states, the rules make no distinction between biological relationships and relationships that result from adoption or marriage. The grandparents of the candidate are also considered part of the candidate's family. Finally, the candidate's family also includes a person who has a committed relationship with the candidate, such as sharing a household and mutual responsibility for each other's welfare or living expenses. These persons will be treated as the equivalent of the candidate's spouse for the purposes of these rules.

Section 113.2 Use of Funds (2 U.S.C. 439a)

The final rules also contain an amendment to the list of permissible uses of excess campaign funds contained in 11 CFR 113.2. The amendment specifically indicates that certain travel costs and certain office operating expenditures will be considered ordinary and necessary expenses incurred in connection with the duties of a Federal officeholder.

The costs of travel for a Federal officeholder and an accompanying spouse who are participating in a function that is directly connected to *bona fide* official responsibilities will be considered ordinary and necessary expenses. 11 CFR 113.2(a)(1). The rule cites fact-finding meetings and events at which the officeholder makes an appearance in an official capacity as examples of functions covered by the rule. Note that spouse travel for campaign purposes continues to be a permissible expense.

In addition, the costs of winding down the office of a former Federal officeholder for six months after he or she leaves office will be considered ordinary and necessary expenses. 11 CFR 113.2(a)(2). Consequently, the use of excess campaign funds to pay for these expenses is permissible.

The Commission notes that the FY 1991 Legislative Branch Appropriations Act (Pub. L. 101-520) provides that "official expenses" may not be paid from excess campaign funds. Thus, even though 2 U.S.C. § 439a, House Rule 43, and Senate Rule 38 contemplate the use of campaign funds for "ordinary and necessary expenses," "political purposes," and expenses "in connection with" official duties, guidance regarding the scope of the Legislative Branch Appropriations Act provision referred to above should be sought by persons covered.

1. Travel Costs. Several commenters criticized the travel cost provision. One commenter thought Members of Congress received a stipend for these expenses, and argued that campaign funds should not be used for this purpose. Another commenter urged the Commission to only allow the use of campaign funds for travel between Washington, D.C. and the Member's district. A third commenter argued that the provision allowing travel expenses for a Member's spouse should be deleted because it creates confusion, and opens a loophole because it does not require the Member to demonstrate that the spouse participated in the official function.

One commenter urged the Commission to allow the use of campaign funds to defray expenses connected to officeholder duties, including travel, as permitted under House rules.

The Commission has concluded that the expenses of both the officeholder and the officeholder's spouse should be permitted. If an officeholder incurs expenses in traveling to a function that is directly connected to his or her *bona fide* official responsibilities, those expenses clearly would not exist

irrespective of his or her duties as a Federal officeholder. As such, the use of campaign funds for those expenses would not be personal use under section 113.1(g)(1).

The Commission also recognizes that an officeholder's spouse is often expected to attend these functions with the officeholder. See Advisory Opinion 1981-25. In this context, the spouse's attendance alone amounts to a form of participation in the function, even if the spouse has no direct role in the activities that take place during the event. Consequently, the Commission has decided that the rule should specifically indicate that the expenses of an accompanying spouse can be paid with campaign funds when an officeholder travels to attend an official function.

This provision also helps to clarify the relationship between the personal use rules and the rules of the House and Senate on the use of campaign funds for travel. Although Members receive appropriated funds for certain travel expenses, House and Senate rules also allow them to pay for certain other expenses with campaign funds. The amendments to § 113.2 make it clear that, so long as the travel is for participation in a function connected to the Member's official responsibilities, the permissibility of this use is not affected by the personal use rules.

Advisory Opinion 1980-113 indicated that campaign funds could be used to defray expenses incurred in carrying out the duties of a state officeholder. That opinion also suggested that campaign funds could be used to defray the travel expenses of the spouse of such an officeholder if the spouse's expenses are incident to the duties of the state officeholder. However, in Advisory Opinion 1993-6, the Commission explicitly superseded Advisory Opinion 1980-113 to the extent that it allowed the use of campaign funds "for expenses related to that person's position as a holder of state office or any office which is not a Federal office as defined in the Act." Advisory Opinion 1993-6, n.3. The amendments to § 113.2 are consistent with Advisory Opinion 1993-6. As revised, § 113.2(a)(1) does not permit the use of campaign funds for travel expenses associated with official responsibilities other than those of a Federal officeholder.

Finally, the Commission has not limited this rule to expenses associated with travel between a Member's district and Washington, D.C. The Commission recognizes that travel to other locations may be directly connected to a Member's *bona fide* official responsibilities. So long as the travel is