OFFICE ACCOUNTS

COMMUNICATION

FROM

THE CHAIRMAN, FEDERAL ELECTION COMMISSION

TRANSMITTING

A PROPOSED REGULATION PERTAINING TO CONTRIBUTIONS TO AND EXPENDITURES FROM OFFICE ACCOUNTS OF ALL FEDERAL AND STATE INCUMBENT OFFICEHOLDERS, PURSUANT TO SECTION 316(c) OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED

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ATTACHMENT B

Explanation and Justification of Part 113—Office Accounts; Excess Campaign Funds

This regulation is a modification of the regulations on the same subject which were previously submitted to the Congress on July 30, 1975 and September 30, 1975. The first submitted version of this regulation responded to the requests of 22 Members of Congress for guidance in the area of office accounts and excess campaign funds. In the course of the public comment period following publication of the July 30 regulation in the *Federal Register* on August 5, 1975, communications were received by the Commission from interested and/or affected persons, and requests were made to the Commission to hold open hearings on the subject matter of the regulation.

The Commission responded to these requests and held two days of public hearings at the United States Court of Claims on September 16 and 17, 1965. The Commission found that testimony submitted at the hearings was most instructive and suggested revisions which were incorporated into the regulation submitted to the Congress on September 30, 1975. These regulations were also the subject of public hearings before the Senate Committee on Rules and Administration on October 2, 1975, and public debate on the Senate floor when they were considered on October 8, 1975.

The present regulation reflects modifications which were approved by the Commission in a unanimous vote (6–10) in their public meeting on Thursday, November 20, 1975. These modifications, which have been made by the Commission, reflect the guidelines which were expressed in the report of the Senate Committee on Rules and Administration (Senate Report No. 94–409), in the course of Senate debate on October 8, 1975 (121 Cong. Rec. S17872), and in public comments which have been received since that time.

Four significant changes have been made in the present regulation: (1) the coverage of this regulation has been extended to include all Federal officeholders; (2) the regulation has also been equalized and strengthened to bring state and local officeholders under similar cov-

erage at the point where they become a candidate for Federal office; (3) the revised regulation expressly provides that any personal bank account of an officeholder, such as one which is used for household and personal expenses, and which is not used principally to support the officeholder's legislative or campaign activities, is *not* an office account, and consequently is not reached by this regulation; and (4) all funds which are expended from an office account in the last calendar year of an officeholder's term will be considered expenditures under the Federal Election Campaign Act of 1971, as amended (FECA, as amended), and be subject to limitations.

As in previous proposed regulations on this subject, it should be noted that all legislatively appropriated funds of an officeholder are not considered within the scope of this regulation. In addition, those funds which are contributed to a so-called "franking account" are exempted from this regulation by 39 U.S.C. § 3210, except that contributions to, and expenditures from, an account used exclusively for materials sent under the frank are reportable.

Other provisions of this regulation provide for full disclosure and reporting of all contributions to, and all expenditures from, an office account during the entire term of a covered officeholder. Furthermore, all contributions will be subject to the limitations of the FECA, as amended, throughout the whole term of any officeholder covered by this regulation. Although every expenditure from an office account during the last calendar year of an officeholder's term will be considered subject to the limitations of the FECA, as amended, it should be emphasized that any expenditure made from an office account prior to the last calendar year of the officeholder's term is also subject, under the FECA, as amended, and this regulation, to a factual review by the Commission when challenged. As with any other such complaint brought to the attention of the Commission, the final determination whether a particular transaction is a campaign-related expenditure, and subject to the limits of the FECA, as amended, will be based upon the specific facts pertaining to that particular expenditure.

When this regulation becomes effective, the practical effect in 1976 will be that all candidates for Federal office who have office accounts which are funded out of private contributions will be treated in the same manner. In 1976, all contributions to, and all expenditures from, an office account will be subject to the limitations of the FECA, as amended, and will be fully disclosed in a regular public manner.

Section-by-Section Analysis

§ 113.1 *Definitions.*

(b) *Funds contributed.*—This definition is similar to the one for "contribution" in the Federal Election Campaign Act of 1971, as amended. "Funds contributed" are used for the purpose of supporting the activities of a holder of Federal office and simultaneously may be used for the purpose of influencing the nomination for election or election of any person to Federal office. See 2 U.S.C. § 431(e)(1)(A).

(c) *Office account.*—Examples of expenditures which would be made from an office account are travel expenses and telephone over and above

appropriated allowances and expenditures for printing nonfrankable matter. Office accounts of the President, Vice-President, House, Senate and State officeholders are treated equitably.

§ 113.2 *Contributions—Interpretations of Limitations.*

The Commission has made an interpretation that the contribution limitations of the FECA, as amended, will appply to funds contributed to an office account for the Federal officeholder's entire term.

The basis for this interpretation is as follows:

(a) The Commission's hearings on office accounts were marked by unanimous agreement on the point that corporate treasuries should be prohibited. (Transcript at pp. 52, 67, 90, 157, 181, 182, 192, 193.) Since the regulation treats some expenditures from an office account as campaign-related and some as not, it is wholly possible that funds so contributed may be used to influence an election. To clearly segregate corporate and union funds from these potentially campaign-related uses, contributions from corporate and union treasuries are prohibited. Similarly, government contractors and foreign nationals are not permitted to contribute funds to office accounts.

(b) The limitations on contributions contained in the Federal Election Campaign Act of 1971, as amended, are applied to all contributions to an office account. Since it is possible that office accounts will be used for campaign purposes during an officeholder's term, contributions to such an account should be subject to the appropriate campaign limitations throughout the entire term. Moreover, under recent Internal Revenue Code amendments in the Upholstery Regulator Act, contributions to office accounts are treated as political contributions. The legislative history of this Act reflects the intimate relationship between office funds and campaign funds. The conference report to the Act states: "Generally newsetter committees (and separate funds) are to be treated for tax purposes in the same manner as political campaign committees." H. Rept. 93–1642, 93rd Cong., 2nd Sess. 22. During the debate on this legislation, several Members further noted the similarity between these two types of funds:

> Mr. SCHNEEBELI. Another change of importance would make individual contributions to candidates for public office which are used for newsletters to be eligible for the abovementioned income tax credit for deductions.
>
> Mr. ULLMAN. Mr. Speaker these provisions place in the law the procedures outlining how we can use funds we have collected *for political purposes, for newsletter purposes.* We think this avoids the necessity for having a separate newsletter fund for Members who have a continuing campaign fund (emphasis added). (*Congressional Record*, daily edition December 20, 1974, page H. 12597.)

§ 113.3 *Expenditures—Interpretations of Limitations.*

The Commission has made the following interpretations of the application of the FECA, as amended, to expenditures from office accounts:

(a) All funds expended from an office account during the calendar year in which a Federal officeholder stands for election, i.e., during

the last year of the term, are treated as expenditures subject to limitations.

(b) All funds expended from a State or local officeholder's office account are treated as expenditures during the calendar year of the election in which the officeholder is seeking Federal office.

The basis for these interpretations is as follows:

The Commission, pursuant to its duty to formulate general policy with respect to the administration of the FECA, as amended, [see 2 U.S.C. § 437d(a)(9)], and to its authority under 2 U.S.C. § 437d (a)(8), has determined that expenditures made during this period should be presumed to be campaign-related. This determination is based on comments received from the public, as well as the testimony submitted at the hearings held on September 16th and 17th, 1975, by the Federal Election Commission. A comparable treatment of such expenditures during such a presumptive period can be found in 2 U.S.C. § 434(d) where recording studio services are not exempt from the FECA as amended, during the last calendar year of an officeholder's term.

On Tuesday, September 16, 1975, at the hearing held by the Commission on this regulation, testimony was received on the subject of when an expenditure from an office account should be considered political:

> Senator JOHNSTON. Section 439(a), which is the amendment to this Act, provides that it may be used to defray any ordinary and necessary expenses incurred by him in connection with his duties as a holder of federal office.
>
> That, according to the Senate report, is further modified by this rule, which is even more restrictive than ordinary and necessary expenses as a holder of federal office.
>
> I think it is the role of this Commission to define when politics start and when duties of a federal office end.
>
> And in a broad sense, anything a Senator does or doesn't do is political. If he doesn't go home for the Christmas holidays, that's political. I mean it has political implications. You can't sneeze without it being political.
>
> But basically, and I think the thrust of the Act, the intent of the Act—the debate is recorded in the *Congressional Record*—distinguishes the fact that there are two different things, although they overlap, that expenses of the office and campaigning are two different things.
>
> What we are saying to the Commission is that the Commission ought to adopt a rule that realistically distinguishes.
>
> Senator Stevens says you ought to say anything spent before an election year, or a year before the election, is not political; anything in an election year is political.
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> The rule we urged back in June, I think it was—the Democratic committee—is that this Commission adopt a rule of presumption, so that anything spent after a certain date would be presumed to be political, and anything spent before that would be presumed not to be political.

There is a difference. It is hard to define. And that's the reason we put the rule-making power into the law.

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Mr. STAEBLER. You are suggesting the reasonableness of limiting it to the last year, and presumably you would limit it to the period when your opponent was a candidate, and so your opponent was under some limitation.

Senator STEVENS. Yes, we faced this problem. Incidentally, the one precedent in the Act is on the accounts that we maintain to pay the expenses of incumbent Senators in the Senate Radio and Television Studio; and we specifically provided in this law that for the first five years those are not chargeable against the limitations, as you know.

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Mr. HARRIS. I think the Senators have made a very valuable suggestion in suggesting this one-year limit. Senator Stevens indicated, however, there would be certain types of expenditures in the period before one year which would really be political expenditures attributable to the campaign ceilings.

Senator STEVENS. We want merely a presumption, Mr. Harris, that expenses from the account are presumed not to be political, but if they are political you've got to charge them.

* * * * *

2 U.S.C. § 434(d) provides further rationale for the interpretation that expenditures made during the calendar of an election should count towards the limitations. That section provides:

> *Members of Congress, reporting exemption.* This section does not require a Member of the Congress to report, as contributions received or as expenditures made, the value of photographic, matting, or recording services furnished to him by the Senate Recording Studio, the House Recording Studio, or by an individual whose pay is disbursed by the the Secretary of the Senate or the Clerk of the House of Representatives and who furnishes such services as his primary duty as an employee of the Senate or House of Representatives, or if such services were paid for by the Republican or Democratic Senatorial Campaign Committee, the Democratic National Congressional Committee, or the National Republican Congressional Committee. This subsection does not apply to such recording services furnished during the calendar year before the year in which the Member's term expires.

§ 113.4 *Deposits of Funds Contributed to a Federal or State Officeholder.*

This section provides for the deposit of all funds contributed to an officeholder into any of three segregated accounts: (1) principal cam-

paign committee, (2) office, and (3) § 3210 or so-called "franking account." An officeholder is not required to set up any of these accounts if he or she does not receive contributions or make expenditures over and above appropriated allowances. Further, even if an officeholder receives contributions to support his or her activities as a holder of such office, the officeholder need not necessarily establish a principal campaign committee. Instead, an officeholder may have an office account and not create a principal campaign committee until required to do so by other provisions of the FECA, as amended.

§ 113.5 *Excess Campaign Funds.*

If, after a candidate for Federal office, a Federal officeholder, or a treasurer of a principal campaign committee determines there is a surplus of campaign receipts after meeting all debts and other obligations, the excess can be given to charity, transferred to an office account, or deposited in an account to pay for the preparation of frankable materials. For example, if a successful candidate for the House of Representatives raises $100,000 in contributions for the general election and expends only $60,000, he or she has $40,000 in excess campaign funds. Of this sum, only $10,000 can be expended out of an office account during the period between the election and January 3 of the following year, because of the $70,000 expenditure limit imposed by 18 U.S.C. § 608. However, the remaining $30,000 can be transferred to, and by, the account which pays for the preparation of frankable materials without breaching the $70,000 expenditure limitation. The excess could also be given to charity without limit. It should be noted that more than $10,000 could be deposited in the office account; however, no more than $10,000 may be expended from this account before January 3rd of the next year.

This section has been proposed pursuant to the Commission's rulemaking authority under 2 U.S.C. § 439a.

§ 113.6 *Reports of office accounts.*

Office accounts which are covered by this regulation are required to file quarterly reports of receipts and expenditures in the same manner as political committees. When the officeholder has designated a principal campaign committee, the office account will file reports with the principal campaign committee. If the officeholder has not designated a principal campaign committee, the office account reports will be filed with the appropriate place designated in § 113.6(b), depending on the officeholder.

2. U.S.C. 439a provides that contributions to a Federal officeholder for the purpose of supporting his or her activities as an officeholder and expenditures thereof "shall be fully disclosed in accordance with rules promulgated by the Commission." The Commission determined that office accounts may be used for campaign-related purposes, and therefore, should file in the same manner and at the same time as political committees.

§ 113.7 *Reports of § 113.4(c) accounts.*

§ 113.4(c) accounts are used exclusively to pay for the preparation of frankable materials and are not subject to the limitations of this regulation. Reports of such accounts are required twice a year with either the Secretary of the Senate or the Clerk of the House. These reports will include the same type of information that is required in reports of political committees.

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