

Commission received numerous comments on this provision.

Several commenters objected to this provision and urged the Commission to allow candidate salaries. Most said that a prohibition would aggravate existing inequities between incumbents and challengers and would create a wealth test or property qualification for running for office. These commenters urged the Commission to allow candidate salaries in order to level the playing field and open up the election process to candidates of modest means. One commenter strongly believes a candidate should be able to receive a reasonable salary based on his or her experience and the services he or she renders to the campaign. Many different proposals for determining the amount of a candidate's salary were suggested.

Several other commenters questioned why full disclosure of salary payments would not adequately prevent any unfairness to campaign contributors. Another commenter argued that candidates are essentially employees of the party by whom they are nominated, and, as such, the party should be permitted to pay the candidate a salary.

In contrast, two commenters strongly supported a prohibition on candidate salaries, saying such a prohibition is required under section 439a. They urged the Commission to adopt a blanket rule prohibiting the use of campaign funds for this purpose, because permitting salaries effectively allows the candidate to use campaign funds to pay his or her personal living expenses and does away with the personal use prohibition. These commenters acknowledged that the inequities that exist between incumbents and challengers is a problem that needs to be rectified.

Nevertheless, they said this inequity cannot be resolved in this rulemaking because nothing in section 439a requires a level playing field. They also argue that nothing in section 439a justifies distinguishing between incumbents and other candidates, and since Members of Congress would not be allowed to take a salary from their campaigns in addition to their Congressional salary, the statute requires a prohibition on salary payments to the candidate.

One of these two commenters also urged the Commission not to try to level the playing field by reversing what the commenter described as the Commission's policy of requiring corporate employees to take an unpaid leave of absence to campaign for office. This commenter also said that a means test for payment of candidate salaries would not work.

The Commission took up the candidate salary issue when it

considered the final rules, but could not reach a majority decision by the required four affirmative votes. See 2 U.S.C. § 437c(c). Consequently, this issue has not been addressed in the final rules.

Paragraph (g)(1)(ii)

Paragraph (g)(1)(ii) explains how the Commission will address other uses of campaign funds not covered by the *per se* list of examples. If an issue comes before the Commission as to whether a use not listed in paragraph (g)(1)(i) is personal use, the Commission will determine whether the use is for an expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. If so, it will be personal use unless some other specific exception applies. These determinations will be made on a case by case basis. Committees should look to the general definition for guidance in determining whether uses not listed in paragraph (g)(1)(i) are personal use.

Two commenters expressed concerns with this approach. One said that case by case review will cause great difficulty, and urged the Commission to allow candidates to explain the campaign relationship of any use that may appear to be personal. This commenter also argued that if the use reasonably appears to have a campaign relationship, it should not be personal use. The other commenter said that this provision leaves the question of personal use unsettled, and urged the Commission to affirm that candidates have wide discretion over the use of campaign funds and treat uses outside the categories contained in the rule as presumptively permissible.

In contrast, a third commenter expressed support for this provision if it is implemented in conjunction with a general definition of personal use that uses the irrespective standard.

The Commission is aware of the problems of case by case decisionmaking. It has sought to minimize these problems by incorporating a list of examples that specifically addresses the most common personal use issues into the final rules.

However, the Commission cannot anticipate every type of expense that will raise personal issues. Thus, the Commission cannot create a list that addresses every situation. Furthermore, some expenses that do raise personal use issues cannot be characterized as either personal or campaign related in the majority of situations, so they cannot be addressed in a *per se* list. Consequently, it is necessary to have a plan for addressing situations not covered by the *per se* list. The

Commission is including paragraph (g)(1)(ii) in the rules to provide guidance to the regulated community as to how these situations will be handled. Should a personal use issue arise, the candidate and committee will have ample opportunity to present their views. The Commission, however, reaffirms its long-standing opinion that candidates have wide discretion over the use of campaign funds. If the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.

The Notice of Proposed Rulemaking sought comments on other uses of campaign funds that sometimes raise personal use issues. In particular, the Commission encouraged commenters to submit their views on when the use of campaign funds for legal expenses, meal expenses, travel expenses and vehicle expenses would be personal use.

Because the use of campaign funds for these expenses can raise serious personal use issues, the Commission attempted to draft specific provisions on these uses and incorporate them into section 113.1(g)(1)(i). However, the Commission's efforts to craft language that would distinguish permissible uses from those subject to the prohibition generated rules that could have proved very confusing for the regulated community. Consequently, the Commission opted for a simpler approach. The Commission will address any issues raised by the use of campaign funds for these expenses by applying the general definition on a case by case basis. Thus, the use of campaign funds for these expenses will be personal use if the expense would exist irrespective of the candidate's campaign or duties as a Federal officeholder.

Legal, meal, travel and vehicle expenses are listed under paragraph (g)(1)(ii) as examples of uses that will be reviewed on a case by case basis. The Commission has inserted this list in the final rules in order to make it clear how issues involving the use of campaign funds for these expenses will be handled. These provisions, and the comments received in response to the NPRM, are discussed in detail below.

1. Legal expenses. Paragraph (g)(1)(ii)(A) indicates that issues regarding the use of campaign funds for legal expenses will be addressed on a case by case basis using the general definition of personal use. One commenter argued that legal expenses should be *per se* personal use except when they are incurred in ensuring compliance with the election laws. This commenter also urged the Commission