



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM

For meeting of July 13, 2017

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther *STW*
Chairman

RE: Proposed Interim Enforcement Policy on Use of Campaign Funds by
Members of Congress for Residential Security Systems

DATE: July 11, 2017

Attached for the July 13, 2017 open meeting agenda is a proposed interim enforcement policy on the use of campaign funds by Members of Congress for residential security systems.

FEDERAL ELECTION COMMISSION

11 CFR Part 113

[NOTICE 2017-XX]

Use of Campaign Funds by Members of Congress for Residential Security Systems

AGENCY: Federal Election Commission

ACTION: Interim Enforcement Policy

SUMMARY: The Commission is issuing an interim enforcement policy to provide guidance on permissible uses of campaign funds to pay for residential security systems by Members of Congress.

DATES: Effective [upon publication in the Federal Register].

**FOR FURTHER
INFORMATION**

CONTACT: [], Assistant General Counsel, or [], Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY
INFORMATION:**

I. Background

This interim enforcement policy is being issued by the Federal Election Commission in response to written correspondence received from the Honorable Paul D. Irving, Sergeant at Arms of the United States House of Representatives.¹ Sergeant at Arms Irving seeks authority from the Commission for any Member of Congress to use campaign funds “to purchase a home security system.”²

The request is made in light of the current threat environment faced by our elected officials, mostly recently demonstrated by the severe wounding of Representative Steve Scalise and three other individuals by a gunman on June 14, 2017. This tragic incident serves as a grave

¹ Mr. Irving initially requested, by letter dated June 17, 2017, a “Letter of Guidance” from the Commission; however, by letter dated June 29, 2017, he asked that his June 17 letter be considered an “official request for an advisory opinion.” It has been designated as Advisory Opinion 2017-07.

² Letter from Mr. Irving dated June 29, 2017.

reminder that individuals who serve the public as elected representatives may be targeted for threats and/or violence, which would not otherwise occur but for their service in that capacity.

The Commission is taking the action described herein based upon the exigent circumstances identified by the Sergeant at Arms regarding the alarming increase in threatening communications aimed at Members of Congress. Accordingly, the Commission recognizes the need to provide sufficient guidance in a timely manner so that each Member can assess his or her individual security needs and make decisions as to how to pay for residential security installations or upgrades without being concerned about being swept up into the Commission's enforcement process.

At the outset, the Commission notes that, although Sergeant at Arms Irving's correspondence purports to be an official advisory opinion request, it does not qualify as such under the Federal Election Campaign Act and Commission regulations. The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from a person about "a specific transaction or activity by the person." 52 U.S.C. § 30108(a); *see also* 11 C.F.R. § 112.1(b). The Commission does not respond to "[r]equests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties." 11 C.F.R. § 112.1(b); *see also* H.R. Rep. 96-422 at 20 ("Advisory Opinions may not be issued in response to a request posing a hypothetical situation or to a request regarding the activities of third parties."). The circumstances of the request made by the Sergeant at Arms do not satisfy in several material respects the criteria set forth in the Act and Commission regulations, as there is no "specific transaction or activity," and no "complete description" by a "person" who plans to undertake such action. 11 C.F.R. § 112.1(b)-(c).

In this case, the Commission is being asked to recognize an exemption to the personal use provisions of the Act and Commission regulations based on the "status" of an individual rather than on any particular "transaction" or "activity." Sergeant at Arms Irving is essentially asking for a blanket exemption for all Members of Congress that does not meet the minimal advisory opinion requirements of the Act and Commission regulations because it concerns the non-particularized activities of third parties. The Commission notes that the Sergeant at Arms raises serious and valid concerns about the personal safety of Members; his concerns are bolstered by disturbing statistics showing a spike in threat incidents, as provided to the Sergeant at Arms by the U.S. Capitol Police.³ However, on its face, the request "regard[s] the activities of third parties," 11 C.F.R. § 112.1(b), as no Members are specifically identified as requestors. The request, moreover, is hypothetical because it asks for a broad exemption to use campaign funds for residential security systems without providing specific details as to the prospective activities of any particular Member. Also, even though the request suggests that it will apply to all Members of Congress, it is not clear whether Mr. Irving has the authority to make such a request on behalf of Members of the U.S. Senate, given his title as Sergeant at Arms of the U.S. House of Representatives.⁴ In this context, the request goes beyond what the Commission would

³ Letter from Mr. Irving dated June 17, 2017.

⁴ Although the interim enforcement policy set forth herein encompasses Members of the U.S. Senate and is available to each of them, it would be preferable to receive input from the Sergeant at Arms of the U.S. Senate, or others who speak for members of that body, before any permanent policy is adopted by the Commission.

generally consider to be a complete advisory opinion request as contemplated by the Act and regulations.

Notwithstanding the problems associated with using the advisory opinion process to address the security issues identified by Sergeant at Arms Irving, the Commission acknowledges the seriousness and immediacy of the current threat environment, and this interim policy is intended to provide an appropriate and meaningful response to all Members of Congress.

II. The Use of Campaign Funds for Residential Security Systems

Under the Act, there is a general prohibition of the ability of federal candidates or officeholders to “convert” campaign contributions to their own “personal use.” 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e). Such conversion occurs when a “contribution or amount” is used “to fulfill any commitment, obligation, or expense” of a federal candidate or a federal officeholder “that would exist irrespective” of the federal candidate’s campaign or the federal officeholder’s duties. 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g).

The prohibition is designed to ensure that contributions do not personally benefit candidates or officeholders, and are primarily used to further their candidacies. In many respects, contributions to federal campaigns are, and should be treated as, “trust funds” in that regard.

In addition to the six categories of permissible uses of contributions set forth in the Act,⁵ the Commission’s regulations contain several enumerated exceptions to the personal use prohibition, none of which is applicable to the situation described by Sergeant at Arms Irving.⁶

⁵ The permissible uses of campaign funds under the Act are as follows: (1) otherwise authorized expenditures in connection with the candidate’s campaign for federal office; (2) ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of federal office; (3) contributions to organizations described in 26 U.S.C. § 170(c); (4) transfers, without limitation, to national, state, or local political party committees; (5) donations to state and local candidates subject to the provisions of state law; and (6) any other lawful purpose not prohibited by 52 U.S.C. § 30114(b). 52 U.S.C. § 30114(a); *see also* 11 C.F.R. § 113.2(a)-(e).

⁶ In addition to defraying expenses in connection with a federal campaign, under 11 C.F.R. § 113.2, such funds:

- a. May be used to defray any ordinary and necessary expenses incurred in connection with the recipient’s duties as a holder of Federal office, if applicable, including:
 1. The costs of travel by the recipient Federal officeholder and an accompanying spouse to participate in a function directly connected to bona fide official responsibilities, such as a fact-finding meeting or an event at which the officeholder’s services are provided through a speech or appearance in an official capacity; and
 2. The costs of winding down the office of a former Federal officeholder for a period of 6 months after he or she leaves office; or
- b. May be contributed to any organization described in section 170(c) of Title 26, of the United States Code; or
- c. May be transferred without limitation to any national, State, or local committee of any political party; or
- d. May be donated to State and local candidates subject to the provisions of State law; or
- e. May be used for any other lawful purpose, unless such use is personal use under 11 CFR 113.1(g).

The Commission has approved three advisory opinion requests from Members of Congress to use campaign funds for residential security systems.⁷ To summarize in concise terms, the Commission has authorized an exemption from the general prohibition against the use of campaign funds for personal use when the following circumstances exist:

- (a) The requesting Members were subject to specific and ongoing threats to their personal safety (and the safety of their families) and that, as a result of these threats, the U.S. Capitol Police had recommended security upgrades to their residences;
- (b) Those threats appear to have been motivated by the fact that the requestors were serving in public roles as elected officeholders or candidates for re-election; and
- (c) The requestors generally articulated a specific use of the funds and an estimated cost (the estimates in these three advisory opinion requests ranged from \$2,200 to \$7,500), and represented that the proposed upgrades would not involve any structural improvements, and were not intended to increase the value of the property.

The request made by Sergeant at Arms Irving, at present, appears to seek a broad blanket exemption for any Member of Congress to pay for residential security systems, subject to the sole limitation that there not be any “structural improvements” to the residence.⁸ Given this broad and somewhat vague request, and the potential for abuse that might result upon a similarly broad authorization by the Commission, it is important to identify with some precision the bounds of permissible use of campaign funds for such security systems or improvements. In the absence of clear and specific conditions, the Commission, which is charged with enforcing the Act’s requirements, may find that its authority to review and take possible action concerning potential violations of the personal use provisions has been unduly circumscribed by this policy.

Accordingly, the policy criteria enunciated below are tailored to fit comfortably within the parameters of what the Commission has approved through prior advisory opinions, and are intended to provide sufficient clarity to Members of Congress as to what activities would be considered permissible under the Act and regulations.

⁷ See Advisory Opinion 2011-17 (Giffords) (Commission approved use of campaign funds to increase security at a family home where then-Representative Giffords was residing after being severely wounded at a campaign event); Advisory Opinion 2011-05 (Terry) (Commission approved use of campaign funds to install various components of a security system at then-Representative Terry’s residence based on stalking incidents and other intimidation from a particular individual); and Advisory Opinion 2009-08 (Gallegly) (Commission approved use of campaign funds for upgrades to then-Representative Gallegly’s home security system based on ongoing threat posed by an individual’s activity at Gallegly’s home; the threat commenced just before an election in which he was a candidate).

⁸ Letter from Mr. Irving dated June 29, 2017.

III. Operative Period of Interim Enforcement Policy

This interim policy, as proposed, will remain in effect for one year from the date of issuance and shall not apply to any disbursements of campaign funds that occur after that time. After one year, the policy will automatically expire, although it may be modified at any time or extended by four or more votes of the Commissioners.

During this period, the Commission will have the opportunity to reconsider this policy in view of any change of circumstances, including any steps taken by Congress. Notwithstanding this enforcement policy, Congress would seem to be the most appropriate entity to provide funds for security purposes, since the funds would be made available to Members of both houses and based upon their status as such, rather than for any specific activity, as is required to be set forth in the advisory opinion context.

It is hoped that the current heightened threat environment confronting Members of Congress will diminish over time, but regardless of whether the threat level subsides, increases or remains the same, this policy should be subject to regular and periodic review so that steps may be taken commensurate with the threat level at that time.

IV. Interim Enforcement Policy

The interim enforcement policy will provide as follows:

A Member of the House of Representatives or Member of the Senate may, notwithstanding the personal use prohibitions under the Act and Commission regulations,⁹ use campaign funds not to exceed \$15,000 for the installation or upgrade of residential security systems under the following conditions:

- (a) Reasonably specific and ongoing threats of physical harm exist as to Members of Congress based on their exposure to the current threat environment due to their status as federal officeholders;
- (b) The threat has been appropriately recognized and assessed by the U.S. Capitol Police;
- (c) The use of campaign funds shall be limited to installing or upgrading residential security systems and not intended to enhance the value of the property;
- (d) Any security equipment purchased with campaign funds shall be non-structural in nature and not built into the frame or structure of the residence itself;¹⁰

⁹ See 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e).

¹⁰ For example, the previous advisory opinions identified proposed systems that ranged from alarm buttons, exterior lighting, improved locks, to a CCTV system. See also Comment on Advisory Opinion 2017-07 by Campaign Legal Center, July 6, 2017, *available at* <https://cg-519a459a-0ea3-42c2-b7bc-fa1143481f74.s3-us-gov-west-1.amazonaws.com/legal/aos/83330.pdf> (“The Commission should approve the installation and monitoring costs of cameras, sensors, and similar removable security devices in and around a Member’s home. This would

- (e) Each Member who uses campaign funds for such systems shall fully disclose each related disbursement on his or her FEC reports as required by the Act and regulations, including the specific type and cost of the installation or improvement.

V. Conclusion

This interim policy represents an articulation of how the Commission intends to exercise its discretion in enforcing an existing regulation on an interim basis and is not intended to bind the Commission or any member of the public, or to create or remove any rights or duties, nor is it intended to affect any other aspect of 11 CFR Part 100, the Act, or the Commission's regulations. *See* 5 U.S.C. 553(b)(A).

make clear that a Member would be required to use personal funds to finance non-structural security measures, such as upgrades to window glass, that are also home improvements.”).