FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 26, 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2014-04

Jan Witold Baran, Esq.
Eric Wang, Esq.
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

Dear Messrs. Baran and Wang:

We are responding to your advisory opinion request on behalf of Enterprise Holdings, Inc., which asks whether federal law preempts New York law regarding the requestor's use of payroll deductions to process voluntary contributions to its separate segregated fund ("SSF"). The Commission concludes that the requestor's use of such deductions is permissible under the Federal Election Campaign Act, 2 U.S.C. §§ 431-57 ("FECA"), and Commission regulations. Because the New York State Department of Labor has clarified that the state statute and regulation at issue do not apply to the requestor's payroll deductions for its SSF, the Commission does not reach the preemption question presented in the request.

Background

The facts presented in this advisory opinion are based on your letter received on April 24, 2014.

Enterprise Holdings is the corporate parent of Enterprise Rent-A-Car, Alamo Rent-A-Car, and National Car Rental. Enterprise PAC is the SSF of Enterprise Holdings and is registered with the Commission. Enterprise PAC makes contributions to federal candidates, federal political committees, and (where permissible) to candidates for nonfederal offices in states other than New York, though it does not make, and does not plan to make, contributions to New York state nonfederal candidates or political committees. Enterprise Holdings uses a payroll-deduction program to facilitate the making of voluntary contributions by its restricted-class employees, including employees in New York, to Enterprise PAC.

A New York state statute specifies the payroll deductions that employers may implement for their employees and prohibits all other deductions. N.Y. Lab. Law § 193. Paragraph (1)(a)

of the statute acknowledges that employers may implement payroll deductions "in accordance with the provisions of any law or any rule or regulation issued by any governmental agency." *Id.* § 193(1)(a). Paragraph (1)(b) provides that an employer also may make deductions that are "expressly authorized in writing by the employee" and "limited to payments for" certain statutorily enumerated purposes. *Id.* § 193(1)(b).[1] None of these enumerated purposes includes political contributions, *see id.*, and the New York State Department of Labor's regulations specify that payroll deductions for "[c]ontributions to political action committees, campaigns and similar payments" are not permissible under section 193(1)(b), even if authorized by the employee. N.Y. Comp. Codes R. & Regs. Tit. 12, § 195-4.5(f) (2013).

On May 27, 2014, the Commission received a comment from the New York State Department of Labor regarding the instant request. The comment notes that the reference in section 193(1)(a) to payroll deductions made "in accordance with any law or any rule or regulation" includes "federal election laws and regulations." N.Y. State Dep't of Labor, Comment at 1. The comment accordingly states that "New York does not prohibit the specific payroll deductions at issue." *Id.* More particularly, the comment states that the state law prohibitions in question "do not apply to payroll deductions made in accordance with 2 U.S.C. § 441b(b)(5) and 11 C.F.R. § 114.1(f), to facilitate the making of voluntary contributions from the restricted class employees of the requestor and its subsidiaries to its federal separate segregated fund, Enterprise Holdings, Inc. Political Action Committee." *Id.*

Question Presented

Do FECA and Commission regulations preempt N.Y. Lab. Law § 193 and N.Y. Comp. Codes R. & Regs. Tit. 12, § 195-4.5(f) insofar as the state provisions purport to prohibit the use of payroll deductions for employees to make voluntary contributions to Enterprise PAC?

Legal Analysis and Conclusion

The requestor's use of payroll deductions to process voluntary contributions to Enterprise PAC is permissible under FECA and Commission regulations. Because the New York State Department of Labor has clarified that the state statute and regulation at issue do not apply to the requestor's payroll deductions for its SSF, the Commission does not reach the preemption question presented in the request.

Commission regulations expressly permit a corporation to use payroll deductions to facilitate the making of voluntary contributions from the corporation's executive and administrative personnel to its SSF. 11 C.F.R. §§ 114.1(f), 114.2(f)(4)(i), 114.5(k)(1); *see also* Advisory Opinion 2010-12 (Procter & Gamble) at 3 (authorizing connected organization to deduct SSF contributions from quarterly retainer payments to its directors); Advisory Opinion 2001-04 (Morgan Stanley Dean Witter & Co. PAC) at 3 (authorizing connected organization to accept payroll-deduction authorizations made by electronic signature for contributions to its SSF); Advisory Opinion 1999-03 (Microsoft PAC) at 2 (same). Like the SSFs in these prior

[1] The statute contains other limited exceptions, which are not relevant here. *See* N.Y. Lab. Law § 193(1)(c)-(d), (2).

advisory opinions, Enterprise PAC is a federal political committee that makes contributions to federal candidates and political committees and uses a payroll-deduction system to process voluntary contributions to the SSF from members of the restricted class. Thus, the Commission concludes that the requestor may operate a payroll-deduction system, as described in the request, consistent with the Act and Commission's regulations.

FECA and Commission regulations "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. § 453(a); *see also* 11 C.F.R. § 108.7(a). The Commission has previously applied this provision in the context of state laws prohibiting the use of payroll-deduction programs for voluntary contributions to an SSF. *See* Advisory Opinion 1982-29 (United Telecom PAC) at 2 ("[T]he Act would supersede or preempt any State law prohibiting the use of payroll deductions as a means of facilitating voluntary contributions . . . ."); Advisory Opinion 1976-23 (Conoco Employees Good Government Fund) at 2 ("State laws regarding payroll deduction plans would not be applicable to separate segregated funds established for the purpose of making contributions or expenditures in connection with Federal elections.").

Here the state statute does not apply to any payroll deduction "made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency." N.Y. Lab. Law § 193(1)(a). In light of that provision, the New York State Department of Labor confirms in its comment that the prohibitions in N.Y. Lab. Law § 193(1)(b) and its implementing regulations "do not apply to payroll deductions . . . that are 'made in accordance with' the provisions of applicable federal election laws and regulations that permit or proscribe payroll deductions for certain political action committees." N. Y. State Dep't of Labor, Comment at 1. "More specifically," the comment notes, the state provisions "do not apply to payroll deductions made in accordance with [FECA and Commission regulations] to facilitate the making of voluntary contributions from the restricted class employees of the requestor and its subsidiaries to its federal separate segregated fund." *Id*. Furthermore, in response to the requestor's specific concern that the New York regulation at issue seems to prohibit payroll deductions for political-committee contributions, the comment makes clear that "[t]he implementing regulation at § 195-4.5 *does not, and could not*, prohibit [the requestor's payroll deductions] because such an application of that regulation would conflict with New York's own statutory recognition of deductions made in accordance with law at Labor Law § 193(1)(a)." *Id.* (emphasis added).

As noted above, the requestor's payroll deductions are lawful under the Commission's regulations. In recognition of and reliance on the representation from the New York State Department of Labor that state law does not apply to the activity that is the subject of this advisory opinion request, the Commission does not reach the question of whether the state law is preempted.

This response constitutes an advisory opinion concerning the application of FECA and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is

indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

(signed)
Lee E. Goodman
Chairman