

to 11 CFR 100.53, proposed section 110.22(b) would treat the exchange of mailing lists of unequal value as a good or service that is provided at less than the usual and normal charge under 11 CFR 100.52(d)(1). Consequently, the difference in value between the two mailing lists exchanged would be an in-kind contribution. 11 CFR 100.52(d)(1). The Commission seeks comment on whether this characterization of the exchange of mailing lists of unequal value as an in-kind contribution is appropriate.

III. Proposed 11 CFR 113.2(d) Conversion of Committee's Mailing List to Personal Use

Both 2 U.S.C. 439a, and the Commission's regulations at 11 CFR part 113, bar candidates and other persons from converting to personal use any contributions or donations. This ban is not limited to monetary contributions. Consequently, the Commission has interpreted the personal use ban to apply to assets of the principal or authorized campaign committee, as well as the actual funds in the committee accounts. See AOs 1994–20, 1990–11, 1984–50, and 1981–11; see also 11 CFR 102.3(a)(2) and 113.2(e)(1)(ii). These assets may have been purchased through the use of funds from contributions or may have been donated to the authorized committee during the campaign. One of the principal assets of a political committee is its mailing list because it is vital to the committee's ability to solicit funds.

On some occasions, particularly after the end of his or her campaign, a candidate may wish to market the mailing list for the rental of names to other organizations and may wish to receive rental proceeds personally. These situations may raise questions as to whether the candidate has a personal ownership interest in the list. The candidate's receipt of proceeds from the rental or sale of the mailing list squarely presents the issue of whether the restrictions of 2 U.S.C. 439a apply. Proposed 11 CFR 113.2(d) would address this issue by explicitly banning the conversion to personal use of the mailing list itself, such as by barring a candidate from retaining the proceeds of a mailing list rental or sale.

In the alternative, the Commission seeks comment on whether a candidate's receipt of proceeds from the rental or sale of a mailing list, or portions thereof, could be permissible under 2 U.S.C. 439a. If permissibility were based on a candidate's ownership of a list or a share of the mailing list, how would the candidate obtain such ownership interest? Could a candidate

acquire personal ownership, through purchase or other consideration, of a mailing list developed by his or her principal campaign committee? Is the candidate's signature adequate consideration for candidate ownership of the resulting mailing list? Is such ownership interest assumed on some other basis? The Commission seeks comment on whether the determination of ownership of the mailing list should be premised on who or what entity (*i.e.*, the candidate as opposed to the committee) incurred the costs for the development or purchase of the list or the portion of the list being rented or sold. The Commission also seeks comment on whether a candidate may acquire personal ownership of a list in other ways. For example, a candidate may sign a fundraising appeal for an organization other than his or her principal campaign committee and receive the use of responsive names, in compliance with Commission regulations. Should the use of the list be viewed as a property interest of the candidate's principal campaign committee, the candidate personally, or both? How significant to that determination are the terms of an agreement purporting to confer a property interest on the principal campaign committee, the candidate personally, or both?

The Commission also seeks comment on situations where the candidate owns a mailing list. If the authorized committee uses the mailing list, has it accepted a contribution from the candidate? How should the use be valued? Should the valuation be based on the sale or rental price for the mailing list? Additionally, how should this transaction be reported?

IV. Proposed 11 CFR 9004.9(d)(2)(i) and 9034.5(c)(2)(i)—Rental, Sale, and Valuation of Mailing Lists by Publicly Financed Campaigns

The proposed rules at 11 CFR 9004.9(d)(2)(i) and 9034.5(c)(2)(i) would include the mailing lists of an authorized committee of publicly financed presidential candidates as assets on the candidates' statements of net outstanding campaign obligations ("NOCO") for the primaries and on the candidates' statements of net outstanding qualified campaign expenses ("NOQCE") for the general election, under certain circumstances. Thus, the proposed rules would recognize a presidential campaign committee's use of its mailing list as an income producing asset and would provide that a committee may only rent or sell the mailing list if the list is included as an asset in the NOCO or

NOQCE statements. However, the proposed rules at 11 CFR 9004.9(d)(2)(i) and 9034.5(c)(2)(i) would not require the publicly funded committee to include the list as an asset on the NOCO or NOQCE statements if it does not rent or sell the list.

Since 1976, the Commission has not required as a *per se* matter, the inclusion of a mailing list as an asset in NOCO and NOQCE statements, even though a political committee's mailing list is almost invariably one of the most important assets of a political committee. Some presidential campaign committees have indeed rented their lists, or portions thereof, to other political committees or organizations and therefore have received proceeds, which may show up on a NOCO or NOQCE statement as cash.

The current rules list "capital assets" and "other assets" as types of assets listed on the NOCO and NOQCE statements. Unlike "other assets," capital assets have special valuation rules accounting for depreciation. A mailing list developed by a political committee is usually a unique asset developed for the special needs of the committee, and the proposed rules would add mailing lists as a special category of assets. The proposed rules would not subject mailing lists to the depreciation rules for "capital assets." The proposed rules at 11 CFR 9004.9(d)(3)(i) and 9034.5(c)(3)(i) explain that the list would be considered an "other asset;" therefore, it would be valued at "fair market value" without depreciation factored in. The proposed rules would give specific guidance as to the fair market value of a mailing list (discussed below).

As indicated above, the proposed rules in 11 CFR 9004.9(d)(3)(ii) and 9034.5(c)(3)(ii) would specify that the mailing list may be rented or sold only if its fair market value is listed on the NOCO and NOQCE statements. These proposed rules also would require that any such rental or sale be in compliance with the conditions of the proposed rule at 11 CFR 110.21, which describes when a committee may rent or sell a mailing list to others without the proceeds becoming contributions. Transfer of a mailing list from a candidate's primary committee to his or her general election committee would not require the principal campaign committee to include a value for its mailing list on its NOCO statement. However, the donation or transfer of the mailing list to another entity (including the candidate's general election committee, the candidate's general election legal and accounting compliance fund (GELAC) or a leadership PAC) would be