

**§ 110.21 Committee rental or sale of mailing lists to others.**

(a) *Rental of mailing list.* A political committee may rent a mailing list, or portions of such list, that it owns to any other person. Rental payments are not contributions if:

(1) Prior to the rental, the political committee ascertains the usual and normal rental charge for the mailing list (or the portion of the mailing list) rented, and other services provided in the ordinary course of business of the rental of such mailing lists (e.g., labels); and

(2) The mailing list or the portion of the list (along with the services provided in the ordinary course of business) is rented at the usual and normal charge, as defined in 11 CFR 100.52(d)(2), for the agreed upon use of the mailing list, including the frequency and duration of the use, in a *bona fide* arm's length transaction with commercially reasonable terms. If the political committee and the person renting the list do not engage in a *bona fide* arm's length transaction, there is a rebuttable presumption that the exchange is not of equal value. To determine whether the terms of the rental agreement are commercially reasonable, the Commission will consider factors that include, but are not limited to:

(i) Whether the person leasing the mailing list is permitted to use the list within a reasonable period of time only;

(ii) Whether any delayed use by the person leasing the mailing list, provided for in the agreement, is based on reasonable business considerations;

(iii) Whether the agreed upon use by the person leasing the mailing list, including the duration of the rental or number of uses, comports with the usual and normal practice of the list industry and the lessee's established procedures and past practice; and

(iv) Whether the person leasing the mailing list actually uses the list.

(b) *Sale of mailing list.* A political committee may sell a mailing list, or portions of a mailing list, that it owns to any other person. Proceeds from the sale are not contributions if prior to the sale, the political committee ascertains the usual and normal charge for the sale of the mailing list, and sells the mailing list at the usual and normal charge, as defined in 11 CFR 100.52(d)(2), in a *bona fide* arm's length transaction with commercially reasonable terms. If the political committee and the person buying the list do not engage in a *bona fide* arm's length transaction, there is a rebuttable presumption that the exchange is not of equal value.

(c) *Rental or sale proceeds as contributions.* (1) Except as provided in paragraph (c)(2) of this section, a sale or rental of a mailing list that does not comply with the conditions set forth in paragraphs (a) or (b) of this section is a fundraising item under 11 CFR 100.53 and all proceeds from such sale or rental are contributions from the person buying or renting the mailing list to the political committee in their full amount.

(2) For the donation or transfer of mailing lists or the sale or rental of mailing lists at less than the usual and normal charge, see 11 CFR 100.52.

(d) *Rental or sale to the candidate.* If a candidate rents or buys a mailing list from his or her authorized committee, the amount paid by the candidate is a contribution to the authorized committee.

(e) *Reporting of proceeds.* The proceeds from the rental or sale of a mailing list that complies with the conditions set forth in paragraphs (a) or (b) of this section must be reported as "other receipts."

(f) *Recordkeeping.* A political committee shall maintain and make available upon request the documentation described in paragraph (f)(1) and (2) of this section.

(1) All sales and rental agreements or contracts of its mailing list(s). The agreements must be signed and dated.

(2) Documentation of the usual or normal charge for its mailing lists in the following manner:

(i) If its mailing list is included in the *SRDS Direct Marketing List Source*, a copy of the price list in the *SRDS Direct Marketing List Source*; or

(ii) If its mailing list is not included in the *SRDS Direct Marketing List Source*, a written appraisal of the mailing list from an independent entity that is not directly or indirectly associated with the political committee (including subcontractors of such entities).

**§ 110.22 Committee exchange of mailing lists.**

(a) *Exchange of equal value.* A political committee may exchange the use of a mailing list or portions of a mailing list with another person for a specific period of time or a specific number of uses. The exchange is not a contribution, donation, or other reportable receipt to the political committee if:

(1) The political committee ascertains in advance the usual and normal charge for the mailing lists, or the portions of the mailing lists, being exchanged and other services provided in the ordinary course of business for the exchange of the mailing lists (e.g., labels); and

(2) The exchange of the mailing lists is a *bona fide* arm's length transaction with commercially reasonable terms that results in an exchange of equal value between the political committee and the other person. If the political committee and the other person in the exchange do not engage in a *bona fide* arm's length transaction, there is a rebuttable presumption that the exchange is not of equal value.

(3) An exchange of equal value takes place when:

(i) The usual and normal rental value for each mailing list, or portion of the mailing list being exchanged, and the agreed upon use for each mailing list, and the services provided in the ordinary course of business are of equal value; and

(ii) The agreement between the political committee and the other person provides that they each use the mailing list they receive within a commercially reasonable period of time. If the agreement provides for a future use by the political committee or the other person, the delay in the use of the mailing list must be based upon reasonable business considerations.

(b) *Exchange of unequal value.* An exchange of mailing lists that does not comply with the conditions set forth in paragraph (a) of this section is a contribution to the extent that the value provided by the other person exceeds the value provided by the political committee.

**PART 113—USE OF CAMPAIGN ACCOUNTS FOR NON-CAMPAIGN PURPOSES (2 U.S.C. 439a)**

3. The authority citation for part 113 would continue to read as follows:

**Authority:** 2 U.S.C. 432(h), 438(a)(8), 439a, and 441a.

4. In § 113.2, paragraph (d) would be added to read as follows:

**§ 113.2 Permissible non-campaign uses of funds (2 U.S.C. 439a).**

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(d) *Conversion of committee's mailing list to personal use.* The mailing list of a principal campaign committee or authorized committee of a candidate, or any proceeds from the rental or sale of any names on the mailing list, may not be converted to the personal use of the candidate or any other person.

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**PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS**

5. The authority citation for part 9004 would continue to read as follows: