

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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## AGENDA ITEM

For Meeting of: 11-29-07

**SUBMITTED LATE**

### MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *TJD*  
General Counsel

Rosemary C. Smith *RCS*  
Associate General Counsel

Amy L. Rothstein *ALR*  
Assistant General Counsel

Eric C. Hallstrom *ECH*  
Attorney

Subject: Draft AO 2007-30

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for November 29, 2007.

Attachment

1   ADVISORY OPINION 2007-30

2   Marc E. Elias, Esq.  
3   Perkins Coie LLP  
4   607 Fourteenth Street, NW  
5   Washington, DC 20005-2011

**DRAFT**

6   Dear Mr. Elias:

7           We are responding to your advisory opinion request on behalf of Chris Dodd for  
8   President, Inc., concerning the application of the Federal Election Campaign Act of 1971,  
9   as amended (the "Act"), the Presidential Primary Matching Payment Account Act (the  
10   "Matching Payment Act"), and Commission regulations to the use of alternative security  
11   verification procedures for contributions made by credit card over the Internet.

12           The Commission concludes that contributions made by credit card over the  
13   Internet and verified by using credit card's security code and either the contributor's  
14   street address or zip code may be matchable under the Matching Payment Act and  
15   Commission regulations.

16   ***Background***

17           The facts presented in this advisory opinion are based on your letter received on  
18   October 12, 2007, your telephone conversations with Commission staff on October 18  
19   and 19, 2007, and your e-mail received on October 25, 2007.

20           Chris Dodd for President, Inc. (the "Committee") is the principal campaign  
21   committee for Senator Chris Dodd. When accepting credit card contributions over the  
22   Internet, the Committee requires contributors to provide their name, credit card number,  
23   credit card expiration date, mailing address, amount of contribution, and  
24   employer/occupation information, as well as the three- or four-digit security code printed  
25   either on the signature panel on the back of the credit card or above and to the right of the

1 account number on the front of the card. The Committee forwards that information to its  
2 credit card processor. The credit card processor then validates the card's security code  
3 and either the contributor's street address or the contributor's zip code. The Committee  
4 would like to submit credit card contributions subject to this verification procedure for  
5 matching funds under the Matching Payment Act.

6 ***Question Presented***

7 *Are credit card contributions made over the Internet eligible for matching funds*  
8 *under the Matching Payment Act and Commission regulations if the credit card*  
9 *processor uses the credit card's security code and either the contributor's street address*  
10 *or zip code, rather than the credit card's expiration date and both the contributor's street*  
11 *address and zip code to verify the contributor's identity?*

12 ***Legal Analysis and Conclusions***

13 Yes, assuming that they are otherwise in compliance with the applicable statutes  
14 and Commission regulations, credit card contributions made over the Internet subject to  
15 security verification based on the card's security code and the contributor's street address  
16 or zip code may be matchable under the Matching Payment Act and Commission  
17 regulations.

18 Under the Matching Payment Act, if a candidate for the presidential nomination  
19 of his or her party agrees to certain conditions and raises in excess of \$5,000 in  
20 contributions of \$250 or less from residents of each of at least 20 States, the Federal  
21 Government will match the first \$250 of each eligible contribution. *See* 26 U.S.C. 9033,  
22 9034; Explanation and Justification for Matching Credit Card and Debit Card  
23 Contributions in Presidential Campaigns, 64 Fed. Reg. 32394 (June 17, 1999). The

1 Matching Payment Act defines a matchable contribution generally as “a gift of money  
2 made by a written instrument which identifies the person making the contribution by full  
3 name and mailing address.” 26 U.S.C. 9034(a). Commission regulations define the term  
4 “written instrument” to mean, “in the case of such a contribution made over the Internet,  
5 an electronic record of the transaction *created and transmitted by the cardholder*, and  
6 including the name of the cardholder and the card number, which can be maintained  
7 electronically and reproduced in a written form by the recipient candidate or candidate’s  
8 committee.” 11 CFR 9034.2(b) (emphasis added). Commission regulations require the  
9 written instrument to contain the full name and signature of the contributor. 11 CFR  
10 9034.2(c). For credit card contributions made over the Internet, the regulations define the  
11 term “signature” as “the full name and card number of the cardholder who is the donor,  
12 *entered and transmitted by the cardholder.*” *Id.* (emphasis added).

13 In the case of credit card contributions made over the Internet, the definitions of  
14 “written instrument” and “signature” focus on the cardholder’s act of entering and  
15 transmitting his or her information. This is because, as the Commission explained when  
16 adopting the regulations, “it is the signatory’s (in this case the donor’s) act of entering his  
17 or her name that represents a legal act.” Matching Credit Card and Debit Card  
18 Contributions, 64 Fed. Reg. at 32396. Thus, for instance, the Commission does not  
19 permit the matching of credit card contributions made via telephone “where the only  
20 record is being created wholly by the recipient committee.” *Id.*

21 As a tool for candidates seeking federal matching funds through the Matching  
22 Payment Act, the Commission developed the Guideline for Presentation in Good Order  
23 (the “Guideline”). The Guideline provides guidance and direction to political committees

1 about the format and procedures for submitting contributions to the Commission for  
2 matching. The Guideline states that all credit card contributions made via the Internet  
3 should be subject to “billing address verification” based on “characters from the street  
4 address and the zip code, and the card expiration date.” Guideline at II-2. As the  
5 Commission has previously noted, however, “the matchability of contributions is  
6 governed by the statute and regulations, not the Guideline.” Buchanan for President, Inc.,  
7 LRA # 512, Statement of Reasons at 19 n.32 (Sept. 14, 2000).

8         The Commission has not mandated specific procedures to verify the identity of an  
9 individual making a credit card contribution over the Internet. Matching Credit Card and  
10 Debit Card Contributions, 64 Fed. Reg. at 32395; *see also* Guideline at II-1 (noting that  
11 the Commission has not “mandated a particular set of safeguards” for all campaigns that  
12 accept credit card contributions over the Internet). Instead, the Commission has  
13 concluded that the measures approved in advisory opinions and described in the  
14 Guideline provide a level of security sufficient to “allay concerns over the receipt of  
15 prohibited contributions.” Matching Credit Card and Debit Card Contributions, 64 Fed.  
16 Reg. at 32395; *see e.g.*, 1999-09 (Bradley for President).<sup>1</sup> Such an approach provides the  
17 Commission with much needed flexibility to ensure that the regulated community is able  
18 to take advantage of rapidly evolving technological innovations, while ensuring that  
19 “necessary precautions” are in place due to the absence of any “direct paper transfer” in  
20 credit card contributions made over the Internet. Matching Credit Card and Debit Card  
21 Contributions, 64 Fed. Reg. at 32395.

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<sup>1</sup> The Commission has referred to these model measures as “safe harbors.” *See* Matching Credit Card and Debit Card Contributions, 64 Fed. Reg. at 32395; Advisory Opinions 1999-36 (Campaign Advantage); 1999-22 (Aristotle Publishing); 1999-9 (Bradley for President).

1           In order to satisfy the requirements of the Matching Payment Act and the  
2 Commission's regulations, a campaign committee must take steps to ensure that the  
3 person making a credit card contribution over the Internet owns the card or account on  
4 which the charge is made. Physical possession of a credit card is one indication of  
5 ownership. The Commission is satisfied that the use of a credit card's security code  
6 provides at least as much assurance that the person making the contribution is in physical  
7 possession of the credit card as does using the card's expiration date. In fact, unlike the  
8 expiration date, the card's security code is not embossed on the card so that it is less  
9 readily copied from charge slips or receipts. As a result, the security code provides  
10 sufficient assurance that the person making the contribution is in possession of the credit  
11 card.

12           The additional step of billing address verification helps to confirm that the person  
13 in physical possession of the credit card is also the owner of the credit card, by soliciting  
14 and verifying personal information about the owner of the credit card. The Commission  
15 has previously accepted validation based on a combination of the contributor's street  
16 address and the contributor's zip code for credit card contributions made over the  
17 Internet. Here, in addition to the card's security code, the Committee collects the  
18 contributor's name, credit card number, credit card expiration date, mailing address, and  
19 employer/occupation information. In addition, the Committee requires the contributor to  
20 affirm he or she is not a Federal government contractor or a foreign national who lacks  
21 permanent resident status in the United States and that the contribution is made from his  
22 or her own funds, on a personal credit or debit card for which he or she has the legal  
23 obligation to pay, and is made neither on a corporate or business entity card nor on the

12           President) and described in the Guideline, it is sufficient to allay concerns that the  
13 contributor is someone other than the credit card owner. Accordingly, credit card