



Federal Election Commission

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Retiring Campaign Debt

This article answers common questions from candidates and their committees who find that they have campaign debts remaining after the election. The Federal Election Campaign Act (the Act) and Commission regulations contain certain provisions related to the process of retiring campaign debts and terminating a principal campaign committee (committee), including fundraising to retire debts, settling debts for less than the amount owed and debt forgiveness.

May I continue to raise contributions to retire debts after the election?

Yes. Candidates may continue to raise contributions to retire committee debts. When raising contributions to retire debts after the election is over, a campaign must remember three general rules:

- Contributions are still subject to the limits and prohibitions of the Act, even if the candidate lost the election and does not plan to run for future federal office;
- Contributions made after an election to retire debts must, in most cases, be specifically designated for that election by the contributor; and
- Contributions designated for, but made after, a particular election may not exceed the campaign's *net debts outstanding*. 11 CFR 110.1(b)(3)(i).

How do I calculate "net debts outstanding?"

A campaign's "net debts outstanding" consist of unpaid debts incurred with respect to the particular election less the sum of: 1) cash on hand, 2) amounts owed to the candidate or the committee and 3) personal loans in excess of \$250,000. "Unpaid debts" include the following:

- All outstanding debts and obligations;
- The estimated cost of raising funds to liquidate the debts; and
- If the campaign is terminating, estimated winding down costs (for example, office rental, staff salaries and office supplies). 11 CFR 110.1(b)(3)(ii).

"Cash on hand" consists of the resources available to pay the campaign's total debts, including currency, deposited funds, traveler's checks, certificates of deposit, treasury bills and any other investments valued at fair market value. For the purpose of calculating net debts outstanding for the primary, cash on hand need not include contributions designated for the general. 11 CFR 110.1(b)(3)(ii)(A) and (B). "Amounts owed" includes amounts owed to the campaign in the form of credits,

refunds of deposits, returns and receivables or a commercially reasonable estimate of the collectible amount.

A campaign first calculates its net debts outstanding as of the day of the election. Thereafter, the campaign continually recalculates its total net debts outstanding as additional funds are received for, or spent on, the election for which the debt remains. 11 CFR 110.1(b)(3)(ii) and (iii).

How should the committee treat salary owed to campaign staff?

Unpaid salary or wages owed to campaign employees are not considered contributions from those employees. Uncompensated services rendered by an employee may be converted to volunteer work, or the amount owed may be treated as a debt, as explained below. 11 CFR 116.6(a). Note, however, that FEC rules do not require an employee to accept less than full payment for his or her services. 11 CFR 116.6(b).

Treatment as Volunteer Service. Uncompensated employee service may be considered volunteer service if the employee signs a statement agreeing to the arrangement. 11 CFR 116.6(a). However, if a committee initially treats unpaid service as volunteer work, and never reports the unpaid amounts as debt, the committee cannot use campaign funds to pay salary to campaign employees who had agreed to work without salaries. AO 2004-27.

Treatment as Debt. Alternatively, the committee may treat the unpaid amount of salary as a debt to the employee. The committee and the employee may settle the debt for less than the amount owed. 11 CFR 116.6(b).

My committee is terminating. Can the committee settle debts for less than the amount owed?

Yes, under certain circumstances. A commercial vendor (incorporated or unincorporated) may forgive or settle a debt owed by a terminating committee. A "terminating committee" is one that does not intend to raise contributions or make expenditures—except for the purposes of paying winding-down costs and retiring its debts. 11 CFR 116.1(a) and 116.2(a). The difference between the debt and the settlement amount is *not* a contribution from the commercial vendor provided:

- Credit was initially extended in the vendor's ordinary course of business, and the terms of the credit were similar to those observed by the vendor when extend-

ing a similar amount of credit to a nonpolitical client of similar risk. 11 CFR 116.3 and 116.4(d)(1).

- The committee undertook all reasonable efforts to satisfy the outstanding debt, such as fundraising, reducing overhead costs and liquidating assets. 11 CFR 116.4(d)(2).
- The vendor made the same efforts to collect the debt as those made to collect debts from a nonpolitical debtor in similar circumstances. Remedies might include, for example, late fee charges, referral to a debt collection agency or litigation. 11 CFR 116.4(d)(3).

If the committee or the creditor fails to take these steps, the difference between the amount owed and the amount actually paid may be considered a contribution subject to limits and source prohibitions (*i.e.*, the contribution is prohibited if the vendor is incorporated). 11 CFR 114.2(b).

Debt Settlement Plans. After a terminating committee has reached agreements with its creditors, the treasurer must file a debt settlement plan on FEC Form 8. Once the plan has been submitted to the Commission for review, the committee must postpone payment on the debt until the Commission has completed the review. 11 CFR 116.7(a). Payments to creditors must be disclosed in the committee's termination report. Step-by-step instructions for completing Form 8 are included with the form.

Reporting Debts Undergoing Settlement. Debts undergoing settlement must be continuously reported until the Commission has completed its review of the committee's debt settlement plan. The committee may file a termination report once all debts have been paid, settled, forgiven or otherwise extinguished. 11 CFR 116.4(f), 116.5(e) and 116.6(c).

Disputed Debts. A disputed debt is a *bona fide* disagreement between the creditor and the committee as to the existence of a debt or the amount owed by the committee. When filing a debt settlement plan, a terminating committee must describe any disputed debts and the committee's efforts to resolve them on Part III of Form 8. 11 CFR 116.10(b).

Creditor's Rights. No commercial vendor or other creditor is required to forgive or settle debts owed by committees. 11 CFR 116.4(e).

Assigning Debts to Another Committee. To expedite termination, an authorized committee that qualifies as a terminating committee and has no remaining cash on hand may assign its debts to another authorized committee of the same candidate, provided that:

- The committee transferring the debts was organized for an election that has already been held;
- Within 30 days before the assignment takes effect, the transferor committee notifies each creditor in writing of the name and address of the committee assuming the debts; and
- The committee assuming the debts notifies the FEC in writing that it has assumed the obligation to pay the

debts. That committee must continue to report the debts until they are retired. 11 CFR 116.2(c)(3).

Is an ongoing committee eligible for debt-forgiveness?

Yes, under certain circumstances. A creditor may forgive a debt owed by an *ongoing committee* (that is, one that does not qualify as a terminating committee) if the debt has been outstanding at least 24 months and the ongoing committee (1) has insufficient cash on hand to pay the debt, (2) has had *receipts* of less than \$1,000 and *disbursements* of less than \$1,000 during the previous 24 months and (3) either:

- The committee owes debts to other creditors of such magnitude that the creditor could reasonably conclude that the ongoing committee will not pay its particular debt; or
- The creditor is unable, after reasonable diligence, to locate the ongoing committee. 11 CFR 116.8(a).

Notification to Commission. A creditor who intends to forgive a debt owed by an ongoing committee must notify the Commission of its intent in writing. In addition to demonstrating that the ongoing committee is eligible for debt-forgiveness, the letter must provide the following information:

- The terms of the initial extension of credit and a description of the terms under which the creditor has extended credit to similar nonpolitical debtors;
- A description of the campaign's efforts to satisfy the debt;
- A description of the steps taken by the creditor to obtain payment, along with a comparison of those remedies with others pursued by the creditor under similar circumstances; and
- An indication that the creditor has forgiven other debts involving nonpolitical debtors in similar circumstances. 11 CFR 116.8(b).

Commission Review. The Commission will review each proposal to forgive a debt to ensure that the creditor, the ongoing committee and the candidate have complied with the Act's contribution limits and prohibitions. 11 CFR 116.8(c).

May the committee sell campaign assets?

Generally, when a campaign sells its property, the purchase is considered a *contribution* to the campaign by the purchaser. The payment, therefore, must not come from prohibited sources and must not exceed the contribution limits.

Under limited circumstances, however, the sale of a campaign asset *does not* result in a contribution.

Mailing Lists. Mailing lists developed by a campaign for its own use may be sold at the "usual and normal" charge without the purchaser making a contribution. See, for example, AOs 2002-14, 1982-41 and 1981-53.

Liquidation of Equipment and Supplies. The Commission has said that the sale of campaign equipment and supplies does not result in a contribution under certain conditions. AOs 2003-19 and 1986-14.

How does a committee terminate?

A committee may file a termination report at any time, provided that:

- The committee no longer intends to receive contributions, make expenditures or make any disbursements that would otherwise qualify it as a political committee; and
- Neither the committee seeking to terminate nor any other authorized committee of the same candidate has any outstanding debts or obligations. 11 CFR 102.3 and 116.1.

A committee involved in an FEC enforcement action, an FEC audit or litigation with the FEC, however, must continue to file regularly scheduled reports until the matter is resolved.

When filing the committee's termination report, the treasurer should check the "Termination Report" box on Line 4 of the Summary Page of FEC Form 3. The termination report must disclose:

- All receipts and disbursements not previously reported, including an accounting of debt retirement; and
- The purposes for which any remaining committee funds or assets will be used. 11 CFR 102.3(a).

The committee's reporting obligation ends *only* when the Commission notifies the committee in writing that the termination report has been accepted. Until the committee receives this notification, it must continue to file reports.

—Isaac J. Baker