

AGENDA DOCUMENT NO. 11-13-A



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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2011 MAR 16 A 8:33

MEMORANDUM

AGENDA ITEM

TO: The Commission

FROM: Cynthia L. Bauerly *CLB*
Chair

Caroline C. Hunter *CCH / EW*
Vice Chair

DATE: March 16, 2011

RE: Interpretive Rule Regarding Electronic Contributor Resignations (LRA 820)

For Meeting of 3-16-11

SUBMITTED LATE

Please find attached a revised version of the proposed Interpretive Rule Regarding Electronic Contributor Resignations for consideration by the Commission.

We ask that this document be made public for consideration at today's meeting.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 110**

3 **[Notice 2011—XX]**

4 **Interpretive Rule Regarding Electronic Contributor Redesignations**

5 **AGENCY:** Federal Election Commission

6 **ACTION:** Notice of Interpretive Rule

7 **SUMMARY:** Commission regulations require that a contributor’s redesignation of a
8 contribution for another election be in writing and signed by the
9 contributor. The Commission construes the requirements of 11 CFR
10 110.1(b)(5) and 110.2(b)(5) to encompass a certain method of
11 electronic redesignation. The method of electronic redesignation is
12 described in the supplementary information below.

13 **DATES:** This Interpretive Rule is effective [insert date of publication in the
14 Federal Register].

15 **FOR FURTHER
16 INFORMATION**

17 **CONTACT:** Allison T. Steinle, Attorney, Office of General Counsel, 999 E Street,
18 NW, Washington, DC 20463 (202) 694-1000 or (800) 424-9530.

19
20 **SUPPLEMENTARY INFORMATION:** Commission regulations require that a contributor’s
21 redesignation of a contribution for another election be in writing and be signed by the
22 contributor. 11 CFR 110.1(b)(5) and 110.2(b)(5). The Commission, however, recognizes that it
23 should interpret the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 et seq.
24 (“the Act”) and its regulations “consistent with contemporary technological innovations . . .

1 where such technology would not compromise the intent of the Act and regulations.” Advisory
2 Opinion 1999-09 (Bradley for President); see also Advisory Opinions 2007-30 (Dodd); 2007-17
3 (DSCC); 1999-36 (Campaign Advantage); 1999-03 (Microsoft PAC); 1995-09 (NewtWatch).

4 During the course of an audit, the Commission recently determined that a specific
5 redesignation practice provided the same degree of assurance of the contributor’s identity and the
6 contributor’s intent to redesignate the contribution as a handwritten signature. Accordingly, the
7 Commission determined that the practice met the requirements of 11 CFR 110.1(b)(5). The
8 Commission believes it is important to inform the public, including political committees and
9 their treasurers, of this determination.

10 The specific method approved by the Commission worked in the following manner: The
11 political committee informed contributors through postal mail, with a follow-up e-mail, that, by
12 visiting a website printed in the letter or by clicking on a link in the e-mail message that directed
13 contributors to the website, they could redesignate their contributions to the candidate’s other
14 authorized committee if they wished to do so. Contributors were also informed that if they did
15 not redesignate their contributions, they would then receive refunds automatically. Contributors
16 who visited the website were asked to fill out an electronic form affirmatively authorizing the
17 redesignation and verifying their identity by entering their personal information, including first
18 and last name, address, phone number, e-mail address, occupation, and name of employer. Upon
19 completing the form, contributors received a “receipt record,” thanking them for their
20 redesignation. The political committee also retained a record of each electronic redesignation in
21 a database, including the personal information provided by each contributor making a
22 redesignation, in a manner consistent with the recordkeeping requirements for signed written

1 redesignations under 11 CFR 110.1(l). The Commission concluded that this process provided
2 assurance of contributor identity and intent equivalent to a written signature.

3 Accordingly, the Commission construes the written signature requirements of 11 CFR
4 110.1(b)(5) and 110.2(b)(5) to encompass the method of electronic redesignation described
5 above. Because the specific method approved by the Commission requires the contributor to
6 provide personal information that can be verified against a committee's records, it provides a
7 level of assurance as to the contributor's identity and intent comparable to that of a written
8 signature. See Explanation and Justification for 11 CFR 110.1(b)(5), 67 Fed. Reg. 69,928,
9 69,934 (Nov. 19, 2002) (Commission declined to eliminate the written signature requirement for
10 contributor redesignations).

11 The Commission encourages the use of innovations in technology to effectuate electronic
12 redesignations. In that light, committees are advised that the Commission will consider other
13 methods of electronic redesignation not explicitly addressed in this interpretive rule, provided
14 that they offer a sufficient degree of assurance of the contributor's identity and the contributor's
15 intent to redesignate. Unless and until the Commission initiates a rulemaking on this issue, such
16 consideration may be provided on a case-by-case basis, including but not limited to the
17 Commission's advisory opinion process or requests for Commission consideration of legal
18 questions. See 2 U.S.C. 437f and 11 CFR Part 112; Federal Election Commission, Policy
19 Statement Establishing a Pilot Program for Requesting Consideration of Legal Questions by the
20 Commission, 75 Fed. Reg. 42088 (July 20, 2010). Committees are also advised that this
21 interpretive rule does not alter or affect the timing or recordkeeping requirements of 11 CFR
22 110.1 or 110.2.

1 This Federal Register notice represents an interpretive rule announcing the general course
2 of action that the Commission intends to follow. This interpretive rule does not constitute an
3 agency rule requiring notice of proposed rulemaking, opportunities for public participation, prior
4 publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedure Act
5 (“APA”). As such, it does not bind the Commission or any members of the general public, or
6 create or remove any rights, duties, etc. The provisions of the Regulatory Flexibility Act, which
7 apply when notice and comment are required by the APA or another statute, are not applicable.
8 See 5 U.S.C. 603(a).

9 On behalf of the Commission,

10 _____
11 Cynthia L. Bauerly
12 Chair
13 Federal Election Commission
14

15 DATED: _____
16 BILLING CODE: 6715-01-P