

whether the contribution is acceptable under the rule. For example, a contribution designated for the primary and made before that election will not be subject to the net debts outstanding rule, even if the campaign receives the contribution after the primary. By contrast, a contribution designated for—but made after—the primary is acceptable only to the extent the campaign has net debts outstanding for the primary on the date of receipt. 110.1(b)(3)(i) and (iii). See Section 8 of this chapter.

Date of Deposit

While all contributions must be deposited within 10 days, the date of deposit is not used for reporting or contribution limit purposes.

6. Joint Contributions

A joint contribution is a contribution that is made by more than one person using a single check or other written instrument. Although each individual has a separate contribution limit, joint contributors may combine their contribution limits by contributing a joint contribution (for example, a check for \$5,000 for a candidate's primary election) as long as both sign the check (or an attached statement), as explained below. 110.1(k).

Each Contributor Must Sign the Check

When making a joint contribution, each contributor must sign the check (or other written instrument) or a statement that accompanies the contribution. 110.1(k)(1). Note that if the check or an accompanying statement of attribution is not signed by each contributor, the entire contribution will be attributed only to the party who signed the check. 104.8(c). However, under certain circumstances the committee may presumptively reattribute the excessive portion of a contribution. See "Reattribution" below.

Exception: Partnerships and LLCs

Contributions from partnerships and certain LLCs are not considered joint contributions, but do trigger special attribution requirements; see Appendix B.

Attribution

If the check or statement does not indicate how much should be attributed to each donor, the recipient committee must attribute the contribution in equal portions. 110.1(k)(1) and (2). For example, if a committee receives a \$1,000 joint contribution signed by two individuals but with no written attribution, the committee must attribute a \$500 contribution to each donor.

A campaign may request that a contribution be reattributed, as explained below.

7. Remediating an Excessive Contribution

When a committee receives an excessive contribution—one which exceeds the contributor's limit or the campaign's net debts outstanding for an election—the committee may remedy the violation by refunding the excessive amount or by seeking a redesignation or reattribution of it within 60 days.

Step-by-step procedures for obtaining a reattribution or redesignation are explained below.

Redesignation

By Contributor

With a redesignation, the contributor instructs the committee to use the excessive portion of a contribution for an election other than the one for which the funds were originally given. For example, the contributor may redesignate the excessive portion of a contribution made for the primary election so that it counts against his or her limit with respect to the general election (provided the contributor has not already contributed the maximum for the general election).

When requesting a redesignation, the committee must inform the contributor that he or she may, alternatively, request a refund of the excessive amount. 110.1(b)(5).

Presumptive Redesignation by Committee

Under certain circumstances, the committee may make a presumptive redesignation of an excessive contribution. When an individual or a non-multican-

didate committee makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. I 10.1(b)(5)(ii)(B)(1)-(4).

Also, the excessive portion of an undesignated contribution made after the primary, but before the general election, may be automatically applied to the primary if the campaign's net debts outstanding from the primary equal or exceed the amount redesignated. I 10.1(b)(5)(ii)(C). See Section 8 in this chapter.

The committee is required to notify the contributor in writing of the presumptive redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead. I 10.1(b)(5)(ii)(C).

It is important to note that presumptive redesignations may be made only within the same election cycle. Also, presumptive redesignation is not an option when the contributor is a multicandidate committee.

Reattribution

By Contributor

With a reattribution, the contributor instructs the committee in writing to attribute the excessive portion of a joint contribution to another individual. For example, if the committee receives an excessive contribution drawn on a joint checking account, but signed by only one account holder, the committee may seek a reattribution signed by each contributor of the excessive amount to the other account holder. I 10.1(k)(3). (A joint contribution may also be reattributed so that a different amount is attributed to

each contributor.¹⁰) Note that a joint contribution must represent the personal funds of each contributor because contributions made in the name of another are prohibited. I 10.4(b).

When requesting reattributions, the committee must also inform contributors that they may, alternatively, ask for a refund of the excessive portions of their contributions. I 10.1(k)(3).

Presumptive Reattribution By Committee

When a committee receives an excessive contribution made via a written instrument with more than one individual's name imprinted on it, but only one signature, the committee may attribute the permissible portion to the signer. The committee may make a presumptive reattribution of the excessive portion to the other individual whose name is imprinted on the written instrument, without obtaining a second signature, so long as the reattribution does not cause the contributor to exceed any other contribution limit. I 10.1(k)(3)(ii)(B)(1).

The committee is required to notify the contributors in writing of the presumptive reattribution within 60 days of the treasurer's receipt of the contribution, and must offer the contributors the option to receive a refund if it was not intended to be a joint contribution. I 10.1(k)(3)(ii)(B)(2)-(3).

When to Request Resignations and Reattributions

In many circumstances, the committee will be able to presumptively redesignate or reattribute contributions. For all other circumstances, contributions can be redesignated or reattributed only by the individual contributor.

A committee may ask a contributor to redesignate and/or reattribute a contribution (within 60 days of the treasurer's receipt), for example, when the committee receives:

¹⁰ See the Explanation and Justification published with the final rule, 52 Fed. Reg. 760, 765-766 (January 9, 1987), available online at http://www.fec.gov/law/cfr/ej_compilation/1987/1987-1.pdf.

- A designated or undesignated contribution that exceeds the donor's limit. 110.1(b)(5)(i)(A) and (C).
- A designated or undesignated contribution for an election in which the candidate is not running. For example, a contribution that was designated for the general but was received before the primary may be redesignated for a future primary if the candidate loses the primary or otherwise does not run in the general election. 102.9(e); see also AOs 1996-29, 1992-15 and 1986-17.
- A contribution that is designated for, but made after, an election and that exceeds the campaign's net debts outstanding for that election. 110.1(b)(3)(i) and (5)(i)(B).
- An undesignated contribution (which normally applies to the candidate's upcoming election) that the committee wants to use to retire debts of a previous election. Note that, if it is redesignated, the contribution then counts against the donor's contribution limits for that previous election. 110.1(b)(5)(i)(D).

Procedures for Obtaining Redesignations and Reattributions from Contributors

The committee treasurer is the person ultimately responsible for complying with the procedures outlined below. 103.3(a) and (b).

Step 1: Deposit Contribution

A committee must deposit contributions within 10 days of the treasurer's receipt. (If a contribution is not deposited, it must be returned to the contributor within 10 days of receipt. A contribution is returned when it is sent back to the contributor without being deposited.) 103.3(a).

Step 2: Determine Whether Excessive

The committee must determine whether a contribution exceeds the donor's limit or the campaign's net debts outstanding. The Commission encourages committees to make this determination within 30 days of receiving the contribution. This allows a committee sufficient time to request

and receive a redesignation and/or reattribution within the 60-day limit, as explained below.

Step 3: Be Prepared to Make Refund

When a committee deposits contributions that may exceed the limits or net debts outstanding for an election, the committee must not spend the funds because they may have to be refunded. To ensure that the committee will be able to refund the contribution in full, the committee may either maintain sufficient funds in its regular campaign depository or establish a separate account used solely for the deposit of possibly illegal contributions. 103.3(b)(4). Furthermore, the committee must keep a written record noting the reason a contribution may be excessive and must include this information when reporting the receipt of the contribution. 103.3(b)(5).

Step 4: Request Redesignation and/or Reattribution

When requesting a redesignation, the committee asks the contributor to provide a written, signed redesignation of the contribution for another election. The request must also state that the donor may receive a refund of the excessive portion of the contribution if he or she does not wish to redesignate it. 110.1(b)(5)(ii)(A). See also the FEC's Interpretive Rule on Electronic Redesignations, 76 FR 16233 (March 23, 2011), available on the FEC website at http://www.fec.gov/law/cfr/ej_compilation/2011/notice_2011-02.pdf.

When requesting a reattribution, the committee asks the contributor whether the contribution was intended to be a joint contribution from more than one person. Alternatively, if the original contribution was a joint contribution, the committee requests that contributors adjust the amount attributable to each.¹¹ In either case, the committee should inform contributors that they must each sign the reattribution. The request must notify each contributor that, instead of reattributing the contribution, he or she may seek a refund of the portion of the contribution that exceeds the limits or the campaign's net debts outstanding. 110.1(k)(3)(ii)(A).

¹¹ See the Explanation and Justification published with the final rule, 52 Fed. Reg. 760, 766 (January 9, 1987), available online at http://www.fec.gov/law/cfr/ej_compilation/1987/1987-1.pdf.

Step 5: Resignation/Reattribution Made or Make Refund Within 60 Days

Within 60 days after the date of the committee's receipt of the contribution either:

- The contributor must provide the committee with a resignation or reattribution; or
- The committee must refund the excessive portion of the contribution.

103.3(b)(3).

A contribution is properly redesignated if, within the 60-day period, the contributor provides the committee with a written, signed statement redesignating the contribution for a different election. 110.1(b)(5)(ii)(B).

A contribution is properly reattributed if, within the 60-day period, the contributors provide the committee with a written statement reattributing the contribution. The statement must be signed by all contributors and must indicate the amount attributable to each donor. (If the contributors do not specify how to divide the contribution, the committee must attribute the contribution equally among the contributors.) 110.1(k)(2) and (3)(ii)(B).

Step 6: Keep Records and Report

The committee must keep documentation for each reattribution and redesignation to verify that it was received within the 60-day time limit. Documentation for a reattribution or a redesignation must include one of the following:

- A copy of the postmarked envelope bearing the contributor's name, return address or other identifying code;
- A copy of the signed statement reattributing or redesignating the contribution with a date stamp showing the date of the committee's receipt; or
- A copy of the written resignation or reattribution dated by the contributor.

110.1(l)(6).

The documentation relating to a reattribution or redesignation must be retained for three years. 102.9(c).

8. Contributions to Retire Debts

If a committee has net debts outstanding after an election is over, a campaign may accept contributions after the election to retire the debts provided that:

- The contribution is designated for that election (since an undesignated contribution made after an election counts toward the limit for the candidate's upcoming election, unless the campaign requests its redesignation);
- The contribution does not exceed the contributor's limit for the designated election; and
- The campaign has net debts outstanding for the designated election on the day it receives the contribution.

110.1(b)(3)(i) and (iii).

How to Calculate Net Debts Outstanding

A campaign's net debts outstanding consist of unpaid debts incurred with respect to the particular election minus cash on hand plus the total 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, and loans exceeding \$250,000.¹² 110.1(b)(3)(ii).

Unpaid Debts

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).

110.1(b)(3)(ii).

¹² For an illustration of how the net debts outstanding calculation is performed, see the Explanation and Justification published with the final rule, 52 Fed. Reg. 762 (January 9, 1987), available online at http://www.fec.gov/law/cfr/ej_compilation/1987/1987-1.pdf#page=3