

AGENDA DOCUMENT NO. 13-03



FEDERAL ELECTION COMMISSION
Washington, DC 20463

FEDERAL ELECTION
COMMISSION
SECRETARIAT

2013 JAN 31 A 9:36

AGENDA ITEM

For Meeting of 1-31-13

MEMORANDUM

SUBMITTED LATE

TO: The Commission

FROM: Ellen L. Weintraub
Chair

ELW

Donald F. McGahn II
Vice Chairman

DFM

DATE: January 31, 2013

SUBJECT: Draft Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements

The Commission is considering the topic of how political committees should report the ultimate payees of committee disbursements. This topic was addressed in a Request for Guidance from the Commission pursuant to Directive 69, which was presented at the Commission's open meeting on December 20, 2012 as Agenda Document 12-86.

The attached draft of an interpretive rule on this topic is being made public in order to invite and facilitate public comment. Any comments on the draft must be received by March 4, 2013 and should be addressed to the Commission Secretary, 999 E Street NW., Washington, DC 20463, via: 202-208-3333 (fax) or secretary@fec.gov.

Attachment

DRAFT

FEDERAL ELECTION COMMISSION

[Notice 2013-XX]

Reporting Ultimate Payees of Political Committee Disbursements

AGENCY: Federal Election Commission.

ACTION: Notice of interpretive rule.

SUMMARY: The Federal Election Commission is clarifying its interpretation of the regulatory requirement that political committees report the full name and address of each person to whom they make expenditures or other disbursements aggregating more than \$200 per calendar year, or per election cycle for authorized committees, and the date, amount, and purpose of such payments, in three situations. These are (1) a political committee reimburses an individual who advanced personal funds to pay committee expenses aggregating more than \$200 to a single vendor; (2) a candidate uses personal funds to pay his or her authorized committee's expenses that aggregate more than \$200 to a single vendor without receiving reimbursement; and (3) a political committee pays a credit card bill that includes a charge of more than \$200 for a single vendor.

DATES: [Insert date of publication in FEDERAL REGISTER]

**FOR FURTHER
INFORMATION**

CONTACT: Amy L. Rothstein, Assistant General Counsel, or Joanna S. Waldstreicher, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY
INFORMATION:**

Political committees must report the name and address of each person to whom they make expenditures or other disbursements aggregating more than \$200 per calendar year, or per election cycle for authorized committees, as well as the date, amount, and

1 purpose of such payments. 2 U.S.C. 434(b)(5), (6); 11 CFR 104.3(b)(3)(i), (vii)
2 (unauthorized committees); 11 CFR 104.3(b)(4)(i), (vi) (authorized committees); see also
3 11 CFR 104.9(a), (b). In addition, for each disbursement over \$200, a political
4 committee must maintain a receipt or invoice from the payee – that is, from the person
5 who “provides the goods or services to the committee or agent thereof in return for
6 payment, except for an advance of \$500 or less for travel and subsistence to an individual
7 who will be the recipient of the goods or services.” 11 CFR 102.9(b)(2), (b)(2)(i)(A).

8 The Commission is issuing this Notice to clarify its interpretation of these
9 requirements as they apply to the reporting of certain itemized disbursements by political
10 committees to vendors. Specifically, this Notice clarifies how a political committee
11 should report disbursements in the following scenarios:

12 (1) the committee reimburses an individual (such as a campaign staffer) who used
13 personal funds to pay committee expenses aggregating more than \$200 to a
14 single vendor;

15 (2) the committee is the authorized committee of a candidate who used personal
16 funds to pay committee expenses aggregating more than \$200 to a single
17 vendor without receiving reimbursement; and

18 (3) the committee’s payment of its credit card bill includes charges of more than
19 \$200 to a single vendor.

20 As explained further below, in each scenario the political committee must itemize
21 as a memo entry on Schedule B the name and address of the original vendor, as well as
22 the date, amount, and purpose of the original purchase made for or by the political
23 committee. This interpretation of the regulatory reporting requirements is necessary to

1 ensure public disclosure of “where political campaign money comes from and how it is
2 spent.” Buckley v. Valeo, 424 U.S. 1, 67 (1976); see also Citizens United v. FEC, 558
3 U.S. 310, 130 S.Ct. 876, 915 (2010).

4 1. Reimbursements to Individuals for Certain Out of Pocket Expenses

5 When an individual who is not acting as a vendor advances his or her personal
6 funds, including a personal credit card, to pay costs incurred in providing goods or
7 services to, or obtaining goods or services that are used by or on behalf of, a political
8 committee, the political committee must treat the individual’s payment as a contribution.¹
9 11 CFR 116.5(a), (b). The political committee must also treat the obligation arising from
10 the individual’s payment as an outstanding debt until reimbursed. 11 CFR 116.5(c); see
11 also 11 CFR 104.11.

12 If the political committee itemizes its reimbursement to the individual on
13 Schedule B of its report filed with the Commission, then the political committee may also
14 need to provide information about the vendor to which the individual made payment in a
15 memo entry associated with the reimbursement. A memo entry is required for any
16 reimbursement of expenses other than travel and subsistence expenses if the individual’s
17 payments to the vendor on behalf of the committee aggregate more than \$200 in a
18 calendar year (or election cycle for authorized committees). When the reimbursement is
19 for travel and subsistence advances that exceed \$500, a memo entry is required for each
20 payment to a specific vendor by that individual on behalf of the political committee if
21 total payments to that vendor by the political committee or by that individual on behalf of
22 the committee aggregate more than \$200 in a calendar year (or election cycle for

¹ Certain travel and subsistence expenses that are not reimbursed, or that are reimbursed within a limited period of time, are exempt. 11 CFR 116.5(b); see also 11 CFR 100.79.

1 authorized committees). Each memo entry must include the name and address of the
2 vendor, as well as the date, amount, and purpose of the payment. 11 CFR 104.3(b)(4)(i);
3 11 CFR 104.9.²

4 For reimbursements of credit card payments, the memo entry must include the
5 name and address of the vendor that provided the goods or services to the political
6 committee, rather than the credit card company that processed the payment, and the date,
7 amount, and purpose of the payment to the vendor. Further information about the
8 reporting of credit card payments appears in Section 3, below.

9 2. Unreimbursed Disbursements By Candidates

10 A candidate may make unlimited expenditures from personal funds on behalf of
11 his or her authorized committee. See 11 CFR 110.10. Any candidate who “makes a
12 disbursement in connection with [his or her own] campaign, shall be considered . . . as
13 having made the disbursement . . . as an agent of the authorized committee or committees
14 of such candidate.” 2 U.S.C. 432(e)(2); see also 11 CFR 101.2(a). Authorized
15 committees must disclose these disbursements on their reports filed with the Commission
16 just as they would disclose any other disbursements that they may make. 2 U.S.C.
17 434(b)(4), (5), (6)(A); 11 CFR 104.3(b)(4).

18 Thus, out-of-pocket spending by candidates, as agents of their authorized
19 committees, requires memo entry itemization of the ultimate payee if the aggregate
20 amount of payments to that vendor exceeds \$200 for the election cycle. The memo entry

² Pursuant to the Commission’s Report Analysis Division Review and Referral Procedures, the Commission’s Reports Analysis Division has been sending Requests for Additional Information to authorized committees that did not itemize the ultimate payee for reimbursements to staff above the applicable thresholds at least as far back as the 1999-2000 election cycle. Similarly, the Reports Analysis Division has been sending Requests for Additional Information to party and non-party committees since the 2005-2006 election cycle.

1 must include the date, amount, and purpose of the out-of-pocket payments, as well as the
2 name and address of the vendor to which payment was made.³

3 3. Payments to Credit Card Companies

4 Any political committee that itemizes disbursements to credit card companies on
5 Schedule B of its report filed with the Commission must itemize as a memo entry any
6 transaction with a single vendor charged on the credit card that exceeds the \$200
7 itemization threshold. The memo entry must include the name and address of the vendor,
8 and the date, amount, and purpose of the charge. Itemizing the ultimate payee, as the
9 provider of goods or services to the political committee, accurately reflects the credit card
10 company's limited role as a payment processor rather than as the provider of goods and
11 services to the committee. See 11 CFR 102.9. The itemization requirement prevents a
12 committee from avoiding the Act's disclosure requirements by placing operating
13 expenditures on a credit card.⁴

14 This interpretive rule clarifies the Commission's interpretation of existing
15 statutory and regulatory provisions, and therefore does not constitute an agency action
16 subject to the notice and comment requirements or a delayed effective date under the
17 Administrative Procedure Act. See 5 U.S.C. 553. The provisions of the Regulatory

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³ The Commission's Reports Analysis Division recently sent a Request for Additional Information to an authorized committee that had not itemized unreimbursed committee expenses paid with personal funds by the candidate. The Reports Analysis Division will initiate a regular practice of sending Requests for Additional Information for failure to itemize the vendor for candidate out-of-pocket expenditures on behalf of his or her authorized committee.

⁴ As with reimbursements to committee staff, the Commission's Reports Analysis Division sends Requests for Additional Information to committees that do not provide memo entries for credit card payments.

1 Flexibility Act, which apply when notice and comment are required by the
2 Administrative Procedure Act or another statute, do not apply. *See* 5 U.S.C. 603(a).

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On behalf of the Commission,

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Ellen L. Weintraub

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Chair

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Federal Election Commission

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12 DATED: _____

13 BILLING CODE: 6715-01-P