MEMORANDUM

TO: The Commission
FROM: Cynthia L. Bauer
Chair

Caroline C. Hunter
Vice Chair

DATE: March 16, 2011

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

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

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

Attachment
Interpretive Rule Regarding Electronic Contributor Redesignations

AGENCY: Federal Election Commission

ACTION: Notice of Interpretive Rule

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

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

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

SUPPLEMENTARY INFORMATION: Commission regulations require that a contributor’s redesignation of a contribution for another election be in writing and be signed by the contributor. 11 CFR 110.1(b)(5) and 110.2(b)(5). The Commission, however, recognizes that it should interpret the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 et seq. (“the Act”) and its regulations “consistent with contemporary technological innovations . . .
where such technology would not compromise the intent of the Act and regulations.” Advisory
Opinion 1999-09 (Bradley for President); see also Advisory Opinions 2007-30 (Dodd); 2007-17
(DSCC); 1999-36 (Campaign Advantage); 1999-03 (Microsoft PAC); 1995-09 (NewtWatch).

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

The specific method approved by the Commission worked in the following manner: The
political committee informed contributors through postal mail, with a follow-up e-mail, that, by
visiting a website printed in the letter or by clicking on a link in the e-mail message that directed
contributors to the website, they could redesignate their contributions to the candidate’s other
authorized committee if they wished to do so. Contributors were also informed that if they did
not redesignate their contributions, they would then receive refunds automatically. Contributors
who visited the website were asked to fill out an electronic form affirmatively authorizing the
redesignation and verifying their identity by entering their personal information, including first
and last name, address, phone number, e-mail address, occupation, and name of employer. Upon
completing the form, contributors received a “receipt record,” thanking them for their
redesignation. The political committee also retained a record of each electronic redesignation in
a database, including the personal information provided by each contributor making a
redesignation, in a manner consistent with the recordkeeping requirements for signed written
redesignations under 11 CFR 110.1(l). The Commission concluded that this process provided
assurance of contributor identity and intent equivalent to a written signature.

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

The Commission encourages the use of innovations in technology to effectuate electronic
redesignations. In that light, committees are advised that the Commission will consider other
methods of electronic redesignation not explicitly addressed in this interpretive rule, provided
that they offer a sufficient degree of assurance of the contributor’s identity and the contributor’s
intent to redesignate. Unless and until the Commission initiates a rulemaking on this issue, such
consideration may be provided on a case-by-case basis, including but not limited to the
Commission’s advisory opinion process or requests for Commission consideration of legal
Statement Establishing a Pilot Program for Requesting Consideration of Legal Questions by the
Commission, 75 Fed. Reg. 42088 (July 20, 2010). Committees are also advised that this
interpretive rule does not alter or affect the timing or recordkeeping requirements of 11 CFR
110.1 or 110.2.
This Federal Register notice represents an interpretive rule announcing the general course of action that the Commission intends to follow. This interpretive rule does not constitute an agency rule requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedure Act ("APA"). As such, it does not bind the Commission or any members of the general public, or create or remove any rights, duties, etc. The provisions of the Regulatory Flexibility Act, which apply when notice and comment are required by the APA or another statute, are not applicable.

See 5 U.S.C. 603(a).

On behalf of the Commission,

Cynthia L. Bauerly
Chair
Federal Election Commission

DATED: __________________
BILLING CODE: 6715-01-P