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MEMORANDUM

AGENDA ITEM
For Meeting of: 8-15-02

TO: The Commission
FROM: Vice Chairman Karl J. Sandstrom *KJS*
DATE: 08/14/2002

SUBMITTED LATE

SUBJECT: NPRM for Contribution Limitations and Prohibitions

Attached are proposed amendments to Agenda Document 02-57, which I would like to include as an agenda document.

1 **Insert on p. 18, line 6:**

2 **Redesignations and Reattributions; Recordkeeping and Accounting**

3 With BCRA's renewed focus on contribution limits, the Commission is
4 considering updating and streamlining its rules for designating contributions for a
5 particular election or attributing contributions to particular donors. Current 11 CFR
6 110.1 and 110.2 set forth the procedures for the redesignation or reattribution of
7 excessive contributions. Section 110.1(b)(5) permits an excessive contribution to a
8 candidate that is not designated in writing for a particular election to be designated for a
9 different election, provided that a signed, written redesignation is obtained from the
10 contributor within 60 days. See 11 CFR 110.1(b)(5)(i)(C) and 110.1(b)(5)(ii). Given the
11 amount of resources the Commission and the regulated community have had to devote to
12 authorized committees' failure to properly follow these procedures, the Commission
13 seeks comment on several ways to address this problem. Although BCRA does not
14 address the procedures for handling excessive contributions, the Commission seeks
15 comment on the following possible changes to sections 110.1, 110.2 and 102.9 as a
16 matter of administrative convenience and to better effectuate donor intent.

17 One possible change to section 110.1(b)(5) would be to presume that when a
18 contributor makes an undesignated, excessive contribution to a candidate's authorized
19 committee before a primary election, the contributor intends to contribute the excessive
20 amount to the general election, provided that the total amount contributed does not
21 exceed the limitations on contributions for both elections. If this presumption were
22 allowed, the authorized committee would be permitted to treat the excessive amount of
23 the contribution as a contribution made with respect to the general election without

1 needing to obtain written permission from the contributor, or even to notify the
2 contributor that such action had been taken. This approach, which is included in the
3 proposed rules as alternative A-1 in section 110.1(b)(5)(ii)(2), would be designed to
4 minimize the administrative burden on authorized committees when a contributor's intent
5 could be reasonably inferred.

6 Alternatively, or in conjunction with the presumption approach, the committee
7 could be required to inform the contributor as to how the contribution had been
8 designated, and that the contributor may request a refund. This approach is included in
9 the proposed rules as alternative A-2 in section 110.1(b)(5)(ii)(2). As with the
10 presumption approach, no confirmation from the contributor would be required. If the
11 Commission were to adopt the notification approach, then 11 CFR 110.1(l) would need to
12 be amended to specify the documentation required to be retained under such an approach.

13 The Commission seeks comment on how this notification approach compares to
14 or fits with the presumption approach. Would the benefit of requiring notification of
15 contributors outweigh the administrative burden to authorized committees of providing
16 and retaining records of such notification? What methods of notification (e.g., mail,
17 electronic mail or oral communication accompanied by a contemporaneous signed record
18 of the conversation) should be permitted if this notification approach is adopted? Should
19 notification be required within thirty days of the treasurer's receipt of the contribution? If
20 a contributor requests a refund, should the treasurer be required to make the refund within
21 thirty days of receipt of the request?

22 The Commission specifically seeks comment on the merits of applying the
23 presumption or notification approach described above to an undesignated, excessive

1 contribution received before a primary election. In addition, the Commission seeks
2 comment on whether it should allow the presumption or notification approach for other
3 types of redesignations, or for reattributions. See 11 CFR 110.1(b)(5)(i), 110.1(k) and
4 110.2(b)(5)(i). For example, should the Commission permit backward-looking
5 presumptions, so that excessive general election contributions received after a primary
6 election may be designated by an authorized committee to pay off primary debt?
7 Alternatively, should it be presumed that a contributor intended to contribute an excessive
8 amount beyond a current election cycle? Are backward-looking presumptions or
9 presumptions beyond a current election cycle consistent with what contributors can be
10 reasonably expected to have intended? More generally, if the Commission adopts the
11 presumption or notification approach for certain contributions in section 110.1, should the
12 Commission make conforming changes to the requirements for contributions by
13 multicandidate political committees in section 110.2? Are there circumstances where the
14 presumption or notification approach would be appropriate for the reattribution of a
15 contribution to a different donor, such as when a contribution made by written instrument
16 is imprinted with the names of more than one account holder? Alternatives B-1 and B-2
17 in proposed 11 CFR 110.1(k)(3)(ii)(2) sets forth how the presumption and notification
18 approaches could be applied under those circumstances. If the Commission adopts the
19 presumption or notification approach for certain types of redesignations or reattributions,
20 conforming amendments will be required in sections 110.1 and 110.2.

21 Whether or not the Commission decides to allow the presumption or notification
22 approach for certain types of redesignations or reattributions, there will remain
23 circumstances where redesignation or reattribution might not be appropriate without some

1 form of authorization from the contributor. See, e.g., 11 CFR 110.1(b)(5)(i)(B). Under
2 current sections 110.1 and 110.2, authorization from the contributor can only be obtained
3 through written authorization signed by the contributor. The Commission seeks comment
4 on whether it should eliminate the signature requirement for all redesignations and
5 reattributions under 11 CFR 110.1 and 110.2, and instead permit authorization from the
6 contributor by email or through oral communications with the contributor when there is a
7 contemporaneous signed record of the conversation, as is permitted under the
8 Commission's best efforts regulations (see 11 CFR 104.7(b)(2)). Eliminating the
9 signature requirement or permitting committees to obtain authorization orally or by email
10 for redesignations and reattributions would require amendments to sections 110.1 and
11 110.2.

12 In addition to concerns about balancing administrative burdens with adequate
13 protection of contributors' intent, the Commission has concerns about some committees'
14 illegal use of contributions received for the general election during the primary election,
15 despite the existing requirement that authorized committees distinguish contributions
16 received for the primary election and contributions received for the general election. See
17 11 CFR 102.9(e). In order to reduce the illegal use of funds during the primary election
18 through the use of contributions intended for the general election, the Commission seeks
19 comment on whether all committees should be required to segregate contributions for the
20 primary election from contributions for the general election. This could be done by
21 tightening the requirements currently set forth in 11 CFR 102.9(e) so that separate
22 accounts for primary and general election contributions would be mandatory, not
23 optional.

1 Recordkeeping also plays a crucial role in ensuring compliance with the Act's
2 contribution limitations. The Commission seeks comment on whether the recordkeeping
3 duties set forth in 11 CFR 102.9 should explicitly require political committees to retain
4 certain records of all contributions over \$50. Should political committees be required to
5 keep copies of contribution checks, either as photocopies or as digital images? Should
6 committees be required to keep records of contributions made by credit card or debit card,
7 such as credit card slips, processing batch reports, or other records created by the
8 committee or provided by the credit or debit card processor? Many committees keep such
9 records now, so it is not anticipated that it would create a significant additional
10 administrative burden if such a recordkeeping requirement were adopted.

11 Finally, the Commission seeks comment on whether 11 CFR 102.9 should include an
12 explicit requirement that political committees maintain copies of all written solicitations.

13

14 **Insert on p. 35 as 110.1(b)(5)(ii) [A-1 is the presumption approach; A-2 is the**
15 **notification approach]:**

16

17 (ii) (1) A contribution shall be considered to be redesignated for another election if –

18 (A) The treasurer of the recipient authorized political committee requests that the

19 contributor provide a written redesignation of the contribution and informs the

20 contributor that the contributor may request the refund of the contribution as an

21 alternative to providing a written redesignation; and

1 (B) Within sixty days from the date of the treasurer's receipt of the contribution, the
2 contributor provides the treasurer with a written redesignation of the contribution for
3 another election, which is signed by the contributor.

4 [A-1] (2) Notwithstanding paragraph (1) or any other provision of this section, if a
5 contribution that was made before a primary election was not designated for a particular
6 election and would exceed the limitation on contributions set forth in 11 CFR 110.1(b)(1)
7 if it were treated as a contribution made for the primary election, the treasurer of the
8 recipient authorized political committee may treat all or part of the amount of the
9 contribution that would be excessive as made with respect to the general election,
10 provided that such treatment would not cause the contributor to exceed any of the
11 limitations on contributions set forth in 11 CFR 110.1(b)(1).

12 [A-2] (2) Notwithstanding paragraph (1) or any other provision of this section, if a
13 contribution that was made before a primary election was not designated for a particular
14 election and would exceed the limitation on contributions set forth in 11 CFR 110.1(b)(1)
15 if it were treated as a contribution made for the primary election, the treasurer of the
16 recipient authorized political committee may treat all or part of the contribution as made
17 with respect to the general election, provided that such treatment would not cause the
18 contributor to exceed any of the limitations on contributions set forth in 11 CFR
19 110.1(b)(1). The treasurer of the recipient authorized political committee shall notify the
20 contributor of how the contribution was treated and that the contributor may request a
21 refund of the contribution. Within thirty days from the date of the treasurer's receipt of
22 the contribution, the treasurer shall provide such notification to the contributor in writing;

1 by electronic mail; or through oral communication with the contributor, provided that the
2 treasurer makes a contemporaneous, signed record of the conversation.

3
4 **Insert on p. 37 as 110.1(k)(3)(ii) [B-1 is the presumption approach; B-2 is the**
5 **notification approach]:**

6 (ii) (1) A contribution shall be considered to be reattributed to another contributor if –

7 (A) The treasurer of the recipient authorized political committee asks the contributor
8 whether the contribution is intended to be a joint contribution by more than one person,
9 and informs the contributor that he or she may request the return of the excessive portion
10 of the contribution if it is not intended to be a joint contribution; and

11 (B) Within sixty days from the date of the treasurer's receipt of the contribution, the
12 contributor provides the treasurer with a written reattribution of the contribution, which is
13 signed by each contributor, and which indicates the amount to be attributed to each
14 contributor if equal attribution is not intended.

15 [B-1] (2) Notwithstanding paragraph (1) or any other provision of this section, a
16 contribution described in 11 CFR 110.1(k)(3)(i) that was made by a written instrument
17 that is imprinted with the names of more than one account holder may be apportioned
18 equally between the account holders, unless a different instruction is provided by the
19 account holder(s) on the instrument or in a separate writing, provided that such
20 apportionment would not cause a contributor to exceed any of the limitations on
21 contributions set forth in 11 CFR 110.1(b)(1).

22 [B-2] (2) Notwithstanding paragraph (1) or any other provision of this section, a
23 contribution described in 11 CFR 110.1(k)(3)(i) that was made by a written instrument

1 that is imprinted with the names of more than one account holder may be apportioned
2 equally between the account holders, unless a different instruction is provided by the
3 account holder(s) on the instrument or in a separate writing, provided that such
4 apportionment would not cause a contributor to exceed any of the limitations on
5 contributions set forth in 11 CFR 110.1(b)(1). The treasurer of the recipient authorized
6 political committee shall notify each account holder of how the contribution was
7 apportioned and that the contributors may request the return of the excessive portion of
8 the contribution if it is not intended to be a joint contribution. Within thirty days from the
9 date of the treasurer's receipt of the contribution, the treasurer shall provide such
10 notification to each account holder in writing, by electronic mail, or through oral
11 communication, provided that the treasurer makes a contemporaneous, signed record of
12 the conversation(s).

13

14 **Insert on p. 45, line 6:**

15 Add the word "knowingly" after "shall not."

16 **Insert on p. 46, line 4:**

17 Add the phrase "paragraph (c) and" after "For purposes of."

18