



VIA E-MAIL: BCRAPart110@fec.gov

September 13, 2002

Ms. Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Notice 2002-14
Comments to Notice of Proposed Rulemaking, 11 CFR Part 110, 104
Contribution Limitations and Prohibitions

Dear Ms. Dinh:

The Credit Union National Association, Inc. (CUNA) appreciates the opportunity to comment on the Commission's notice of proposed rulemaking (NPRM) on contribution limitations and prohibitions. The proposed rules implement the Bipartisan Campaign Reform Act of 2002 (BCRA), which changes the Commission's rules relating to contribution limitations and prohibitions.¹

By way of background, CUNA is a trade association that represents over 90% of the nation's more than 10,400 state and federal credit unions. CUNA was organized, among other things, to promote and improve business conditions relating to the operation of state league members and direct credit union members. Fifty-one of CUNA's members are leagues representing the fifty states and the District of Columbia. All members of the state leagues are state or federally chartered credit unions. Thirteen of the state leagues have federal political action committees (PACs). The Credit Union Legislative Action Council (CULAC) is the federal PAC established and administered by CUNA.

Because of the scope, length, and subject matter of the proposal, we will limit our comments to the discussion of contribution reattributions and redesignations in the proposal. In summary,

¹ 67 Fed. Reg. 54,366-54,379 (Aug. 22, 2002).

CUNA supports Alternative 1-A which would allow a candidate's authorized committee to presume that when a contributor makes an undesignated, excessive contribution before a primary election, the contributor intends to contribute the excessive amount to the general election, provided that the total amount contributed does not exceed the limitations on contributions for both elections. CUNA also supports the Commission's suggestion to make similar conforming changes to the requirements for contributions by multicandidate political committees.

DISCUSSION:

The Commission is considering updating and streamlining its rules for designating contributions for a particular election or attributing contributions to particular donors. Currently, 11 CFR 110.1 and 110.2 set forth the procedures for the redesignation and reattribution of excessive contributions. Section 110.1(b)(5) permits an excessive contribution to a candidate that is not designated in writing for a particular election to be designated for a different election, provided that a signed, written redesignation is obtained from the contributor within 60 days.

Alternatives 1-A and 1-B

The Commission seeks comments on ways to address this issue and proposes two alternatives. Alternative 1-A in Section 110.1(b)(5)(ii)(B) would allow a candidate's authorized committee to presume that when a contributor makes an undesignated, excessive contribution before a primary election, the contributor intends to contribute the excessive amount to the general election, provided that the total amount contributed does not exceed the limitations on contributions for both elections. Alternative 1-B contains the same presumption but also includes a requirement that the committee inform the contributor as to how the contribution had been designated and that the contributor may request a refund.

CUNA believes that Alternative 1-A strikes the best balance between the Commission's need to assure that each committee follows redesignation and reattribution procedures and a committee's flexibility to presume that the excessive amount of any contribution made before a primary is intended for the general election. Alternative 1-B, on the other hand, unnecessarily requires additional notification to the contributor that belies the presumption of the contributor's intent. CUNA believes that the notification provisions in Alternative 1-B too closely resemble the existing language in Section 110.1(b)(5)(ii)(A) and do not provide a viable, more efficient alternative.

Presumptions

The Commission seeks comment on whether it should permit backward-looking presumptions (i.e., applying excessive general election contributions received after a primary to be applied to primary debt) or whether it should be presumed that a contributor intended to contribute an excessive amount beyond a current election cycle.

CUNA does not support permitting backward-looking presumptions so that excessive general election contributions received after a primary could be applied to primary debt, as payment of primary debt requires more complex considerations by the contributor. Rather, CUNA believes that the proposed presumption should only extend prospectively to the current election cycle so

that excessive primary contributions would apply to the current general election. From a practical perspective, a presumption that a contribution should be applied beyond the current election cycle is unrealistic. Candidates' positions change on issues of importance to contributors, and the support provided in one election cycle should not be presumptively extended to the next. Moreover, recordkeeping beyond the current election cycle would be overly burdensome to the Commission and committees.

We believe that the Commission's intent to "streamline" these particular rules is best effectuated by limiting the presumption prospectively in the current election cycle. Thus, when a contributor makes an undesignated, excessive contribution before a primary election, the presumption should be that contributor intends to contribute the excessive amount to the general election, provided that the total amount contributed does not exceed the limitations on contributions for both elections.

Multicandidate political committees

The Commission also requests comment on whether conforming changes to the requirements for contributions by multicandidate political committees in Section 110.2. CUNA fully supports similar changes to the requirements for contributions by multicandidate political committees that mirror Alternative 1-A.

Redesignations or reattributions with authorization from the contributor

The Commission seeks comment on whether it should eliminate the signature requirement for all redesignations and reattributions under 11 CFR 110.1 and 110.2. The Commission proposes to permit authorization from the contributor by email or through oral communications with the contributor when there is a contemporaneous signed record of the conversation. CUNA supports elimination of the signature requirement and permitting authorization from the contributor by email. This approach is consistent with the Commission's progression to the electronication of reporting requirements. Moreover, we support affording committees the ability to utilize technology to facilitate compliance with these requirements. CUNA urges the Commission to eliminate the signature requirement and permit committees to obtain authorization via email for redesignations and reattributions.

Recordkeeping

The Commission also seeks comment on whether the recordkeeping duties set forth in 11 CFR 102.9 should explicitly require political committees to retain certain records of all contributions over \$50. Such records could include copies of contribution checks, credit or debit card slips, processing batch reports, other reports created by the credit or debit card processor or copies of all written solicitations. CUNA does not support any of these proposed requirements.

We believe that the existing recordkeeping requirements for multicandidate political committees provide sufficient safeguards to ensure compliance with the contribution limitations and that the proposed additions to the recordkeeping burdens political committees without any enforcement benefit. The existing recordkeeping requirements for contributions of more than \$50 already include the amount, date of receipt, and donor's name and address. We maintain that these are

sufficient to meet the reattribution and redesignation requirements and that the proposed additional recordkeeping requirements are inconsistent with the Commission's stated intent to "streamline" its rules for redesignation and reattribution. Finally, as a federation of trade associations, CUNA relies on the strict collecting agent duties imposed on its state leagues and credit unions set forth in 11 CFR 102.6 and 102.8. We believe that these reporting criteria in combination with existing criteria in Section 102.9 are appropriate and adequate.

CUNA appreciates the opportunity to comment on this proposed rulemaking. If you have any questions on these comments, please call me at 202/508-6731.

Sincerely,

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