



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 3, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-30

Marc E. Elias, Esq.
Perkins Coie LLP
607 Fourteenth Street, NW
Washington, DC 20005-2011

Dear Mr. Elias:

We are responding to your advisory opinion request on behalf of Chris Dodd for President, Inc., concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), the Presidential Primary Matching Payment Account Act (the "Matching Payment Act"), and Commission regulations to the use of alternative security verification procedures for contributions made by credit card over the Internet.

The Commission concludes that contributions made by credit card over the Internet and verified by using the credit card's security code and either the contributor's street address or zip code may be matchable under the Matching Payment Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter received on October 12, 2007, your telephone conversations with Commission staff on October 18 and 19, 2007, and your e-mail received on October 25, 2007.

Chris Dodd for President, Inc. (the "Committee") is the principal campaign committee for Senator Chris Dodd. When accepting credit card contributions over the Internet, the Committee requires contributors to provide their name, credit card number, credit card expiration date, mailing address, amount of contribution, and employer/occupation information, as well as the three- or four-digit security code printed either on the signature panel on the back of the credit card or above and to the right of the

account number on the front of the card. The Committee forwards that information to its credit card processor. The credit card processor then validates the card's security code and either the contributor's street address or the contributor's zip code. The Committee would like to submit credit card contributions subject to this verification procedure for matching funds under the Matching Payment Act. Based on documents filed by the Committee on November 13, 2007, the Commission has declared the Committee eligible to receive federal matching funds. Press Release, Dodd Fourth Presidential Candidate Declared Eligible for Primary Matching Funds in 2008 Race (Nov. 27, 2007), <http://www.fec.gov/press/press2007/20071126dodd.shtml>.

Question Presented

Are credit card contributions made over the Internet eligible for matching funds under the Matching Payment Act and Commission regulations if the credit card processor uses the credit card's security code and either the contributor's street address or zip code, rather than the credit card's expiration date and both the contributor's street address and zip code, to verify the contributor's identity?

Legal Analysis and Conclusions

Yes, assuming that they are otherwise in compliance with the applicable statutes and Commission regulations, credit card contributions made over the Internet subject to security verification based on the card's security code and the contributor's street address or zip code may be matchable under the Matching Payment Act and Commission regulations.

Under the Matching Payment Act, if a candidate for the presidential nomination of his or her party agrees to certain conditions and raises in excess of \$5,000 in contributions of \$250 or less from residents of each of at least 20 States, the Federal Government will match the first \$250 of each eligible contribution. *See* 26 U.S.C. 9033, 9034; Explanation and Justification for Matching Credit Card and Debit Card Contributions in Presidential Campaigns, 64 Fed. Reg. 32394 (June 17, 1999). The Matching Payment Act defines a matchable contribution generally as "a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address." 26 U.S.C. 9034(a). Commission regulations define the term "written instrument" to mean, "in the case of such a contribution made over the Internet, an electronic record of the transaction *created and transmitted by the cardholder*, and including the name of the cardholder and the card number, which can be maintained electronically and reproduced in a written form by the recipient candidate or candidate's committee." 11 CFR 9034.2(b) (emphasis added). Commission regulations require the written instrument to contain the full name and signature of the contributor. 11 CFR 9034.2(c). For credit card contributions made over the Internet, the regulations define the term "signature" as "the full name and card number of the cardholder who is the donor, *entered and transmitted by the cardholder.*" *Id.* (emphasis added).

In the case of credit card contributions made over the Internet, the definitions of “written instrument” and “signature” focus on the cardholder’s act of entering and transmitting his or her information. This is because, as the Commission explained when adopting the regulations, “it is the signatory’s (in this case the donor’s) act of entering his or her name that represents a legal act.” Matching Credit Card and Debit Card Contributions, 64 Fed. Reg. at 32396. Thus, for instance, the Commission does not permit the matching of credit card contributions made via telephone “where the only record is being created wholly by the recipient committee.” *Id.*

As a tool for candidates seeking federal matching funds through the Matching Payment Act, the Commission developed the Guideline for Presentation in Good Order (the “Guideline”). The Guideline provides guidance and direction to political committees about the format and procedures for submitting contributions to the Commission for matching. The Guideline states that all credit card contributions made via the Internet should be subject to “billing address verification” based on “characters from the street address and the zip code, and the card expiration date.” Guideline at II-2. As the Commission has previously noted, however, “the matchability of contributions is governed by the statute and regulations, not the Guideline.” Buchanan for President, Inc., LRA # 512, Statement of Reasons at 19 n.32 (Sept. 14, 2000).

The Commission has not mandated specific procedures to verify the identity of an individual making a credit card contribution over the Internet. Matching Credit Card and Debit Card Contributions, 64 Fed. Reg. at 32395; *see also* Guideline at II-1 (noting that the Commission has not “mandated a particular set of safeguards” for all campaigns that accept credit card contributions over the Internet). Instead, the Commission has concluded that the measures approved in advisory opinions and described in the Guideline provide a level of security sufficient to “allay concerns over the receipt of prohibited contributions.” Matching Credit Card and Debit Card Contributions, 64 Fed. Reg. at 32395; *see e.g.*, 1999-09 (Bradley for President).¹ Such an approach provides the Commission with much needed flexibility to ensure that the regulated community is able to take advantage of rapidly evolving technological innovations, while ensuring that “necessary precautions” are in place due to the absence of any “direct paper transfer” in credit card contributions made over the Internet. Matching Credit Card and Debit Card Contributions, 64 Fed. Reg. at 32395.

In order to satisfy the requirements of the Matching Payment Act and the Commission’s regulations, a campaign committee must take steps to ensure that the person making a credit card contribution over the Internet owns the card or account on which the charge is made. Physical possession of a credit card is one indication of ownership. The Commission is satisfied that the use of a credit card’s security code provides at least as much assurance that the person making the contribution is in physical possession of the credit card as does using the card’s expiration date. In fact, unlike the expiration date, the card’s security code is not embossed on the card so that it is less

¹ The Commission has referred to these model measures as “safe harbors.” *See* Matching Credit Card and Debit Card Contributions, 64 Fed. Reg. at 32395; Advisory Opinions 1999-36 (Campaign Advantage); 1999-22 (Aristotle Publishing); 1999-9 (Bradley for President).

readily copied from charge slips or receipts. As a result, the security code provides sufficient assurance that the person making the contribution is in possession of the credit card.

The additional step of billing address verification helps to confirm that the person in physical possession of the credit card is also the owner of the credit card, by soliciting and verifying personal information about the owner of the credit card. The Commission has previously accepted validation based on a combination of the contributor's street address and the contributor's zip code for credit card contributions made over the Internet. Here, in addition to the card's security code, the Committee collects the contributor's name, credit card number, credit card expiration date, mailing address, and employer/occupation information. In addition, the Committee requires the contributor to affirm he or she is not a Federal government contractor or a foreign national who lacks permanent resident status in the United States and that the contribution is made from his or her own funds, on a personal credit or debit card for which he or she has the legal obligation to pay, and is made neither on a corporate or business entity card nor on the card of another, and is not made from the general treasury funds of a corporation, labor organization or national bank. *See* Chris Dodd for President On-Line Contribution Page, https://salsa.wiredforchange.com/o/1318/t/120/shop/custom.jsp?donate_page_KEY=1476 (last visited November 29, 2007). In light of the Committee's collection of personal information about the contributor, its requirement that the contributor provide specific affirmations, and its use of the credit card's security code to verify the contributor's physical possession of the credit card, the Commission is satisfied that the proposed alternative verification method here meets the signature requirements of 11 CFR 9034.2(c).

Although the verification procedure described in your request varies from the method approved by the Commission in Advisory Opinion 1999-9 (Bradley for President) and described in the Guideline, it is sufficient to allay concerns that the contributor is someone other than the credit card owner. Accordingly, credit card contributions made over the Internet that were verified in the manner described in your request may be matchable under the Matching Payment Act and Commission regulations. *Cf.* Advisory Opinion 1999-36 (Campaign Advantage) (modifying the application of the Guideline's address verification procedures for on-line checking services subject to the regulations governing credit card transactions).

In reaching its conclusion, the Commission assumes that the third-party vendor is processing the Committee's credit card contributions and implementing the verification procedures described in your request in the ordinary course of business and is receiving the usual and normal charge for its services.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. All cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

Sincerely,

(signed)
Robert D. Lenhard
Chairman