



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2013-12

Mark Schneider, Esq.
Service Employees International Union
800 Massachusetts Ave., N.W.
Washington, D.C. 20036

Dear Mr. Schneider:

We are responding to your advisory opinion request on behalf of the Service Employees International Union (“SEIU”) and the SEIU Committee on Political Education (“SEIU COPE”). The requestors ask about the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to the requestors’ proposed use of recorded telephone conversations to obtain and maintain SEIU members’ authorizations of payroll-deduction contributions to SEIU COPE. The Commission concludes that the proposal is consistent with the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter dated July 18, 2013.

SEIU COPE is registered with the Commission as SEIU’s separate segregated fund (“SSF”). SEIU COPE receives its contributions mostly through payroll deductions from SEIU’s restricted class. Currently, members of the restricted class authorize these payroll deductions either in handwritten documents or by electronic signatures provided via email or web-based communications.

The requestors propose to obtain and maintain payroll-deduction authorizations from SEIU’s members through recorded telephone conversations. Under the proposal, a representative of SEIU will use current membership records to call a member and, consistent with applicable state law, explain that the conversation is being recorded. The SEIU representative will request that the individual on the telephone provide certain

information (including his or her name, address, and employer), which the representative will check against SEIU's records to verify that the person on the phone is the individual sought and is a current member of SEIU. Once the representative has confirmed that the individual is a member of SEIU's restricted class, the representative will solicit contributions to SEIU COPE. The representative will confirm that the member is a U.S. citizen, note that contributions are not tax-deductible, and provide the information required by 11 C.F.R. § 114.5(a).

If the member agrees to make contributions to SEIU COPE by payroll deduction, the representative will record the member's consent in an electronic database along with the amount of the authorized contributions, the date of the call, and the identity of the SEIU representative who made the call. SEIU will maintain this information and a recording of the telephone conversation for at least three years after the contributions are reported. If the member's phone has text-messaging service, SEIU will send a summary of the transaction to the member via text message. In the phone call and in any text-message summary, SEIU will provide the member with a telephone number and address to which the member may call or write to cancel the deductions at any time.

Question Presented

Is the requestors' proposed method of obtaining and maintaining records of SEIU members' affirmative authorizations for payroll-deduction contributions to SEIU COPE consistent with the Act and Commission regulations?

Conclusion and Legal Analysis

Yes, the Commission concludes that the requestors' proposed method of obtaining and maintaining records of SEIU members' affirmative authorizations for payroll-deduction contributions to SEIU COPE is consistent with the Act and Commission regulations.

A labor organization may use its general treasury funds to establish and administer an SSF and to solicit contributions from its restricted class to that SSF. 2 U.S.C. § 441b(b)(2)(C), (b)(4); 11 C.F.R. §§ 114.1(a)(2)(iii), 114.5(b). A labor organization's restricted class includes the organization's members and their families, as well as its executive or administrative personnel and their families. 11 C.F.R. § 114.1(j). Any solicitation for contributions to an SSF must inform members of the "political purposes" of the SSF and advise that the solicited member may refuse to contribute "without any reprisal." See 11 C.F.R. § 114.5(a)(3)-(4); Advisory Opinion 2006-17 (Berkeley) at 5.¹

¹ In addition, if the solicitation includes guidelines for suggested contribution amounts, the member being solicited must be informed that the guidelines are merely suggestions, that the member is free to contribute more or less than the guidelines suggest, and that the member will not be favored or disadvantaged "by reason of the amount of their contribution or their decision not to contribute." 11 C.F.R. § 114.5(a)(2).

A labor organization may use a payroll-deduction or check-off system to collect contributions to its SSF. *See* 11 C.F.R. § 114.2(f)(4)(i) (exempting enrollment of restricted-class members in payroll-deduction or check-off system from facilitation prohibition); *see also, e.g.*, Advisory Opinion 1999-06 (Rural Letter Carriers) (approving deductions from annuity payments for contributions to labor organization’s SSF). A contributor must affirmatively authorize such payroll deductions before they begin. *See* Advisory Opinion 1999-03 (Microsoft PAC) at 2 (explaining that payroll deductions require advance showing of contributor’s “specific and voluntary donative intent”); *cf. FEC v. Nat’l Educ. Ass’n*, 457 F. Supp. 1102, 1106 (D.D.C. 1978) (upholding Commission’s determination that reverse check-off was unlawful because “it require[d] the dissenter to act to prevent a contribution rather than requiring his affirmative assent to make one”).

An SSF must report contributions that it receives, 2 U.S.C. § 434(b); 11 C.F.R. § 114.5(e)(3) — including contributions made via payroll deduction, *see* 11 C.F.R. § 104.8(b) — and must “[m]aintain records . . . with respect to the matters required to be reported” for three years after the report is filed. 11 C.F.R. § 104.14(b); *see also* 2 U.S.C. § 432(c)-(d). These records must “provide in sufficient detail the necessary information . . . from which the filed reports . . . may be verified.” 11 C.F.R. § 104.14(b).

Prior to 2006, the Commission had articulated a general rule that *written* authorization was required to verify an individual’s enrollment in a payroll-deduction plan for contributions to an SSF. *See* Payroll Deductions by Member Corporations for Contributions to a Trade Association’s Separate Segregated Fund, 70 Fed. Reg. 41,939, 41,942 (July 21, 2005) (“Each contributor must affirmatively authorize the deduction, in writing, in advance”); Advisory Opinion 2001-04 (MSDW PAC) (“The specific and voluntary donative intent of the solicited employee needs to be manifested in a written authorization by him prior to the actual deduction of any contributions.”); Advisory Opinion 1999-03 (Microsoft PAC) (same). But the Commission also approved, on a case-by-case basis, authorizations in a form other than the traditional written signature, where the use of technology would not compromise the intent of the Act or Commission regulations. *See, e.g.*, Advisory Opinion 2001-04 (MSDW PAC) (approving payroll deduction authorizations submitted by “the standard ‘click through’ process which forms the basis for much of Internet commercial transactional activity”); Advisory Opinion 1999-06 (Rural Letter Carriers) (approving telephone authorizations for deductions from annuities); Advisory Opinion 1999-03 (Microsoft PAC) (approving payroll deduction authorizations by digital signature).

In 2006, the Commission issued a policy statement clarifying its application of the Act’s authorization and recordkeeping requirements for payroll deductions. Statement of Policy; Recordkeeping Requirements for Payroll Deduction Authorizations, 71 Fed. Reg. 38,513 (July 7, 2006). The policy statement explained that even though “signed [authorization] forms may serve as the best documentation that a deduction was authorized at a particular time for a particular amount,” they are “not the only adequate

form of proof for meeting the [Act's] recordkeeping requirements.” *Id.* The Commission accordingly noted that it would “accept certain other forms of documentation” to satisfy the requirements, such as “spreadsheets or other computerized records, wire transfer records, or other written or electronic records.” *Id.*

The requestors’ proposal here satisfies the Act and Commission regulations and is also consistent with the Commission’s 2006 policy statement and prior advisory opinions. As in the prior matters, the requestors here will receive explicit authorization from an individual before enrolling that individual in the payroll-deduction plan; will have safeguards in place to ensure that the authorizing individual is a member of the restricted class; will provide enrolled individuals with information to enable them to cancel or modify their contributions at any time; and will maintain a record of the authorization in retrievable form for at least three years after the contribution is reported. *See* Advisory Opinion 2001-04 (MSDW PAC) at 4 (listing authorization “protocols” that are “central to the Commission’s conclusions” approving non-written authorizations) (citing Advisory Opinion 1999-03 (Microsoft PAC)). Indeed, in Advisory Opinion 1999-06 (Rural Letter Carriers), the Commission approved a telephone-based authorization system that included “computer-based (and retrievable) records . . . for each call . . . to authorize or modify or terminate a PAC contribution.” Thus, because the instant proposal incorporates procedural safeguards and recordkeeping mechanisms equivalent to those previously approved, the lack of a “handwritten signature on a paper document . . . is not significant in the circumstances presented.” *Id.* at 6. Accordingly, the Commission concludes that the requestors’ proposal is consistent with the Act and Commission regulations.

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 requestors may not rely on that conclusion as support for their proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. The cited advisory opinions are available from the Commission’s Advisory Opinion searchable database at <http://www.fec.gov/searchao>.

On behalf of the Commission,

(signed)
Ellen L. Weintraub
Chair