



Contents

- 1 Regulations
- 7 Litigation
- 10 Advisory Opinions

Federal Election Commission
999 E Street, NW
Washington, DC 20463

Commissioners:

Ellen L. Weintraub, Chair
Donald F. McGahn II, Vice
Chairman
Caroline C. Hunter
Matthew S. Petersen
Steven T. Walther

Staff Director:

Alec Palmer

General Counsel:

Vacant

The FEC Record is produced
by the Information Division,
Office of Communications.

Toll free 800-424-9530

Local 202-694-1100

Email info@fec.gov

Greg Scott, Director
Alex Knott, Sr. Writer/Editor
Dorothy Yeager, Production
Manager

Regulations

Civil Monetary Penalties Adjusted for Inflation

On July 11, 2013, the Commission approved an increase in the agency's civil monetary penalties, as required under the Federal Civil Penalties Inflation Adjustment Act of 1990. The penalty amounts, many of which were last adjusted in 2009, were published in the [Federal Register](#) on July 24, and apply to violations that occur after that date. The final rules are also available through the Commission's website at <http://sers.nictusa.com/fosers/>.

(Posted 07/24/13; By: Alex Knott)

Resources:

- [Draft Rule](#)
- [FEC Consideration of Final Rule](#) 
- [Federal Register Notice - 78 Fed. Reg. 44419](#)
- [Administrative Fines Program](#)

Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements

On June 27, 2013, the Commission approved an interpretive rule that clarifies a political committee's reporting requirements for three specific situations in which someone pays an expense on its behalf. In each instance, the interpretive rule explains how the committee must report the "ultimate payee."

Background

The Federal Election Campaign Act (the Act) and FEC regulations require political committees to report the full name and address of each person to whom they make expenditures or other disbursements aggregating more than \$200 per calendar year (or per election cycle for authorized committees), along with the date, amount and purpose of the payment. 2 U.S.C. §434(b)(5) and (6); 11 CFR 104.3(b)(3)(i) and (vii) and 104.3(b)(4)(i) and (vi); see also 11 CFR 104.9(a) and (b).

On January 31, 2013, the Commission published a draft notice seeking comment on a proposed interpretive rule to clarify these requirements as they apply to the reporting of certain itemized disbursements by committees to vendors.

Reporting of Ultimate Payees

The resulting interpretive rule clarifies how a political committee must report disbursements in the following three scenarios:

- The committee reimburses an individual who used personal funds to pay committee expenses aggregating more than \$200 to a single vendor;
- The committee's payment of its credit card bill includes charges of more than \$200 to a single vendor; and
- In the case of an authorized committee, the candidate used personal funds to pay committee expenses aggregating more than \$200 to a single vendor without receiving reimbursement.¹

Reimbursements to individuals for out of pocket expenses. When an individual who is not acting as a vendor advances his or her personal funds (or uses a personal credit card) to pay for goods or services on behalf of a political committee, that initial payment (sometimes called a staff advance) is considered to be a contribution. 11 CFR 116.5(a) and (b). It is also treated as an outstanding debt until reimbursed. 11 CFR 116.5(c); see also 11 CFR 104.11.²

As clarified in the interpretive rule, a memo entry identifying the ultimate payee is required for any reimbursement of expenses (other than travel and subsistence expenses) if the individual's payments to the vendor on behalf of the committee aggregate more than \$200 in a calendar year (or election cycle for authorized committees). See reporting examples A and B.³

¹ The first two scenarios (individual out-of-pocket expenses and credit card payments) are addressed in and consistent with the Commission's Reports Analysis Division (RAD) Review and Referral Procedures for the 2011-2012 Election Cycle (made public at http://www.fec.gov/pdf/RAD_Procedures.pdf). The third scenario (unreimbursed expenses by candidates on behalf of their authorized committees) was not addressed in that document. Although going forward RAD will routinely send Requests for Additional Information (RFAs) to campaigns that fail to itemize vendor information in those circumstances, this portion of the interpretive rule will be applied prospectively. The adequacy of committee responses to RFAs on this issue will only be judged for those sent after the adoption of this interpretive rule.

² Travel and subsistence expenses that are unreimbursed, or that are reimbursed within a limited period of time, are exempt. 11 CFR 100.79 and 116.5(b).

³ Note that the reporting examples in this article simply illustrate the reporting of the reimbursement on Schedule B and do not account for every possible scenario. In some cases, a corresponding entry on Schedules A (Receipts) and/or D (Debts) may be needed. For help with the reporting of specific situations, [contact your Campaign Finance Analyst](#).

Reporting Example A (click image to enlarge):

Reimbursement to Individuals for Non-Travel Out-of-Pocket Expenses (Authorized Committees)

SCHEDULE B (FEC Form 3) ITEMIZED DISBURSEMENTS		Use separate subchedules for each category of the Detailed Summary Page	FOR LINE NUMBER (check only one)	PAGE OF
			<input checked="" type="checkbox"/> 17	180
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.				
NAME OF COMMITTEE (in Full) Cosmo Kramer for Congress Committee				
A. Jackie Chiles		Date of Disbursement		
Mailing Address 460 West End Avenue		04		30
City New York		State NY		Zip Code 10024
Purpose of Disbursement Reimbursement for office supplies		Amount of Each Disbursement this Period		750.00
Office Sought: House <input type="checkbox"/> Senate <input type="checkbox"/> President <input type="checkbox"/> Other <input type="checkbox"/>		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		Category/Type
B. Staples		Date of Disbursement		
Mailing Address 900 West 79th Street		04		20
City New York		State NY		Zip Code 10024
Purpose of Disbursement Office supplies		Amount of Each Disbursement this Period		750.00
Office Sought: House <input type="checkbox"/> Senate <input type="checkbox"/> President <input type="checkbox"/> Other <input type="checkbox"/>		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		MEMO

Made and Reimbursed in Same Period

Reporting Example B (click image to enlarge):

Reimbursement to Individuals for Non-Travel Out-of-Pocket Expenses (Unauthorized Committees)

SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS		Use separate subchedules for each category of the Detailed Summary Page	FOR LINE NUMBER (check only one)	PAGE OF
			<input checked="" type="checkbox"/> 219	220
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.				
NAME OF COMMITTEE (in Full) Independence Political Action Committee				
A. Tom Johnson		Date of Disbursement		
Mailing Address 460 E. 32nd Street		04		30
City New York		State NY		Zip Code 10024
Purpose of Disbursement Reimbursement for office supplies		Amount of Each Disbursement this Period		750.00
Office Sought: House <input type="checkbox"/> Senate <input type="checkbox"/> President <input type="checkbox"/> Other <input type="checkbox"/>		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		Category/Type
B. Staples		Date of Disbursement		
Mailing Address 900 W. 79th Street		04		20
City New York		State NY		Zip Code 10024
Purpose of Disbursement Office supplies		Amount of Each Disbursement this Period		750.00
Office Sought: House <input type="checkbox"/> Senate <input type="checkbox"/> President <input type="checkbox"/> Other <input type="checkbox"/>		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		MEMO

Made and Reimbursed in Same Period

When the reimbursement is for travel and subsistence advances that exceed \$500, a memo entry is required for each payment to a specific vendor by that individual on behalf of the committee if total payments to that vendor by the political committee (or by the individual on behalf of the committee) aggregate more than \$200 in a calendar year (or election cycle for an authorized committee). Each memo entry must include the name and address of the vendor, as well as the date, amount and purpose of the payment. 11 CFR

104.3(b)(4)(i) and 104.9. See reporting examples C and D.

Reporting Example C (click to enlarge):

Reimbursement for Travel Expense Exceeding \$500 (Authorized Committees)

SCHEDULE B (FEC Form 3) ITEMIZED DISBURSEMENTS		FOR LINE NUMBER: (check only one)	PAGE	OF
NAME OF COMMITTEE (in Full) Cosmo Kramer for Congress Committee		<input checked="" type="checkbox"/> 17	18	19a
Full Name (Last, First, Middle Initial) A. Susan Ross		<input type="checkbox"/> 19b	20a	21
Mailing Address 715 West 79th Street		Date of Disbursement 05 03 2014		
City, State, Zip Code New York NY 10024		Amount of Each Disbursement this Period 550.00		
Purpose of Disbursement Reimbursement for airline ticket		Candidate Name		
Office Sought: House <input type="checkbox"/> Senate <input type="checkbox"/> President <input type="checkbox"/> District		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		
Full Name (Last, First, Middle Initial) B. Skyway Airlines		Date of Disbursement 04 03 2014		
Mailing Address 301 AirportWay		Amount of Each Disbursement this Period 550.00		
City, State, Zip Code Newark NJ 07114		Candidate Name		
Purpose of Disbursement Airline ticket		Category/Type MEMO		
Office Sought: House <input type="checkbox"/> Senate <input type="checkbox"/> President <input type="checkbox"/> District		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		

Made and Reimbursed in Same Period

Reporting Example D (click to enlarge):

Reimbursement for Travel Expense Exceeding \$500 (Unauthorized Committees)

SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS		FOR LINE NUMBER: (check only one)	PAGE	OF
NAME OF COMMITTEE (in Full) Independence Political Action Committee		<input checked="" type="checkbox"/> 21b	22	23
Full Name (Last, First, Middle Initial) A. Jim Lopez		<input type="checkbox"/> 23a	24	25
Mailing Address 715 W. 81st Street		<input type="checkbox"/> 27	28a	28b
City, State, Zip Code New York NY 10024		<input type="checkbox"/> 28c	28	300
Purpose of Disbursement Reimbursement for airline ticket		Date of Disbursement 05 03 2014		
Candidate Name		Amount of Each Disbursement this Period 550.00		
Office Sought: House <input type="checkbox"/> Senate <input type="checkbox"/> President <input type="checkbox"/> District		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		
Full Name (Last, First, Middle Initial) B. Skyway Airlines		Date of Disbursement 04 03 2014		
Mailing Address 301 AirportWay		Amount of Each Disbursement this Period 550.00		
City, State, Zip Code Newark NJ 07114		Candidate Name		
Purpose of Disbursement Airline ticket		Category/Type MEMO		
Office Sought: House <input type="checkbox"/> Senate <input type="checkbox"/> President <input type="checkbox"/> District		Disbursement For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		

Made and Reimbursed in Same Period

If the individual used a personal credit card, the memo entry must include the name and address of the vendor that provided the goods or services to the political committee (rather than the credit card company that processed the payment) and the date, amount and purpose of the payment to the vendor.

Payments to credit card companies. If a political committee itemizes disbursements to credit card companies on Schedule B (Itemized Disbursements), it must include a memo entry for any transaction with a single vendor charged on the card that exceeds the \$200 itemization threshold. The memo entry must include the name and address of the vendor and the date, amount and purpose of the charge, as shown in reporting examples E and F. See 11 CFR 102.9.

Reporting Example E (click to enlarge):

Payment to Credit Card Company (Authorized Committees)

SCHEDULE B (FEC Form 3)		FOR LINE NUMBER		PAGE		OF	
ITEMIZED DISBURSEMENTS		(check only one)		17		18	
Use separate schedule(s) for each category of the Detailed Summary Page		(check only one)		19		20	
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.							
NAME OF COMMITTEE (in Full) Cosmo Kramer for Congress Committee							
A. Citibank VISA				Date of Disbursement 04 29 2014			
Mailing Address 301 10th Street, Suite 4500				Amount of Each Disbursement this Period 3,174.50			
City, State, Zip Code New York NY 10001				Purpose of Disbursement Credit Card Payment			
Candidate Name				Category/Type			
Office Sought: House, Senate, President				Disbursement For: Primary, General, Other (specify)			
State, District							
B. Skyway Airlines				Date of Disbursement 02 13 2014			
Mailing Address 301 Airport Way				Amount of Each Disbursement this Period 3000.00			
City, State, Zip Code Newark NJ 07114				Purpose of Disbursement Travel Expense – May Fundraiser			
Candidate Name				Category/Type MEMO Citibank VISA			
Office Sought: House, Senate, President				Disbursement For: Primary, General, Other (specify)			
State, District							

Reporting Example F (next page; click to enlarge):

Payment to Credit Card Company (Unauthorized Committees)

SCHEDULE B (FEC Form 3X)		FOR LINE NUMBER		PAGE		OF	
ITEMIZED DISBURSEMENTS		(check only one)		21		22	
Use separate schedule(s) for each category of the Detailed Summary Page		(check only one)		23		24	
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.							
NAME OF COMMITTEE (in Full) Independence Political Action Committee							
A. Citibank VISA				Date of Disbursement 04 29 2014			
Mailing Address 301 10th Street, Suite 4500				Amount of Each Disbursement this Period 3,174.50			
City, State, Zip Code New York NY 10001				Purpose of Disbursement Credit Card Payment			
Candidate Name				Category/Type			
Office Sought: House, Senate, President				Disbursement For: Primary, General, Other (specify)			
State, District							
B. Skyway Airlines				Date of Disbursement 02 13 2014			
Mailing Address 301 Airport Way				Amount of Each Disbursement this Period 3000.00			
City, State, Zip Code Newark NJ 07114				Purpose of Disbursement Travel Expense – May Fundraiser			
Candidate Name				Category/Type MEMO Citibank VISA			
Office Sought: House, Senate, President				Disbursement For: Primary, General, Other (specify)			
State, District							

Unreimbursed disbursements by candidates. Authorized committees must disclose disbursements from personal funds made by candidates on behalf of their committees, just as they would disclose any other disbursements that they may make. 2 U.S.C. §434(b)(4), (5) and (6)(A); 11 CFR 104.3(b)(4). As explained in the interpretive rule, out of pocket spending by candidates, as agents of their authorized committees, requires memo entry itemization of the ultimate payee if the aggregate amount of payments to a vendor exceeds \$200 for the election cycle. Each memo entry must include the name and address of the vendor to which payment was made and the date, amount and purpose of the payment. See reporting examples G and H.

Reporting Example G (click to enlarge):

Unreimbursed Out-of-Pocket Expenses by Candidate
 (Authorized Committees)

SCHEDULE A (FEC Form 3)		Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER (check only one)	PAGE OF
ITEMIZED RECEIPTS			<input type="checkbox"/> 11a <input type="checkbox"/> 11b <input type="checkbox"/> 11c <input checked="" type="checkbox"/> 11d <input type="checkbox"/> 11e <input type="checkbox"/> 12 <input type="checkbox"/> 13a <input type="checkbox"/> 13b <input type="checkbox"/> 14 <input type="checkbox"/> 15	11
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.				
NAME OF COMMITTEE (in Full) Cosmo Kramer for Congress Committee				
Full Name (Last, First, Middle Initial) A. Cosmo Kramer		Date of Receipt 04 20 2014		
Mailing Address 504 W. 54th Street, Apt. 19B		FEC ID number of contributing federal political committee. C		Amount of Each Receipt this Period 201.00
City New York	State NY	Zip Code 10016	Name of Employer Self-employed	
Occupation Entrepreneur		Election Cycle-to-Date 251.00		IN-KIND Fundraising lunch with donors
Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)				

Reporting Example H (click to enlarge):

**Unreimbursed Out-of-Pocket Expenses by Candidate
(Authorized Committees)**

SCHEDULE B (FEC Form 3) ITEMIZED DISBURSEMENTS		Use separate schedule(s) for each category of the (Detailed Summary Page)	FOR LINE NUMBER (check only one)	PAGE OF
			<input checked="" type="checkbox"/> 17	18 <input type="checkbox"/> 19a <input type="checkbox"/> 19b <input type="checkbox"/> 20 <input type="checkbox"/> 21
Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.				
NAME OF COMMITTEE (in full) Cosmo Kramer for Congress Committee				
Full Name (Last, First, Middle Initial) A. Cosmo Kramer		Date of Disbursement Month: 04 Year: 20 Day: 2014		
Mailing Address 504 W. 54th Street, Apt. 19B		Amount of Each Disbursement this Period 201.00		
City, State, Zip Code New York NY 10016		Purpose of Disbursement Fundraising lunch with donors		
Candidate Name Cosmo Kramer		Category/Type IN-KIND		
Office Sought <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		
State NY				
Full Name (Last, First, Middle Initial) B. Monk's Coffee Shop		Date of Disbursement Month: 04 Year: 20 Day: 2014		
Mailing Address 2880 W. Broadway		Amount of Each Disbursement this Period 201.00		
City, State, Zip Code New York NY 10024		Purpose of Disbursement Fundraising lunch with donors		
Candidate Name Cosmo Kramer		Category/Type MEMO		
Office Sought <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		
State NY				

The Commission's [Notice of Interpretive Rule](#) was published in the *Federal Register* on July 8, 2013, at 78 Fed. Reg. 40625. It is available through the Commission's website at <http://sers.nictusa.com/fosers/>.

(Posted 7/9/2013; By: Dorothy Yeager)

Resources:

- [FEC Regulations](#)
- [FEC Consideration of Interpretive Rule](#) 
- [FEC Interpretive Rules](#)
- [Reports Analysis Division Home Page](#)
- **Record Article: [Draft Interpretive Rule](#)**

Litigation

Free Speech v. FEC

On June 25, 2013, the U.S. Court of Appeals for the Tenth Circuit affirmed the district court's dismissal of a challenge to FEC rules and policies brought by Free Speech, an unincorporated nonprofit. Free Speech challenged the constitutionality of the Commission's regulation, 11 CFR 100.22(b), defining "expressly advocating," the Commission's process for determining whether an organization qualifies as a "political committee," including the Commission's application of the "major purpose" test, and the Commission's standard for determining what constitutes a "solicitation" for contributions.

The Court of Appeals held that the U.S. District Court for the District of Wyoming had correctly resolved each of Free Speech's constitutional challenges and adopted the District Court's opinion in its entirety. See [Record Summary of District Court Opinion in *Free Speech v. FEC*](#).

(Posted 7/1/2013; By: Myles Martin)

Resources:

- [Free Speech v. FEC Litigation Page](#)
- [Tenth Circuit Court of Appeals Decision](#)

La Botz v. FEC

On July 1, 2013, former U.S. Senate candidate Dan La Botz filed suit against the FEC in the U.S. District Court for the District of Columbia, challenging the Commission's dismissal of his administrative complaint.

Background

The challenge arises from a previous suit filed in the same court in July 2011. ([La Botz v. FEC](#), 11-1247RC.) In that case, Mr. La Botz alleged that the Commission wrongfully dismissed the administrative complaint that he filed against the Ohio News Organization and its member newspapers ("ONO"). The administrative complaint alleged that the ONO failed to use pre-established and objective standards when inviting participants to a series of televised debates from which Mr. La Botz was excluded, and as a result, the costs of the debates constituted prohibited, in-kind corporate contributions to the participating campaigns. The Commission dismissed the administrative complaint in 2011, finding no reason to believe that ONO violated the Federal Election Campaign Act (the Act) or Commission regulations because ONO's criteria for participation in the debate were pre-established and objective. On September 5, 2012, the district court concluded that the Commission's dismissal of the administrative complaint was not supported by substantial evidence and was contrary to law, and remanded the matter to the agency.

On May 24, 2013, the Commission exercised its prosecutorial discretion and again dismissed the administrative complaint. It concluded that there was insufficient evidence to provide reason to believe that the ONO failed to use pre-established objective criteria in selecting debate participants and that further pursuit of the matter would not be an efficient use of the agency's limited resources.

Litigation

Mr. La Botz's current complaint alleges that the Commission erred as a matter of law in dismissing the remanded action. According to the court complaint, the Commission's findings contradict the district court's holdings, the Act and the Commission's regulations. Mr. La Botz seeks a declaration from the court that the Commission's dismissal of his administrative complaint was arbitrary and capricious, contrary to law, and an abuse of discretion. The complaint also asks that the case be remanded back to the Commission with an order to conform to the court's declaration within 30 days.

(Posted 07/24/13; By: Zainab Smith)

Resources:

- [La Botz v. FEC Litigation Page](#)

Garcia for Congress v. FEC

On June 24, 2013, Garcia for Congress and its treasurer, Swati Patel, filed suit against the Commission in the US District Court for the Northern District of Texas challenging a \$15,220 administrative fine stemming from its failure to file required 48-hour notices of campaign contributions. The Garcia campaign and its treasurer ask the court to set aside or modify the penalty, and request a jury trial.

Background

The plaintiffs are Garcia for Congress, the authorized campaign committee of Domingo A. Garcia, a candidate in the 2012 primary election for the 33rd Congressional District of Texas, and Swati Patel, the Garcia campaign committee's treasurer.

On February 8, 2013, the Commission notified the plaintiffs that it found reason to believe the campaign violated the Act by failing to file 48-hour notices for contributions of \$1,000 or more received less than 20 days, but more than 48 hours before the primary election. 2 U.S.C. §434(a). Based on the schedule of penalties at 11 CFR 111.44, the Commission assessed an administrative fine of \$15,220 against the Garcia campaign and its treasurer.

Garcia for Congress challenged the Commission's finding in a letter received by the agency's Office of Administrative Review on March 1, 2013. After considering the committee's written response, the Reviewing Officer recommended no changes to the Commission's preliminary determination and assessment of an administrative fine of \$15,220 against the Garcia campaign and Ms. Patel. On March 11, 2013, a copy of this recommendation was sent to the plaintiffs.

On May 20, 2013, the Commission adopted the recommendation and made a final determination that Garcia for Congress and its treasurer violated the Act and imposed the civil penalty of \$15,220.

Litigation

Garcia for Congress has filed suit to challenge the Commission's decision. Among other things, the plaintiffs argue that the Commission "ignored that the FECA contains a safe harbor provision," and that the fine assessed was "grossly disproportionate to what Plaintiffs failed to timely disclose."

(Posted 07/3/2013; By: Alex Knott)

Resources:

- [Administrative Fines Program](#)
- [FEC Form 6 \(48-Hour Notice of Contributions/Loans Received\) Instructions](#) [PDF]

Advisory Opinions

AO 2013-03 Potential Candidate May Consult for Nonprofit

A potential federal candidate may serve as a paid consultant to a nonprofit corporation even if she decides to become a candidate. The consulting fees she receives would not be considered prohibited contributions to the campaign.

Background

Erin Bilbray-Kohn is considering a run for the U.S. House of Representatives. In anticipation of her potential candidacy, Ms. Bilbray-Kohn resigned her Executive Director position with Emerge Nevada and became a paid consultant. Emerge Nevada is a nonprofit Nevada corporation that helps elect Democratic women to state and local offices. As a consultant, Ms. Bilbray-Kohn will organize and conduct trainings for Emerge Nevada, and will provide fundraising advice to the program's candidates. She will not solicit, direct, or receive any donations for the candidates or for Emerge Nevada itself, and she will not have authority to spend Emerge Nevada's funds or otherwise to exercise any control over the organization. Ms. Bilbray-Kohn's compensation of \$5,500 per month represents half of her former salary plus an additional \$500 per month to account for some of the extra costs that she will bear as a consultant (such as payroll taxes and business expenses).

Analysis

The Federal Election Campaign Act (the Act) and Commission regulations prohibit federal candidates and officeholders from raising or spending funds in connection with a federal election "unless the funds are subject to the limitations, prohibitions, and reporting requirements" of the Act. 2 U.S.C. §441i(e)(1)(A); 11 CFR 300.61. Such persons are also prohibited from raising or spending funds in connection with a nonfederal election unless the funds are raised within the Act's contribution limits and source restrictions. 2 U.S.C. §441i(e)(1)(B); 11 CFR 300.62.

The Commission found that the Act would not prohibit Ms. Bilbray-Kohn from consulting for Emerge Nevada if she becomes a federal candidate. As a consultant, Ms. Bilbray-Kohn's duties will be limited to organizing Emerge Nevada's training program, conducting candidate training sessions, and providing advice to individual candidates. She will not solicit or receive funds for the candidates or for Emerge Nevada, and she will not direct or control any of the candidates' or organization's spending of nonfederal funds. In addition, the program's candidates would not be acting as Ms. Bilbray-Kohn's agents when they subsequently raise funds for their own nonfederal campaigns. Therefore, Ms. Bilbray-Kohn can serve as a paid consultant to Emerge Nevada after she becomes a federal candidate.

The Commission also concluded that Emerge Nevada's payments of consulting fees to Ms. Bilbray-Kohn would not be prohibited corporate contributions. Commission regulations state that payments of "compensation" to a candidate are contributions unless the compensation satisfies three requirements. 11 CFR 113.1(g)(6). The Commission determined that Ms. Bilbray-Kohn's consulting fees would satisfy these requirements. First, the payments would result from Ms. Bilbray-Kohn's "*bona fide* employment" as a consultant and would be genuinely independent of her candidacy. 11 CFR

113.1(g)(6)(iii)(A). The Commission found that Emerge Nevada retained Ms. Bilbray-Kohn as a consultant based in part on her past experience with the organization and on her expertise with Nevada politics, not on her candidacy for Federal office.

Second, her compensation also will be “exclusively in consideration of [her] services” as a consultant since she will perform a subset of the duties she previously performed as Executive Director, and she will be compensated only for those reduced duties, not for any activities she undertakes as a federal candidate. 11 CFR 113.1(g)(6)(B).

Finally, Ms. Bilbray-Kohn’s compensation will not exceed the amount that would be paid to any other similarly qualified person for the same work over the same period of time, since the amount of her compensation is no more than the organization is paying any other training consultant with Ms. Bilbray-Kohn’s level of knowledge and experience. 11 CFR 113.1(g)(6)(C). Therefore, the payment of the consulting fees would not be prohibited contributions to the campaign.

(Posted 7/3/13; By: Zainab Smith)

Resources:

- [Commission Discussion of AO 2013-03](#) 
- [Advisory Opinion 2013-03](#) [PDF]