

Make Your Laws PAC, Inc.
FEC ID # C00529743
% Nick Staddon, Secretary
122 Pinecrest Rd.
Durham, NC 27705

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463

Re: MYL PAC comment on fines and forms rulemaking (REG 2015-01)

May 27, 2015

Dear Commissioners:

Please accept this comment on behalf of Make Your Laws PAC, Inc. (MYL PAC) in response to the FEC's Notice of Availability in REG 2015-01.

Background

MYL PAC is a strictly non-partisan organization. Our goals include ensuring that elections, and corresponding campaign finance, are transparent and accessible to all. We are also the kind of small, new organization that would be most disproportionately affected by excessive reporting burdens.

We have no comment regarding the administrative fines program, except to ask that the Commission be lenient on small organizations, like MYL PAC, that do not have the resources to e.g. hire full time lawyers and accountants. Of course, we must report as well — but administrative fines, MURs, etc. should make good faith efforts and the amount of money affected major considerations.

We disagree with the petitioners that double-entry bookkeeping is difficult or burdensome. If anything, it serves as a useful way to double-check one's work, both internally and against e.g. bank records, which are universally double-entry.

We agree that petitioners' proposal that 24/48 hour reports may be estimated is reasonable, so long as the firm amount is reported as soon as it is reasonably known (e.g. with a revised report), and any estimations are clearly reported as such (e.g. with a checkbox or memo entry).

We agree with petitioners' proposal that reporting forms should clearly set out options to declare a PAC as traditional, IEOC, or hybrid. This should be a simple option on Form 1. Better still, every PAC

should simply be *assumed* to be a hybrid PAC, and the asset / contribution / expense reporting should distinguish which PACs are actively using segregated funds.

We agree with petitioners' proposal that reporting forms should clearly distinguish funds (amounts held, contributions, expenditures, etc) in traditional vs IE sides of a PAC. Again, this should be a simple checkbox on Form 3X schedules, possibly with some duplication of the summary section for the different categories of funds. We would also suggest distinguishing any other kind of fund that is segregated, e.g. for shared administrative expenses or *Levin* funds.

We agree with petitioners' proposal that the Commission's guidance be updated to reflect current law — both with the issues the petitioners mention, and ongoing AOs. Part of publishing an AO (or at least the *Record* summary) should include going through all documents that refer to that part of the regulations and keeping them up to date.

We generally agree with petitioners' proposal for improving Form 3X. While we agree that the "category type", line number, and memo entry items are redundant, they should be unified and made into clearer, more detailed, and extendable categorization system. This would allow new categories can be easily added as the law develops (e.g. with Bitcoin).

The Commission should standardize and simplify other matters, such as reportable non-contributions (e.g. *pro bono* attorney work), asset purchase / liquidation, and any other common memo entry. Generally speaking, memo entries should be a rare *exception*, not a rule. If a memo entry is often required, that is an indication of something to integrate into a fully standardized form.

We have a few further suggestions that go beyond petitioners' proposal, which we ask the Commission to integrate into any rulemaking on this matter:

1. Standardize contributor information and update the "cash" limitation.

[2 USC 432\(c\)\(1\)](#) requires committees to keep account of all of their contributions.

Currently, the FEC's regulations require committees to submit contributor information, as defined in [11 CFR 100.12](#), if the contribution is greater than \$200 ([11 CFR 104.3\(i\)\(4\)\(i\)](#)); and to collect a subset of that information (i.e. name and address) for contributions greater than \$50 but less than or equal to \$200. There is no requirement to collect *any* information for contributions \$50 or less — even though limits apply in aggregate, and failure to collect it from repeat donors of \$50 or less would make violations likely (and hard to either prove or disprove).

Additionally, committees are forbidden from accepting unidentified contributions of currency \$100

or more ([2 USC 441g](#), [11 CFR 110.4\(c\)\(2\)](#)).

As the Commission has seen from our own [AOR 2014-02 re. Bitcoin](#) and our [comments on CAF's preceding AOR 2013-15](#), as well as from the Commission's September 17, 2014 forum on website improvement, we believe these requirements are inadequate and outdated. They fail to account for non-currency but hard-to-trace mediums of exchange such as Bitcoin, and fail to standardize reporting enough to allow data to be reliably cross-linked and correlated.

Section 432 imposes *minimum* accounting requirements, not maximums. The FEC has the authority to impose more specific disclosure and accounting requirements, and should use that authority to address flaws in existing regulations.

We suggest that the Commission address these issues in four simple ways:

A. Standardize "name", "address", "occupation", and "employer".

Currently, the same person could be reported in a large number of different ways, due to variations in how their name is given (nicknames, middle initial vs full middle name, etc), having multiple mailing addresses, multiple employers/occupations and multiple ways to describe the same.

This makes cross-correlating data very difficult, even within FEC reports, let alone with state campaign finance reports, voter registration rolls, lobbyist registrations, etc.

Therefore, we suggest that the FEC define these terms (and require all collection and reporting thereof) in a uniform way, such that reporting is fully consistent — namely:

"Name": For an individual, the full legal name listed on their most recent voter registration, passport, driver's license, state ID, or birth certificate (in that order).

For other entities, its full legal name as registered with the Secretary of State in its domicile.

"Address": For an individual, the address listed on their most recent voter registration, driver's license, or state ID (in that order)¹; or if neither registered to vote nor possessing state DL/ID, their primary residence address (i.e. the only address at which they could register to vote).

For other entities, the address of its headquarters, as registered.

¹ Standard US passports do not list addresses in the official portion of the document.

"Occupation": One of the Bureau of Labor Statistics' enumerated occupations, according to its most recent Standard Occupational Classification² publication — reported by the committee together with the corresponding 6-digit SOC code.

"Employer": The full legal name (per above) of the entity providing the majority of that individual's income for that tax year, e.g. as listed on their most recent W2 or 1099-MISC — except "self" for self-employed and "none" for unemployed, retired, etc.

B. Require collection of full [11 CFR 100.12](#) identification for all contributions.

This includes collection by the directly receiving entity, e.g. under [11 CFR 102.8](#); information sent by an intermediary / conduit to earmark recipients, under both 102.8 and [11 CFR 110.6](#); and all other reports or accounting of any person, e.g. [11 CFR 104.3\(h\)](#).

We suggest the Commission go one step beyond the current "best efforts" standard. While we agree that "best efforts" is a reasonable standard for the *accuracy* of information collected, we believe that the *information* is mandatory. Contributions lacking adequate identification should be handled in accordance with [11 CFR 103.3\(b\)](#) (i.e. as possibly illegal contributions that may be accepted provisionally pending further efforts to ensure their legitimacy).

If the remaining information is not obtained, then it should be returned (if reliably possible) or (if not³) given to a 501(c)(4) or (c)(3) organization, or the U.S. Treasury.

C. Prohibit anonymous contributions and generalize the provision for unidentified contributions.

The first sentence of [11 CFR 110.4\(c\)\(3\)](#), effectively permitting anonymous contributions of \$50 or less, should be stricken and replaced with a flat prohibition on anonymous contributions.

The second sentence should be moved to a separate, more general provision, requiring committees receiving *any* contribution which has not been adequately identified to disburse it for non-election purposes (e.g. to a 501(c)(3) or (c)(4) organization, or to the U.S. Treasury).

D. Limit to \$100 any contribution made in a difficult-to-trace medium of exchange.

[11 CFR 110.4\(c\)](#) should be changed to replace the terms "cash", "currency", etc. with the

² <http://www.bls.gov/soc/>

³ We note that currently, it is *not* technically possible to reliably return Bitcoin; such returns would need to be made by other reliable means, e.g. a mailed check. This may change as the Bitcoin protocol is developed further.

broader "non-traceable contribution", defined in a new section 110.4(d) as *any* contribution which is made with a medium of exchange that cannot be adequately audited.

Systems that *are* adequately auditable would include, e.g., those regulated by FinCEN's "know your customer" (KYC) requirements (banks, credit cards, money services businesses, etc), or by the SEC, CFTC, state DMVs, or other regulatory agencies that impose similar requirements to track the identity of exchangers and exchanged items in each transaction.

The exchange of Bitcoin is *not* currently adequately auditable. However, this may change; for instance, some Bitcoin exchanges may choose to voluntarily adopt FinCEN KYC requirements for their customers. Exchange between such KYC-compliant accounts *would* meet the standard, and would not be subject to the \$100 limit that we propose.

Cash would continue to fall within this provision; we believe simply that it should be extended to cover any non-monetary medium of exchange that, like cash, cannot be readily traced.

The FEC should not *prohibit* inadequately auditable contributions, but simply limit them to \$100. This would be in keeping with Congress' intent in passing [2 USC 441g](#).

2. Require all large contributions and expenditures to be reported immediately.

The FEC currently requires 1-2 day reporting for electioneering communications (over \$10,000) and for independent expenditures. However, this might not disclose the source until after an election is over, and omits various other kinds of contributions and expenditures that would be of similarly heightened public interest.

We suggest that a 1-2 day reporting rule be applied to uniformly *all* contributions and expenditures over \$10,000, regardless of the time or purpose.

3. Require committees to report the value of their non-monetary assets.

Currently, committees only need to report their "cash on hand". This can significantly understate a committee's true resources, e.g. stocks, bonds, equipment, Bitcoin, etc.

Therefore, we suggest that committees be required to report the current value of "assets on hand" whenever "cash on hand" would normally be reported, with IRS-standard depreciation.

4. Require committees to report the number of unitemized contributions and expenditures.

Currently, committees do not need to itemize contributions or expenditures valued \$200 or less,

only the sum value thereof. However, unitemized contributions can make up a large proportion of a committee's activity — e.g. 33% of President Obama's 2012 campaign⁴ — and lumping them all together needlessly obscures important information.

Reporting the *number* of such contributions (and number of *contributors*), segregated by type of contribution (e.g. cash, non-cash currency, Bitcoin, food, etc.), would provide significantly more insight into this activity without imposing significant burden on the committee.

Similarly, the number of contributions and contributors of unitemized contributions could be broken down by the rough amount (e.g. rounded to the nearest \$10), thereby offering insight into the *distribution* of unitemized contribution amounts.

5. Define the term "direct costs of fundraising".⁵

[11 CFR 106.6\(d\)\(1\)](#) refers to a definition of "direct costs of fundraising" in "11 CFR 106.6(a)(2)". However, 106.6(a)(2) doesn't exist, and 106.6(a) doesn't even mention fundraising.

The FEC should define the term "direct costs of fundraising" and make conforming technical corrections, with an eye to related provisions at [11 CFR 106.6\(b\)\(1\)\(ii\)](#), [106.5\(a\)\(2\)\(ii\)](#), [106.5\(f\)\(1\)](#), and [104.10\(b\)\(2\)](#). We note that these related provisions also do not define the term.

We suggest that [11 CFR Part 100, Subpart D](#) — defining expenditures in general — would be a more appropriate place to define the term, and that all other regulations should be conformed to refer to a single definition.

⁴ <https://www.opensecrets.org/pres12/candidate.php?id=N00009638>

⁵ This is a primarily technical correction. MYL PAC did point it out during the Commission's last technical and conforming amendments rulemaking, but it was not included. It is mentioned here simply for completeness, as an easily corrected technical problem with the current regulations.

Conclusion

Thank you in advance for your consideration and attention to this issue. We hope to help, as a non-partisan member of the regulated community, in improving the transparency and accountability enabled by the Commission's regulations.

We support the petitioners' proposed rulemaking, with the caveats above, and agree that the forms are long overdue for an overhaul. We therefore ask that the Commission move forward with an NPRM — or indeed more than one, so as to deal with the easier issues in this petition for rulemaking without waiting to resolve the more complex ones.

We also ask that the Commission specifically solicit input on an NPRM from the open source developer community, so that the electronic versions of these forms are updated simultaneously and sensibly, in a way that supports making the data more publicly accessible and understandable.

I request the Commission's permission to appear and testify at any hearing on this matter.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,
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