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Washington, DC 20463

**AGENDA DOCUMENT NO. 13-38**  
**AGENDA ITEM**  
**For meeting of September 12, 2013**  
**SUBMITTED LATE**

September 9, 2013

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS*  
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Subject: Draft AO 2013-12 (SEIU and SEIU COPE)

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on September 11, 2013.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2013-12

2

3 Mark Schneider, Esq.  
4 Service Employees International Union  
5 800 Massachusetts Ave., N.W.  
6 Washington, D.C. 20036

**DRAFT**

7

8 Dear Mr. Schneider:

9 We are responding to your advisory opinion request on behalf of the Service

10 Employees International Union (“SEIU”) and the SEIU Committee on Political

11 Education (“SEIU COPE”). The requestors ask about the application of the Federal

12 Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to

13 the requestors’ proposed use of recorded telephone conversations to obtain and maintain

14 SEIU members’ authorizations of payroll-deduction contributions to SEIU COPE. The

15 Commission concludes that the proposal is consistent with the Act and Commission

16 regulations.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter dated

19 July 18, 2013.

20 SEIU COPE is registered with the Commission as SEIU’s separate segregated

21 fund (“SSF”). SEIU COPE receives its contributions mostly through payroll deductions

22 from SEIU’s restricted class. Currently, members of the restricted class authorize these

23 payroll deductions either in handwritten documents or by electronic signatures provided

24 via email or web-based communications.

25 The requestors propose to obtain and maintain payroll-deduction authorizations

26 from SEIU’s members through recorded telephone conversations. Under the proposal, a

27 representative of SEIU will use current membership records to call a member and,

1 consistent with applicable state law, explain that the conversation is being recorded. The  
2 SEIU representative will request that the individual on the telephone provide certain  
3 information (including his or her name, address, and employer), which the representative  
4 will check against SEIU's records to verify that the person on the phone is the individual  
5 sought and is a current member of SEIU. Once the representative has confirmed that the  
6 individual is a member of SEIU's restricted class, the representative will solicit  
7 contributions to SEIU COPE. The representative will confirm that the member is a U.S.  
8 citizen, note that contributions are not tax-deductible, and provide the information  
9 required by 11 C.F.R. § 114.5(a).

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

19 ***Question Presented***

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

1 ***Conclusion and Legal Analysis***

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

6 A labor organization may use its general treasury funds to establish and  
7 administer an SSF and to solicit contributions from its restricted class to that SSF.  
8 2 U.S.C. § 441b(b)(2)(C), (b)(4); 11 C.F.R. §§ 114.1(a)(2)(iii), 114.5(b). A labor  
9 organization's restricted class includes the organization's members and their families, as  
10 well as its executive or administrative personnel and their families. 11 C.F.R. § 114.1(j).  
11 Any solicitation for contributions to an SSF must inform members of the "political  
12 purposes" of the SSF and advise that the solicited member may refuse to contribute  
13 "without any reprisal." *See* 11 C.F.R. 114.5(a)(3)-(4); Advisory Opinion 2006-17  
14 (Berkeley) at 5.<sup>1</sup>

15 A labor organization may use a payroll-deduction or check-off system to collect  
16 contributions to its SSF. *See* 11 C.F.R. §§ 114.2(f)(4)(i) (exempting enrollment of  
17 restricted-class members in payroll-deduction or check-off system from facilitation  
18 prohibition); *see also, e.g.*, Advisory Opinion 1999-06 (Rural Letter Carriers) (approving  
19 deductions from annuity payments for contributions to labor organization's SSF). A  
20 contributor must affirmatively authorize such payroll deductions before they begin. *See*

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<sup>1</sup> 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).

1 Advisory Opinion 1999-03 (Microsoft PAC) at 2 (explaining that payroll deductions  
2 require advance showing of contributor’s “specific and voluntary donative intent”); *cf.*  
3 *FEC v. Nat’l Educ. Ass’n*, 457 F. Supp. 1102, 1106 (D.D.C. 1978) (upholding  
4 Commission’s determination that reverse check-off was unlawful because “it require[d]  
5 the dissenter to act to prevent a contribution rather than requiring his affirmative assent to  
6 make one”).

7 An SSF must report contributions that it receives, 2 U.S.C. § 434(b); 11 C.F.R.  
8 § 114.5(e)(3) — including contributions made via payroll deduction, *see* 11 C.F.R.  
9 § 104.8(b) — and must “[m]aintain records . . . with respect to the matters required to be  
10 reported” for three years after the report is filed. 11 C.F.R. § 104.14(b); *see also* 2 U.S.C.  
11 § 432(c)-(d). These records must “provide in sufficient detail the necessary information  
12 . . . from which the filed reports . . . may be verified.” 11 C.F.R. § 104.14(b).

13 Prior to 2006, the Commission had articulated a general rule that *written*  
14 authorization was required to verify an individual’s enrollment in a payroll-deduction  
15 plan for contributions to an SSF. *See Payroll Deductions by Member Corporations for*  
16 *Contributions to a Trade Association’s Separate Segregated Fund*, 70 Fed. Reg. 41,939,  
17 41,942 (July 21, 2005) (“Each contributor must affirmatively authorize the deduction, in  
18 writing, in advance . . . .”); Advisory Opinion 2001-04 (MSDW PAC) (“The specific and  
19 voluntary donative intent of the solicited employee needs to be manifested in a written  
20 authorization by him prior to the actual deduction of any contributions.”); Advisory  
21 Opinion 1999-03 (Microsoft PAC) (same). But the Commission also approved, on a  
22 case-by-case basis, authorizations in a form other than the traditional written signature,

1 where the use of technology would not compromise the intent of the Act or Commission  
2 regulations. *See, e.g.*, Advisory Opinion 2001-04 (MSDW PAC) (approving payroll  
3 deduction authorizations submitted by “the standard ‘click through’ process which forms  
4 the basis for much of Internet commercial transactional activity”); Advisory Opinion  
5 1999-06 (Rural Letter Carriers) (approving telephone authorizations for deductions from  
6 annuities); Advisory Opinion 1999-03 (Microsoft PAC) (approving payroll deduction  
7 authorizations by digital signature).

8         In 2006, the Commission issued a policy statement clarifying its application of the  
9 Act’s authorization and recordkeeping requirements for payroll deductions. Statement of  
10 Policy; Recordkeeping Requirements for Payroll Deduction Authorizations, 71 Fed. Reg.  
11 38,513 (July 7, 2006). The policy statement explained that even though “signed  
12 [authorization] forms may serve as the best documentation that a deduction was  
13 authorized at a particular time for a particular amount,” they are “not the only adequate  
14 form of proof for meeting the [Act’s] recordkeeping requirements.” *Id.* The Commission  
15 accordingly noted that it would “accept certain other forms of documentation” to satisfy  
16 the requirements, such as “spreadsheets or other computerized records, wire transfer  
17 records, or other written or electronic records.” *Id.*

18         The requestors’ proposal here satisfies the Act and Commission regulations and is  
19 also consistent with the Commission’s 2006 policy statement and prior advisory opinions.  
20 As in the prior matters, the requestors here will receive explicit authorization from an  
21 individual before enrolling that individual in the payroll-deduction plan; will have  
22 safeguards in place to ensure that the authorizing individual is a member of the restricted

1 class; will provide enrolled individuals with information to enable them to cancel or  
2 modify their contributions at any time; and will maintain a record of the authorization in  
3 retrievable form for at least three years after the contribution is reported. *See* Advisory  
4 Opinion 2001-04 (MSDW PAC) at 4 (listing authorization “protocols” that are “central to  
5 the Commission’s conclusions” approving non-written authorizations) (citing Advisory  
6 Opinion 1999-03 (Microsoft PAC)). Indeed, in Advisory Opinion 1999-06 (Rural Letter  
7 Carriers), the Commission approved a telephone-based authorization system that included  
8 “computer-based (and retrievable) records . . . for each call . . . to authorize or modify or  
9 terminate a PAC contribution.” Thus, because the instant proposal incorporates  
10 procedural safeguards and recordkeeping mechanisms equivalent to those previously  
11 approved, the lack of a “handwritten signature on a paper document . . . is not significant  
12 in the circumstances presented.” *Id.* at 6. Accordingly, the Commission concludes that  
13 the requestors’ proposal is consistent with the Act and Commission regulations.

14         This response constitutes an advisory opinion concerning the application of the  
15 Act and Commission regulations to the specific transaction or activity set forth in your  
16 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in  
17 any of the facts or assumptions presented, and such facts or assumptions are material to a  
18 conclusion presented in this advisory opinion, then the requestors may not rely on that  
19 conclusion as support for their proposed activity. Any person involved in any specific  
20 transaction or activity which is indistinguishable in all its material aspects from the  
21 transaction or activity with respect to which this advisory opinion is rendered may rely on  
22 this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or

1 conclusions in this advisory opinion may be affected by subsequent developments in the  
2 law including, but not limited to, statutes, regulations, advisory opinions, and case law.  
3 The cited advisory opinions are available from the Commission's Advisory Opinion  
4 searchable database at <http://www.fec.gov/searchao>.

5 On behalf of the Commission,  
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Ellen L. Weintraub  
Chair