FEC Rules for National Convention Delegates

Federal Election Commission
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The material that follows offers answers to frequently asked questions about FEC rules governing delegates to national nominating conventions. Citations are to FEC regulations in Title 11, Code of Federal Regulations.

To whom do these rules apply?

These rules apply to any individual who is seeking selection as a delegate, or who has already been selected as a delegate, at any level of the delegate selection process (local, state or national). 11 CFR 110.14(b)(1).

Do delegates have to file reports with the FEC?

No. Individual delegates are not required to register or file regular reports of the funds they raise and spend for their personal delegate activity. 11 CFR 110.14(d)(3) and (e)(2). However, delegates acting as a group may have to file reports as a delegate committee. See "Do delegate committees have to file FEC reports?" below.

How are funds raised and spent for delegate activity treated under federal campaign finance law?

Funds raised and spent for delegate selection are considered "contributions" and "expenditures" made for the purpose of influencing a federal election[1] and are therefore subject to the federal law's prohibitions.[2] 11 CFR 110.14(c)(1) and (2). Although the law generally does not limit contributions per delegate, 11 CFR 110.1(m)(1), 110.14(d), certain other contribution limits apply. See, e.g., 11 CFR 110.5(e). Please note that these prohibitions and limits apply to contributions of goods and services (in-kind contributions) as well as to monetary contributions. 11 CFR 100.52(d).

Who is prohibited from contributing to a delegate?

Individual delegates may not accept any contributions from sources prohibited from making contributions in connection with federal elections. 11 CFR 110.14(c)(2). These sources include:

- Corporations (including banks and nonprofit corporations);
- Labor organizations;
- Foreign nationals or businesses (except "green card" holders--those admitted to the United States for permanent residence); and
- Federal government contractors (such as partnerships and sole proprietors with federal contracts). 11 CFR 110.20; 114.2; 115.2, 115.4 and 115.5.

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[1] A national nominating convention is considered a federal election. 11 CFR 100.2(e).

[2] Ballot access fees paid by an individual delegate to a political party are not considered contributions or expenditures; nor are administrative payments made by a party committee (including an unregistered organization) for sponsoring a convention or caucus to select delegates. Nevertheless, the funds used to pay these expenses are subject to the law's prohibitions and limits. 11 CFR 110.14(c)(1)(i) and (ii) and (c)(2).

What are the limits on contributions to delegates?

Contributions to an individual delegate are not subject to any per delegate limit. 11 CFR 110.1(m) and 110.14(d)(1).[3]

Do these rules apply if I, as a delegate, am only raising money to pay for travel to the convention?

Yes. Travel and subsistence expenses related to the delegate selection process and the national nominating convention are considered "expenditures." 11 CFR 110.14(e). Thus, a delegate may not use prohibited funds to pay for travel to attend the national convention and related food and lodging expenses. Advisory Opinions (AOs) 2000-38 and 1980-64.

I'm a federal officeholder who will serve as a delegate. May I use my campaign funds to pay for my travel to the convention?

Special rules apply to federal candidates or officeholders who attend the convention as delegates. While campaign funds may not be used to pay for anyone's personal expenses (i.e., expenses that would exist irrespective of the candidate's campaign or his/her duties as a federal officeholder), candidates who attend the convention as delegates may use campaign funds to pay for their own convention-related travel, food and lodging expenses. 11 CFR 110.14(c) and (e); AO 1995-47 n.4.

The Commission has issued advisory opinions clarifying that such candidates may also use campaign funds to pay the travel and subsistence expenses of other individuals (e.g., spouse, child, Congressional staff person) in connection with the convention if the individual will be engaging in significant campaign-related or officeholder-related activity on the candidate's behalf during the convention. 11 CFR 113.1(g); AOs 1996-20, 1996-19 and 1995-47.

Although the use of campaign funds to pay someone's personal expenses is a violation of the personal use prohibition, when travel involves both personal activities and campaign (or officeholder) activities, campaign funds may be used to pay the personal portion of travel and subsistence costs if the individual reimburses the campaign within 30 days. 11 CFR 113.1(g)(1)(ii)(C); AO 2000-12.

Do expenditures I, as a delegate, make for my own selection and travel count as contributions to a candidate?

No. Expenditures made by delegates or delegate committees solely to further their selection are not considered contributions to any candidate and are not chargeable to a publicly funded candidate's spending limits. Examples of such expenditures include, for example:

- A communication which advocates the selection of delegates only; and
- Travel and subsistence expenses related to the delegate selection process and the national nominating convention. 11 CFR 110.14(e)(1) and (h)(1).

[3] Presidential primary candidates receiving public funding must comply with an overall spending limit and a spending limit in each state. 11 CFR 9035.1.

May delegates join together to raise and spend funds?

Yes. Under FEC regulations, they would be acting as a delegate committee. A delegate committee is a group that raises or spends funds to influence the selection of one or more delegates. A delegate committee may be a group of delegates or a group that supports delegates. 11 CFR 110.14(b)(2).

Do delegate committees have to file FEC reports?

Possibly. A delegate committee becomes a "political committee" under federal law once it receives contributions or makes expenditures exceeding $1,000 in a calendar year. 11 CFR 100.5(a) and (e)(5); 110.14(b)(2). At that point, the committee must register with the FEC within 10 days and begin filing periodic FEC reports to disclose its receipts and disbursements. 11 CFR 102.1(d) and 104.1(a). All pre-registration activity must be disclosed in the first report. 11 CFR 104.3(a) and (b). Note that a delegate committee that has triggered status as a federal political committee must include the word "delegate" or "delegates" in its name. It may also include the name of the Presidential candidate it supports. 11 CFR 102.14(b)(1).

Do contribution prohibitions and limits apply to delegate committees?

The same sources that are listed above as prohibited from making contributions to a delegate are also prohibited from making contributions to a delegate committee. 11 CFR 110.14(c)(2). The following limits apply to contributions made to delegate committees:

- Contributions from permissible sources to a delegate committee are subject to an aggregate limit of $5,000 per calendar year.11 CFR 110.1(d) and (m)(2); 110.14(g)(1). Note, however, that if the delegate committee is affiliated with a Presidential campaign, it will share the limit applicable to the Presidential campaign. 11 CFR 110.3(a).

Supporting Presidential Candidates

May a delegate or delegate committee make contributions to candidates?

A delegate or delegate committee may contribute a maximum of $2,600 to a federal candidate, per election.[4] 11 CFR 110.1(b)(1). The primary and general are considered separate elections but, in the case of Presidential candidates, the entire primary season is considered only one election. 11 CFR 100.2 and 11 CFR 110.1(j)(1).

Note that a contribution to a candidate must be reported by the candidate's committee. 11 CFR 104.1(a), 104.3(a). For this reason, when making an in-kind contribution, a delegate or delegate committee should notify the candidate's committee of the monetary value. 11 CFR 104.13(a)(1). Note also that in-kind contributions generally count against a publicly funded Presidential candidate's expenditure limits. 11 CFR 9035.1(a)(3).

[4] A federal candidate is a candidate seeking election to the Presidency, the Vice Presidency, the U.S. Senate or the U.S. House of Representatives. 11 CFR 100.4.

May a delegate or delegate committee put out a communication that promotes both the delegate(s) and the Presidential candidate supported?

Yes. An individual delegate or a delegate committee may pay for communications that both:

- Advocate the selection of that individual delegate or of the delegates promoted by the delegate committee; and
- Refer to, provide information on or expressly advocate the election or defeat of a Presidential candidate (or candidate for any public office). 11 CFR 110.14(f) and (i).

If such a communication meets the federal campaign finance law's definition of a "public communication," it will trigger certain election law provisions.[5] 11 CFR 100.26. Moreover, depending on the circumstances, a portion of a dual-purpose expenditure may have to be allocated as an in-kind contribution or an independent expenditure on behalf of any federal candidate mentioned in the ad. 11 CFR 110.14(f)(2) and (i)(2). Finally, the communication must include a disclaimer notice. 11 CFR 110.11.

May delegates undertake some small grassroots dual-purpose communications that do not trigger contribution limits?

Dual-purpose expenditures for campaign materials such as pins, bumper stickers, handbills, brochures, posters and yard signs are not considered in-kind contributions on behalf of the federal candidate mentioned in the materials as long as the materials are used in connection with volunteer activities (i.e., are distributed by volunteers) and are *not* conveyed through public political advertising.[6] 11 CFR 110.14(f)(1) and (i)(1).

When would a dual-purpose expenditure count against contribution limits to a candidate?

A portion of a dual-purpose expenditure is considered an in-kind contribution to the referenced candidate if the communication:

- Is conveyed through public political advertising (or is not distributed by volunteers); and
- Is a coordinated communication under 11 CFR 109.21.
  11 CFR 110.14(f)(2)(i) and (i)(2)(i).

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[5] A public communication is a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing (more than 500 pieces of mail or faxes of an identical or substantially similar nature within any 30-day period), telephone bank to the general public (meaning more than 500 telephone calls of an identical or substantially similar nature within any 30-day period) or any other form of general public political advertising. The term "general public political advertising" does not include communications over the Internet, except for communications placed for a fee on another person's web site. 11 CFR 100.26; 100.27 and 100.28.

[6] For purposes of the delegate selection regulations, public political advertising means political advertising conveyed through broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication. 11 CFR 110.14(f)(2) and (i)(2). Direct mail means mailings by commercial vendors or mailings made from lists not developed by the individual delegate or delegate committee. 11 CFR 110.14(f)(4) and (i)(4).

When would a dual-purpose expenditure be considered an independent expenditure?

A portion of a dual-purpose expenditure for a communication that is conveyed through public political advertising is considered an independent expenditure (rather than an in-kind contribution) on behalf of the candidate if the communication:

- Expressly advocates the election (or defeat) of a clearly identified candidate; and
- Is not a coordinated communication under 11 CFR 109.21.
  11 CFR 110.14(f)(2)(ii) and (i)(2)(ii).

Note that an independent expenditure, whether done by a delegate or a delegate committee, must carry a disclaimer notice and is subject to reporting requirements. For more information on independent expenditures, consult 11 CFR Part 109. For more information on disclaimers, consult 11 CFR 110.11.

How do you determine what amount of a dual-purpose expenditure to allocate to the Presidential candidate?

The amount of a dual-purpose expenditure allocated as an in-kind contribution or independent expenditure on behalf of a candidate must be in proportion to the benefit the candidate receives, based on factors such as the amount of space or time devoted to the candidate compared with total space or time. 11 CFR 106.1(a)(1).

What if a delegate or delegate committee simply distributes materials prepared by the Presidential campaign?

Expenditures by a delegate or delegate committee to reproduce (in whole or in part) or to disseminate materials prepared by a Presidential candidate's committee (or other federal candidate's committee) are considered in-kind contributions to the candidate. Although subject to contribution limits, this type of contribution is not chargeable to a publicly funded Presidential candidate's spending limits as long as the expenditure is not a coordinated communication under 11 CFR 109.21. 11 CFR 110.14(f)(3) and (i)(3). The materials must include a disclaimer notice. 11 CFR 110.11.

Affiliation

Is a delegate committee considered an affiliate of the Presidential campaign? If yes, what rules apply?

Possibly. Delegate committees--including unregistered committees--need to determine whether they are affiliated with another delegate committee or a candidate's committee because affiliated committees are considered one political committee for purposes of the contribution limits, and thus, share the same limits on contributions received and made. 11 CFR 110.3(a)(1). (Affiliated committees, may, however, make unlimited transfers to one another. 11 CFR 102.6(a)(1)(i).) If a delegate committee is affiliated with the committee of a Presidential candidate receiving public funds, then all of the delegate committee's expenditures count against the Presidential candidate's expenditure limits.

What are the factors indicating affiliation?

In determining whether a delegate committee and a Presidential committee are affiliated, the Commission may consider, among other factors, whether:

- The Presidential campaign[7] played a significant role in forming the delegate committee;
- Any delegate associated with a delegate committee has been or is on the staff of the Presidential committee;
- The committees have overlapping officers or employees;
- The Presidential committee provides funds or goods to the delegate committee in a significant amount or on an ongoing basis (not including a transfer of joint fundraising proceeds);
- The Presidential campaign suggests or arranges for contributions to be made to the delegate committee;
- The committees show similar patterns of contributions received;
- One committee provides a mailing list to the other committee;
- The Presidential campaign provides on going administrative support to the delegate committee;
- The Presidential campaign directs or organizes the campaign activities of the delegate committee; and/or
- The Presidential campaign files statements or reports on behalf of the delegate committee. 11 CFR 110.14(j). See also, for example, AO 1988-1.

Do affiliation rules apply to delegate committees that have a relationship with each other?

Possibly. Delegate committees established, financed, maintained or controlled by the same person or group are affiliated. Factors that indicate affiliation between delegate committees are found at 11 CFR 100.5(g)(4). 11 CFR 110.14(k).

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[7] Campaign refers to the candidate, his or her authorized committee and other persons associated with the committee.