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Phone: **Date:**
11/14/01

Re: **CC:**

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● Comment: Comments on Draft Policy Statement

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November 14, 2001

Via Facsimile and First-Class Mail

Rosemary C. Smith, Esq.
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Request for Comment on Draft Statement of Policy Regarding Party
Committee Transfers of Nonfederal Funds

Dear Ms. Smith:

These comments are submitted on behalf of our client, DNC Services Corporation/Democratic National Committee (the "DNC"), in response to the Commission's Request for Comment on Draft Statement of Policy Regarding Party Committee Transfers of Nonfederal Funds, 66 Fed. Reg. 562347 (Nov. 7, 2001).

The DNC strongly supports the proposed Statement of Policy, and urges the Commission to adopt the alternative formulation of the proposed policy, under which the Commission would not pursue an untimely party committee transfer made to cover the nonfederal share of an allocable expense paid between August 27, 2001 and December 31, 2001, if the transfer is made no later than May 1, 2002, and is fully disclosed on the party committee's applicable report. (The formulation of the alternative in the Draft Statement refers to a transfer deadline of March 1, 2002, but this appears to be an inadvertent error since 120 days from December 31, 2001 would be May 1, 2002).

At the outset, it should be made clear that the Commission has discretion to afford the DNC the relief the DNC requested in AOR 2001-16, by issuing an Advisory Opinion. On a number of occasions, the Commission has granted similar relief from application of

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Rosemary Smith, Esq.
November 14, 2001
Page 2

a regulation, by reason of exceptional circumstances, through the issuance of advisory opinions. See, e.g., Advisory Opinions 2001-11; 2000-19; 2000-11; and 1999-33.

At the same time, it is clearly appropriate for the Commission to issue a policy statement of general application to address the impact of the events of September 11 on party committee fundraising. The situation described by the DNC in its Advisory Opinion Request is likely not unique to the DNC. As noted in the Supplementary Information to the Draft Policy Statement, a number of party committees voluntarily suspended their fundraising activities in the aftermath of the September 11 terrorist attacks. It therefore makes sense for the Commission to clarify, through a Policy Statement, its enforcement policy with respect to application of the time window for allocation transfers of non-federal funds pursuant to 11 C.F.R. §106.5(g)(1). By issuing a policy statement, the Commission can "let[] the public know its current enforcement or adjudicatory approach." Syncor Int'l Corp. v. Shalala, 127 F.3d 90, 94 (D.C. Cir. 1997).

1. The Events of September 11 Impacted the Ability of the DNC to Raise Non-Federal Funds Needed for Allocation Transfers

In the case of the DNC, at least eight fundraising events were cancelled or postponed in the wake of the September 11 tragedy. These included a Latino Outreach Dinner in Miami scheduled for September 15; an event scheduled for September 16 in Tampa Bay; an event scheduled for New York on September 20; an event scheduled for New Orleans on September 21; a major-donor reception scheduled for September 28; a Democratic Business council dinner in Washington, D.C., scheduled for October 3; and a Women's Leadership Forum Conference scheduled for October 4, in Washington, D.C. A total amount of \$ 1,650,000, the vast majority of which was projected to be non-federal, was to have been raised at these events. As a result of cancellation or postponement of these events, the DNC was forced to borrow non-federal funds in order to make allocation transfers within the 60-day window specified in the Commission's rules, 11 C.F.R. §106.5(g)(2)(ii)(B).

During the Commission's open meeting on November 1, 2001, at which the DNC's Advisory Opinion Request and the Draft Policy Statement were discussed, certain Commissioners suggested that this situation imposed a mere "inconvenience" on the DNC because the DNC made contributions or transfers of non-federal funds in connection with the 2001 general elections for state and local offices. In fact, these funds were raised from donors specifically for the purpose of supporting Democratic candidates in the 2001 general elections for state and local offices (although no contribution was earmarked for any particular candidate). It would have been a violation of the donors' trust to use these contributions for payment of the DNC's administrative and overhead expenses.

From the perspective of the DNC's situation, then, the one-time enforcement policy set forth in the Draft Policy Statement is necessary and warranted.

Rosemary Smith, Esq.
November 14, 2001
Page 3

2. The Policy Statement Will Not Undermine Achievement of the Policy Purpose of the Allocation Window

The proposed Draft Policy Statement would make a very minor one-time adjustment in application of the allocation transfer time window, an adjustment that would in no way undermine the policy purpose of the window. In establishing the allocation "window," the Commission's purpose was solely to "allow the Commission to track the flow of non-federal funds into federal accounts, and to ensure that the use of such funds is strictly limited to payment for the non-federal share of allocable activities." Explanation and Justification of Regulations on Methods of Allocation Between Federal and Non-Federal Accounts: Payments Reporting, 55 Fed. Reg. 26058, 26066 (June 26, 1990).

The Draft Policy Statement would ensure that this purpose is fully achieved, by requiring that any transfers made beyond the normal deadline be fully disclosed on the party committee's applicable report. As stated in the DNC's Advisory Opinion Request, to ensure that this purpose is fully accomplished under an extended allocation window, the DNC would be willing to submit any additional information or documentation in connection with its disclosure reports, that the Commission may deem necessary or desirable in order to monitor compliance with the allocation regulations with regard to transfers from the DNC's non-federal to federal accounts for allocable disbursements.

It is important to note that, under the Draft Policy Statement, no party committee would be permitted to pay one penny more of non-federal money for any expenditure than would otherwise be allowed. The concerns that have been raised in some quarters about "widening the soft money loophole" and the like are therefore utterly misplaced.

For these reasons, the Draft Policy Statement should be adopted, with the alternative under which the Commission would not pursue an untimely party committee transfer made to cover the nonfederal share of an allocable expense paid between August 27, 2001 and December 31, 2001, if the transfer is made no later than May 1, 2002, and is fully disclosed on the party committee's applicable report.

Thank you for your consideration of these comments.

Sincerely yours,



Joseph E. Sandler
Neil P. Reiff
Counsel for DNC Services Corporation/
Democratic National Committee