



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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JAN 17 2002

January 10, 2002

MEMORANDUM

AGENDA ITEM

For Meeting of: 01-17-02

TO: The Commission
THROUGH: James A. Pehrkon *[Signature]*
Staff Director
FROM: Lawrence H. Norton *[Signature]*
General Counsel
N. Bradley Litchfield *[Signature]*
Associate General Counsel
Jonathan Levin *[Signature]*
Senior Attorney
SUBJECT: Revised Draft AO 2001-17

Pursuant to the Commission's discussion at the meeting of December 13, 2001, the Office of General Counsel has prepared the attached revised draft. This draft opinion responds to a request from the Democratic National Committee with respect to the reporting of single check contributions that it proposes to split between the Federal and non-Federal accounts.

Unlike the previous draft, which focused extensively on how and when such contributions may be retained by the DNC and prescribed different methods for handling the contributions, this draft contains a brief statement approving the DNC's proposed treatment of the contributions and focuses most of the analysis on answering the question asked, which is how to report the proposed transactions. The draft prescribes the details of such reporting for Schedule A and Memo Schedules A and B, including cross-references between entries. We request that this draft be placed on the agenda for January 17, 2002.

Attachment

1 ADVISORY OPINION 2001-17

2
3 Neil Reiff
4 Sandler, Reiff & Young
5 50 E Street, S.E.
6 Suite 300
7 Washington, D.C. 20003

DRAFT

8
9 Dear Mr. Reiff:

10 This responds to your letter dated October 29, 2001, as supplemented by
11 documents submitted on November 6, 2001, and your letter dated December 20, 2001, on
12 behalf of the DNC Services Corporation/Democratic National Committee (the "DNC"),
13 concerning the application of the Federal Election Campaign Act of 1971, as amended
14 ("the Act"), and Commission regulations to the reporting of contributions received by the
15 DNC that are deposited in Federal and non-Federal accounts.

16 By way of background, this opinion is requested in accordance with a conciliation
17 agreement entered into by the DNC and the Commission in connection with an
18 enforcement case, MUR 4961. This case involved the Commission's investigation into
19 the DNC's practice of splitting single check contributions between the Federal and non-
20 Federal accounts, and apportioning the excessive portion to the non-Federal account.
21 Although such a split is permissible under certain circumstances, the DNC requires
22 specific guidance as to the appropriate method of disclosing the receipt of such
23 contributions on reports filed with the Commission. Therefore, the DNC requests this
24 advisory opinion to ascertain the appropriate method of disclosing the receipt of
25 contributions that it proposes to split, pursuant to donors' directions, between its Federal
26 and non-Federal accounts.¹

27 You state that the DNC handles contributions that are split between Federal and
28 non-Federal accounts in the following manner:

29 (1)The DNC provides all disclaimer language necessary to comply with the
30 requirements of 11 CFR 102.5(a)(2) at the time of solicitation. On its donor cards, the
31 DNC asks donors to apportion, in writing, their contributions to either the Federal or non-

¹ Specifically, the conciliation agreement states: "In connection with the Committee's contention that the requirements are not clear regarding the reporting of single-check contributions split between the federal and non-federal accounts, the Committee may request from the Commission an Advisory Opinion regarding the reporting of such single-check contributions received in the future." Section IV.15.

1 Federal account. All donor cards will be required to be signed by the contributor. The
2 donor card submitted by you and attached to this opinion solicits contributions for both
3 the Federal and non-Federal accounts specifically and will be the donor card in the
4 solicitations of each of the contributions at issue. The donor card informs individuals and
5 Federal PACs that their contributions will be used in connection with Federal elections
6 and will be subject to the limits and prohibitions of the Act; instructs those persons to
7 make their contributions payable to the "DNC Federal Account" or to designate the
8 "Federal Account below" in order to allow for deposit in the Federal account; advises
9 "other contributors" that their contributions will be used for State and local elections and
10 asks them to make their checks payable to the "DNC—Non-Federal Account"; informs
11 individuals of the \$20,000 annual limit on contributions to the DNC and the \$25,000
12 annual contribution limit for contributions to all Federal campaigns and accounts;²
13 informs individuals that any portion in excess of the \$20,000 limit will be "allocated" to a
14 non-Federal account; asks the contributor to designate, on the donor card, either the entire
15 contribution or "the first \$20,000 (or other \$___)" of it for the Federal account, or to
16 designate the full amount for the non-Federal account; and asks for the contributor's
17 signature.³

18 (2) Each contribution at issue will be accompanied by the donor card attached to this
19 opinion, whether completed or not, thus indicating that the contribution was in response
20 to a solicitation containing the donor card. To the extent that a contribution, whether on
21 its face, or when aggregated with prior contributions from the same donor, exceeds the
22 Federal limit, the DNC seeks the donor's permission to split the contribution between its
23 Federal and non-Federal accounts if the donor has not provided clear instructions as to
24 how his contribution should be apportioned. Such permission may be granted directly on
25 the donor card (see above) or in response to a written follow-up request to the donor. If a
26 donor's contribution clearly indicated that it is intended to be a non-Federal contribution,
27 the DNC will deposit the contribution directly into a non-Federal account.

² The Act and regulations provide that the political committees established by a national party may receive no more than \$20,000 in any calendar year from a person other than a multicandidate committee and no more than \$15,000 per calendar year from a multicandidate committee. 2 U.S.C. §441a(a)(1)(B) and (2)(B); 11 CFR 110.1(c)(1) and 110.2(c)(1).

³ In addition, the donor card asks for information about the contributor to help insure against the receipt of foreign national contributions.

1 (3) When donor permission is sought by follow-up request, the DNC notifies the
2 donor that he or she may request a refund of the excessive portion of the contribution in
3 lieu of reapportionment to the DNC's non-Federal account.

4 (4) Upon receipt of a contribution which the DNC proposes to split between
5 Federal and non-Federal account, the DNC deposits the check into its Federal account.
6 On the day of that deposit, the DNC will deposit into its non-Federal account a check
7 representing a transfer of the excessive portion of the contribution (or contributions if
8 more than one contribution check is deposited into the Federal account).

9 (5) In the event that the DNC does not receive written donor permission to split
10 the contribution between its Federal account and non-Federal account within sixty days
11 after receipt of the contribution, or does not receive a donor request for a refund of the
12 contribution, the DNC transfers the portion of the contribution that was retained in its
13 Federal account to a non-Federal account at the expiration of the sixty-day period.⁴

14 As indicated above, you ask the Commission to advise the DNC as to the
15 reporting procedures for the receipt of contributions that it proposes to split between the
16 Federal and non-Federal accounts. Using the example of a \$50,000 contribution from an
17 individual, where \$20,000 is retained in the Federal account and \$30,000 is transferred to
18 the non-Federal account, you propose that the DNC disclose a \$20,000 contribution to its
19 Federal account and a \$30,000 donation to its non-Federal account. You also suggest that
20 the DNC could file a memo schedule document that describes the contributions that were
21 split during a particular reporting period and provide a listing of the transfers of the
22 excessive portions of such contributions.

23 *Analysis*

24 Based on the specific facts presented in the DNC's request, including (but not
25 limited to) the content of the donor card and the joinder of each contribution with the
26 donor card, the Commission concludes that the DNC's proposed treatment of the
27 contributions, with respect to receipt, deposit, subsequent contributor authorization, and
28 transfer, is permissible under Commission regulations. *See* 11 CFR 102.5(a) and 103.3.
29 The DNC's proposed treatment is not the only permissible treatment of such

⁴ You state that the DNC will not attempt to seek reattribution of the contributions to an additional contributor as provided for in 11 CFR 110.1(k)(3).

1 contributions, however. In order to ascertain other permissible alternatives, the DNC
2 would need to submit another advisory opinion request with a complete description of the
3 relevant facts. See 11 CFR 112.1(b) and (c).

4 The issue the DNC asks about is the proper reporting of the transactions described
5 above. The Act and Commission regulations require a party political committee to report
6 the receipt of contributions, including contributions from individuals. The committee
7 must report the identification (name, address, occupation, and employer) of each
8 individual who makes a contribution to the committee during the reporting period whose
9 contribution or contributions aggregate in excess of \$200 during the calendar year, along
10 with the date of receipt, amount of the contribution, and aggregate year-to-date total. 2
11 U.S.C. §§434(b)(2)(A) and (3)(A), and 431(13); 11 CFR 104.3(a)(2)(i) and (4)(i), and
12 100.12. Commission regulations also require a national party committee, such as the
13 DNC, to disclose in a memo Schedule A the name, address, and occupation or type of
14 business of any individual or entity donating more than \$200 in a calendar year to the
15 non-Federal accounts, along with the date of receipt and amount of the donation. 11 CFR
16 104.8(e). National party committees must also disclose in a memo schedule B the name
17 and address of each person to whom disbursements from the non-Federal accounts are
18 made which aggregate in excess of \$200 in a calendar year along with the date, amount,
19 and purpose of the disbursement. 11 CFR 104.9(c). These memo schedules A and B are
20 part of a Schedule I filed by the national party committee.

21 Commission regulations do not specifically address the reporting of the receipt of
22 contribution checks where the proceeds are intended to be split between Federal and non-
23 Federal accounts. Because the DNC will initially receive a check in excess of the
24 §441a(a)(1) limit, it is essential that the contribution and the division of the funds be
25 disclosed in a manner that is clear on the public record. This need for clarity is amplified
26 by the fact that national party committees file voluminous reports for all their activities,
27 and the DNC might accept numerous contributions that are split between Federal and
28 non-Federal accounts. Thus, the splitting of funds that are placed in separate accounts
29 requires the use of memo entries with explicit cross-references between the disclosures
30 for the Federal and non-Federal accounts.

1 Reports and other information available at the Commission indicate that the DNC
2 discloses its Federal contributions alphabetically by the last name of the contributor (and
3 then in calendar date order for each individual). Non-Federal contributions are disclosed
4 alphabetically within each non-Federal account (and then in date order for each
5 individual.) Using the above example of the \$50,000 check from a contributor who has
6 made no other contributions to the DNC Federal Account during the year, the split
7 contribution should be reported as discussed below.⁵ The Commission notes that, even
8 though a \$50,000 check will initially be deposited into the Federal account, the amount in
9 excess of the Federal limit will be transferred out on the same business day, which is
10 virtually contemporaneous with the deposit. Thus, the DNC may report a receipt of
11 \$20,000 into the Federal account and \$30,000 into the non-Federal account.

12 Each contribution by an individual that is intended to be split must be itemized on
13 Schedule A. The entry must report a receipt of \$20,000, the date of receipt, and other
14 contributor information required by the regulations. This would not be a memo entry; it
15 would be added to the totals for line 11a on the Detailed Summary Page. With this entry,
16 there must also be an abbreviated reference to a corresponding entry on memo Schedule
17 A for the receipt of \$30,000 by the particular non-Federal account.⁶ This reference would
18 say "Fed Portion. See Non-Fed Portion (Memo Sched A-Non-Fed Individual)."⁷

19 The memo Schedule A must itemize the \$30,000 donation in accordance with
20 11 CFR 104.8(e). The date of receipt will be the date that the DNC received the check.
21 With this entry, there would also need to be a notation stating: "Non-Fed Portion. See
22 Sched A for Fed Portion."

23 Under the proposal, if the DNC does not receive written donor permission for a
24 split between the Federal and non-Federal accounts, or a request for a refund of the
25 excess amount, within 60 days of its receipt of the contribution, it will transfer the
26 \$20,000 Federal portion to the non-Federal account. Such a transfer must be reported, in

⁵ Reporting of the initial contribution and receipt of the funds into the Federal and non-Federal accounts must be done regardless of whether the donor card contains a complete and clear authorization for the Federal/non-Federal split.

⁶ Use of reasonable abbreviations will be necessary because, in electronically filed reports, the length of such an entry is currently limited to 100 characters.

⁷ The Commission recognizes that the non-Federal portion will most likely be transferred to the "Non-Federal Individual" account. If the portion is transferred to a different DNC non-Federal account and reported on memo Schedule A under that account, the entry should refer to that account instead.

1 effect, as a further donation by the contributor to the non-Federal account, as follows.
2 Schedule A of the report covering the date of the transfer will contain the contributor
3 identification information, a negative contribution amount (\$20,000), and the date of the
4 transfer. The \$20,000 would be subtracted from the totals for line 11a on the Detailed
5 Summary Page. The Schedule A entry must be accompanied by a reference stating:
6 "Transfer to non-Fed Individual Acct. See Memo Sched A." An additional notation must
7 state: "See orig contrib dated x/yy/zz." A corresponding entry must be placed on memo
8 Schedule A with the contributor information, the receipt of \$20,000, and the date along
9 with a reference stating, "Transferred from Fed Acct."

10 If the contributor asks for a refund of the excess amount (which, since the date of
11 the initial deposit, is already in the non-Federal account), the DNC must disclose the
12 refund on memo Schedule B of the report covering the date of the refund, under the
13 category of "other disbursements." It will disclose the recipient's name and address and
14 the amount of the refund. No reference to other entries is necessary.

15 The DNC must also retain records in connection with these contributions.
16 Commission regulations provide that each political committee required to file any report
17 or statement with the Commission shall:

18 [m]aintain records, including bank records, with respect to the matters
19 required to be reported, including vouchers, worksheets, receipts, bills and
20 accounts, which shall provide in sufficient detail the necessary information
21 and data from which the filed reports and statements may be verified,
22 explained, clarified, and checked for accuracy and completeness.
23

24 11 CFR 104.14(b)(1). The committee must preserve such records for audit or inspection
25 by the Commission for a period of at least three years after the related report or statement
26 is filed. See 11 CFR 104.14(b)(3) and 102.9(c). Accordingly, the DNC must maintain,
27 for the required time period, a copy of the contributor check together with the particular
28 donor card sent with each check, and, if applicable (where the donor card is not
29 completed), a copy of each written follow-up request sent to the contributor and each
30 written contributor permission for the split or written contributor request for a refund.
31 Moreover, the DNC must keep accounting records, such as by computer, whereby each
32 individual contribution is readily connected to the deposit into the Federal bank account

1 and the transfer of the excess to the non-Federal account, as well as to the subsequent
2 bank transactions, such as any transfer of the Federal amount to the non-Federal account.

3 Because this opinion is not issued until shortly before the due date for the 2001
4 Year End Report, the specific requirements for cross references in the DNC's
5 contribution and donation disclosure schedules need not be implemented for any
6 contributions received prior to January 1, 2002.

7 This response constitutes an advisory opinion concerning the application of the
8 Act, or regulations prescribed by the Commission, to the specific transaction or activity
9 set forth in your request. See 2 U.S.C. §437f.

10 Sincerely,

11
12 David M. Mason
13 Chairman

14
15 Attachment (Donor Card)
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DONOR CARD

Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year:

Name of donor: _____

Contact: _____
(if donor is corporation, union or partnership)

Current address: _____

Telephone number: Home _____ Office _____

Current occupation: _____ Employer: _____

Amount contributed: \$ _____ Social Security #: _____ Date of birth _____

Contributions to the DNC are not tax-deductible for federal income tax purposes.

Individuals/Federal PACs: Your contribution will be used in connection with federal elections and is subject to the limitations and prohibitions of the Federal Election Campaign Act. In order for the DNC to deposit your check into our Federal Account, you must make your check payable to "DNC Federal Account" or designate Federal Account below.

Other contributors: Your contribution will be used in connection with state and local elections. Please make check payable to "DNC--Non-Federal Account".

An individual may contribute up to \$20,000 per calendar year to the DNC's federal account. Any portion of a contribution in excess of that amount will be allocated to a non-federal account. An individual may contribute only up to \$25,000 per calendar year to the federal accounts of all party committees, PACs and federal campaigns combined.

Please designate:

_____ My entire contribution to the DNC's Federal Account.

_____ The first \$20,000 (or other \$ _____) of my contribution to the Federal Account.

_____ My entire contribution to the DNC's Non-Federal Account.

Federal law prohibits foreign nationals, except legal permanent residents of the U.S., from contributing to the DNC. Please certify the information below by signing this card.

If an individual: I am a citizen of the United States _____ (or)

I am a legal permanent resident of the United States _____

If a corporation or partnership: _____ I certify that no persons were involved in the decision to make this corporate contribution other than U.S. citizens or legal permanent residents.

The majority of the ultimate beneficial ownership of this corporation or partnership is held by United States citizens and/or legal permanent residents of the U.S. YES _____ NO _____

If NO: I certify that this contribution is being made solely from revenues generated by U.S. operations of this corporation.

Signature _____ Name (print) _____

Title (if a corporation or partnership): _____

