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AOR 2001-17

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Dear Mr. Norton:

I am writing on behalf of DNC Services Corporation/Democratic National Committee ("DNC") to request an advisory opinion relating to the disclosure of contributions that are allocated between both the federal and non-federal accounts of the DNC.

By way of background, this opinion is being requested in accordance with Section IV.15. of a conciliation agreement entered into by the DNC and the Commission in connection with MUR 4961. This Matter involved the Commission's investigation into the DNC's practice of allocating excessive contributions between its federal and non-federal accounts. While the Commission and the DNC generally agree that the practice of allocating excessive contributions is permissible, the DNC and Commission could not agree as to the appropriate method of disclosing contributions that are allocated between federal and non-federal accounts. Therefore, the DNC is requesting this advisory opinion as to the appropriate method of disclosing the receipt of contributions that are allocated between its federal and non-federal accounts.

As a threshold matter, the DNC handles contributions that are allocated between federal and non-federal accounts in the following manner:

- 1) The DNC provides all disclaimer language necessary to comply with the requirements of 11 C.F.R. § 102.5 (whether written or oral) at the time of solicitation.
- 2) On its donor cards, the DNC asks donors to allocate, in writing, their contribution to either the federal or non-federal account. All donor cards will be required to be signed by the contributor.

- 3) To the extent that a contribution, whether on its face, or when aggregated with prior contributions, exceeds the federal limit, the DNC seeks permission to allocate the contribution between its federal and non-federal accounts if the DNC has not provided clear instructions as to how their contribution should be allocated.<sup>1</sup> Such permission may be granted directly on the donor card or by a written follow-up request to the donor.
- 4) To the extent that such permission is sought by follow-up request, the DNC notifies the donor that he or she may request a refund of the excessive portion of their contribution in lieu of reallocation to the DNC's non-federal account.
- 5) Upon receipt of a contribution for which it intends to allocate between federal and non-federal accounts, the DNC immediately transfers the excessive portion to a non-federal account. This process is ordinarily accomplished within one to two business days upon deposit of the contribution into the DNC's federal account.
- 6) In the event that the DNC does not receive written permission from the donor to allocate the contribution between its federal account within sixty days of receipt of a contribution, or does not receive a request for a refund of the contribution, the DNC transfers the portion of the contribution that was retained into its federal account to a non-federal account at the expiration of the sixty-day period.

The DNC believes that disclosing the ultimate allocation of a split contribution between the committee's federal and non-federal accounts is the most appropriate method of disclosing split contributions. Thus, if the DNC were to receive a contribution from an individual, in the amount of \$50,000, that was allocated \$20,000 to its federal account, and \$30,000 to its non-federal account, the DNC would disclose a \$20,000 contribution to its federal account and a \$30,000 contribution to its non-federal account. The DNC believes that this is the best method of disclosing such contributions, and the easiest way for the Commission and those who review public disclosure reports to understand the ultimate disposition of a contribution. Furthermore, it is our understanding that this is the normal practice of several Democratic and Republican committees that allocate contributions in such a fashion.

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<sup>1</sup> If a donor's contribution clearly indicated that it was intended to be a non-federal contribution, the DNC will deposit the contribution directly into a non-federal account.

Nevertheless, in MUR 4691, the Commission took the position that the DNC should:

...report the full amount of each check deposited into the federal account, the full amount of each transfer from the federal account to a non-federal account, the full amount of each transfer from the federal account to a non-federal account, and the receipt by a non-federal account of each transfer.

Conciliation Agreement, MUR 4691, Section IV.15.,

The DNC assumes that an example of this method would be disclosed as follows:

- 1) Contribution from John Doe, in the amount of \$50,000 would be disclosed as a receipt on Line 11(a).
- 2) A transfer, in the amount of \$30,000 to the DNC's non-federal account would be disclosed on Line 22.
- 3) The receipt of \$30,000 from the DNC's federal account would be disclosed on Schedule I, Line 1.

The DNC believes that requiring committees to disclose the full amount of the original transaction, and require readers of disclosure reports to track a series of transfers between accounts will serve to confuse both the Commission and the reader of the DNC's disclosure reports. Clearly, those who review the DNC's reports will be able to determine that the individual donor contributed an aggregate of \$50,000 to the DNC. Whether the DNC received one check or two, it is the DNC's belief that the disclosure of the ultimate allocation of the contribution would better serve the Commission and the regulated community when in determining the ultimate amount of federal and non-federal dollars contributed by a donor.

Moreover, the DNC is also concerned that the Commission's own databases will not properly reflect the correct allocation of such contributions. In that regard, it is our understanding that federal contributions that are ultimately reallocated to non-federal accounts are processed in the same manner as refunds in the Commission's database. Absent an adjustment for this method of processing, the disclosure of such contributions in the fashion that the Commission suggests, will lead to further confusion for those who use its computer database to track contributions.

Ironically, in order to comply with the Commission's recommended approach to the disclosure of split contributions, the DNC would be required to disable a coding in its

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contribution processing system that currently prohibits the DNC from processing federal contributions in excess of \$20,000 per calendar year from an individual donor.

Ultimately, the DNC believes that the Commission's goal in this matter would be better served if the DNC were permitted to file a miscellaneous document in the form of a memo schedule to the Commission that describes those contributions that were split during a particular reporting period, and provide a listing of transfers of the excessive portions of such contributions. Of course, if the Commission determines to move forward with an alternative method of disclosing split contributions, the DNC wishes to work closely with the Commission to ensure that any method developed by the Commission with respect to such contributions serves the needs of the Commission, the disclosing committees, as well as those who review reports and databases at the Commission.

If you have any questions or need additional information in connection with this Advisory Opinion Request, please contact me at (202) 479-1111. Thank you for your time and attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Neil Reiff', written in a cursive style.

Neil Reiff  
Counsel to DNC Services Corporation/  
Democratic National Committee