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December 12, 2001

The Honorable Danny L. McDonald  
Chairman  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: Advisory Opinion Request 2001-17

Dear Chairman McDonald:

On behalf of our client, the DNC Services Corp./Democratic National Committee ("DNC"), we would like to provide the following comments regarding the Draft Advisory Opinion that our firm received from the Commission this week in the above referenced Advisory Opinion Request.

Although the DNC generally supports the draft opinion, it has several serious concerns regarding the draft opinion's approach to the handling and reporting of split contributions.

Deposit and Transfer of a Split Contribution

Although the DNC supports the Draft Opinion's approach to regulating the solicitation of split contributions, as well as follow-up requirements with a particular donor, the DNC is baffled as to the Commission's approach regarding the requirement that the excessive portion of a contribution be either split on separate deposit slips or require an "instant bank transfer of the excess to a non-Federal account." Draft Opinion at page 7, lines 8-12, footnote 9. This approach is inconsistent with Commission regulations and the Commission's approach in MUR 4961, as well as impractical and burdensome for any committee to implement as a matter of procedure.

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It has been the Commission's position that party committees are required to transfer the excessive portion of a contribution within sixty days of receipt. See MUR 4691. The Commission policy was clearly derived from the Commission's regulation, 11 C.F.R. § 103.3(b)(3), which allows a committee to retain an excessive contribution pending redesignation or reattribution of such contribution for sixty days as long as the contribution is not used for any disbursements by the committee. See 11 C.F.R. § 103.3(b)(4). Notwithstanding this regulation and policy, the DNC represented in its Advisory Opinion Request that it is able to transfer the excessive portion of a split contribution within one or two days of the deposit of the contribution. By making the transfer of funds within this short period of time, combined with the large volume of financial activity that a national party committee undertakes, it is virtually impossible for the DNC to have its cash-on-hand dip below the non-federal portion of split contributions at any given time before the requisite transfer is made. Nevertheless, the Draft Opinion attempts to create an unprecedented, draconian approach to the handling of split contributions by requiring either a "split deposit" (which the DNC's bank does not permit nor does the DNC wish to utilize) or the virtually instant transfer of the excessive portion of the contribution (presumably by wire transfer).

The DNC believes that proper accounting procedures should require the DNC to match a deposit to the actual amount of checks, carefully check the accuracy of its information, write a separate check to its non-federal account, and deposit the non-federal check directly into its non-federal account. This process permits the DNC to properly track its financial activity and ensure the accuracy of its deposits and transfers. Ultimately, the approach recommended by the Commission will make it difficult for the DNC to create a proper audit trail for the deposit and transfer of contributions, and will make it more difficult for the DNC to reconcile its financial activities. Thus, the requirement that split contributions be separated instantly upon deposit is unduly burdensome, unnecessary and inconsistent with Commission regulations.

#### Reporting of Split Contributions

Generally, the DNC supports the Commission's approach to the disclosure of split contributions. The DNC agrees that the federal and non-federal portion of a split contribution should be separately disclosed on the appropriate federal and non-federal schedules. The DNC would further agree to provide a notation, in one form or another, that a particular contribution had been split between federal and non-federal accounts. However certain portions of the approach suggested by the Commission appear to be derived from the assumption that the DNC continues to file its reports with the Commission on paper. As the Commission is well aware, the DNC is now required to file its reports electronically. In that regard, there are certain portions of the Commission's approach that may be impossible for the DNC to comply with.

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Specifically:

- 1) The Draft Opinion, at page 9, lines 13-14 suggest that the DNC provide a notation with the split contribution that it is "Combined on check with \$30,000 non-Fed donation on memo Schd A, Schd I, p. xx, line x." Since the DNC merely submits electronic data to the Commission and no longer files paper schedules, the requirement that it provide a page and line number for a particular transaction is impractical. Thus, since the DNC no longer utilizes Commission paper schedules to prepare its FEC reports, it has no way of knowing what page or line number that any particular transaction may appear on. It should be further noted that since the required notation discussed above exceeds 38 characters, the DNC will assume that the Commission intends to require the DNC to provide this cross-reference as a "Memo Text" entry (which is limited to 100 characters), rather than as a "Transaction Description" (which is limited to 38 characters). By doing so, the notation will not appear with the particular transaction, but rather, as a notation at the end of the report that cross-references the Transaction ID of the original contribution.
- 2) Similarly, the requirement on page 9, lines 26 and 27, that a refunded contribution cross-reference a specific page and line number is impractical to implement in an electronic filing.
- 3) The DNC is also concerned about the Draft Opinion's requirement that split contributions be listed together on the report. See page 10, lines 1-5. Of course, providing a header on the first page of such transactions is impossible since no paper report is filed. Similarly, the requirement that such contributions be listed together is a cause for concern. Currently, the DNC's computer program is designed to sort data and present contributions on its reports in two sorts. First, contributions are sorted by last, then first, name. Then contributions from an individual are sorted by date. The DNC has provided information in this fashion to the Commission consistently for several years. This method is also consistent with the approach of the FECFile software provided by the Commission for committees who file electronically (The DNC itself does not utilize FECFile to prepare and file its reports).<sup>1</sup> In order to comply with the Commission's approach, the DNC would have to reprogram its computers in order to separately identify and disclose split contributions. Notwithstanding any programming and

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<sup>1</sup> Presumably, similarly situated committees that utilize FECFile Version 4.0 to electronically file their reports, would be unable to comply with the sorting requirement.

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additional administrative burdens this may cause, the DNC believes that this approach will further confuse those persons who are accustomed to reviewing DNC reports that have been traditionally presented in the alphabetical format discussed above since split contributions would be required to be extracted from the traditional format and presented in a different portion of the report.

Ultimately, the DNC believes that the best way to provide information regarding split checks for the public record would be to provide the Commission with a discrete spreadsheet, that would be filed on paper as a Miscellaneous Report, that would note which contributions have been split for that particular report. In the alternative, the DNC would be willing to provide the notation requested by the Commission, on Page 9 of its Draft Opinion as a "Memo Text" entry, so long as the page and line number requirements are omitted.

The DNC urges the Commission to modify the Office of General Counsel's approach to disclosing split contributions in accordance with the its comments. If the Commission is unwilling to adopt these modifications, the DNC should be provided with another opportunity to comment on any modified proposal put forth by the Commissioners during its meeting of December 13<sup>th</sup>. Should the Commission not allow the DNC to provide additional input regarding these reporting procedures, it would defeat the entire purpose of this Advisory Opinion Request, which was to allow the DNC, other affected committees, as well as the appropriate Commission staff, to provide input as to the appropriate method of reporting split contributions. The DNC is committed to working with the Commission in order to ensure the most effective and least burdensome method of informing the general public as to which contributions received by the DNC are split contributions and looks forward to working with the Commission to devise such reporting procedures.

If you have any further questions or concerns, do not hesitate to contact me at (202) 479-1111.

Sincerely yours,



Neil Reiff  
Counsel to DNC Services Corp./  
Democratic National Committee