

# Political Law Group

## MEMO

**TO: Interested Parties**

**FROM: General Counsel to the Democratic National Committee**

**RE: Campaign Finance and Party Rules Applicable to Elections for National Party Office**

---

### Democratic Party Rules

The Chairperson and officers of the Democratic National Committee ("DNC") are elected by the members of the DNC according to the Charter and Bylaws of the Democratic Party of the United States.<sup>1</sup> The approximately 447 DNC members consist of state-elected members, state party chairs and vice chairs, representatives of Democratic elected officials and affiliated organizations, and at-large members. The Charter requires that the Chairperson and officers be elected at a meeting held prior to March 1st, the year after a presidential election.<sup>2</sup> In accordance with past practices, the Rules and Bylaws Committee of the DNC will meet in early December to adopt rules governing the officers' elections and will make information about the process available to the public at that time. Additional questions regarding the procedures of the election or to request a roster of DNC members can be directed to [secretarysoffice@dnc.org](mailto:secretarysoffice@dnc.org).

### What Funds Can Be Used in Your Campaign?

While the Federal Election Commission ("FEC") has not given explicit guidance regarding all of the potential financing options for party officer elections, there are several important campaign finance and tax issues to keep in mind if candidates for these offices plan on raising or spending any funds to advance their campaigns.

#### 1. Personal Funds

There is no limit on the amount of personal funds one may spend towards election for a national political party office. An election for party office is not an election for federal office

---

<sup>1</sup> Bylaws of the Democratic Party of the United States, Article Two, Sec.1(f).

<sup>2</sup> Charter of the Democratic Party of the United States, Article Five, Sec. 2(a).

under the Federal Election Campaign Act of 1971, as amended ("the Act"), and therefore spending personal funds will not trigger any registration or reporting requirements with the FEC.

## 2. Federal Campaign Funds

Federal candidates and officeholders may generally use funds from their existing federal campaign committees to pay for expenses related to a run for party office. Federal candidates have wide discretion over how to use principal campaign committee funds; so long as funds are not diverted to personal use, they may be spent towards any "lawful purpose."<sup>3</sup> The FEC has held that using campaign funds to seek office in a political party is not a prohibited personal use.<sup>4</sup> However, any campaign funds that are used for an election for party office should not then be used for any specific activity that would qualify as personal use.<sup>5</sup> Any expenditures made from a principal campaign committee will need to be reported to the FEC on the committee's normally scheduled reports.

## 3. Creating a New Entity to Finance a Campaign for Party Office

A candidate for a DNC office may choose to form a new tax-exempt political organization under section 527 of the Internal Revenue Code to solicit and spend funds for his or her election. Because an election for a national party office is not an election for federal office, the 527 would not need to register and report with the FEC and any contributions received would not be subject to limitations on amount or the prohibitions on taking corporate or union treasury funds. Federal law does not put further special restrictions on the use of funds from foreign nationals, federal contractors, national banks and federally chartered corporations, and if candidates have questions about the use of these funds, they should seek additional advice from counsel. While a section 527 organization will not need to register

---

<sup>3</sup> 52 U.S.C. § 30114(a).

<sup>4</sup> FEC Adv. Op. 2007-29 (Jackson, Jr.) (allowing campaign funds to be contributed to a committee for election to a local political party position); FEC Adv. Op. 1993-10 (Colorado) (permitting a former federal candidate to use excess campaign funds to support his candidacy for a national political party office). Note that the House and Senate Ethics Committees also allow officeholders wide discretion over the use of campaign funds, so long as funds are used for bona fide political purposes. In addition, no House or Senate resources may be used for political campaign purposes, including a campaign for party office.

<sup>5</sup> See 52 U.S.C. § 30114(b)(2) (listing examples of impermissible personal use of campaign funds). In general, "personal use" refers to any amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of federal office. *Id.*

and report with the FEC, if it anticipates raising more than \$25,000 in a calendar year, it will need to register and report to the Internal Revenue Service. A section 527 organization may be formed by filing a Form 8871, Political Organization Notice of Section 527 Status, with the Internal Revenue Service within 24 hours of incorporating the organization.<sup>6</sup> The committee would also be required to file Form 8872 with the IRS on a monthly or quarterly basis if it has or expects to have contributions or expenditures exceeding \$50,000 for the calendar year.<sup>7</sup> In addition, the committee would be required to file a Form 990 information return with the IRS annually until its dissolution.<sup>8</sup>

#### 4 Use of Other Entities to Finance a Campaign for Party Office

Candidates for party office who may want to use resources from sources, entities or organizations other than personal funds, funds donated from a federal principal campaign committee, and fresh funds raised for this election into a section 527 tax-exempt organization as discussed above should seek additional guidance from counsel as different restrictions could apply.

### **Fundraising Restrictions Applicable to Federal Candidates and Officeholders**

A current federal candidate or federal officeholder establishing a section 527 organization to solicit and spend funds for a campaign for national party office is subject to additional restrictions under the Bipartisan Campaign Reform Act ("BCRA").

Under BCRA and FEC regulations, federal candidates or officeholders may not solicit, receive, direct, transfer, spend, or disburse funds in connection with an election other than an election for federal office unless the funds comply with the Act's contribution limits and source restrictions.<sup>9</sup> Accordingly, while there is some ambiguity regarding party officer elections, current Federal candidates and officeholders should only raise funds in support of

---

<sup>6</sup> See Internal Revenue Service, Instructions for Form 8871, *available at* <https://www.irs.gov/pub/irs-pdf/i8871.pdf>.

<sup>7</sup> See Internal Revenue Service, Instructions for Form 8872, *available at* <https://www.irs.gov/pub/irs-pdf/i8872.pdf>.

<sup>8</sup> If the committee has taxable income in any fiscal year that exceeds \$100, it must also file Form 1120-POL with the IRS to report this income. See Internal Revenue Service, Form 1120-POL, *available at* <https://www.irs.gov/pub/irs-pdf/f1120pol.pdf>.

<sup>9</sup> 52 U.S.C. § 30125(e)(1)(B).

their party officer campaigns subject to the same source restrictions and contributions limits that apply to their federal campaigns.<sup>10</sup>

*Updated: 11/16*

---

<sup>10</sup> 52 U.S.C. § 30125(e)(1)(B).