



# ENSURING DPCA'S COMPLIANCE WITH FEC RULES AND RECOMMEND PRACTICES FOR COUNTRY COMMITTEES

*TOM SCHMID, INTERNATIONAL COUNSEL  
DEMOCRATIC PARTY COMMITTEE ABROAD  
COUNSEL@DEMOCRATSABROAD.ORG*

# Contents

- ▶ Part I: Ensuring DPCA's Compliance with FEC Rules
  - ▶ Overview of compliance & organizational risks
  - ▶ Brief overview of the FEC
  - ▶ Key FEC rules
- ▶ Part II: Recommended Practices for Country Committees
  - ▶ Key recommendations
  - ▶ Relationship between DPCA and country committees
- ▶ Part III: Case study (conduits)
- ▶ Part IV: Q&A

# Disclaimer

The issues, conclusions, and recommendations presented here are based on my personal interpretation of FEC law, regulations and other guidance. The views expressed herein may not necessarily reflect the official or final position of the Democratic Party Committee Abroad (DPCA).



# PART I

ENSURING DPCA'S COMPLIANCE WITH FEC RULES

# Overview of Compliance and Organizational Risk

- ▶ Compliance is:
  - ▶ the process of identifying and managing organizational risk;
  - ▶ The ability of an organization to operate according to a set of rules
- ▶ Internal vs. external compliance
- ▶ Five key functions of compliance:
  - ▶ Identification
  - ▶ Prevention
  - ▶ Detection
  - ▶ Resolution
  - ▶ Advisory role

# What risks to DPCA?

- ▶ Failure to manage contribution limits properly can result in tax liability.
- ▶ Failure to file with the FEC or properly disclose can result in fines.
- ▶ Intentional violation of FEC rules can result in up to 5 years' imprisonment.
- ▶ The DNC can dissolve DPCA if the risk becomes too great

# Overview of the FEC

- ▶ Federal Election Campaign Act of 1974
- ▶ FEC opened its doors in 1975 as an independent commission
- ▶ Regulates contributions and expenditures made for the purpose of influencing any election for Federal office.
- ▶ Has jurisdiction over federal elections: House, Senate, Presidency

# DPCA status: not a state party

- ▶ “Democrats Abroad cannot be granted the status of a State party committee. Rather, . . . Democrats Abroad will be deemed a subordinate of the national committee.” AO 1976-112 (April 1, 1977).
- ▶ DPCA is a **subordinate committee** of the DNC and is subject to the DNC’s contribution limits



# What is DPCA authorized to do?

**Yes:** influence federal elections through paid political advertising  
**(independent expenditures)**

**Yes:** spend money on GOTV, membership growth and operational expenses

**Conditionally:** we can only engage in **joint fundraising** if we enter into a written agreement and follow other strict rules

**Probably Not:** engage in **party coordinated communications** or **party coordinated expenditures** (including in-kind donations to campaigns)

# FEC Rules

- ▶ Contributions
- ▶ Expenditures
- ▶ Prohibitions
- ▶ Volunteer Activity Exemption

# FEC Rules: Contributions

- ▶ A contribution is defined as **“anything of value” for the purpose of influencing the nomination or election of a federal candidate**
  - ▶ Monetary donations
  - ▶ In-kind contributions
  - ▶ Coordinated communications
- ▶ Contributions are subject to limits
  - ▶ For example, the individual contribution limit to candidate committees is \$2,700 per election
  - ▶ Individual limit to national party committees is \$33,900 per year

# FEC Rules: Contributions



CONTRIBUTION LIMITS FOR 2017-2018 FEDERAL ELECTIONS					
DONORS	RECIPIENTS				
	Candidate Committee	PAC <sup>1</sup> (SSF and Nonconnected)	State/District/ Local Party Committee	National Party Committee	Additional National Party Committee Accounts <sup>2</sup>
Individual	\$2,700* per election	\$5,000 per year	\$10,000 per year (combined)	\$33,900* per year	\$101,700* per account, per year
Candidate Committee	\$2,000 per election	\$5,000 per year	Unlimited Transfers	Unlimited Transfers	
PAC- Multicandidate	\$5,000 per election	\$5,000 per year	\$5,000 per year (combined)	\$15,000 per year	\$45,000 per account, per year
PAC- Nonmulticandidate	\$2,700* per election	\$5,000 per year	\$10,000 per year (combined)	\$33,900* per year	\$101,700* per account, per year
State/District/Local Party Committee	\$5,000 per election (combined)	\$5,000 per year (combined)	Unlimited Transfers		
National Party Committee	\$5,000 per election <sup>3</sup>	\$5,000 per year			

# FEC Rules: Expenditures

- ▶ An expenditure is defined as the purchase of or payment for **“anything of value” for the purpose of influencing the nomination or election of a federal candidate.**
- ▶ The law excludes 10 categories, including “nonpartisan activity designed to encourage individuals to register to vote”

# FEC Rules: Prohibitions

- ▶ Prohibited sources of contributions
  - ▶ Corporations and unions
  - ▶ Federal government contractors
  - ▶ Foreign nationals (excludes permanent residents but includes foreign governments, foreign political parties, foreign corporations, associations and partnerships)
  - ▶ Contributions in the name of another (conduits)
- ▶ Prohibited from contributing to federal, state and local elections
  - ▶ Foreign nationals
  - ▶ National banks
  - ▶ Federally chartered corporations

# FEC Rules: Volunteer Activity Exemption

- ▶ Two kinds of exemptions: unlimited and limited
- ▶ Limitation: dollar amount



# FEC Rules: Unlimited Exemptions

- ▶ **PERSONAL SERVICES:** no compensation from anyone else
  - ❖ **FOREIGN NATIONALS:** may volunteer but not in any decision-making capacity
- ▶ **USE OF HOME:** use for a political committee is not an in-kind contribution
- ▶ **CHURCH/COMMUNITY ROOM:** not an in-kind contribution if used on a regular basis by members of the community without regard to political affiliation
- ▶ **LIVING EXPENSES:** volunteers may pay an unlimited amount of money on their own living expenses while engaged in the work of the committee



# Internet Activity Exemption

- ▶ **INTERNET ACTIVITY:** includes sending emails, posting blogs, creating and maintaining websites, domain names, embedding hyperlinks
- ▶ Value of personal services and use of equipment is not reportable as a contribution or an expenditure (i.e., not regulated as long as they are uncompensated services)
- ▶ Unlimited exemption
- ▶ Applies to individuals and groups of individuals that work in coordination with campaign and political committees

# Internet Activity Exemption

- ▶ **NOTE:** paid **public communications** are not included in the internet activity exemption. 11 CFR Sec. 100.94.
- ▶ Public communications include:
  - ▶ Any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public
  - ▶ **General public political advertising:** the placement of advertising on another person's website for a fee includes all potential forms of advertising, such as banner advertisements, streaming video, popup advertisements, and directed search results.

# Internet Activity Risks

Paid internet advertisements  
+ purpose to influence federal election

**Internet activity regulated by the FEC**

# Internet Activity Risks

- ▶ Solicitation: **does not include mere statements of support [for a candidate]** . . . , but it does mean to ask, request or recommend either explicitly or implicitly, orally, or in writing that another person contribute, donate or transfer funds or otherwise provide anything of value.
- ▶ Solicitations must inform potential contributors that their contributions will be used in connection with federal elections or that they are subject to the limits and prohibitions of the FECA.

# FEC Rules: Limited Exemptions

- ▶ **FOOD, BEVERAGE, INVITATIONS:** limited to \$2,000 per year for a party committee; limit applies to all committees related to the same party
- ▶ **F/B VENDOR DISCOUNTS:** vendor may offer up to a \$2,000 discount for food and beverage per political party per calendar year, provided that the amount paid is greater than or equal to the vendor's cost
- ▶ **INDIVIDUAL TRAVEL:** up to \$2,000 for travel per party committee within the calendar year; excess is an in-kind contribution
- ▶ **FREE LEGAL AND ACCOUNTING SERVICES:** (1) purpose is compliance, not politics; (2) entity must regularly employ persons who provide these services; (3) entity must not hire additional staff. This limit applies only to entities that hire professionals and staff to provide these services.

# Part I: Conclusion

- ▶ To influence elections, DPCA can spend money on independent expenditures
- ▶ Otherwise, DPCA can spend its money on GOTV, growing membership and operational expenses
- ▶ Our volunteers can provide uncompensated personal services to DPCA without the need to report (including foreign nationals in non-decision-making roles)
- ▶ Our volunteers can freely engage in uncompensated internet activities that promote a federal candidate, but beware of soliciting funds (merely including links to candidates' donation pages is OK)



# Part II

## RECOMMENDED PRACTICES FOR COUNTRY COMMITTEES



# Key Recommendations

- ▶ All country committees should comply with the fundamental contribution rules applicable to political committees (regardless of our assertion that CCs are “local clubs”)
- ▶ Country committees should not under any circumstances spend money on political advertisements and/or electioneering (any interest in doing so should be raised with the DPCA Excom)



# Relationship between country committees and DPCA

- ▶ **CC status:** country committees are “local clubs”
- ▶ **Previous guidance:** country committees may accept donations, for example, of \$1 million, provided that it is legal in the host country (in other words, no contribution limits for country committees, implying that the FEC has no jurisdiction)
- ▶ **Question:** if country committees aren't subject to FEC jurisdiction, why worry about compliance?

# Political Committees

- ▶ “any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year”.

# FEC Registration Thresholds

- ▶ State and national organizations
  - ▶ Spends more than \$1,000 in contributions and other expenditures; or
  - ▶ Raises more than \$1,000 in contributions
- ▶ Local organizations
  - ▶ Raises more than \$5,000 in contributions
  - ▶ Spends more than \$5,000 on exempt party activities
  - ▶ Makes more than \$1,000 in contributions
  - ▶ Spends more than \$1,000 in other expenditures
- ▶ . . . if spent within a calendar year.

# Why don't country committees have to register?

- ▶ Non-partisan GOTV exempted (i.e., not expenditures)
- ▶ Internet activity exemption (free to use the Internet but no paid ads to influence federal elections)

# Reasons to comply with FEC rules, particularly with respect to money from foreign nationals

1. **Optics** (Republicans would love to call the Democratic Party corrupt and use “money from foreign nationals” as a talking point against us)

2. What if a CC is **forced involuntarily** to file with the FEC? The CC would have comingled funds from legal donors with those of illegal donors

3. What if the FEC or a court rules that CCs operate under the **direction and control** of DPCA (contrary to our argument) and are, thus, deemed to be parts of DPCA? (i.e., our “local club” argument fails and a contribution to a CC must be reported as contribution to DPCA)

-Recall that DPCA is a subordinate committee of the DNC

# Other country committee compliance recommendations

- ▶ **Jointly held funds:** Contributions must come from funds in the sole possession of an American citizen or permanent resident (funds jointly held with a foreign-national spouse are problematic)
- ▶ **Donor information:** Name, address, occupation of donors who contribute in excess of \$200 within a calendar year
- ▶ \$100 limit on cash contributions
- ▶ \$50 limit on anonymous contributions
- ▶ Contributions must be deposited within 10 days of receipt, or they must be refunded

# PART III

## CASE STUDY



# The 1996 Fundraising Scandals

- ▶ **Parties:** at least 23 respondents including the DNC and the Clinton-Gore campaign
- ▶ **Problem:** acceptance of contributions from prohibited sources
  - ▶ Foreign nationals (including through conduits)
  - ▶ Corporations
- ▶ **Penalties:** \$719,500 in fines plus disgorgement of illegal contributions



# Summary of the Facts

- ▶ DNC goal to raise \$7 million from the Asian-American community
- ▶ Gore to speak at a Buddhist temple (International Buddhist Progress Society, Inc., a California non-profit corporation)
- ▶ DNC required a \$100,000 fundraising minimum
- ▶ Cost was \$2,500 per person
- ▶ Temple reimbursed members for donations (\$120,000)

# FEC Violations

- ▶ Corporate contributions. 2 U.S.C. Sec. 441 (b) (former classification).
- ▶ **Facilitation:** Using corporate resources or facilities to engage in fundraising activities in connection with a federal election. 11 CFR Sec. 114(.2(f)(1)
- ▶ Contributions in the name of another. 2 U.S.C. Sec. 441 (f)

# Conduits

- ▶ Ying Chiu Tien (permanent resident) invited two foreign nationals to attend
- ▶ Tien paid \$7,500 to the DNC by check for her and her guests
- ▶ “Tien knew that her guests were foreign nations, that she wrote a check to the DNC covering her contribution and theirs, and that they then reimbursed her for their respective shares of the contribution. Thus, Tien had the requisite understanding of the facts to have committed a ‘knowing’ violation of the Act.” General Counsel’s Report, MUR 4530 at 14 (June 9, 1999).

# Risks to DPCA and Country Committees

- ▶ Serious violations pose an existential threat to DPCA
- ▶ DNC might pull the plug
- ▶ An investigation could bankrupt us
  - ▶ Investigation involved nearly 1 million documents
  - ▶ Attorney time and costs would be tremendous whether we win or lose
- ▶ Need to run a tight ship and actively comply with the rules



# PART IV

## QUESTIONS & ANSWERS