

Political Law Compliance and Investigations Update

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Presidential Election Alert: Campaign Finance Implications for Harris for President

On July 21, 2024, President Joseph Biden announced that he was ending his bid for reelection and instead endorsing Vice President Kamala Harris for president. A presumptive nominee withdrawing so close to the party convention is unprecedented. While this raises numerous legal and procedural questions, the following focuses on those questions facing a donor who wants to contribute to Harris's campaign.

Biden for President, which was Biden's presidential campaign committee, amended its filing with the Federal Election Commission on the same day as Biden's announcement, renaming itself "Harris for President." As a result, that same campaign committee is now Harris's campaign committee. Although this may help Harris use the funds in Biden's campaign accounts for her race, it also requires that donors aggregate for limit purposes contributions they make to Harris's campaign with those made to Biden's campaign. An individual donor may contribute up to \$3,300 for the primary and up to \$3,300 for the general election, while a multicandidate political action committee (PAC) may give up to \$5,000 for each election. When giving to Harris for President, an individual or PAC will have to count the amount already given to Biden for President to ensure the donor does not exceed the foregoing limit. For example, an individual who already made the maximum \$6,600 contribution (\$3,300 for each election) to Biden for President may not contribute to Harris for President.

There is also a question of timing that affects giving options. One may contribute to the primary only up to the date of the primary election, and after that, a contribution to the primary is allowed only to retire net outstanding debt. For presidential elections, the primary election is deemed to occur when the national party formally names its presidential and vice presidential nominees and the candidates accept their nominations. Both typically occur during the Democratic National Convention, where the party nominates its candidate through a delegate roll call and the candidate accepts during a speech. However, there are reports that at least the delegate roll call will occur virtually and before the convention, possibly by August 7, 2024. As a result, donors seeking to contribute to Harris's primary election should monitor developments to determine when the primary election will be deemed to occur based on the standard above.

Finally, we are still waiting to see whom Harris will pick as her vice presidential nominee. If Harris selects a state or local official who would be covered under the federal pay-to-play rules (*e.g.*, a governor), contributions to and fundraising for the campaign will be subject to the prohibitions and restrictions under those rules, which include:

- SEC Rule 206(4)-5 for investment advisers.
- CFTC Rule 23.451 for swap dealers.
- MSRB Rule G-37 for broker-dealers that underwrite municipal securities and municipal advisors.

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- FINRA Rule 2030 for third-party and affiliated placement agents.
- SEC Rule 15Fh-6 for securities-based swap dealers that engage in a securities-based swap with a state or local governmental counterparty.

Given the widespread speculation that Harris may select a sitting governor as her running mate and the unique circumstances

of this nomination process, even before the vice presidential nominee pick is formally announced, firms subject to a federal pay-to-play rule should consider whether the circumstances of any requested contribution could be interpreted as an attempt to do indirectly what could not be done directly under the rule.

Please contact us with any questions.

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