

AGENDA DOCUMENT NO. 11-40



FEDERAL ELECTION COMMISSION
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MEMORANDUM

AGENDA ITEM

To: The Commission

Through: Alec Palmer *AP*
Acting Staff Director

For Meeting of 7-21-11

From: Patricia Carmona *PC*
Chief Compliance Officer

Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division

Martin Favin *MF*
Audit Manager

By: Terrence O'Brien *TOB*
Lead Auditor

Subject: Proposed Final Audit Report on the Georgia Federal Elections Committee
(A07-14)

Attached for your approval is the subject report. The report has been written in accordance with Directive 70.

This report is being circulated on a 72 hour no objection basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session. If you have any questions, please contact Terry O'Brien or Marty Favin at 694-1200.

Attachment:
Proposed Final Audit Report on the Georgia Federal Elections Committee



Proposed Final Audit Report on the Georgia Federal Elections Committee

(January 1, 2005 - December 31, 2006)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee

The Georgia Federal Elections Committee is a state party committee of the Georgia Democratic Party headquartered in Atlanta, Georgia. For more information, see Committee Organization on p. 2.

Financial Activity² (p. 3)

• Receipts	
○ Contributions from Individuals	\$ 831,477
○ Contributions from Other Political Committees	349,991
○ Transfers from Affiliated Party Committees	776,863
○ Offsets to Operating Expenditures	13,928
○ Transfers from Non-federal Accounts	564,956
○ Other Federal Receipts	1,800
Total Receipts	\$ 2,539,015
• Disbursements	
○ Operating Expenditures	\$ 1,192,694
○ Contributions to Federal Candidates	12,323
○ Coordinated Party Expenditures	142,208
○ Contribution Refunds	5,800
○ Federal Election Activity	701,728
○ Transfers to Non-federal Accounts	460,783
○ Other Federal Disbursements	2,047
Total Disbursements	\$ 2,517,583

Commission Findings (p. 6)

- Misstatement of Financial Activity (Finding 1)
- Recordkeeping for Salaries and Related Expenses (Finding 2)
- Disclosure of Occupation/Name of Employer (Finding 3)

Additional Issues (p. 13)

- Misstatement of Financial Activity – Payroll (Issue 1)
- Non-federal Funding for Possible Federal Activity (Issue 2)

¹ 2 U.S.C. §438(b).

² These figures have been revised to exclude the Payroll Account; see Additional Issue 1.

Proposed Final Audit Report on the Georgia Federal Elections Committee

(January 1, 2005 - December 31, 2006)



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Part I

Background

Authority for Audit

This report is based on an audit of the Georgia Federal Elections Committee (GFEC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and, as a result, this audit examined:

1. The disclosure of individual contributors' occupation and name of employer.
2. The disclosure of disbursements, debts and obligations.
3. The disclosure of expenses allocated between federal and non-federal accounts.
4. The consistency between reported figures and bank records.
5. The completeness of records.
6. Other committee operations necessary to the review.

Changes to the Law

On December 1, 2005, the Commission voted to amend its rules to require state, district and local party committees to pay as administrative expenses the salaries, wages and fringe benefits of employees who spend 25 percent or less of their compensated time in a month on Federal Election Activity (FEA) or activity in connection with a Federal election ("covered employees"). The Supreme Court in *Shays v. FEC* struck down the previous regulation that allowed party committees to use non-federal funds for salaries and wages for covered employees. The revised rule became effective on January 19, 2006.

Audit Hearing

GFEC requested a hearing before the Commission. The request was granted and the hearing was held on June 16, 2010. At the hearing, GFEC addressed only issues related to an account used for payroll.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	June 14, 1976
• Audit Coverage	January 1, 2005 - December 31, 2006
Headquarters	Atlanta, Georgia
Bank Information	
• Bank Depositories	One
• Bank Accounts	Six Federal, Six Non-Federal, One Levin, One Payroll
Treasurer	
• Treasurer When Audit Was Conducted	Rex Templeton, February 6, 2007 - March 20, 2011
• Treasurer During Period Covered by Audit	Jeffrey J. DiSantis, June 19, 2003 - February 6, 2007
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts) ³

Cash-on-hand @ January 1, 2005	\$ 17,342
Receipts	
○ Contributions from Individuals	831,477
○ Contributions from Other Political Committees	349,991
○ Transfers from Affiliated Party Committees	776,863
○ Offsets to Operating Expenditures	13,928
○ Transfers from Non-Federal Accounts	564,956
○ Other Federal Receipts	1,800
Total Receipts	\$ 2,539,015
Disbursements	
○ Operating Expenditures	1,192,694
○ Contributions to Federal Candidates	12,323
○ Coordinated Party Expenditures	142,208
○ Contribution Refunds	5,800
○ Federal Election Activity	701,728
○ Transfers to Non-Federal Accounts	460,783
○ Other Federal Disbursements	2,047
Total Disbursements	\$ 2,517,583
Cash-on-hand @ December 31, 2006	\$ 38,774
Levin Cash-on-hand @ January 1, 2005	\$ 6,886
Total Levin Receipts	750
Total Levin Disbursements	7,210
Levin Cash-on-hand @ December 31, 2006	\$ 426

³ These figures have been revised to exclude the Payroll Account; see Additional Issue 1.

Part III

Summaries

Commission Findings

Finding 1. Misstatement of Financial Activity

A comparison of GFEC's reported financial activity with bank records, excluding its Payroll Account (See Additional Issue 1. below), revealed a misstatement of receipts and disbursements in both 2005 and 2006, and an understatement of cash on December 31, 2006. In 2005, GFEC understated receipts by \$17,125 and disbursements by \$23,951. In 2006, GFEC understated receipts by \$3,922 and overstated disbursements by \$21,969. GFEC understated its reported cash balance on December 31, 2006, by \$20,291. In response to the Interim Audit Report, GFEC filed amended reports which corrected the misstatements noted above, excluding transactions relating to the Payroll Account. The Commission approved this finding. (For more detail, see p. 6.)

Finding 2. Recordkeeping for Salaries and Related Expenses

GFEC failed to provide supporting documentation detailing the time spent on federal activities for employees whose earnings and related payroll expenses were allocated on Schedules H4 (Disbursement for Allocated Federal/Nonfederal Activity) totaling \$231,366. In response to the Interim Audit Report, GFEC provided declarations from its employees whose salary payments were allocated on Schedules H4 that showed these payments were allocable and therefore, correctly reported. The Commission approved this finding. (For more detail, see p. 8.)

Finding 3. Disclosure of Occupation/Name of Employer

A review of contributions from individuals revealed that 71 contributions totaling \$170,474 lacked, or did not adequately disclose, the contributor's occupation and/or name of employer. Furthermore, GFEC provided no evidence that it made "best efforts" to obtain, maintain and submit the information. In response to the Interim Audit Report, GFEC filed amended reports disclosing the information it had acquired as a result of its contact with the contributors. The Commission approved this finding. (For more detail, see p. 10.)

Additional Issues

Pursuant to Commission Directive 70,⁴ the following matters are discussed in the “Additional Issues” section. (For more detail, see p. 13.)

Issue 1. Misstatement of Financial Activity – Payroll

During audit fieldwork, the Audit staff noted that GFEC maintained a separate account used to make federal, non-federal and allocated payroll disbursements (Payroll Account). GFEC did not report the non-federal activity from the Payroll Account. The Audit staff included the unreported non-federal activity in its Misstatement of Financial Activity finding in the Interim Audit Report. In response to that report, and in a subsequent hearing, GFEC counsel disagreed that the non-federal transactions related to the Payroll Account were reportable to the Commission. Counsel stated that the Payroll Account was created to accommodate GFEC’s payroll processing vendor, which would not draw funds to process payroll from multiple accounts. The Audit staff recommended that the Payroll Account be considered an allocation account and all receipts and disbursements should therefore have been reported to the Commission.

The Commission did not approve the Audit staff’s recommended finding by the required four votes.

Issue 2. Non-Federal Funding for Possible Federal Activity

During the period audited, GFEC made 68 transfers totaling \$628,254 from its non-federal account to its Payroll Account. GFEC used these transfers to fund payroll that it considered to be non-federal. Without supporting documentation to show its payroll was not related to FEA, the Audit staff considered all disbursements made from GFEC’s Payroll Account to be for federal activity, reportable on Schedules B (Itemized Disbursements). Absent any further documentation, that analysis would have required that \$478,715 be returned to the non-federal account. In response to the Interim Audit Report, GFEC provided declarations from several employees attesting that they spent little or no time working on federal activities during the months in which all, or a portion, of their payroll was paid with non-federal funds. As a result, no transfer of funds back to the non-federal account was needed.

The Commission did not approve the Audit staff’s recommended finding by the required four votes.

⁴ Available at http://www.fec.gov/directives/directive_70.pdf.

Part IV

Commission Findings

Finding 1. Misstatement of Financial Activity

Summary

A comparison of GFEC's reported financial activity with bank records, excluding its Payroll Account (See Additional Issue 1. below), revealed a misstatement of receipts and disbursements in both 2005 and 2006 and an understatement of cash on December 31, 2006. In 2005, GFEC understated receipts by \$17,125 and disbursements by \$23,951. In 2006, GFEC understated receipts by \$3,922 and overstated disbursements by \$21,969. GFEC understated its reported cash balance on December 31, 2006 by \$20,291. In response to the Interim Audit Report, GFEC filed amended reports, which corrected the misstatements noted above, excluding transactions relating to the Payroll Account. The Commission approved this finding.

Legal Standard

Contents of Reports. Each report must disclose:

- the amount of cash-on-hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedules A (Itemized Receipts) or Schedules B. 2 U.S.C. §434(b)(1), (2), (3), (4), and (5) and §434(e)(2), (3), and (4).

Facts and Analysis

A. Facts

In 2005 and 2006, GFEC did not report any wholly non-federal activity from its Payroll Account. GFEC reasoned that this account was needed only because its payroll vendor would not make withdrawals from multiple accounts. GFEC reported the activity related to federal payroll and payroll that was allocable between the federal and non-federal accounts. In the Interim Audit Report, the Audit staff included the Payroll Account in the analysis as a federal account that was fully reportable. The Commission did not approve by the required four votes the Audit staff recommendation that the Payroll Account was a federal account requiring complete disclosure. (See Additional Issue 1. below.) The analysis presented below excludes the wholly non-federal share of the Payroll Account.

The Audit staff reconciled GFEC's reported financial activity with its bank records for 2005 and 2006. Below are charts that outline the discrepancies in both years, followed by explanations of the misstatements, if known.

2005 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ January 1, 2005	\$16,116	\$17,342	\$1,226 Understated
Receipts	\$414,202	\$431,327	\$17,125 Understated
Disbursements	\$418,781	\$442,732	\$23,951 Understated
Ending Cash Balance @ December 31, 2005	\$11,537	\$5,937	\$5,600 Overstated

The \$1,226 understatement of beginning cash-on-hand was due to prior period errors.

The understatement of receipts resulted from the following:

• Unreported contributions from political committees	+	\$17,000
• Unexplained difference	+	125
Understatement of Receipts		\$17,125

The understatement of disbursements resulted from the following:

• Unreported transfers: federal accounts to non-federal accounts	+	\$34,018
• Inter-account transfers from federal accounts to Payroll Account erroneously reported	-	2,895
• Unexplained difference	-	7,172
Net Understatement of Disbursements		\$23,951

On December 31, 2005, GFEC overstated its cash balance by \$5,600 as a result of the errors described above.

2006 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ January 1, 2006	\$11,537	\$5,937	\$5,600 Overstated
Receipts	\$2,103,766	\$2,107,688	\$3,922 Understated
Disbursements	\$2,096,820	\$2,074,851	\$21,969 Overstated
Ending Cash Balance @ December 31, 2006	\$18,483	\$38,774	\$20,291 Understated

The understatement of receipts resulted from the following:

• Transfer from national party committee not reported	+	\$5,000
• Unexplained difference	-	1,078
Net Understatement of Receipts		\$3,922

The overstatement of disbursements resulted from the following:

• Reported transfers from federal account to non-federal account not traced to bank	-	\$27,550
• Unreported transfers: federal account to non-federal account	+	258
• Unexplained difference	+	5,323
Net Overstatement of Disbursements		\$21,969

On December 31, 2006, GFEC understated its cash balance by \$20,291 as a result of the errors described above.

B. Interim Audit Report & Audit Division Recommendation

In the Interim Audit Report, the Audit staff recommended that GFEC amend its 2005 and 2006 reports to correct the misstatements noted above. The amended reports were to include appropriate Schedules A and B, a memo text with each amended item stating that “the transactions are being disclosed as a result of the 2005–2006 cycle FEC audit.” Audit staff further recommended that GFEC reconcile the cash balance on its most recent report to identify any subsequent discrepancies that may impact adjustments recommended by the Audit staff.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, GFEC filed amended reports correcting the errors detailed above.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that GFEC amended its reports to materially correct the misstatements presented above.

Commission Conclusion

On March 3, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that GFEC misstated its financial activity for both 2005 and 2006 including activity in its Payroll Account. (See Additional Issue 1. below.)

The Commission approved the Audit staff’s recommendation with the exception of activity related to the Payroll Account.

Finding 2. Recordkeeping for Salaries and Related Expenses

Summary

GFEC failed to provide supporting documentation detailing the time spent on federal activities for employees whose earnings and related payroll expenses were allocated on Schedules H4 totaling \$231,366. In response to the Interim Audit Report, GFEC provided declarations from its employees whose salary payments were allocated on

Schedules H4 that showed these payments were allocable and therefore, correctly reported. The Commission approved this finding.

Legal Standard

A. Reporting Allocable Expenses. A political committee that allocates federal/non-federal expenses must report each disbursement it makes from its federal account (or separate allocation account) to pay for a shared federal/non-federal expense. Committees report these kinds of disbursements on Schedules H4. 11 CFR §104.10(b)(4).

B. Costs allocable by State party committees between Federal and Non-federal accounts (Effective prior to January 19, 2006). State party committees must pay salaries and wages from funds that comply with State law for employees who spend 25 percent or less of their time in any given month on federal election activity. 11 CFR §106.7(c)(1).

C. Costs allocable by State party committees between Federal and Non-federal accounts (Effective on January 19, 2006). State party committees must either pay salaries, wages and fringe benefits for employees who spend 25 percent or less of their time in a given month on federal election activity with funds from their federal account, or with a combination of funds from their federal and non-federal accounts. 11 CFR §106.7(c)(1), as amended January 19, 2006.

D. Recordkeeping: Salaries and Wages. Committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election. Salaries and wages for employees who spend more than 25 percent of their compensated time in a given month on federal election activity or activities in connection with a federal election must be paid only from a federal account. 11 CFR §106.7(d)(1)(ii).

Facts and Analysis

A. Facts

The Audit staff's review of payroll expenses reported on Schedules H4 revealed that GFEC failed to maintain supporting documentation detailing the time spent on federal activities for employees whose salaries and related expenses totaled \$231,366. Absent the supporting documentation, GFEC should have disclosed these salary and related expenses as non-allocable FEA on Schedules B, Line 30b, (Federal Election Activity Paid Entirely with Federal Funds).

The Audit staff discussed this matter with GFEC's representatives during the audit and requested monthly logs, timesheets and affidavits. GFEC representatives were unable to locate any of the items requested.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, GFEC representatives stated that they did not believe any of the undocumented activity from the Payroll Account was for FEA.

In the Interim Audit Report, the Audit staff recommended that GFEC provide monthly logs or time sheets attesting to the time spent by employees for the period employed by GFEC, or affidavits stating that these employees did not spend more than 25 percent of their time on FEA or activities in connection with a federal election, and amend its disclosure reports accordingly. Audit staff also recommended that GFEC report any disbursements that it could not show were allocable or solely non-federal on Schedules B, line 30b (Federal Election Activity Paid Entirely with Federal Funds), and include a memo text with each amended item stating that “the transactions are being disclosed as a result of the 2005–2006 cycle FEC audit.”

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, GFEC provided declarations from its employees attesting that during relevant months in which the employees’ payroll was funded entirely or partially by non-federal funds, they worked less than 25 percent on activities in connection with a federal election. GFEC also noted that the Commission’s regulations regarding payment of payroll for those employees who did not meet the 25 percent threshold changed in January 2006 and that GFEC correctly amended its payroll procedures to comply with these new requirements.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that GFEC provided declarations from its employees attesting that during the relevant months in which the employees’ payroll was funded by at least a portion of non-federal funds, each employee worked less than 25 percent on activities in connection with a federal election.

Commission Conclusion

On March 3, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that GFEC had not maintained adequate documentation detailing the time spent on federal activities for employees whose earnings and related payroll expenses were allocated on Schedules H4.

The Commission approved the Audit staff’s recommendation.

Finding 3. Disclosure of Occupation/Name of Employer

Summary

A review of contributions from individuals revealed that 71 contributions totaling \$170,474 lacked, or did not adequately disclose, the contributor’s occupation and/or name of employer. Furthermore, GFEC did not provide any evidence that “best efforts” were made to obtain, maintain and submit the information. In response to the Interim Audit Report, GFEC filed amended reports disclosing the information it had acquired as a result of its contact with the contributors. The Commission approved this finding.

Legal Standard

A. Itemization Required for Contributions from Individuals. A political committee other than an authorized committee must itemize any contribution from an individual if it exceeds \$200 per calendar year, either by itself or when combined with other contributions from the same contributor. 2 U.S.C. §434(b)(3)(A).

B. Required Information for Contributions from Individuals. For each itemized contribution from an individual, the committee must provide the following information:

- the contributor’s full name and address (including zip code);
- the contributor’s occupation and the name of his or her employer;
- the date of receipt (the date the committee received the contribution);
- the amount of the contribution; and
- the calendar year-to-date total of all contributions from the same individual. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A).

C. Best Efforts Ensures Compliance. When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain and submit the information required by the Act, the committee’s reports and records will be considered in compliance with the Act. 2 U.S.C. §432(h)(2)(i).

D. Definition of Best Efforts. The treasurer and the committee will be considered to have used “best efforts” if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
 - a clear request for the contributor's full name, mailing address, occupation, and name of employer; and
 - the statement that such reporting is required by federal law.
- Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee’s records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

A. Facts

A review of contributions from individuals revealed that 71 contributions totaling \$170,474 lacked, or did not adequately disclose, the contributor’s occupation and/or name of employer. This represents 23 percent of the dollar value of individual contributions itemized by GFEC. The committee disclosed most of these contributions with a notation of “information requested.”

The Audit staff asked a GFEC representative to provide documentation in support of their best efforts procedures. In response, the GFEC representative explained that the original solicitations and follow-up letters to the contributors contained a request for the

occupation and name of employer information and that any information received would be provided to the auditors for review. To date, GFEC has provided no such information.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with GFEC representatives at the exit conference and provided a list of the itemized contributions that lacked, or did not adequately disclose, the required occupation and/or name of employer information.

The Audit staff recommended that GFEC provide documentation that it exercised best efforts to obtain, maintain and submit the required contributor information, make an effort to contact those individuals for whom the required information was not in GFEC files and provide documentation of such efforts (such as copies of letters/email to the contributors and/or phone logs), and file amended reports to disclose any information in GFEC's possession as well as information obtained in response to this recommendation.

C. Committee Response to the Interim Audit Report

In response to the Interim Audit Report, GFEC filed amended reports disclosing the occupations and names of employers it had obtained in accordance with the Interim Audit Report recommendation. To document best efforts, GFEC also submitted a description of its attempts to gather information from contributors it was unable to contact. GFEC stated that it has undertaken procedural changes to its operations to ensure ongoing compliance with best efforts regulations.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that GFEC filed amended reports disclosing the occupations and names of employers it had obtained in accordance with the Interim Audit Report recommendation. GFEC's attempts to gather information from contributors and its procedural changes made to ensure ongoing compliance were also acknowledged.

Commission Conclusion

On March 3, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that GFEC had not adequately disclosed its contributors' occupations and/or names of employers.

The Commission approved the Audit staff's recommendation.

Part V

Additional Issues

Issue 1. Misstatement of Financial Activity - Payroll

Summary

During audit fieldwork, the Audit staff noted that GFEC maintained a separate account used to make federal, non-federal and allocated payroll disbursements (Payroll Account). GFEC did not report the non-federal activity from the Payroll Account. The Audit staff included the unreported non-federal activity in its Misstatement of Financial Activity finding in the Interim Audit Report. In response to that report, and in a subsequent hearing, GFEC counsel disagreed that the non-federal transactions related to the Payroll Account were reportable to the Commission. Counsel stated that the Payroll Account was created to accommodate GFEC's payroll processing vendor, which would not draw funds to process payroll from multiple accounts. The Audit staff recommended that the Payroll Account be considered an allocation account and all receipts and disbursements should therefore have been reported to the Commission.

The Commission did not approve the Audit staff's recommended finding by the required four votes.

Legal Standard

Contents of Reports. Each report must disclose:

- the amount of cash on hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedules A or Schedules B. 2 U.S.C. §434(b)(1), (2), (3), (4), and (5) and §434(e)(2), (3), and (4).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled reported activity with bank records for 2005 and 2006. During this time, GFEC used a Payroll Account for federal, non-federal and allocable payroll expenses. A comparison of GFEC's reported financial activity with bank records for its Payroll Account revealed that GFEC did not report wholly non-federal payroll expenses paid from this account in either year. In 2005, GFEC did not report receipts and disbursements of \$505,984 and \$500,014 respectively, and in 2006 GFEC did not report receipts and disbursements of \$122,391 each.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff presented this matter at the exit conference. GFEC representatives disagreed that the Payroll Account was a federal account and explained that the Payroll Account was used like an "escrow account." They stated that GFEC created this account

to accommodate its payroll processing vendor, which would not draw funds to process payroll from multiple accounts. GFEC representatives said that this account was not a federal account and its non-federal activity was not reportable to the Commission.

The Audit staff recommended that GFEC amend its reports to include the Payroll Account.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, GFEC counsel stated that GFEC did not believe that the “payroll escrow account” was a federal account and that GFEC did not intend to file amended reports to reflect the non-federal portion of the Payroll Account’s activities. Counsel stated that the account was a transmittal account for both federal and non-federal funds, rather than a federal account. Counsel believed that disclosure of the non-federal portion of this account was unnecessary and incorrect.

D. Draft Final Audit Report

In the Draft Final Audit Report the Audit staff stated that it believed the account acted as an allocation account, a federal account from which committees must report all federal and non-federal activity.

E. Audit Hearing

On June 16, 2010, GFEC counsel attended an audit hearing to discuss the Payroll Account. GFEC counsel explained that GFEC’s payroll vendor required that only one bank account could be debited in order for that company to issue payroll checks. In order for GFEC to accommodate that requirement, a transmittal account was set up solely for the purpose of collecting payroll funds in one account so that the payroll company could debit that account and issue payroll checks.

GFEC counsel emphasized that the non-federal portions of payments made to employees whose salaries were allocable were first transferred to GFEC’s federal account and properly reported to the Commission before being forwarded to the transmittal account. Further, funds used to pay non-federal employees went directly from GFEC’s non-federal account to the transmittal account. Counsel stated that this would be no different than if a check had gone from GFEC’s non-federal account directly to the employee.

Commission Conclusion

On March 3, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that GFEC was required to report all receipts and disbursements related to the Payroll Account but was not required to file any further amended reports.

The Commission did not approve the Audit staff’s recommended finding by the required four votes. The Commission adopted a motion to approve the Misstatement of Financial Activity finding excluding the activity related to the Payroll Account. The Commission agreed that GFEC was not required to file further amended reports related to the Payroll Account.

Issue 2. Non-Federal Funding for Possible Federal Activity

Summary

During the period audited, GFEC made 68 transfers totaling \$628,254 from its non-federal account to its Payroll Account. GFEC used these transfers to fund payroll that it considered to be non-federal. Without supporting documentation to show its payroll was not related to FEA, the Audit staff considered all disbursements made from GFEC's Payroll Account to be for federal activity, reportable on Schedules B. Absent any further documentation, that analysis would have required that \$478,715 be returned to the non-federal account. In response to the Interim Audit Report, GFEC provided declarations from several employees attesting that they spent little or no time working on federal activities during the months in which all or a portion of their payroll was paid with non-federal funds. As a result, no transfer of funds back to the non-federal account was needed.

The Commission did not approve the Audit staff's recommended finding by the required four votes.

Legal Standard

A. Accounts for Federal and Non-federal Activity. A party committee that finances political activity in connection with both federal and non-federal elections shall establish two accounts (federal and non-federal) and allocate shared expenses, those that simultaneously support federal and non-federal election activity, between the two accounts. Alternatively, the committee may conduct both federal and non-federal activity from one bank account, considered a federal account. 11 CFR §102.5(a)(1)(i).

B. Paying for Allocable Expenses. Commission regulations offer party committees two ways to pay for allocable shared federal/non-federal expenses.

- They may pay the entire amount of the shared expense from the federal account and transfer funds from the non-federal account to the federal account to cover the non-federal share of that expense or
- They may establish a separate, federal allocation account into which the committee deposits funds from both its federal and non-federal accounts solely for the purpose of paying the allocable expenses of shared federal/non-federal activities. 11 CFR §106.5(g)(1)(i) and (ii)(A).

C. Reporting Allocable Expenses. A political committee that allocates federal/non-federal expenses must report each disbursement it makes from its federal account (or separate allocation account) to pay for a shared federal/non-federal expense. Committees report these kinds of disbursements on Schedules H4. 11 CFR §104.10(b)(4).

D. Costs allocable by State party committees between Federal and Non-federal accounts (Effective prior to January 19, 2006). State party committees must pay salaries and wages from funds that comply with State law for employees who spend 25 percent or less of their time in any given month on federal election activity. 11 CFR §106.7(c)(1).

E. Costs allocable by State party committees between Federal and Non-federal accounts (Effective on January 19, 2006). State party committees must either pay salaries, wages and fringe benefits for employees who spend 25 percent or less of their time in a given month on federal election activity with funds from their federal account, or with a combination of funds from their federal and non-federal accounts. 11 CFR §106.7(c)(1), as amended January 19, 2006.

F. Recordkeeping: Salaries and Wages. Committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election. Salaries and wages for employees who spend more than 25 percent of their compensated time in a given month on federal election activity or activities in connection with a federal election must be paid only from a federal account. 11 CFR §106.7(d)(1)(ii).

Facts and Analysis

A. Facts

GFEC made 68 transfers totaling \$628,254 from its non-federal accounts into its Payroll Account. GFEC used these transfers to fund payroll that it considered to be non-federal. Without supporting documentation to show its payroll was not related to FEA, the Audit staff considered all disbursements made from GFEC's Payroll Account to be for federal activity, reportable on Schedules B, Line 30b of the Detailed Summary Page (Federal Election Activity Paid Entirely with Federal Funds).

An analysis of transactions other than payroll showed that GFEC transferred \$149,539 less than it could have from its non-federal account to its federal account to pay for allocable expenses. This resulted in GFEC's non-federal account potentially overfunding its Payroll Account by \$478,715 (\$628,254 - \$149,539).

During audit fieldwork, the Audit staff made several requests for GFEC to provide documentation to demonstrate its non-federal account was not financing federal activity through its payroll disbursements.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, GFEC representatives stated that they did not believe any of the unreported activity from the Payroll Account was for FEA.

In the Interim Audit Report, the Audit staff recommended that GFEC provide monthly logs or time sheets attesting to the time spent by individuals employed by GFEC, or affidavits stating that these employees did not spend more than 25 percent of their time on FEA or activities in connection with a federal election, and amend its disclosure reports accordingly. Audit staff also recommended that GFEC report any disbursements that it could show were solely non-federal as "Other Disbursements," and report any disbursements that GFEC could not show were allocable, or solely non-federal, as FEA.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, GFEC provided declarations from its employees attesting that during months in which the employees' payroll was funded entirely, or partially, by non-federal funds, they worked less than 25 percent, or no time at all, on activities in connection with a federal election.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that GFEC provided declarations from several of its employees attesting that during the relevant months, the employees worked less than 25 percent or not at all on activities in connection with a federal election.

Commission Conclusion

On March 3, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that the system for funding payroll in place during the audited period did not comply with the regulations, but that the filing of additional amended reports was unnecessary. The Audit Division Recommendation Memorandum also noted that GFEC had demonstrated that it did not fund federal activity with non-federal funds.

The Commission did not approve the Audit staff's recommended finding by the required four votes. The Commission considered a motion to modify the finding to delete the discussion of the non-federal expenses paid from the Payroll Account on the grounds that it does not have jurisdiction to impose recordkeeping and documentation requirements on employee activity that a state party committee claims is solely non-federal. That motion did not receive the required four affirmative votes.