



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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June 29, 2011

MEMORANDUM

AGENDA ITEM

To: The Commission

Through: Alec Palmer *AP*
Acting Staff Director

For Meeting of 9-1-11

From: Patricia Carmona *PC*
Chief Compliance Officer

Joseph F. Stoltz *TH For JS*
Assistant Staff Director
Audit Division

Thomas Nurthen *✓*
Audit Manager

By: Mary Moss *MM*
Lead Auditor

Subject: Proposed Final Audit Report on the United Association Political Education Committee (A09-27)

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 Thomas Nurthen or Mary Moss at 694-1200.

Attachments:

Proposed Final Audit Report on the United Association Political Education Committee



Proposed Final Audit Report on the United Association Political Education Committee

January 1, 2007 – December 31, 2008

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 (p. 2)

The United Association Political Education Committee is a separate segregated fund of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, headquartered in Annapolis, MD. For more information, see the Committee Organization chart, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 3,130,530
○ Transfers from Affiliates	313,467
○ Refunds from Federal Candidates	33,500
○ Other Receipts	<u>230,574</u>
Total Receipts	\$ 3,708,071
• Disbursements	
○ Contributions to Federal Candidates	\$ 2,103,850
○ Independent Expenditures	510,314
○ Operating Expenditures	72,655
○ Other Disbursements	<u>1,392,617</u>
Total Disbursements	\$ 4,079,436

Commission Findings (p. 3)

- Excessive Contributions to Candidates and Other Political Committees (Finding 1)
- Failure to File Notices and Properly Disclose Independent Expenditures (Finding 2)
- Failure to Properly Disclose Transfers from Affiliated Committees (Finding 3)

¹ 2 U.S.C. §438(b).

Proposed Final Audit Report on the United Association Political Education Committee

January 1, 2007 – December 31, 2008



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Part I

Background

Authority for Audit

This report is based on an audit of the United Association Political Education Committee² (UAPEC), 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 factors and as a result, this audit examined:

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

Audit Hearing

UAPEC declined the opportunity for a hearing.

² On June 10, 2010, UAPEC amended its Statement of Organization and changed its name to the United Association Political Education Committee (United Association of Journeymen and Apprentice's of the Plumbing and Pipefitting Industry of the United States and Canada). UAPEC also added its connected organization's name to its Statement of Organization in this amendment.

Part II

Overview of Committee

Committee Organization

Important Dates	UAPEC
• Date of Registration	September 23, 1976
• Audit Coverage	January 1, 2007 – December 31, 2008
Headquarters	Annapolis, MD
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Three
Treasurer	
• Treasurer When Audit Was Conducted	William P. Hite
• Treasurer During Period Covered by Audit	William P. Hite
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Volunteer staff and consultant

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2007	\$ 1,121,310
○ Contributions from Individuals	3,130,530
○ Transfers from Affiliates	313,467
○ Refunds from Federal Candidates	33,500
○ Other Receipts	230,574
Total Receipts	\$ 3,708,071
○ Contributions to Federal Candidates	2,103,850
○ Independent Expenditures	510,314
○ Operating Expenditures	72,655
○ Other Disbursements	1,392,617
Total Disbursements	\$ 4,079,436
Cash on hand @ December 31, 2008	\$ 749,945

Part III

Summaries

Commission Findings

Finding 1. Excessive Contributions to Candidates and Other Political Committees

The Audit staff identified 12 contributions made by UAPEC to 9 candidate committees and 2 other political committees that, when aggregated with contributions made by its affiliates, appeared to have exceeded the limitation by \$42,225. The excessive contributions were not eligible for redesignation. UAPEC provided evidence that two of the excessive contributions, totaling \$10,000, were timely resolved and that it received refunds totaling \$7,225 from five recipient committees. UAPEC also provided copies of letters mailed to the remaining four committees requesting refunds of \$25,000.

The Commission approved this finding. (For more detail, see p.4)

Finding 2. Failure to File Notices and Properly Disclose Independent Expenditures

UAPEC disclosed independent expenditures, totaling \$510,314, on Schedule E (Itemized Independent Expenditures). The independent expenditures were reported when paid, which in most cases was after the date of the election. UAPEC should have disclosed these independent expenditures as memo entries on Schedule E and a corresponding debt on Schedule D. Finally, UAPEC failed to timely file any corresponding 24 or 48-hour notices. UAPEC agreed with the Audit staff's conclusion and, as recommended, provided a written copy of its new procedures.

The Commission approved this finding. (For more detail, see p. 6)

Finding 3. Failure to Properly Disclose Transfers From Affiliated Committees

UAPEC incorrectly disclosed transfers from affiliated political committees totaling \$313,467, as either unitemized contributions from individuals or as contributions from other political committees. These transfers should have been reported and itemized as Transfers from Affiliated/Other Party Committees. UAPEC complied with the Audit staff's recommendation and filed amended reports properly disclosing all of the transfers.

The Commission approved this finding. (For more detail, see p. 8)

Part IV

Findings and Recommendations

Finding 1. Excessive Contributions to Candidates and Other Political Committees

Summary

The Audit staff identified 12 contributions made by UAPEC to 9 candidate committees and 2 other political committees that, when aggregated with contributions made by its affiliates, appeared to have exceeded the limitation by \$42,225. The excessive contributions were not eligible for redesignation. UAPEC provided evidence that two of the excessive contributions, totaling \$10,000, were timely resolved and that it received refunds totaling \$7,225 from five recipient committees. UAPEC also provided copies of letters mailed to the remaining four committees requesting refunds of \$25,000.

The Commission approved this finding.

Legal Standard

A. Authorized Committee Limits. No multicandidate political committee shall make contributions to an authorized committee that aggregate more than \$5,000 per election or to any other political committee in any calendar year which, in the aggregate, exceeds \$5,000. 2 U.S.C. §441a(a)(2)(A) and (C); 11 CFR §110.2(b) and (d).

B. Contribution Limitations for Affiliated Committees. For the purposes of the contribution limitations of 11 CFR §110.2, all contributions made by more than one affiliated committee, regardless if they are political committees under 11 CFR §100.5, shall be considered to be made by a single political committee. 11 CFR §110.3(a)(1).

C. Redesignation of Excessive Contributions. When an authorized candidate committee receives an excessive contribution, (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

1. The redesignation must be signed by the contributor;
2. The redesignation must be received by the committee within 60 days after the committee received the original contribution; and
3. The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

Facts and Analysis

A. Facts

The Audit staff identified contributions made by UAPEC that appeared to exceed the limitations by \$42,225. These excessive contributions consisted of 10 contributions to 9 candidate committees totaling \$32,225 and 2 contributions to other political committees totaling \$10,000. A majority of the excessive contributions were the result of UAPEC not tracking contributions made by its affiliated committees. UAPEC and its affiliates share a contribution limitation. At this time, the excessive contributions are not eligible for redesignation and UAPEC can only request a refund from the recipient committees.

At the exit conference, the Audit staff provided UAPEC representatives with a schedule of the excessive contributions. In response, UAPEC's Legal Counsel (Counsel) provided copies of letters sent to each recipient committee requesting refunds of the excessive contributions. Counsel also related that well before the audit UAPEC underwent a 100% turnover in staff. The new director instituted programs and procedures designed to monitor the contributions made by affiliates and comply more fully with the requirements of the Act.

B. Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that UAPEC provide evidence demonstrating the contributions were not excessive or continue to seek refunds and provide evidence of any refunds received.

In response to the recommendation, UAPEC demonstrated that:

- Two excessive contributions (\$10,000) were resolved in a timely manner. For one excessive contribution, UAPEC provided documentation that it received a \$5,000 refund in 2009. For the second excessive contribution, UAPEC provided copies of letters to and from the recipient committee; agreeing that the excessive portion (\$5,000) should be deposited into the committee's non-federal account. The documentation discussed above was not available during the audit fieldwork.
- It received refunds from four of the recipient committees totaling \$6,725.
- Second letters were sent to the remaining committees requesting refunds totaling \$25,500.

C. Committee Response to the Draft Final Audit report

In response to the Draft Final Audit Report, UAPEC acknowledged that it made excessive contributions. It stated, however its belief that the Draft Final Audit Report statement that the excessive contributions resulted from its failure to track contributions made by its affiliates was misleading.

UAPEC stated it had certain procedures in place, albeit not foolproof, to track contributions by affiliated committees. Through the years, UAPEC had requested its

affiliates, in writing, to advise it of contributions made to federal candidates. UAPEC explained that it called or otherwise communicated with affiliates that had PACs organized within a state where a candidate was seeking office to ascertain whether a contribution had already been made by the affiliate. UAPEC further stated it had no control over affiliates' day-to-day operations or access to their records. Therefore, identifying contributions made by affiliates was a difficult and challenging process. With respect to the remaining excessive contributions, UAPEC noted that it made written requests for refunds prior to the audit.

Finally, UAPEC provided documentation that it received an additional refund of \$500 from a candidate committee, thus reducing the remaining excessive contributions to \$25,000 (\$25,500 - \$500).

Commission Conclusion

On June 15, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that UAPEC made excessive contributions in the amount of \$42,225 and that \$25,000 of that amount remains outstanding.

The Commission approved the Audit staff's recommendation.

Finding 2. Failure to File Notices and Properly Disclose Independent Expenditures

Summary

UAPEC disclosed independent expenditures, totaling \$510,314, on Schedule E (Itemized Independent Expenditures). The independent expenditures were reported when paid, which in most cases was after the date of the election. UAPEC should have disclosed these independent expenditures as memo entries on Schedule E and a corresponding debt on Schedule D. Finally, UAPEC failed to timely file any corresponding 24 or 48-hour notices. UAPEC agreed with the Audit staff's conclusion and, as recommended, provided a written copy of its new procedures.

The Commission approved this finding.

Legal Standard

A. Definition of Independent Expenditures. The term "independent expenditure" means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in coordination with any candidate or authorized committee or agent of a candidate. 11 CFR §100.16(a).

B. Disclosure requirements – general guidelines. An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as "memo" entries on Schedule E and as a reportable debt on Schedule D. Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of

those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

C. Last-Minute Independent Expenditure Reports (24-Hour Notices). Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour notice is required for each additional \$1,000 that aggregates. The 24-hour notice must be filed on a Schedule E. The date that a communication is publicly disseminated serves as the date that the Committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

D. Last-Minute Independent Expenditure Reports (48-Hour Notices). Any independent expenditure aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. The notices must be filed with the Commission within 48-hours after the expenditure is made. 11 CFR §§104.4(f) and 104.5(g)(1).

Facts and Analysis

A. Facts

Between August 27, 2008 and December 3, 2008, UAPEC made 8 disbursements totaling \$510,314 for the purchase of materials such as mini-billboards, yard signs, posters, shirts, hats, etc. These disbursements were itemized on Schedules E, in support of Barack Obama, filed with the report covering the period in which the payments were made. A majority of the independent expenditures were related to one payment, in the amount of \$324,209, that was paid after the 2008 General election.³ UAPEC should have disclosed these independent expenditures as memo entries on Schedules E, filed with reports covering the dates when the materials were disseminated, and included a corresponding debt on Schedule D (Debts and Obligations).

Further, UAPEC did not timely file any 24 or 48-hour notices of its independent expenditures and did not maintain documentation of the dissemination date for any of the materials. However, the invoices were dated either October 31, 2008 or November 18, 2008. Therefore, it appears likely that the materials were disseminated within a notice period.

This matter was discussed with the UAPEC representatives during the exit conference. In response, Counsel stated that as a result of the audit, UAPEC's staff now understands the reporting requirements for independent expenditures, including 24 and 48-hour notices, and, the need to document dissemination dates. However, they were unsure how the dissemination date would be determined since UAPEC generally distributes materials directly to local union members or ships the materials to local unions for distribution.

³ UAPEC received a refund of \$30,710 relative to this payment.

Counsel suggested that in the future, UAPEC will change its method of recording, aggregating and filing the required notices based on the date that materials are first received at UAPEC headquarters. This date would be UAPEC's dissemination date for 24 and 48-notices.

B. Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that UAPEC implement revised procedures in order to properly disclose independent expenditures on Schedule's E and/or D and to track aggregation and dissemination for both the 24 and 48-hour notice requirements.

In response, UAPEC agreed with the Audit staff's conclusion and, as recommended, provided a written copy of its new independent expenditure tracking procedures.

C. Committee Response to the Draft Final Audit report

In response to the Draft Final Audit Report, UAPEC stated, that although it understood the 24-hour and 48-hour independent expenditure notice requirement, it did not believe that the Act or Regulations provided any guidance on when materials such as yard signs, mini-billboards, shirts, hats, etc., should be considered disseminated. Therefore, although it planned on implementing its new revised procedures, it requested a clarification concerning the precise date when the 24 and 48-hour notices should have been filed.

Commission Conclusion

On June 15, 2011, the Commission considered the Audit Division Recommendation Memorandum, in which the Audit Division recommended that the Commission adopt a finding that UAPEC was required to file 24 or 48-hour notices for independent expenditures based on the dissemination date rather than payment date, and that UAPEC failed to keep a record of the dissemination date for the materials that were the result of the independent expenditures. Finally, UAPEC may consider the date such materials are delivered to its headquarters as the dissemination date for the purpose of filing 24 or 48-hour notices.

The Commission approved the Audit staff's recommendation. The Commission will also issue a policy statement that provides guidance on when independent expenditures for materials such as yard signs, mini-billboards, shirts, hats, etc., should be considered disseminated.

Finding 3. Failure to Properly Disclose Transfers from Affiliated Committees

Summary

UAPEC incorrectly disclosed transfers from affiliated political committees totaling \$313,467, as either unitemized contributions from individuals or as contributions from other political committees. These transfers should have been reported and itemized as

Transfers from Affiliated/Other Party Committees. UAPEC complied with the Audit staff's recommendation and filed amended reports properly disclosing all of the transfers.

The Commission approved this finding.

Legal Standard

Disclosure Required for Transfers from Affiliated Committees. A political committee must disclose the total amount of transfers from affiliated committees, and the identification of each affiliated committee which makes a transfer to the reporting committee during the reporting period, together with the date and amount of each transfer. 2 U.S.C. §434(b)(2)(F) and (3)(D).

Facts and Analysis

A. Facts

UAPEC incorrectly disclosed transfers, totaling \$313,467, from affiliated political committees. Transfers from four affiliated committees, totaling \$27,867, were included in the unitemized contributions from individuals total. The remaining transfers from 21 affiliated committees, totaling \$285,600, were itemized as contributions from Other Political Committees. All of these transfers should have been reported and itemized as Transfers from Affiliated/Other Party Committees. UAPEC representatives were advised of these disclosure errors at the exit conference.

In response, UAPEC's Counsel related there had initially been some uncertainty among UAPEC staff concerning whether the affiliates (local unions) were acting as collecting agents. Counsel stated after further investigation, UAPEC staff concluded the receipts were in fact transfers from affiliates and agreed to amend the reports as recommended.

B. Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that UAPEC amend its reports to properly disclose the transfers from the affiliated committees totaling \$313,467 (\$285,600 + 27,867) on Schedule A, Line 12, Transfers from Affiliated/Other Party Committees. In response, UAPEC filed amended reports properly disclosing all of the transfers.

Commission Conclusion

On June 15, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that UAPEC failed to properly disclose transfers from affiliated committees.

The Commission approved the Audit staff's recommendation.