

AGENDA DOCUMENT NO. 12-42



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2012 MAY 11 P 3:43

May 10, 2012

**AGENDA ITEM**

For Meeting of 6-7-12

**MEMORANDUM**

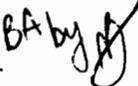
To: The Commission

Through:  Alec Palmer   
Staff Director

From: Patricia Carmona   
Chief Compliance Officer

Tom Hintermister   
Assistant Staff Director  
Audit Division

Marty Kuest   
Audit Manager

By: Bill Antosz   
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the Los Angeles  
County Democratic Central Committee (A09-07)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff's recommendations are presented below and the findings are discussed in the attached Draft Final Audit Report (DFAR). The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

**Finding 1. Misstatement of Financial Activity**

The Audit staff recommends that the Commission find that Los Angeles County Democratic Central Committee (LACDCC) misstated their financial activity for calendar years 2007 and 2008.

**Finding 2. Misstatement of Levin Financial Activity**

The Audit staff recommends that the Commission find that Los Angeles County Democratic Central Committee misstated their Levin financial activity for calendar year 2008.

LACDCC requested an audit hearing to discuss the new facts that had come to light as a result of the arrest of its former treasurer on September 2<sup>nd</sup>, 2011. Its request for a hearing was granted and was subsequently held on December 14, 2011.

In their hearing testimony, LACDCC representatives described the alleged embezzlement activity of their former treasurer and the known extent of the losses incurred by a number of her former client committees. They stated their belief that LACDCC "...lost almost \$200,000, given all of their accounts, which include state accounts and federal accounts." Next, LACDCC representatives questioned whether the committee should be held responsible for reporting unauthorized and unknown transactions that were attributed to its former Treasurer's alleged embezzlement scheme. Further, LACDCC representatives requested that the Commission revisit the issues raised in the DFAR, which, they contended, in light of the arrest of the former treasurer, was not an accurate presentation of the committee's financial activity. LACDCC representatives indicated that transactions involved with the former treasurer's malfeasance cannot and should not be characterized as activity of the committee.

Also during the audit hearing, LACDCC was requested to provide additional relevant documentation, including materials that would:

- Provide detailed documentation/information about the aforementioned \$200,000 embezzlement and how this might apply to or affect the conclusions of the DFAR;
- Demonstrate how each transaction identified in either of the misstatement findings was a result of the former treasurer's alleged unauthorized activity;
- Provide information regarding the internal controls in place at the time of the possible misappropriation; and
- Document any post-discovery steps taken by LACDCC pursuant to the Commission's "Best Practices for Committee Management".

Subsequent to the audit hearing, the Audit staff forwarded its workpapers related to the misstatements of financial activity and again requested the documentation/information discussed at the audit hearing.

On February 21, 2012, LACDCC representatives provided supplemental information. The additional information did not include any new documentation or information relating to the alleged \$200,000 embezzlement. The response did include a detailed discussion on the key misstatement components that were highlighted in the Audit report. LACDCC believes that these transactions were all the result of the former Treasurer's alleged embezzlement scheme and subsequent cover-up, and questions whether it or its former Treasurer should be held responsible for failing to report these unauthorized and unknown transactions. If the Commission proceeds to issue an Audit report that states any findings against the committee or the former Treasurer, LACDCC proposes that the following language be used to characterize the transactions at issue: "Unauthorized transfer of funds by the Committee's former treasurer".

The supplemental information also included the internal controls that were in place during the period that the alleged misappropriations took place. LACDCC explained that it had hired an experienced campaign finance firm and retained an experienced law firm to oversee the committee's activities and finances. Tasks at the campaign finance firm were divided among its employees. Payments were only permitted if they were authorized by one of three designated committee representatives who were not employed by nor had any business relationship with the campaign finance firm. LACDCC received daily financial reports, which were sent to at least two officers and its counsel. Thus, LACDCC believed that it had sufficient controls in place to avoid any misconduct.

LACDCC has implemented additional practices to ensure as much accountability as possible. New safeguards in place include:

- The Committee receives copies of its monthly bank statements and reconciliation reports from its new compliance firm.
- The Committee has authorization to contact the bank directly to verify its account activity on a regular basis.
- Committee representatives may not approve payments or reimbursements for themselves.

LACDCC concluded by requesting that the Commission re-evaluate the findings, and issue an Audit report that properly characterizes these transactions and places responsibility in the hands of those who should be held accountable.

### **Recommendations to Audit Report post Audit Hearing**

It is further recommended that the Commission approve that the Audit Hearing section of the Proposed Final Audit Report contain a brief discussion of the circumstances concerning the former Treasurer's alleged illegal activity and that she has plead guilty to five counts of mail fraud involving several other state and federal committees (but not naming LACDCC) that were also her clients. The discussion will also explain that the fact pattern for the misstated transactions presented in the DFAR are similar to those described with respect to other committees in the criminal charges filed against the former Treasurer.

It is also recommended that the Proposed Final Audit Report not adjust the amount of misstated activity identified by the Audit staff in Findings 1 and 2. Consistent with the handling of prior audits involving embezzlement, such as the Lockheed Martin Employees' Political Action Committee (A03-54), the Audit staff maintains that all receipts and disbursements of a committee's federal account are reportable; including those that may have been involved in the alleged embezzlement. Given the unknown circumstances and amounts involved in the alleged embezzlement, the Audit staff recommends that the Proposed Final Audit Report request LACDCC to amend reports for the audit period or provide information with current filings that properly discloses any unauthorized transactions when and if sufficient information is made available.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote. Should an objection be received, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Bill Antosz or Marty Kuest at 694-1200.

#### Attachments:

- Draft Final Audit Report on the Los Angeles County Democratic Central Committee
- Legal Analysis, Draft Final Audit Report for Los Angeles County Democratic Central Committee (LRA 816), August 10, 2011

cc: Office of General Counsel



# Draft Final Audit Report of the Audit Division on the Los Angeles County Democratic Central 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.<sup>1</sup> 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)

Los Angeles County Democratic Central Committee is a local party committee headquartered in Burbank, California. For more information, see the chart on the Committee Organization, p.2.

## Financial Activity (p. 2)

• <b>Receipts</b>	
○ Contributions	\$ 297,749
○ Loans Received	7,700
○ Other Receipts	10,025
○ Transfers from Non-Federal Funds	503,595
○ Transfers from Levin Funds	38,845
<b>Total Receipts</b>	<b>\$ 857,914</b>
• <b>Disbursements</b>	
○ Operating Expenditures	\$ 787,495
○ Loan Repayments	7,700
○ Other Disbursements	79,573
<b>Total Disbursements</b>	<b>\$ 874,768</b>
• <b>Levin Receipts</b>	<b>\$153,473</b>
• <b>Levin Disbursements</b>	<b>\$156,930</b>

## Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Misstatement of Levin Financial Activity (Finding 2)

---

<sup>1</sup> 2 U.S.C. §438(b).

**Draft Final Audit Report of  
the Audit Division  
on the  
Los Angeles County Democratic  
Central Committee**

---

January 1, 2007 – December 31, 2008



# Table of Contents

	<b>Page</b>
<b>Part I. Background</b>	
Authority for Audit	1
Scope of Audit	1
<b>Part II. Overview of Committee</b>	
Committee Organization	2
Overview of Financial Activity	2
<b>Part III. Summaries</b>	
Findings and Recommendations	3
<b>Part IV. Findings and Recommendations</b>	
Finding 1. Misstatement of Financial Activity	4
Finding 2. Misstatement of Levin Financial Activity	9

# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of the Los Angeles County Democratic Central Committee (LACDCC), 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 the following areas in this audit:

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

### **Scope Limitation**

The treasurer of LACDCC (the Treasurer) operates an accounting firm that handles LACDCC's accounting, recordkeeping and reporting. The firm also acts as LACDCC's credit card processor. The same credit card merchant account is used to process contributions for LACDCC and a number of other clients. The Audit staff did not have access to complete records for this account and therefore was limited in its ability to verify the proper accounting of transactions relating to the account.

## Part II

### Overview of Committee Committee Organization

<b>Important Dates</b>	LACDCC
• Date of Registration	September 6, 1994
• Audit Coverage	January 1, 2007 – December 31, 2008
<b>Headquarters</b>	Burbank, CA
<b>Bank Information</b>	
• Bank Depositories	1
• Bank Accounts	4 (1 Federal Account, 1 Levin Account and 2 Non-Federal Accounts)
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Kinde Durkee
• Treasurer During Period Covered by Audit	Kinde Durkee
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid staff and volunteer

### Overview of Financial Activity (Audited Amounts)

<b>Federal Cash-on-hand @ January 1, 2007</b>	<b>\$ 18,888</b>
○ Contributions	297,749
○ Loans Received	7,700
○ Other Receipts	10,025
○ Transfers from Non-Federal Funds	503,595
○ Transfers from Levin Funds	38,845
<b>Total Federal Receipts</b>	<b>\$ 857,914</b>
○ Operating Expenditures	787,495
○ Loan Repayments	7,700
○ Other Disbursements	79,573
<b>Total Federal Disbursements</b>	<b>\$ 874,768</b>
<b>Federal Cash-on-hand @ December 31, 2008</b>	<b>\$ 2,034</b>
<b>Levin Cash-on-Hand @ January 1, 2007</b>	<b>\$ 381</b>
<b>Total Levin Receipts</b>	<b>\$ 153,473</b>
<b>Total Levin Disbursements</b>	<b>\$ 156,930</b>
<b>Levin Cash-on-hand @ December 31, 2008</b>	<b>-\$ 3,076</b>

## **Part III**

### **Summaries**

#### **Findings and Recommendations**

##### **Finding 1. Misstatement of Financial Activity**

A comparison of LACDCC's reported federal activity with bank records revealed a misstatement of cash-on-hand, receipts and disbursements in 2007 and 2008. In 2007, LACDCC overstated beginning cash-on-hand by \$5,228, understated receipts by \$8,920, understated disbursements by \$9,311 and overstated ending cash-on-hand by \$5,619. In 2008, LACDCC understated receipts by \$34,278, disbursements by \$33,411 and ending cash-on-hand by \$25,661. In response to the Interim Audit Report, LACDCC amended its reports to correct the misstatements presented in that report.

The Audit staff also identified an apparent prohibited or excessive contribution contained in the 2008 misstated receipts. In response to the Interim Audit Report, LACDCC provided evidence showing that the receipts should not be considered contributions. (For more detail, see p. 4.)

##### **Finding 2. Misstatement of Levin Financial Activity**

A comparison of LACDCC's reported Levin activity with bank records revealed a misstatement of cash-on-hand, receipts and disbursements in 2008. Specifically, LACDCC understated receipts by \$16,328 and disbursements by \$101,669 and overstated ending cash-on-hand by \$85,341. In response to the Interim Audit Report, LACDCC amended its reports to correct the misstatement of Levin financial activity. (For more detail, see p. 9.)

## Part IV

# Findings and Recommendations

### Finding 1. Misstatement of Financial Activity

#### Summary

A comparison of LACDCC's reported federal activity with bank records revealed a misstatement of cash-on-hand, receipts and disbursements in 2007 and 2008. In 2007, LACDCC overstated beginning cash-on-hand by \$5,228, understated receipts by \$8,920, understated disbursements by \$9,311 and overstated ending cash-on-hand by \$5,619. In 2008, LACDCC understated receipts by \$34,278, disbursements by \$33,411 and ending cash-on-hand by \$25,661. In response to the Interim Audit Report, LACDCC amended its reports to correct the misstatements presented in that report.

The Audit staff also identified an apparent prohibited or excessive contribution contained in the 2008 misstated receipts. In response to the Interim Audit Report, LACDCC provided evidence showing that the receipts should not be considered contributions.

#### Legal Standard

**A. 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 the calendar year; and
- The total amount of disbursements for the reporting period and the calendar year; and;
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2) and (4).

**B. Receipt of Prohibited Contributions – General Prohibition.**

Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans) from the treasury funds of the following prohibited sources:

- Corporations (i.e. any incorporated organization, including a non-stock corporation, an incorporated membership organization or an incorporated cooperative);
- Labor Organizations; or
- National Banks. 2 U.S.C. §441b.

**C. Extension of Credit by Commercial Vendor.**

A commercial vendor, whether or not it is a corporation, may extend credit to a candidate or political committee provided that:

- The credit is extended in the vendor's ordinary course of business (see below); and
- The terms of the credit are similar to the terms the vendor observes when extending a similar amount of credit to a nonpolitical client of similar risk. 11 CFR §116.3(a) and (b).

**D. Definition of Ordinary Course of Business.**

In determining whether credit was extended in the ordinary course of business, the Commission will consider whether:

- The commercial vendor followed its established procedures and its past practice in approving the extension of credit;
- The commercial vendor received prompt, full payment if it previously extended credit to the same candidate or political committee and
- The extension of credit conformed to the usual and normal practice in the commercial vendor's industry or trade. 11 CFR §116.3(c)

**E. Party Committee Limits.**

A party committee may not receive more than \$5,000 per year from any one contributor. 2 U.S.C. §441a(a)(1)(C), (2)(C) and (f); 11 CFR §§110.1(d) and 110.9.

**F. Contributions by Limited Liability Companies (LLCs).**

A limited liability company is a business entity that is recognized as an LLC under the laws of the state in which it is established. An LLC that elects to be treated as a corporation by the Internal Revenue Service under 26 CFR 301.7701-3 shall be considered a corporation pursuant to 11 CFR Part 114. An LLC that makes a contribution to a candidate or committee shall provide information as to how the contribution is to be attributed and affirm that it is eligible to make the contribution. 11 CFR §110.1(g)

**Facts and Analysis****A. Facts**

The Audit staff reconciled the reported financial activity with the bank records for 2007 and 2008. It determined that LACDCC misstated cash-on-hand, receipts and disbursements for both years. The following charts outline the discrepancies and provide explanations for the differences.

<b>2007 Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Opening Cash Balance	\$24,116	\$18,888	\$5,228 Overstated
Receipts	\$312,959	\$321,879	\$8,920 Understated
Disbursements	\$299,683	\$308,994	\$9,311 Understated
Ending Cash Balance	\$37,392	\$31,773	\$5,619 Overstated

The net understatement of receipts resulted from the following:

• Offset to operating expenditures not reported	+ \$9,245
• Unexplained differences	- <u>325</u>
<b>Net Understatement of Receipts</b>	<b>\$8,920</b>

The net understatement of disbursements resulted from the following:

• Disbursements not reported	+ \$847
• Disbursements reported with incorrect amounts	+ 9,389
• Reported disbursements that did not clear bank	- 98
• Reported voided disbursements	- <u>827</u>
<b>Net Understatement of Disbursements</b>	<b>\$9,311</b>

<b>2008 Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Opening Cash Balance	\$37,392	\$31,773	\$5,619 Overstated
Receipts	\$501,758	\$536,035	\$34,277 Understated
Disbursements	\$532,364	\$565,774	\$33,410 Understated
Ending Cash Balance	\$6,786	\$2,034	\$4,752 Overstated

The net understatement of receipts resulted from the following:

• Unreported advance from credit card processor (see below)	+ \$7,700
• Unreported transfers from non-federal account (see below)	+ 42,596
• Reported transfer from Levin fund that was never made	- 16,272
• Unexplained differences	+ <u>253</u>
<b>Net Understatement of Receipts</b>	<b>\$34,277</b>

The net understatement of disbursements resulted from the following:

• Unreported repayment of advance from credit card processor	+ \$7,700
• Unreported disbursements to credit card processor (see below)	+ 15,000
• Unreported disbursements	+ 7,877
• Reported disbursements with incorrect amounts	+ 26,873
• Reported disbursements that did not clear bank	- 1,374
• Reported voided disbursements	- 66
• Reported disbursement paid from Levin account	- <u>22,600</u>
<b>Net Understatement of Disbursements</b>	<b>\$33,410</b>

LACDCC misstated the cash balances throughout 2007 and 2008 due to the errors outlined above and unknown adjustments from prior reporting periods. LACDCC overstated the cash balance on December 31, 2008 by \$4,752.

**Advance from and Repayment to Credit Card Processor-\$7,700**

LACDCC's federal account received advances from its accounting firm and credit card processor, Durkee & Associates,<sup>3</sup> on credit card proceeds that were being delayed. The advances totaled \$7,700 and occurred between December 22 and December 26, 2008. The committee prepared and dated checks to repay the advances on the days it received them, but the checks did not clear the bank until February 17, 2009. LACDCC did not report the advances of \$7,700 and the repayments of the same amount, as noted above.

In addition to the reporting issues relating to these transactions, the Audit staff considers the \$7,700 received from Durkee & Associates an advance or an extension of credit outside the ordinary course of business. See 2 U.S.C. § 431(8)(A)(i) or see 11 C.F.R. §§ 100.55, 116.1(e), 116.3. As such, the \$7,700 received by LACDCC is a contribution and either an excessive contribution of \$2,700 (\$7,700 less the allowable contribution limit of \$5,000) or a prohibited contribution of \$7,700, depending on whether Durkee & Associates, as a limited liability company, elected to be treated as a partnership or a corporation for tax purposes.

**Disbursed to Credit Card Processor-\$15,000**

On December 31, 2008, three checks totaling \$15,000 were drawn from the federal account. Each check was payable to Durkee & Associates. LACDCC did not report the checks on its disclosure reports. LACDCC's counsel explained that the Treasurer withdrew the funds from the federal account as part of the reconciliation process to identify possible errors involving the deposit of credit card contributions. LACDCC returned the funds to the federal account once it determined that there were no problems with credit card contributions. As was the case with the redeposit of the \$45,000 to the Levin account (see Finding 2), however, LACDDC redeposited the \$15,000 in the federal account months later. Durkee & Associates returned the money in four increments between May and December of 2009.

The Treasurer provided a listing of credit card contributions totaling \$61,491 that were deposited into the shared credit card merchant account and identified as contributions to LACDCC. These credit card contributions apparently represent the funds Durkee & Associates withdrew from LACDCC's bank accounts (Levin account (\$45,000) and the federal account (\$15,000)) while reconciling the credit card merchant account. Based on available records of Durkee & Associates, the Audit staff could not determine whether LACDCC funds were used by Durkee & Associates during the period it held them.

---

<sup>3</sup> Durkee & Associates is operated by LACDCC's Treasurer, Kinde Durkee. Durkee & Associates is an accounting and business management firm with clients including political and non-profit organizations, as well as small businesses.

### **Transfer from Non-federal Account-\$15,000**

LACDCC failed to report a transfer received from its non-federal account in the amount of \$15,000. According to LACDCC's counsel, the \$15,000 was erroneously transferred from LACDCC's non-federal account to its federal account on December 31, 2008, the same day it wrote the checks to the credit card processor. Without receipt of this transfer, LACDCC's federal bank account would have had a negative balance of \$7,044 on December 31, 2008.

LACDCC transferred \$15,000 on November 9, 2009 to return the funds to the non-federal account. LACDCC's counsel stated the purpose for the original transfer was unclear, and that no one from LACDCC's management was informed of, or consulted about, the erroneous \$15,000 transfer or the return of those funds. Rather, LACDCC management became aware of these transactions solely as a result of this audit. The Audit staff could not determine the reason for the transfer from the non-federal account based on available records. The Audit staff verified that the funds were returned to the LACDCC's non-federal account.

The non-federal account transferred less than its share of allocated federal/non-federal costs during the audit period. As such, the federal account could have accepted the non-federal transfer without resulting in overfunding.

### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff presented the misstatements noted above to the representatives for LACDCC during the exit conference. The representatives did not provide any information to explain the misstatements, but indicated that they would file amended reports to correct these errors.

The Audit staff recommended that LACDCC file amended reports to correct the misstatements. LACDCC should amend the cash balance of its most recent report with an explanation that the amendments are due to audit adjustments from a prior reporting period.

LACDCC should also provide information concerning the \$7,700 advance from its credit card processor to establish that it was made in the ordinary course of business. The information should include:

- The specific terms that Durkee & Associates apply to such extensions of credit;
- Whether similar terms are offered to nonpolitical customers of similar size and risk of obligation;
- Rationale for why Durkee & Associates chose the time it did to negotiate LACDCC's checks representing repayment;
- Information about Durkee & Associates' tax status; and
- Any other information LACDCC believes might clarify the transactions.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, LACDCC amended its reports, correcting the misreporting. Also, LACDCC amended its cash balance on its May 2011 monthly report and noted that the adjustment was pursuant to the Audit staff's direction.

To establish that the advance of \$7,700 from its credit card processor was made in the ordinary course of business, LACDCC's response explained that Durkee & Associates considered short-term advances to its clients as benefits encompassed in its 3 percent credit card transaction fee. It provided a listing of 45 short-term advances that Durkee & Associates made to both its political and non-political clients dating back to 2001.

LACDCC sufficiently demonstrated that the \$7,700 from Durkee & Associates had a business purpose and was not for the purpose of influencing a federal election. As a result, the transaction is not considered a contribution.

## **Finding 2. Misstatement of Levin Financial Activity**

### **Summary**

A comparison of LACDCC's reported Levin activity with bank records revealed a misstatement of cash-on-hand, receipts and disbursements in 2008. For 2008, LACDCC understated receipts by \$16,328 and disbursements by \$101,669 and overstated ending cash-on-hand by \$85,341. In response to the Interim Audit Report, LACDCC amended its reports to correct the misstatement of Levin financial activity.

### **Legal Standard**

#### **A. Reporting.**

If a state, district or local party committee's combined annual receipts and disbursements for federal election activity (FEA) total \$5,000 or more during the calendar year, the committee must disclose receipts and disbursements of Federal funds and Levin funds used for FEA. 11 CFR §300.36 (b)(2).

#### **B. Contents of Levin Reports.** Each report must disclose:

- The amount of cash-on-hand for Levin funds at the beginning and end of the reporting period;
- The total amount of Levin fund receipts for the reporting period and the calendar year;
- The total amount of Levin fund disbursements for the reporting period and the calendar year; and
- Certain transactions that require itemization on Schedule L-A (Itemized Receipts of Levin Funds) or Schedule L-B (Itemized Disbursements of Levin Funds). 11 CFR §300.36 (b)(2).

## Facts and Analysis

### A. Facts

The Audit staff reconciled the reported Levin financial activity with the bank records for 2007 and 2008. Staff determined that LACDCC misstated cash-on-hand, receipts and disbursements for 2008. The following chart outlines the discrepancies for 2008 and provides explanations for the misstated Levin activity.

<b>2008 Levin Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Opening Cash Balance	\$960	\$960	\$0
Receipts	\$135,990	\$152,318	\$16,328 Understated
Disbursements	\$54,685	\$156,354	\$101,669 Understated
Ending Cash Balance	\$82,265	\$(3,076) <sup>5</sup>	\$85,341 Overstated

The understatement of receipts resulted from the following:

• Unreported transfer from federal account	+ \$6,328
• Unreported contribution	+ 5,000
• Refund of contribution reported as a negative receipt instead of a disbursement	+ 5,000
<b>Understatement of Receipts</b>	<b>\$16,328</b>

The understatement of disbursements resulted from the following:

• Unreported disbursements to Durkee & Associates (see below)	+ \$45,000
• Unreported transfer to non-party committee (see below)	+ 35,000
• Other unreported disbursements	+ 32,941
• Disbursement incorrectly reported as transfer to federal account <sup>6</sup>	- 16,272
• Refund of contribution reported as a negative receipt instead of a disbursement	+ 5,000
<b>Net Understatement of Disbursements</b>	<b>\$101,669</b>

LACDCC misstated its Levin ending cash balances for 2008 due to the errors outlined above. On December 31, 2008, the committee overstated the Levin cash by \$85,341.

<sup>5</sup> The negative ending cash balance was due to an outstanding check that was not negotiated until February 2009. During the period that it was outstanding, the Levin bank statements showed a positive cash balance.

<sup>6</sup> LACDCC disbursed \$22,600 from its Levin account to a vendor, but it reported this transaction as a \$16,272 transfer to the federal account, which is the amount that could have been transferred from the Levin account if the disbursement had been paid properly from the federal account. The \$22,600 is included in the \$32,941 amount of disbursements that were not reported. LACDCC also did not report the transfer of \$6,328 – the federal share of the \$22,600 expenditure – from its federal account to the Levin account.

**Amount Disbursed from Levin Fund-\$45,000**

Between December 5 and December 22, 2008, four checks made out to Durkee & Associates totaling \$45,000 were drawn on the Levin account. LACDDC did not report the checks on its Schedules L. According to LACDCC's counsel, Durkee & Associates closely examined its credit card merchant account<sup>7</sup> at the end of 2008 and determined that a number of clients had received duplicate transfers relating to credit card contributions. Durkee & Associates concluded that reversing all credit card transfers made to its clients was the best way to avoid potential reporting issues. Durkee & Associates would then re-transfer the correct amount of credit card contributions based upon a reconciliation of its merchant account.

However, credit card contributions were not deposited into the Levin account during the audit period. As such, there seemed to be no reason for Durkee & Associates to withdraw funds from this account. LACDCC deposited credit card contributions in the federal account. However, between December 5 and December 22, 2008, LACDCC did not have \$45,000 in its federal bank account (See Finding 1. above). The \$45,000 withdrawn from the Levin account was not re-deposited until March 23, 2010.

The committee made an earlier attempt to redeposit the money in March 2009. LACDCC's counsel provided a check in the amount of \$45,000 made out to the Levin Fund, along with a deposit ticket dated March 13, 2009. However, this check never cleared and was not posted to the account.

LACDCC's counsel states that LACDCC management was not informed of, or consulted about, the \$45,000 originally withdrawn from the Levin Fund account, the merchant account check issued to LACDCC in March 2009 or the merchant account check issued to LACDCC in March 2010. LACDCC management became aware of these transactions only as a result of the audit. The Treasurer contends that Durkee & Associates has since improved its internal controls to avoid this type of situation in the future. LACDCC forwarded a description of the internal control improvements to the Audit staff. These internal controls include general changes to accounting and recordkeeping procedures, but do not specifically detail procedures that would minimize the risk of commingling LACDCC proceeds with those of other committees and Durkee & Associates.

**Amount Transferred from Levin Account-\$35,000**

On November 25, 2008, LACDCC made a transfer of \$35,000 from the Levin account to a non-party committee, Pasadena Area United Democratic Headquarters (Pasadena United), which is another Durkee & Associates client. The committee did not report the transfer on its Schedules L. LACDCC's counsel explained that the transfer was supposed to be made from Durkee & Associates' credit card merchant account to Pasadena United, but the funds were taken from the Levin account in error.

---

<sup>7</sup> This merchant account was a shared account that received credit card contributions for LACDCC and Durkee & Associates' other political committee clients, many of which had the same treasurer as LACDCC.

The Treasurer refunded the \$35,000 to the Levin Fund account from the Durkee & Associates merchant account in three increments between December 17, 2009 and January 28, 2010. The Treasurer explained that this was more efficient than transferring \$35,000 from Pasadena United to the Levin account and then transferring \$35,000 to Pasadena United from the Durkee & Associates merchant account. The Treasurer believed this was an appropriate resolution because the merchant account was the intended source of the funds.

LACDCC's counsel states that no one from LACDCC management was informed of, or consulted about, the error, the method of reversing the erroneous transaction, the timing or reporting of the error, the return of funds or any other aspect of the corrective effort undertaken by the Treasurer.

**B. Interim Audit Report & Audit Division Recommendation**

The Audit staff presented the misstatements of Levin activity to the representatives for LACDCC during the exit conference. The representatives did not provide any information to explain the misstatements, but indicated that they would file amended reports to correct the errors.

The Audit staff recommended that LACDCC file amended reports to correct the misstatements of Levin activity. The Audit staff also recommended that LACDCC reconcile the cash balance on its most recent report to identify any subsequent discrepancies that could affect the recommended adjustments to cash.

**C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, LACDCC amended its reports correcting the misreporting.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 10, 2011

**MEMORANDUM**

**TO:** Thomas Hintermister  
Acting Assistant Staff Director

**FROM:** Christopher Hughey *pch*  
Acting General Counsel

Lawrence L. Calvert, Jr. *LLC*  
Associate General Counsel

Lorenzo Holloway *LH*  
Assistant General Counsel  
For Public Finance and Audit Advice

Delanie DeWitt Painter *DDP*  
Attorney

**SUBJECT:** Draft Final Audit Report for Los Angeles County Democratic Central Committee (LRA 816)

The Office of the General Counsel has reviewed the proposed Draft Final Audit Report (“DFAR”) for the Los Angeles County Democratic Central Committee (the “Committee”).<sup>1</sup> We comment on the payment of \$7,700 for delayed credit card proceeds to the Committee by the Committee’s accounting firm, Durkee & Associates (D&A). We concur that this transaction was not a contribution by D&A.<sup>2</sup> We also concur with the remaining findings not specifically discussed in this memorandum. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this audit.

The Interim Audit Report (“IAR”) recommended that the Committee provide information to demonstrate that an apparent \$7,700 advance to the Committee was in the

---

<sup>1</sup> We recommend that the Commission consider this document in open session as there is no legal basis to justify a closed Commission meeting.

<sup>2</sup> D&A is an accounting and business management firm operated by the Committee’s treasurer, Kinde Durkee. The firm handles the Committee’s accounting, recordkeeping, and reporting and acts as its credit card processor. D&A used a merchant account to process credit card transactions for the Committee and other clients including political committees. The Committee explained in response to the IAR that D&A is a single principal limited liability company, and the sole owner is Kinde Durkee, who reports D&A’s income on a Schedule C of her individual tax return.

ordinary course of business. The Committee's federal account received payments from D&A totaling \$7,700 for delayed credit card proceeds. D&A apparently became aware of a delay in transmission from the credit card company to D&A's merchant account of funds for credit card contributions to the Committee. However, it apparently was not aware of the actual amount of contributions that were delayed. It estimated the amount of the delayed credit card proceeds and paid the Committee \$7,700 from the merchant account on December 22 (in a check of \$5,700) and December 26 (in a check of \$2,000), 2008. Checks in the same amounts from the Committee to repay D&A were prepared on the same dates but did not clear the bank until February 17, 2009.<sup>3</sup> D&A provided the auditors a list of credit card contributions associated with these transactions, which totaled \$5,887. The auditors, however, determined that the net credit card proceeds that should have been transferred from D&A to the Committee amounted to \$5,424.

In response to the IAR, the Committee contends that the \$7,700 payment was an extension of credit by D&A in the ordinary course of business and provided the following information, along with a signed declaration from Ms. Durkee. The Committee explained that D&A reviews credit card contribution transactions, and if the transactions are approved by the contributor's credit card company but payment is not received within a reasonable period of time, D&A transfers the funds to the client and repays itself when the payment is received from the credit card company. D&A charges clients a 3% fee for each credit card transaction and considered the "advance to its clients as one of the client benefits encompassed by its 3% credit card transaction fee." IAR Response at 2. D&A said it considered the cost of this benefit as minimal compared to the fee received because it was unusual for credit card companies to delay forwarding funds. The Committee further explained that D&A offers similar terms to non-political customers of similar size and risk of obligations. The Committee provided a list of 45 advances to non-political customers over a ten year period (March 27, 2001 to April 13, 2011) for amounts ranging from \$20 to \$15,000. Based on the Committee's response, the auditors conclude in the DFAR that the Committee demonstrated that the payment from D&A was in the ordinary course of business.

We conclude that, at a minimum, \$5,424 of this transaction was not a contribution. A contribution includes any gift, subscription, loan, advance, deposit of money, or anything of value made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(a). Anything of value includes goods and services provided without charge or at less than the normal charge. 11 C.F.R. § 100.52(d).

---

<sup>3</sup> The Committee stated that the repayment was on February 17, 2009 because the last batch of delayed credit card proceeds was received from the credit card companies at that time. The auditors, however, conclude that the last batch of credit card funds included in the payment was received later than that date.

In our comments on the IAR, we stated that additional information was necessary to clarify whether this transaction was an advance that resulted in an excessive or prohibited contribution or an extension of credit in the ordinary course of business. *See* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. §§ 100.55, 116.1(e), 116.3. Having considered the matter further, we are of the opinion that the transaction does not precisely fit the definition of either an advance or an extension of credit. While we do believe that D&A provided the Committee with something of value, we do not believe the facts indicate that the provision of something of value was made for the purposes of influencing a federal election. Thus, at a minimum, \$5,424 of the transaction was not a contribution.

The Commission's regulations define "extension of credit" as including, but not being limited to,

- (1) any agreement between the creditor and political committee that full payment is not due until after the creditor provides goods or services to the political committee
- (2) any agreement between the creditor and the political committee that the political committee will have additional time to pay the creditor beyond the previously agreed to due date; and
- (3) the failure of the political committee to make full payment to the creditor by a previously agreed to due date.

11 C.F.R. § 116.1(e). The facts here do not show that there was an extension of *credit* from D&A to the Committee in the sense of D&A providing goods or services for which it accepted a delayed payment. Rather, it was the *Committee* that was owed money by the credit card company, through D&A.

The transaction here was closer to being an advance of funds by D&A to the Committee. Unlike "extension of credit," "advance" is not defined by the Act or regulations. However, the transaction was not an "advance" in the sense of being an early payment of money due at a later time; contributors had made contributions to the Committee which were supposed to be forwarded to the Committee between 10 and 30 days after receipt, *see* 2 U.S.C. § 432(b)(2), so the funds appear to have been due and payable to the Committee. They simply had not yet made their way to the Committee due to delay on the part of the credit card company.

But however the transaction is characterized, the D&A funds provided to the Committee constituted *something of value*. To be a contribution, it is necessary not merely that the funds constituted something of value, but that they have been provided "for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i).

The information submitted in response to the IAR suggests that D&A did not provide this service for the purpose of influencing a federal election. Rather, it was treating the Committee in the same way that it treats its other non-political clients who are in a similar situation. The Committee demonstrated that D&A has provided 45 similar payments for delayed credit card funds to non-political clients over a period of ten years ranging from \$20 to \$15,000. D&A considers these payments as one benefit paid for by its 3% charge on its clients' credit card transactions. Thus, we conclude that the payment had a business purpose, consistent with D&A's services for its other clients, and was not for the purpose of influencing a federal election. Therefore, this transaction was not a contribution.

We note that D&A's estimated \$7,700 payment to the Committee exceeded the net delayed credit card proceeds that should have been transferred of \$5,424. The Committee has not provided any information clarifying whether the amounts paid to other non-political clients were estimated and similarly exceeded the amounts of delayed credit card proceeds to those clients. Nevertheless, given the fact that D&A could have contributed the estimated excess of \$2,276 to the Committee within Durkee's limitation, we do not believe this aspect of the transaction is worth pursuing further. *See* 2 U.S.C. § 441a(a)(1)(C).