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May 29, 2014

MEMORANDUM

AGENDA ITEM

To: The Commission

Through: Alec Palmer *for PCO*
Staff Director

From: Patricia C. Orrock *for PCO*
Chief Compliance Officer

for Tom Hintermister *EL*
Assistant Staff Director
Audit Division

Marty Favin *MLF*
Audit Manager

for Alex Boniewicz *AB*
Audit Manager

By: Bill Antosz *i3A*
Lead Auditor

For Meeting of 6-26-14

Subject: Audit Division Recommendation Memorandum on the Democratic Party of Illinois (DPIL) (A11-15)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presents its recommendations below and discusses the findings 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

In response to the Interim Audit Report, DPIL filed amendments for 2010 that materially complied with the recommendation. DPIL had no additional comments in its response to the DFAR.

The Audit staff recommends that the Commission find that DPIL misstated its receipts and disbursements for calendar year 2010.

Finding 2. Recordkeeping for Employees

In response to the Interim Audit Report recommendation, DPIL acknowledged that it needed to improve its system for maintaining monthly payroll logs, and provided a sample payroll log that it intends to use as part of its general compliance procedures in the future. DPIL had no additional comments in its response to the DFAR.

The Audit staff recommends that the Commission find that DPIL failed to maintain monthly logs, as required, to document the percentage of time each employee spent on federal election activity totaling \$729,125. This amount includes payroll paid as follows to DPIL employees.

- Employees reported on Schedule H4 and paid with allocated federal and non-federal funds during the same month (totaling \$412,809);
- Employees reported on Schedule H4 or Schedule B and also paid with 100 percent non-federal funds during the same month (totaling \$1,269), and
- Employees paid exclusively with non-federal funds in a given month (totaling \$315,047).

It should be noted that this finding does not contain contract labor totaling \$21,850.

Finding 3. Fundraising Receipts

For the period covered by the audit, DPIL received and deposited into its federal account \$68,300¹ from fundraising events that were held to benefit non-federal candidates and DPIL's non-federal account. Contemporaneous documentation to demonstrate the intent of the donors was not available. In response to the Interim Audit Report recommendation, DPIL transferred \$75,800 to its non-federal account.

DPIL requested an audit hearing before the Commission because it believed that the audit report still asserted potential violations by the committee related to proceeds from joint fundraising events, allocation of event costs between federal and non-federal accounts and notice requirements to donors. Its request for a hearing was granted and subsequently held on April 23, 2014.

During the hearing, DPIL Counsel discussed how the party had already transferred the \$75,800 noted in the DFAR finding to its non-federal account. He described how the bulk of DPIL's program is focused on non-federal activities and the Democratic Chair in the state of Illinois is also the state legislative leader. Thus, DPIL spends extensively in state legislative races and in "down ballot races."

¹ The finding in the DFAR included a total of \$75,800, but at the audit hearing held April 23, 2014, DPIL Counsel noted that one contribution in the amount of \$5,000 included in that total was designated for the federal account. Upon closer examination, the Audit staff found that this check, along with one other in the amount of \$2,500, did have accompanying letters from the contributors that designated these funds to the federal account. As a result, the Audit staff will revise this figure to \$68,300 in the Proposed Final Audit Report (\$75,800 - \$5,000 - \$2,500).

DPIL Counsel noted that the auditors reviewed batch deposits and identified fundraising events that raised federal contributions. Some of the events were sponsored by the Democratic Chair's own campaign committee and other events were held to raise funds for DPIL's non-federal account. Funds totaling \$75,800 were deposited in DPIL's federal account, while a total of \$1,103,925 was raised from these fundraising events. He added that DPIL transferred \$75,800 to its non-federal account to cooperate with the recommendation and because it had ample use for the non-federal funds. However, DPIL believes that 11 CFR §102.5 is being applied as a source restriction on whether the party can or cannot deposit money received from these non-federal events into its federal account. He further stated that, in this case, there is not a clear unambiguous record of what the donors were told at the time that they made their contributions and he questions whether there is an actual basis for a finding.

Finally, DPIL Counsel questioned the universe of the funds deposited from the fundraising events. He stated that not all batched contributions were actually raised at these events and mentioned one event in particular where he believed that contributions from a group of trial lawyers were incorrectly batched and included with actual event contributions. He stated that this represented the core problem with this finding. It was a reflection of limitations in the audit process; dealing with activities that happened long ago and dealing with records that were open to multiple interpretations. This suggested that the universe of contributions from this event is somewhat smaller than proposed and called into some doubt the financial amount of the entire finding.

In conclusion, DPIL Counsel asked the Commission to modify or remove Finding 3 from the audit report, so there would not be a suggestion that DPIL had engaged in prohibited joint fundraising, and that these funds were ineligible for deposit in the federal account because they did not meet the source restrictions and contribution limitations of the Act.

The Proposed Final Audit Report will reflect the following modifications to Finding 3.

- The amount in violation will be revised from \$75,800 to \$68,300 (See footnote 1);
- Any references to the joint fundraising requirements at 11 CFR §102.17 will be removed;
- Any references to the requirements for the allocation of expenses between the federal and non-federal accounts at 11 CFR §106.7(d) will be removed; and
- A statement that the Audit staff confirms that the contributions in question do not facially appear to violate contribution limits or source restrictions will be added.

The Audit staff recommends the Commission find that DPIL did not maintain sufficient records to support that these contributions totaling \$68,300 may be deposited into a federal account under the notification requirements of 11 CFR §102.5.

Finding 4. Unreported Levin Fund Activity

In response to the Interim Audit Report, DPIL filed amendments that materially complied with the recommendation. DPIL had no additional comments in its response to the DFAR.

The Audit staff recommends that the Commission find that DPIL did not report Levin funds totaling \$115,274 on its Levin Schedules and incorrectly disclosed a shared federal election activity expenditure in the amount of \$144,375 as a shared operating expenditure.

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 Favin at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on the Democratic Party of Illinois

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on the Democratic Party of Illinois

(January 1, 2009 - December 31, 2010)

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 Democratic Party of Illinois (DPIL) is a state party committee with headquarters in Springfield, Illinois. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)²

• Receipts	
○ Individual Contributions	\$ 597,542
○ Political Committee Contributions	1,337,075
○ Transfers from Affiliates	844,950
○ Transfers from Non-federal Accounts	1,504,443
Total Receipts	\$ 4,284,010
• Disbursements	
○ Operating Expenditures	\$ 1,922,328
○ Federal Election Activity	705,871
○ Coordinated Expenditures	1,257,848
○ Transfers to Affiliated Committees	292,178
○ Other Disbursements	62,545
Total Disbursements	\$ 4,240,770

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Recordkeeping for Employees (Finding 2)
- Fundraising Receipts (Finding 3)
- Unreported Levin Fund Activity (Finding 4)

¹ 2 U.S.C. §438(b).

² DPIL did not maintain a Levin bank account, but during the period covered by the audit DPIL raised \$254,774 of Levin receipts that it deposited into its non-federal bank account. DPIL transferred \$100,000 of Levin funds to its federal account for federal election activity during this same period. See Finding 4 for Levin reporting issues.

Draft Final Audit Report of the Audit Division on the Democratic Party of Illinois

(January 1, 2009 - December 31, 2010)



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Part I

Background

Authority for Audit

This report is based on an audit of the Democratic Party of Illinois (DPIL), 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 whether 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; and
6. other committee operations necessary to the review.

Commission Guidance

Request for Early Commission Consideration of a Legal Question

Pursuant to the "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," DPIL requested early consideration of a legal question raised during the audit. DPIL questioned whether the monthly time logs required under 11 CFR §106.7(d)(1) applied to employees paid with 100 percent federal funds. (See Finding 2.)

The Commission concluded, by a vote of 5-1, that 11 CFR §106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, the Commission will not, however, pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. The Audit staff informed DPIL counsel of the Commission's decision on DPIL's request. This audit report does not include any finding or recommendation with respect to DPIL's employees paid with 100 percent federal funds and reported as such.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	May 4, 1983
• Audit Coverage	January 1, 2009 - December 31, 2010
Headquarters	
Springfield, Illinois	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	3 Federal, 4 Non-federal Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Michael Kasper
• Treasurer During Period Covered by Audit	Michael Kasper, January 1, 2009 - December 31, 2010
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2009	\$ 298,984
Receipts	
○ Individual Contributions	597,542
○ Political Committee Contributions	1,337,075
○ Transfers from Affiliates	844,950
○ Transfers from Non-federal Accounts	1,504,443
Total Receipts	\$ 4,284,010
Disbursements	
○ Operating Expenditures	1,922,328
○ Federal Election Activity	705,871
○ Coordinated Expenditures	1,257,848
○ Transfers to Affiliated Committees	292,178
○ Other Disbursements	62,545
Total Disbursements	\$ 4,240,770
Cash-on-hand @ December 31, 2010	\$ 342,224

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of DPIL's reported financial activity with its bank records revealed a misstatement of receipts and disbursements in calendar year 2010. DPIL understated receipts by \$203,666 and disbursements by \$215,677. The misstatements were mainly the result of unreported transfers from the non-federal accounts and affiliated committees, as well as unreported operating expenditures and transfers to affiliated committees. In response to the Interim Audit Report recommendation, DPIL amended its reports to materially correct the misstatements noted above. (For more detail, see p. 5.)

Finding 2. Recordkeeping for Employees

During audit fieldwork, the Audit staff found that DPIL did not maintain monthly logs, as required, to document the percentage of time each employee spent on federal election activity. DPIL maintained payroll logs for the month of September 2010; the information contained in these logs, however, did not include the percentage of time each employee spent on federal election activity. For 2009 and 2010, logs were required for DPIL payroll totaling \$729,125.³ In response to the Interim Audit Report recommendation, DPIL acknowledged that it needed to improve its system for maintaining monthly payroll logs, and it provided a sample payroll log that it intends to use as part of its general compliance procedures. (For more detail, see p. 7.)

Finding 3. Fundraising Receipts

During audit fieldwork, the Audit staff identified 10 fundraising events that raised funds for DPIL's federal and non-federal accounts. The federal account received \$75,800 from these events. Although the federal account was the recipient of these funds, DPIL did not share in any of the costs incurred in raising these funds. Four of the events were held to benefit a non-federal campaign and therefore appear to be prohibited contributions. For the remaining six events, the Audit staff lacks sufficient information to conclude whether the events were joint fundraising events with other political committees or DPIL fundraising events solely benefiting DPIL's federal and non-federal accounts.

In response to the Interim Audit Report recommendation, DPIL transferred \$75,800 to its non-federal account. DPIL's response also stated that the Interim Audit Report presented neither evidence of any failure on DPIL's part to allocate the event costs, nor any indication that the events in question were somehow joint fundraisers under 11 CFR

³ This total does not include payroll for employees paid with 100 percent federal funds and reported as such. (See Part I, Background, Commission Guidance, Request for Early Consideration of a Legal Question on Page 1.)

§102.17. The response further stated that all of the events were non-federal fundraising events, and that the amounts identified by the auditors were insubstantial, when compared with the total amounts raised through these events. (For more detail, see p. 9.)

Finding 4. Unreported Levin Fund Activity

During audit fieldwork, an analysis of DPIL's Levin fund activity indicated that DPIL raised Levin funds during the period covered by the audit that totaled \$254,774. Of this amount, DPIL did not report Levin funds totaling \$115,274 on its Levin Schedules L (Aggregation Page: Levin Funds) or on its Schedules L-A (Itemized Receipts of Levin Funds). In addition, DPIL incorrectly disclosed a shared federal election activity expenditure in the amount of \$144,375 as a shared operating expenditure. In response to the Interim Audit Report recommendation, DPIL filed amended reports that materially corrected the reporting of Levin activity. (For more detail, see p. 13.)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of DPIL's reported financial activity with its bank records revealed a misstatement of receipts and disbursements in calendar year 2010. DPIL understated receipts by \$203,666 and disbursements by \$215,677. The misstatements were mainly the result of unreported transfers from the non-federal accounts and affiliated committees; as well as unreported operating expenditures and transfers to affiliated committees. In response to the Interim Audit Report recommendation, DPIL amended its reports to materially correct the misstatements noted above.

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 Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4) and (5).

Facts and Analysis

A. Facts

As part of audit fieldwork, the Audit staff reconciled DPIL's reported activity with its bank records and identified misstatements of receipts and disbursements for calendar year 2010. The chart below details the discrepancies and succeeding paragraphs explain the reasons for the misstatements.

2010 Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2010	\$324,676	\$324,676	\$0
Receipts	\$3,727,446	\$3,931,112	\$203,666 Understated
Disbursements	\$3,697,887	\$3,913,564	\$215,677 Understated
Ending Cash Balance @ December 31, 2010	\$354,235	\$342,224	\$12,011 Overstated

The understatement of receipts was the result of the following:

• Contributions from individuals not reported	\$1,525
• Transfers from non-federal accounts not reported	79,316
• Transfers from an affiliated committee not reported	138,089
• Contributions received via ACTBLUE reported net of processing fees	296
• Reported receipts not supported by deposit or credit	<u>(15,560)</u>
Net Understatement of Receipts	<u>\$ 203,666</u>

The understatement of disbursements was the result of the following:

• Operating expenditures not reported	\$155,347
• Transfer to an affiliated committee not reported	137,089
• Disbursements not supported by check or debit	(77,607)
• Unreported in-kind contributions	150
• Disbursements incorrectly reported	7
• ACTBLUE processing fees not reported	<u>691</u>
Net Understatement of Disbursements	<u>\$ 215,677</u>

The \$12,011 overstatement of the ending cash balance resulted from the reporting discrepancies noted above.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided DPIL representatives with work papers detailing the misstatements of financial activity and discussed the reporting errors that caused the misstatement. A DPIL representative stated that DPIL made the unreported transfer to the affiliated committee in error, and made the unreported transfers received from the same affiliated committee in order to correct the original transfer. DPIL was prepared to amend its reports to correct the misstatement.

The Interim Audit Report recommended that DPIL:

- amend its reports to correct the misstatements for 2010 as noted above;
- amend its most recent report to correct the cash-on-hand balance with an explanation that the change resulted from a prior period audit adjustment; and
- reconcile the cash balance of its most recent report to identify any subsequent discrepancies that may affect the adjustment recommended by the Audit staff.

C. Committee Response to Interim Audit Report Recommendation

In response to the Interim Audit Report recommendation, DPIL filed amended reports that materially corrected the misstatement of financial activity. The response also noted that DPIL is reviewing and revising its procedures for reconciling and verifying its reports to ensure that such misstatement errors do not recur in future reporting periods.

Finding 2. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff found that DPIL did not maintain monthly logs, as required, to document the percentage of time each employee spent on federal election activity. DPIL maintained payroll logs for the month of September 2010; the information contained in these logs, however, did not include the percentage of time each employee spent on federal election activity. For 2009 and 2010, logs were required for DPIL payroll totaling \$729,125.⁴ In response to the Interim Audit Report recommendation, DPIL acknowledged that it needed to improve its system for maintaining monthly payroll logs, and it provided a sample payroll log that it intends to use as part of its general compliance procedures.

Legal Standard

Maintenance of Monthly Logs. Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election.

Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or have their pay allocated as administrative costs;
- employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and
- employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with state law. 11 CFR §106.7(d)(1).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed all payroll disbursements made from DPIL's federal, non-federal and coordinated campaign accounts. The only payroll log DPIL maintained was for the month of September 2010. This log listed the number of hours worked by each employee and the activities performed each day. The information provided did not, however, include the percentage of time that the employees spent in connection with federal election activity. During audit fieldwork, DPIL representatives explained that DPIL did not realize that logs were required until September 1, 2010, and that some staff left before the end of September without turning in their logs. Such logs were required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages.

In addition to the aforementioned logs for the month of September 2010, DPIL provided agreement-for-services contracts, campaign employment applications, and IRS W-4

⁴ This total does not include payroll for employees paid with 100 percent federal funds and reported as such. (See Part I, Background, Commission Guidance, Request for Early Consideration of a Legal Question on Page I.)

forms (Employee's Withholding Allowance Certificate) for most of its employees. For employees paid from the non-federal account, the campaign employment applications noted the non-federal candidates to which the employees were assigned, and for employees paid from the federal account, the applications noted that the employee was assigned to DPIL's headquarters. Further, DPIL provided copies of in-kind letters that were addressed to non-federal candidates. These letters listed salaries and expenses paid to employees from its non-federal accounts as in-kind contributions made on behalf of non-federal candidates. The documentation provided by DPIL supports its position that the employees it considered non-federal could be paid from its non-federal accounts. DPIL did not, however, maintain sufficient payroll logs to document the percentage of time each employee spent in connection with federal election activity.

For 2009 and 2010, logs were required for \$729,125 in payroll (\$412,809 paid with an allocation of shared federal/non-federal funds and \$316,316⁵ paid with non-federal funds).⁶

B. Interim Audit Report & Audit Division Recommendation

At the exit conference and during audit fieldwork, the Audit staff discussed the recordkeeping issue with DPIL representatives. The representatives provided notarized and sworn affidavits by DPIL's executive director and coordinated campaign director that identified DPIL's employees and discussed the amount of compensated time spent by each employee on activities in connection with federal elections. DPIL did not provide documentation of the actual percentage of time spent on federal activities. While the affidavits were useful for allocation purposes, they alone were not sufficient to fulfill the recordkeeping requirement because they were not created and maintained prior to the issuance of the audit notification letter.

For DPIL employees paid with an allocation of federal and non-federal funds, and for those employees paid entirely with non-federal funds, the Interim Audit Report recommended that DPIL provide and implement a plan to maintain such monthly payroll logs to track the percentage of time each employee spends on federal election activity.

C. Committee Response to Interim Audit Report Recommendation

In response to the Interim Audit Report recommendation, DPIL acknowledged that it needed to improve its system for maintaining monthly payroll logs. It also provided a sample payroll log that it intends to use as part of its general compliance procedures in the future. The sample payroll log contained columns for each employee to track non-federal hours worked, federal election activity hours worked and the type of federal election activity that the employee performed. If DPIL uses this log properly, it should result in compliance with the 11 CFR 106.7(d)(1) recordkeeping requirements.

⁵ DPIL paid 59 employees from its non-federal account. Forty-six of these employees were paid exclusively with non-federal funds totaling \$221,641. The other 13 employees were paid \$94,675 from the non-federal account, but also received payments from the federal account.

⁶ Payroll is stated net of taxes and benefits.

Finding 3. Fundraising Receipts

Summary

During audit fieldwork, the Audit staff identified 10 fundraising events that raised funds for DPIL's federal and non-federal accounts. The federal account received \$75,800 from these events. Although the federal account was the recipient of these funds, DPIL did not share in any of the costs incurred in raising these funds. Four of the events were held to benefit a non-federal campaign and therefore appear to be prohibited contributions. For the remaining six events, the Audit staff lacks sufficient information to conclude whether the events were joint fundraising events with other political committees or DPIL fundraising events solely benefiting DPIL's federal and non-federal accounts.

In response to the Interim Audit Report recommendation, DPIL transferred \$75,800 to its non-federal account. DPIL's response also stated that the Interim Audit Report presented neither evidence of any failure on DPIL's part to allocate the event costs, nor any indication that the events in question were somehow joint fundraisers under 11 CFR §102.17. The response further stated that all of the events were non-federal fundraising events, and that the amounts identified by the auditors were insubstantial, when compared with the total amounts raised through these events.

Legal Standard

A. Written Agreement. Participants in joint fundraising activities must enter into a written agreement. The written agreement shall identify the fundraising representative and state a formula for the allocation of the fundraiser proceeds. 11 CFR §102.17(c)(1).

B. Fundraising Notice. A joint fundraising notice shall be included with every solicitation for contributions. This notice shall include the following:

- the names of all committees participating in the joint fundraising activity;
- the allocation formula to be used for distributing joint fundraising proceeds;
- a statement informing contributors that they may designate their contributions for a particular participant or participants; and
- if one or more participants can lawfully accept contributions that are prohibited under the Act, a statement informing contributors that contributions from prohibited sources will be distributed only to those participants that can accept them. 11 CFR §102.17(c)(2).

C. Required Information on Solicitations. All written solicitations for contributions will include a clear request for the contributor's full name, mailing address, occupation and name of employer, and must include an accurate statement of federal law regarding the collection and reporting of individual contributor identifications. 11 CFR §104.7(b)(1).

D. Fundraising for Federal and Non-Federal Accounts. If federal and non-federal funds are collected by a state party committee through a joint fundraising activity, that committee must allocate its direct fundraising costs using the funds received method. If the non-federal account has paid more than its allocable share, the committee shall

transfer funds from its federal to its non-federal account. The committee shall make note of any such adjustments and transfers in its report for any period in which a transfer was made, and shall also report the date of the fundraising program or event that serves as the basis for the transfer. 11 CFR §106.7(d)(4).

E. Depositing Contributions into Federal Accounts: Only contributions meeting any of the following conditions may be deposited in a federal account:

- contributions designated for the federal account;
- contributions that result from a solicitation that expressly states that the contributions will be used in connection with a federal election; or
- contributions from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act. 11 CFR §102.5(a)(2)(i)-(iii).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified 10 fundraising events that raised funds for DPIL's federal and non-federal accounts. DPIL did not disclose the events on Schedules H-2 (Allocation Ratios). In addition, DPIL did not pay any expenses related to these fundraising events from its federal or non-federal accounts. From the available documentation, the Audit staff determined that (1) solicitations for some of the events requested that checks be made out to the Friends of Michael J. Madigan committee,⁷ (2) organizations other than DPIL paid the costs for some of the events, and (3) most of the disclaimers on the event solicitations did not include an accurate statement of federal law regarding the collection and reporting of individual contributor information. DPIL provided In-kind Contribution Notification forms to document some of the costs of three of the fundraising events. These forms noted that the in-kind contributions for the costs were made on behalf of Friends of Michael J. Madigan, not DPIL. From the documentation that was made available, it appeared that the solicitations for these fundraising events were not intended to raise money for the federal account.

The federal account received \$75,800 and the non-federal account received \$1,103,925 from these events. It is not clear whether any other committees received funds from these events. Although the federal account was the recipient of funds, it did not appear to have shared in any of the costs incurred in raising these funds. Documentation for three of the 10 events showed that in-kind contributions were made to Friends of Michael J. Madigan in the amount of \$5,077 for some of the costs of these events. There were no written agreements available that identified the fundraising representatives and stated the allocation formulas, the allocation percentages for distribution of joint fundraising proceeds and expenses among the participants. The Audit staff has grouped the 10 fundraising events into two categories.

⁷ Friends of Michael J. Madigan is a non-federal committee. Michael J. Madigan is the Speaker of the Illinois House of Representatives and Chairman of DPIL.

1. Fundraising Events Held to Benefit the Non-federal Campaign Committee of DPIL's Chairman, Michael J. Madigan

DPIL received and deposited into its federal account contributions totaling \$5,650 from four of the 10 events. DPIL contends that the events were not DPIL events and that it did not solicit the contributions. The four fundraisers were:

- 2009 Lake Event held in April, 2009;
- 2010 Lake Event held on April 26, 2010;
- Luciana Event held on September 21, 2010; and
- Union League Event held on September 23, 2010.

Based on the content of the solicitations for these four events, it appears that these events may have been solely for the benefit of the non-federal campaign account of Michael J. Madigan. All solicitations from these events asked that contributor's checks be made payable to "Friends of Michael J. Madigan." No documentation was available to demonstrate that DPIL solicited funds from or participated in these events.

As cited above, 11 CFR §102.5(a)(2)(i)-(iii) provides guidance on when funds may be deposited into a committee's federal account. Based on the documentation provided, the Audit staff concluded that none of the funds that DPIL received as a result of these four events was permitted to be deposited into DPIL's federal account. Therefore, the funds totaling \$5,650 were impermissible and should be transferred to DPIL's non-federal account.

2. The Six Remaining Fundraising Events

DPIL received and deposited into its federal account contributions totaling \$70,150 from the six remaining fundraising events. These events may be either joint fundraising events with other political committees or fundraising events that solely benefited DPIL's federal and non-federal accounts. The six events are as follows:

- DC 2009 Event, held on November 4, 2009;
- WesPAC/IBEW Event held on February 24, 2010;
- Reza's Dinner held on August 12, 2010;
- Janssen Event held on September 28, 2010;
- Hospitality Event held on October 6, 2010; and
- 2010 DC Event held on October 14, 2010.

The Audit staff lacks sufficient information to be able to determine into which category these events fall. Despite event solicitations directing contributors to make their checks payable to the "Democratic Party of Illinois," the Audit staff does not have information suggesting that DPIL participated with any other committees, shared any of the costs, or received any of the shared proceeds for

these events. Although some of the solicitations requested contributors to mail their checks to the event sponsor and/or include “paid for by” language to identify the political committee that paid for the solicitation, this alone does not establish that the events were joint fundraisers with other political committees in connection with a federal election.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented this issue to the DPIL representatives and requested that they document the costs associated with these events, as well as who paid for such expenses. DPIL representatives acknowledged that four of the events in which DPIL received federal funds were not DPIL events, but argued that the amount of federal funds received from the events was *de minimis*.

The Audit staff recommended that DPIL:

- demonstrate that it could permissibly deposit funds totaling \$5,650 from the four fundraising events identified above; and
- demonstrate that it could permissibly deposit funds totaling \$70,150 from the remaining six events. Further, for these events, the Interim Audit Report recommended that DPIL identify which, if any, were joint fundraising events with other political committees, or which, if any, were DPIL events benefiting solely its federal and non-federal accounts. In connection with those events that benefited solely DPIL’s federal and non-federal accounts, the Interim Audit Report recommended that DPIL demonstrate that it had properly allocated costs between its federal and non-federal accounts.

Absent such demonstration, the \$75,800 deposited in its federal account would be considered impermissible and the Interim Audit Report would recommend that DPIL transfer these funds to its non-federal account.

C. Committee Response to Interim Audit Report Recommendation

In response to the Interim Audit Report recommendation, DPIL transferred \$75,800, to its non-federal account on September 18, 2013 and provided a copy of the check (front only). DPIL submitted that the Interim Audit Report presented no evidence of any failure on DPIL’s part to allocate the event costs, nor any indication that the events in question were somehow joint fundraisers under 11 CFR §102.17.

The response further stated that all of the events were non-federal fundraising events, and that the amounts identified by the auditors were insubstantial, when compared with the total amounts raised through these events. The response also stated that neither the allocation rules nor the joint fundraising rules were triggered when a bona fide non-federal fundraising event elicits a *de minimis* number of federal contributions, and the Interim Audit Report presented no evidence that DPIL or the Friends of Michael J. Madigan Committee sought federal contributions through any of these events. However, because of the limited documentation available, and to eliminate any question of noncompliance, DPIL nonetheless made the recommended transfer.

Although DPIL has complied with the Audit staff's recommendation to transfer the \$75,800 to its non-federal account, we do not agree with its assertions. DPIL did not show that any of the funds it deposited in its federal account met the criteria in 11 CFR §102.5(a)(2)(i)-(iii). There is no exception to the Commission's rules that would permit a *de minimis* amount of funds, the origins of which are either related to a non-federal event or an event for which the political purpose (federal/non-federal) cannot be determined, to be deposited in a committee's federal account.

Finding 4. Unreported Levin Fund Activity

Summary

During audit fieldwork, an analysis of DPIL's Levin fund activity indicated that DPIL raised Levin funds during the period covered by the audit that totaled \$254,774. Of this amount, DPIL did not report Levin funds totaling \$115,274 on its Levin Schedules L (Aggregation Page: Levin Funds) or on its Schedules L-A (Itemized Receipts of Levin Funds). In addition, DPIL incorrectly disclosed a shared federal election activity expenditure in the amount of \$144,375 as a shared operating expenditure. In response to the Interim Audit Report recommendation, DPIL filed amended reports that materially corrected the reporting of Levin 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. Receipt of Levin Funds. Levin funds expended or disbursed by any state committee must be raised solely by the committee that expends or disburses them. Each donation must be lawful under the laws of the state in which the committee is organized and the funds solicited must not aggregate more than \$10,000 in a calendar year. Consequently, funds from national party committees, other state, district and local committees, and from federal candidates or officeholders, may not be accepted as Levin funds. 11 CFR §300.31.

C. 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

As part of audit fieldwork, the Audit staff found that DPIL raised Levin funds totaling \$254,774 that it deposited into its non-federal account. It reported Levin funds totaling \$139,500 on its Schedules L-A. DPIL did not report Levin funds totaling \$115,274. In addition, DPIL incorrectly disclosed a shared federal election activity expenditure of \$144,375, of which the Levin share was \$114,056, as a shared operating expenditure.

DPIL did not have a Levin fund bank account for its Levin fund receipts. DPIL representatives explained that DPIL kept all Levin funds raised in its non-federal account in accordance with 11 CFR §300.30(C)(2) and (3). DPIL provided the Audit staff with a reasonable accounting of its Levin fund receipts. A daily cash analysis of DPIL's non-federal accounts demonstrated that DPIL had sufficient Levin funds at the time DPIL transferred the funds to the federal account.

During the period covered by the audit, DPIL reported shared federal election activity expenditures totaling \$180,000. The Levin share of these expenditures was \$139,500. DPIL transferred only \$100,000 to its federal account for the Levin share of the allocable expenditures. Levin funds totaling \$154,774 remain in DPIL's non-federal account.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided DPIL representatives with workpapers that detailed a possible overfunding by DPIL's non-federal account. DPIL representatives responded that DPIL had incorrectly reported a disbursement in the amount of \$144,375 on Schedule H-4 (Shared Federal/Non-Federal Activity) instead of Schedule H-6 (Shared Federal Election Activity), and that it could have used Levin funds to pay the \$114,056 share of the direct mail expenditure. They argued that DPIL had sufficient Levin funds on hand to pay for the non-federal share, and stated that the reports would be amended to correct this matter. The Audit staff concurred that Levin funds could have been transferred to the federal account in regard to this expenditure, and that DPIL did have sufficient Levin funds available to be transferred. Further, by classifying this transaction as such, there no longer would be an overfunding by the non-federal account.

The Interim Audit Report recommended that DPIL amend its reports to disclose the additional Levin receipts in the amount of \$115,274 on Schedules L-A and disclose the expenditure in the amount of \$144,375 as a shared federal election activity expenditure on Schedule H-6.

C. Committee Response to Interim Audit Report Recommendation

In response to the Interim Audit Report recommendation, DPIL filed amended reports that materially corrected the reporting of Levin activity.