



FEDERAL ELECTION COMMISSION
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AGENDA ITEM

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

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

For Meeting of 1-14-16

Thomas E. Hintermister *TH*
Assistant Staff Director
Audit Division

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By: Paula Nurthen
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the Utah State
Democratic Committee (USDC) (A13-10)

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

The Audit staff determined that, for 2011, USDC understated its opening cash by \$17,885 and overstated its receipts and ending cash by \$92,203 and \$74,545, respectively. For 2012, only the opening and ending cash were misstated. Opening cash was overstated by \$74,545 and ending cash was overstated by \$75,866. Subsequent to audit notification, USDC amended its reports, which materially corrected the opening cash for 2011. In response to the Interim Audit Report (IAR) recommendation and the DFAR, USDC agreed that transfers were reported but not made through its bank accounts (and only accounted for on its books), but stated their use of a sweep account precluded them from making effective transfers. USDC requested a reduction in the misstatement amount of \$90,439, the amount of its reported transfers for 2011.

The Audit staff recommends the Commission find that USDC misstated its financial activity for the calendar year 2011 and its opening and ending cash balances for 2012.

Finding 2. Recordkeeping for Employees

For the period covered by the audit, USDC did not maintain monthly payroll logs for some of its payroll, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified 42 payroll transactions totaling \$62,135, for which monthly payroll logs were missing or incomplete. This consisted entirely of payroll which was allocated between federal and non-federal funds. In response to the IAR recommendation, USDC stated that it has procedures in place [that were implemented in 2012] to ensure that payroll logs are maintained to track the amount of time employees spent on federal activities. USDC did not provide any additional comments in response to the DFAR.

The Audit staff recommends the Commission find that USDC failed to maintain monthly payroll logs to document the time employees spent on federal election activity, totaling \$62,135.

Finding 3. Improper Bank Account Structure

USDC maintained a bank account in which all funds, including both federal and non-federal, were temporarily transferred from linked subaccounts (federal and non-federal) to a parent account that served as a temporary holding account for all USDC funds. This account structure was maintained for ten months in 2011 and then its use discontinued. The Audit staff determined the account was not a federal account in accordance with 11 CFR §102.5(a)(1)(i), which provides for the permissible account structure pertaining to federal and non-federal activity. In response to the IAR recommendation, USDC stated that it had no additional comments regarding this matter. USDC did not file an additional response to the DFAR.

The Audit staff recommends the Commission find that USDC used an improper bank account structure during 2011.

Finding 4. Receipt of Levin Fund Donations that Exceed the Limit

The Audit staff identified two donations to the Levin Fund that exceeded the donation limitation by \$12,000. In response to the IAR recommendation, USDC filed amended reports disclosing different Levin contributors to replace those identified as excessive, but did not provide evidence to demonstrate that total Levin funds were sufficient and that the substituted Levin donors were Levin eligible. However, in response to the DFAR, USDC stated that it used the last-in, first-out accounting method and provided the accounting documentation requested by the Audit staff. The Audit staff verified USDC's Levin accounting and determined that USDC did not exceed the Levin Donation Limit.

The Audit staff recommends the Commission find that USDC did not exceed the Levin Fund limit.

Finding 5. Receipt of Contributions that Exceed Limits

USDC accepted contributions from two political action committees that exceeded the limitation by \$8,500. Both of the excessive contributions were refunded; however, the refunds were not made timely. In response to the IAR recommendation, USDC stated that it had no additional comments regarding this matter. USDC did not provide any additional comments in response to the DFAR.

The Audit staff recommends the Commission find that USDC accepted contributions that exceeded the limitation by \$8,500 and the funds were untimely refunded.

The Committee did not request an audit hearing.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

In case of an objection, 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 Paula Nurthen or Douglas Kodish at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on the Utah State Democratic Committee

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on the Utah State Democratic Committee

(January 1, 2011 - December 31, 2012)

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. 3)

The Utah State Democratic Committee is a state party committee headquartered in Salt Lake City, Utah. For more information, see the chart on the Committee Organization, p. 3.

Financial Activity (p. 4)

• Receipts	
○ Contributions from Individuals	\$ 448,066
○ Contributions from Other Political Committees (PACs)	206,626
○ Transfers from Affiliated/Other Party Committees	771,602
○ Transfers from Nonfederal Accounts	550,073
○ Other Receipts	119,872
Total Receipts	\$ 2,096,239
• Disbursements	
○ Operating Expenditures	\$ 1,119,344
○ Federal Election Activity	709,716
○ Coordinated Party Expenditures	134,156
○ Other Disbursements	67,902
○ Transfers to Affiliated/Other Party Committees	65,000
Total Disbursements	\$ 2,096,118
• Levin Receipts	\$104,500
• Levin Disbursements	\$103,500

Findings and Recommendations (p. 5)

- Misstatement of Financial Activity (Finding 1)
- Recordkeeping for Employees (Finding 2)
- Improper Bank Account Structure (Finding 3)
- Receipt of Levin Fund Donations that Exceed the Limit (Finding 4)
- Receipt of Contributions that Exceed Limits (Finding 5)

¹ 52 U.S.C. §30111(b).

Draft Final Audit Report of the Audit Division on the Utah State Democratic Committee

(January 1, 2011 - December 31, 2012)



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Part I

Background

Authority for Audit

This report is based on an audit of the Utah State Democratic Committee (USDC), 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 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. 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. 52 U.S.C. §30111(b).

Scope of Audit

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

1. the receipt of excessive contributions;
2. the receipt of contributions from prohibited sources;
3. the disclosure of individual contributors' occupation and name of employer;
4. the disclosure of disbursements, debts and obligations;
5. the disclosure of expenses allocated between federal and non-federal accounts;
6. the consistency between reported figures and bank records;
7. the completeness of records;
8. the disclosure of independent expenditures; and
9. other committee operations necessary to the review.

Commission Guidance

Request for Early Commission Consideration of a Legal Question

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," several state party committees unaffiliated with USDC requested early consideration of a legal question raised during audits covering the 2010 election cycle. Specifically, the Commission addressed whether monthly time logs under 11 CFR §106.7(d)(1) were required for employees paid with 100 percent federal funds.

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, however, the Commission decided it would not 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 USDC representatives of the payroll log requirement and of the Commission's decision not to pursue recordkeeping violations for failure to keep payroll logs for salaries paid and correctly

reported as 100 percent federal. This audit report does not include any findings or recommendations with respect to USDC employees paid with 100 percent federal funds and reported as such.

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Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	November 16, 1978
• Audit Coverage	January 1, 2011 - December 31, 2012
Headquarters	
Salt Lake City, Utah	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Six federal and four non-federal
Treasurer	
• Treasurer When Audit Was Conducted	Brian King: 9/20/13 – 3/16/15 Peter Corroon: 3/17/15 - Present
• Treasurer During Period Covered by Audit	Kathleen Snyder: 1/01/11 – 10/10/11 Robert Miller: 10/11/11 – 12/31/12
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, 2011	\$ 82,729
Receipts	
○ Contributions from Individuals	448,066
○ Contributions from Other Political Committees (PACs)	206,626
○ Transfers from Affiliated/Other Party Committees	771,602
○ Transfers from Nonfederal Accounts	550,073
○ Other Receipts	119,872
Total Receipts	2,096,239
Disbursements	
○ Operating Expenditures	1,119,344
○ Federal Election Activity	709,716
○ Coordinated Party Expenditures	134,156
○ Other Disbursements	67,902
○ Transfers to Affiliated/Other Party Committees	65,000
Total Disbursements	2,096,118
Cash-on-hand @ December 31, 2012	\$ 82,850
Levin Cash-on-hand @ May 8, 2012	\$0
Total Levin Receipts	104,500
Total Levin Disbursements	103,500
Levin Cash-on-hand @ December 31, 2012	\$1,000

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of USDC's reported financial activity with its bank records found that, for 2011, USDC understated its opening cash by \$17,885 and overstated its receipts and ending cash by \$92,203 and \$74,545, respectively. For 2012, only the opening and ending cash were misstated. Opening cash was overstated by \$74,545 and ending cash was overstated by \$75,866. Subsequent to audit notification, USDC amended its reports, which materially corrected the opening cash for 2011. In response to the Interim Audit Report recommendation, USDC stated that it disagrees with the dollar amount of the receipts misstatement, \$92,203, and requests that the finding be reduced by \$90,439, the amount of its over reported transfers. (For more detail, see p. 7.)

Finding 2. Recordkeeping for Employees

During audit fieldwork, the Audit staff found that USDC did not maintain monthly payroll logs for some of its payroll, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified 42 payroll transactions totaling \$62,135, for which monthly payroll logs were missing or incomplete. This consisted entirely of payroll which was allocated between federal and non-federal funds. In response to the Interim Audit Report recommendation, USDC stated that it now has procedures in place to ensure that payroll logs are maintained to track the amount of time employees spent on federal activities. (For more detail, see p. 9.)

Finding 3. Improper Bank Account Structure

USDC maintained a bank account in which all funds, including both federal and non-federal, were temporarily transferred from linked subaccounts (federal and non-federal) to a parent account that served as a temporary holding account for all USDC funds. This account structure was maintained for ten months in 2011. The Audit staff determined the account was not a federal account in accordance with 11 CFR §102.5(a)(1)(i), which provides for the permissible account structure pertaining to federal and non-federal activity. Upon review of the account activity, the Audit staff concluded that USDC did not improperly use non-federal funds to pay for federal activity. In response to the Interim Audit Report recommendation, USDC stated that it has no additional comments regarding this matter. (For more detail, see p. 11.)

Finding 4. Receipt of Levin Fund Donations that Exceed the Limit

The Audit staff identified two donations to the Levin Fund that exceeded the donation limitation by \$12,000. In response to the Interim Audit Report recommendation, USDC filed amended reports disclosing different contributors of Levin funds to replace those the

Audit staff identified as making excessive Levin contributions. USDC did not demonstrate through a reasonable accounting method that it had sufficient Levin-eligible funds to make the Levin disbursements at the time when it spent the monies acquired from the two excessive donations on Levin activities and it did not demonstrate that the most recently disclosed Levin donations were, in fact, Levin-eligible. (For more detail, see p. 13.)

Finding 5. Receipt of Contributions that Exceed Limits

USDC accepted contributions from two political action committees that exceeded the limitation by \$8,500. Both of the excessive contributions were refunded; however, the refunds were not made timely. In response to the Interim Audit Report recommendation, USDC stated that it has no additional comments regarding this matter. (For more detail, see p. 15.)

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Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of USDC's reported financial activity with its bank records found that, for 2011, USDC understated its opening cash by \$17,885 and overstated its receipts and ending cash by \$92,203 and \$74,545, respectively. For 2012, only the opening and ending cash were misstated. Opening cash was overstated by \$74,545 and ending cash was overstated by \$75,866. Subsequent to audit notification, USDC amended its reports, which materially corrected the opening cash for 2011. In response to the Interim Audit Report recommendation, USDC stated that it disagrees with the dollar amount of the receipts misstatement, \$92,203, and requests that the finding be reduced by \$90,439, the amount of its over reported transfers.

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). 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled USDC's reported financial activity with its bank records for the calendar years 2011 and 2012 and identified misstatements for 2011 in its opening cash balance, receipts and ending cash balance. The following chart outlines the discrepancies between USDC's disclosure reports and its bank records, and the succeeding paragraphs explain, to the extent possible, the reasons for the misstatements.

2011 Committee Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ January 1, 2011	\$64,844	\$82,729 ²	\$17,885 Understated
Receipts	\$477,497	\$385,294	\$92,203 Overstated
Disbursements	\$458,632	\$458,859	\$227 Understated
Ending Cash Balance @ December 31, 2011	\$83,709	\$9,164	\$74,545 Overstated

The overstatement of receipts resulted from the following:

• Transfers from non-federal accounts over reported	\$ (90,439)
• Fidelity investment account receipts over reported	(2,170)
• Unexplained difference	406
Net Overstatement of Receipts	<u>\$ (92,203)</u>

The misstatement of the opening cash balance in 2011 resulted primarily from USDC not reporting the proper opening balance and activity for the Karen Shepherd Fund.³ Subsequent to audit notification, USDC amended its reports to adjust the opening cash balance for this fund, which materially corrected the opening cash balance for 2011. The misstatement of the ending cash balance in 2011 resulted primarily from the opening cash adjustment for the Karen Shepherd Fund and the net overstatement of receipts detailed above.

For 2012, USDC overstated its opening cash balance by \$74,545 and overstated its ending cash balance by \$75,866. The overstatements resulted primarily from the discrepancies during calendar year 2011 noted above. USDC has not filed amendments to correct the misstated cash balances for 2012.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff explained the misstatements above, and other possible misstatements related to a bank account in which all funds, including both federal and non-federal funds, were temporarily transferred from linked subaccounts (federal and non-federal) to a parent account that served as a temporary holding account for all USDC funds. Schedules of the misstatements were provided to USDC representatives and Counsel. Counsel stated that they would review the schedules and

² The opening cash balance was adjusted to include a federal cash balance from USDC's parent account discussed in Finding 3.

³ The Karen Shepherd Fund consisted of amounts originally donated from the Karen Shepherd for Congress Committee in 1995. During 2011, total receipts were \$1,100 and there were no disbursements. The opening cash balance at the beginning of 2011 was \$55,620 and the closing balance at the end of 2011 was \$56,720. These balances were included in the amendments filed by USDC after notification of the audit. It is also noted that USDC closed the account for the Karen Shepherd Fund in March 2014.

might seek Commission consideration regarding the inclusion of the parent account as a federal account. Subsequently, USDC filed a Request for Commission Consideration of a Legal Question; however, the matter was withdrawn after the Audit staff, in further consultation with the Office of General Counsel, decided not to include activity from the parent account as part of the misstatement finding, since USDC did not use the parent account to pay any of its expenses and it was not used as a Federal allocation account.⁴

The Interim Audit Report recommended that USDC file amended disclosure reports to correct the remaining overstatements of ending cash and receipts for 2011 and the misstated cash balances for 2012.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, USDC said it disagrees that receipts were overstated by \$92,203 and requests that this amount be reduced by \$90,439, the amount of over reported H3 transfers. USDC contends that if it had made electronic transfers (or written checks) from its holding account and deposited them into its Federal account, the funds would have been returned to its parent account by automatic transfers, so in effect, no transfers could have been made. Therefore, it recorded the transfers on its books and reported them as such.

The Audit staff maintains that USDC overstated the amount of transfers from its non-federal account and continues to recommend that USDC amend its reports to reflect the amount of funds that were actually transferred between the accounts. Such an adjustment would be consistent with the reporting of other transfers between these accounts which USDC properly reported during the audit period.

Finding 2. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff found that USDC did not maintain monthly payroll logs for some of its payroll, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified 42 payroll transactions totaling \$62,135, for which monthly payroll logs were missing or incomplete. This consisted entirely of payroll which was allocated between federal and non-federal funds. In response to the Interim Audit Report recommendation, USDC stated that it now has procedures in place to ensure that payroll logs are maintained to track the amount of time employees spent on federal activities.

Legal Standard

Maintenance of Monthly Logs. 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;

⁴ The parent account is the subject of Finding 3- Improper Bank Account Structure.

- 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 disbursements for payroll. USDC was required to maintain monthly logs or equivalent records to document the percentage of time each employee spent in connection with a federal election for \$358,530 in payroll. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For some employee time records, USDC properly utilized a payroll log to record the time spent on federal election activity. However, some payroll logs were either missing or were not complete for payroll totaling \$62,135.⁵ The total of \$62,135 consisted entirely of payroll reported on Schedules H4 and paid with an allocation of federal and non-federal funds.⁶

B. Interim Audit Report & Audit Division Recommendation

At the exit conference and during audit fieldwork, the Audit staff discussed the payroll recordkeeping issue with USDC representatives. The representatives noted that most of the missing records were for three individuals, one of whom is now deceased. The representatives stated that, starting in 2012, USDC adopted new employee policies and procedures that required all employees to sign timesheets that tracked the percentage of time spent on federal election activity. A sample of the new timesheet and a copy of the policies and procedures were provided to the Audit staff. The Audit staff found the planned changes sufficient for tracking the amount of time spent by USDC employees on federal election activity.

For USDC employees that were paid with an allocation of federal and non-federal funds for which payroll logs were missing or incomplete, the Interim Audit Report recommended that USDC:

- provide evidence that the missing or incomplete monthly time logs were maintained to document the percentage of time an employee spent in connection with a federal election; and
- continue to maintain payroll logs according to the policy provided to the Audit staff.

⁵ 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 Commission Consideration of a Legal Question, Page 1). Payroll amounts are stated net of payroll taxes and benefits.

⁶ All payroll described in this finding, \$358,530, was required to be allocated between federal and non-federal activity.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, USDC stated that it now has procedures in place to ensure that payroll logs are maintained to track the amount of time employees spent on federal activities. The Audit staff concludes that USDC did not maintain monthly logs for payroll totaling \$62,135.

Finding 3. Improper Bank Account Structure

Summary

USDC maintained a bank account in which all funds, including both federal and non-federal, were temporarily transferred from linked subaccounts (federal and non-federal) to a parent account that served as a temporary holding account for all USDC funds. This account structure was maintained for ten months in 2011. The Audit staff determined the account was not a federal account in accordance with 11 CFR §102.5(a)(1)(i), which provides for the permissible account structure pertaining to federal and non-federal activity. Upon review of the account activity, the Audit staff concluded that USDC did not improperly use non-federal funds to pay for federal activity. In response to the Interim Audit Report recommendation, USDC stated that it has no additional comments regarding this matter.

Legal Standard

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

B. Federal v. Non-Federal Account. The federal account may contain only those funds that are permissible under the federal election law. The non-federal account may contain funds that are not permitted under the federal law (but are legal under state law), such as contributions that exceed the limits of the federal law and contributions from otherwise prohibited sources, such as corporations and labor organizations. 11 CFR §102.5(a)(1)(i) and (a)(3).

C. Transfers. Generally, a political committee may not transfer funds from its non-federal account to its federal account, except when the committee follows specific rules for paying for shared federal/non-federal election activity. 11 CFR §§102.5(a)(1)(i) and 106.5(g).

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

- They may pay the entire amount of the shared expense from the federal account and transfer funds from the non-federal account to the federal account to cover the non-federal share of that expense; or
- They may establish a separate allocation account into which the committee deposits funds from both its federal and non-federal accounts solely for the

purpose of paying the allocable expenses of shared federal/non-federal activities. 11 CFR §106.5(g)(1)(i) and (ii)(A).

E. Reporting Allocable Expenses. A political committee that allocates federal/non-federal expenses must report each disbursement it makes from its federal account (or separate allocation account) to pay for a shared federal/non-federal expense. Committees report these kinds of disbursements on Schedule H-4. 11 CFR §104.17(b).

Facts and Analysis

A. Facts

Prior to audit fieldwork, USDC informed the Audit staff that a previous Executive Director had maintained a bank account that included both federal and non-federal funds, obtained primarily through automatic transfers (sweeps) from linked subaccounts (a federal bank account and a non-federal bank account).⁷ The parent account also automatically transferred money back to the subaccounts to pay for checks and other debits from the subaccounts. The effects of these transfers, on a daily basis, were to maintain zero balances in these subaccounts.⁸

USDC did not deposit funds directly into the parent account, other than small credit card contributions, totaling \$41,784, and the aforementioned automatic transfers. The account was not used to pay bills, except for credit card fees associated with contributions that totaled \$2,435. All transfers for allocated costs were paid directly by check or internet transfer from a non-federal account to a federal account. The automatic sweeps function was discontinued in October of 2011.⁹ Thereafter, the parent account served only as a credit card processing account.

Under 11 CFR §102.5, committees must use a federal account to deposit and pay all federal activity. Alternatively, a committee may choose to establish a special account, called an allocation account, solely for the purpose of paying mixed federal/non federal expenses. Funds are then transferred from the federal and nonfederal accounts into the allocation account to pay for allocable activity. USDC's account structure as described above does not comply with the regulations pursuant to 11 CFR §102.5.

The commingling of federal and non-federal funds into the parent account increased the risk of utilizing non-federal funds for federal activity. However, based on a funding analysis of all USDC's accounts, the Audit staff concluded that no overfunding of federal activity from non-federal accounts existed during the audit period.

⁷ The parent account also received credit card contributions from both federal and non-federal donors, and was used to pay expenses relating to the processing fees for those credit card contributions.

⁸ Other than the linked federal sub-account, USDC did not maintain a federal account for its daily operational activities.

⁹ Of the contributions and fees mentioned in this paragraph, only \$7,517 was processed and deposited after October 2011; the fees totaled \$165.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed the improper account structure with USDC representatives and Counsel and it was subsequently presented as a finding. Counsel stated that USDC agreed that the account structure was improper and that its use had been discontinued. Subsequent to the exit conference, Counsel provided sufficient explanation to assure the Audit staff, in conjunction with their own analysis, that no overfunding of federal activity resulted from the commingling of federal and non-federal funds in the parent account.

The Interim Audit Report recommended that USDC provide any additional information or written comments that it considered relevant to this matter.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, USDC provided no additional comments. The Audit staff concludes that USDC used an account structure for ten months during 2011 that was not in compliance with regulations pursuant to 11 CFR §102.5.

Finding 4. Receipt of Levin Fund Donations that Exceed the Limit

Summary

The Audit staff identified two donations to the Levin Fund that exceeded the donation limitation by \$12,000. In response to the Interim Audit Report recommendation, USDC filed amended reports disclosing different contributors of Levin funds to replace those the Audit staff identified as making excessive Levin contributions. USDC did not demonstrate through a reasonable accounting method that it had sufficient Levin-eligible funds to make the Levin disbursements at the time when it spent the monies acquired from the two excessive donations on Levin activities and it did not demonstrate that the most recently disclosed Levin donations were, in fact, Levin-eligible.

Legal Standard

Party Committee Limits. A state, district or local committee of a political party must not solicit or accept from any person (including any entity established, financed, maintained, or controlled by such person) one or more donations of Levin funds aggregating more than \$10,000 in a calendar year. If the state limit is less than \$10,000, the committee must adhere to that limit. 11 CFR §300.31(d)(1)-(2).

Levin Funds Accounts and Accounting. For Levin fund expenditures, Committees must either:

- Establish a separate Levin account (in addition to the non-federal and federal accounts); or
- Deposit Levin funds into the non-federal account, and demonstrate through a reasonable accounting method that it has sufficient Levin funds in the account to

cover any expenses allocated to Levin funds.¹⁰ 11 CFR §§ 102.5(a)(3) and 300.30(c).

Facts and Analysis

A. Facts

USDC deposited its Levin funds into its non-federal account, and reportedly “flagged” (tracked) its donations. It later transferred these Levin donations, as needed, into its Levin account. During the audit period, USDC made two lump-sum transfers from its non-federal account into its Levin account, in anticipation of making Levin disbursements. The Audit staff reviewed these donations and identified two donations in 2012 that exceeded the Levin donation limit.

USDC exceeded the Levin donation limit by \$12,000. Utah state law does not address limits for Levin fund donations; therefore, the federal limit of \$10,000 per donor in a calendar year should have been followed. One donor made donations totaling \$18,000, and exceeded the donation limit by \$8,000 and the other donor made donations totaling \$14,000, and exceeded the donation limit by \$4,000.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed this matter with USDC representatives who replied that Levin funds were transferred from USDC’s non-federal account to its Levin account, and that because of a clerical error, the wrong Levin donors were disclosed. USDC proposed amending its report to disclose different Levin eligible donors.

The Audit staff, in consultation with the Office of General Counsel, agreed that the amendments would resolve the issue of excessive Levin donations, but sought more information about the accounting method utilized and the related clerical disclosure errors.

The Interim Audit Report recommended that USDC provide evidence these donations were not excessive or show through a reasonable accounting method that total Levin funds were sufficient and that the proposed substitute Levin donors were Levin eligible at the time Levin expenditures were made. Absent such action, USDC should refund the \$12,000 in excessive donations and provide evidence of such refunds (to include copies of the front and back of the cancelled checks).

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, USDC stated that it would file amendments within 30 days to disclose different Levin eligible donors, which it has since done. However, no information was provided regarding USDC’s accounting method to demonstrate that total Levin funds were sufficient and that the proposed substitute Levin donors were Levin eligible at the time Levin expenditures were made.

¹⁰ Levin funds cannot be deposited into a federal account.

The Audit staff agrees the amendments filed for the excessive Levin amount is sufficient as long as associated records are provided that show the adequacy of Levin Funds and the eligibility of Levin donors.

Finding 5. Receipt of Contributions that Exceed Limits

Summary

USDC accepted contributions from two political action committees that exceeded the limitation by \$8,500. Both of the excessive contributions were refunded; however, the refunds were not made timely. In response to the Interim Audit Report recommendation, USDC stated that it has no additional comments regarding this matter.

Legal Standard

- A. Party Committee Limits.** A state, district or local committee of a political party may not receive more than a total of \$5,000 per calendar year from a multicandidate political committee. 52 U.S.C. §30116(a)(2)(C) and 11 CFR §110.2(d).
- B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
- Return the questionable check to the donor; or
 - Deposit the check into its federal account and:
 - Keep enough money in the account to cover all potential refunds;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
 - Seek a reattribution or redesignation of the excessive portion, following the instructions provided in the Commission regulations; and
 - If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §103.3(b)(3), (4) and (5).

Facts and Analysis

A. Facts

USDC accepted contributions from two multicandidate political action committees that exceeded the limitation by \$8,500. One of the contributions was made in 2011 for \$10,000 and the other was made in 2012 for \$8,500, resulting in excessive contributions of \$5,000 and \$3,500, respectively. Both of the excessive contributions were refunded; however, the refunds were not made timely (refunds were made 129 days and 373 days later, respectively).

B. Interim Audit Report & Audit Division Recommendation

Subsequent to the exit conference, the Audit staff presented this matter to USDC representatives. USDC acknowledged the errors and noted that they had addressed them.

The Interim Audit Report recommended that USDC provide any additional comments it considered relevant to this matter.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, USDC made no additional comments. The Audit staff concludes that USDC accepted contributions that exceeded the limitation by \$8,500 and the funds were untimely refunded.

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