



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 7, 2012

MEMORANDUM

TO: Patricia Carmona
Chief Compliance Officer

Tom Hintermister
Assistant Staff Director
Audit Division

FROM: Christopher Hughey *pch*
Deputy General Counsel

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

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

Allison T. Steinle *ATS*
Attorney

SUBJECT: Proposed Draft Final Audit Report on the Colorado Republican Federal Campaign Committee (LRA 827)

I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Draft Final Audit Report ("DFAR") on the Colorado Republican Federal Campaign Committee ("the Committee"). Our comments address issues pertaining to the Committee's allocation account as presented in Finding 1 (Misstatement of Financial Activity) and Finding 2 (Allocation of Expenditures). We concur with any findings not specifically discussed in this memorandum. The Committee did not file a response to the IAR. If you have any questions, please contact Allison T. Steinle, the attorney assigned to this audit.

II. FINDING 1 (MISSTATEMENT OF FINANCIAL ACTIVITY) AND FINDING 2 (ALLOCATION OF EXPENDITURES)

The Committee maintained five federal bank accounts and three non-federal bank accounts in 2007 and 2008. The Committee labeled one of these federal accounts as an

“allocation account,” and to date has not indicated that the account was originally intended to function as anything other than an allocation account established pursuant to 11 C.F.R. § 106.7. However, the Committee not only used this account to pay for allocable expenses during the audit period, but also paid for \$2,893,303 in 100% federal activity and \$19,000 in 100% non-federal activity out of the allocation account. The disbursements out of the account included, but were not limited to, disbursements for payroll, legal fees, mailers, and consulting services. The Committee also not only transferred funds into the allocation account from the other federal and non-federal accounts, but also made \$147,830 in transfers back out of the allocation account to other federal accounts.

Finding 2 of the proposed DFAR concludes that these transactions resulted in an overfunding of the allocation account in the amount of \$131,725. In addition, the Committee failed to report \$51,500 in 100% non-federal transfers into the allocation account, and Finding 1 of the proposed DFAR includes this amount in its misstatement calculation.

We agree with the Audit Division that the Committee overfunded the account by transferring more funds from the non-federal accounts than were needed to cover the non-federal share of the Committee’s allocable activity. We also agree that that the Committee impermissibly transferred funds from its non-federal account to pay for non-allocable activity, and impermissibly paid for 100% non-federal activity out of its allocation account. The Commission’s regulations prohibit committees from transferring funds from a non-federal account to reimburse a federal account for non-allocable activity. 11 C.F.R. §§ 102.5(a), 106.7(f)(1). The Commission’s regulations also permit committees to use allocation accounts “solely for the purpose of paying the allocable expenses of joint federal and non-federal activities.” 11 C.F.R. § 106.7(f)(1)(ii). An expense payable with 100% non-federal funds is, by definition, not allocable, and thus transfers of non-federal funds to a federal account and payment of 100% non-federal expenses thereafter by the federal account are not permissible.¹

We also agree with the Audit Division that any activity not reported out of the allocation account should be included in the misstatement amount. Allocation accounts permit state party committees to mix funds from a committee’s federal and non-federal operating accounts to pay allocable expenses, but are considered federal accounts from which that committee must report all activity, including the non-federal portion of activity. See 11 C.F.R. §§ 104.17, 106.7(f); Explanation and Justification for Methods of Allocation between Federal and Non-Federal Accounts, 55 Fed. Reg. 26,058, 26,065-66 (June 26, 1990). This reporting requirement allows the Commission to verify that committees are transferring and using the proper amount of non-federal funds to pay for the non-federal share of allocable activities, and do not use non-federal funds to subsidize federal activities. See 55 Fed. Reg. at 26,066 (noting that a reporting requirement “allow[s] the Commission to track the flow of non-federal funds into federal

¹ We note that that under a strict reading of 11 C.F.R. § 106.7(f)(1)(ii), the Committee was also prohibited from using the allocation account to pay for the 100% federal activity using 100% federal funds. However, had the Committee paid for the 100% federal activity out of a federal operating account also used to pay for allocable activity pursuant to 106.7(f)(1)(i), as opposed to an allocation account established pursuant to 106.7(f)(1)(ii), it could have done so as long as the 100% federal activity was not funded by non-federal funds. See 11 C.F.R. §§ 102.5(a), 106.7(f)(1)(i). Therefore, we read 11 C.F.R. § 106.7(f)(1)(i) and (ii) together to only prohibit the transfer of non-federal funds and the payment of 100% non-federal expenses thereafter.

accounts, and [] ensure[s] that the use of such funds is strictly limited to payment for the non-federal share of allocable activities”].

Finally, we note that the Georgia Federal Elections Committee (“GFEC”) audit addressed similar, but not identical, issues. This audit involved payments for 100% federal activity and 100% non-federal activity out of a so-called “payroll escrow” account, which in some ways resembles an allocation account.² However, we do not believe that the GFEC audit affects the legal analysis in this case. We do not understand the Commission to have expressed any views as to the regulatory requirements for actual allocation accounts, which were not at issue in the GFEC audit, or as to the regulatory requirements for the payment of allocable expenses from federal accounts for committees that choose to pay their allocable expenses in that method. As noted above, to our knowledge, the allocation account here was an actual allocation account established pursuant to 11 C.F.R. § 106.7, and not as a payroll escrow account used exclusively to pay salary and taxes. Instead, it appears that this was an allocation account that was simply mislabeled in terms of the funds transferred in and paid out of the account.

² Specifically, GFEC established a payroll escrow account to ease its administrative payroll processing burden. The payroll escrow account was funded by transfers from the committee’s federal and non-federal operating accounts. GFEC then made 100% federal, 100% non-federal, and allocable payroll disbursements for salary and taxes from the payroll escrow account. GFEC did not disclose any non-federal activity associated with the payroll escrow account. GFEC asserted that its payroll escrow account was neither a federal account nor an allocation account, and thus stated that it was not required to report the account’s non-federal activity. In that case, the Commission did not approve the Audit Division’s recommendation that the Commission find that the payroll escrow account “did not comply with the regulations, but that the filing of additional reports was unnecessary.” See Final Audit Report on the Georgia Federal Elections Committee.