**AGENDA DOCUMENT NO.** 19-08-A
**AGENDA ITEM**
**For meeting of** March 28, 2019

FEDERAL ELECTION COMMISSION
SECRETARIAT

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**THE FEDERAL ELECTION COMMISSION**
Washington, DC 20463

February 14, 2019

**MEMORANDUM**

To: The Commission

Through: Alec Palmer AP
Staff Director

From: Patricia C. Orrock PCO
Chief Compliance Officer

Nicole Burgess NB
Audit Manager

By: Mary Moss MM
Lead Auditor

Subject: Audit Division Recommendation Memorandum on Jill Stein for President (JSFP)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to JSFP on November 19, 2018 (see attachment). In response to the DFAR, JSFP provided comments to Findings 1 through 4, as noted below.[1] JSFP did not request an audit hearing.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR. The Office of General Counsel (OGC) has reviewed this memorandum and concurs with the recommendations.

**Committee Request to Delay Repayment Determination**
In response to DFAR Finding 1 (Net Outstanding Campaign Obligations ("NOCO")), JFSP contends that the NOCO statement is incorrect and wrongly results in a repayment obligation. JFSP requests that the Commission delay making a repayment determination[2] to give it an opportunity to work with Audit staff to resolve discrepancies it purports exist in the NOCO statement. In exchange for the Commission delaying making a repayment determination, JSFP proposes to: (1) waive its right to have the audit concluded by September 2019; (2) comply with any repayment determinations identified by December 31, 2019; (3)

[1] On February 5, 2019, OGC verified that JSFP did not intend to submit additional documents.
[2] Notification of repayment by the Commission must be made August 21, 2019 via the Final Audit Report of the Commission.

make a repayment within 60 days of a repayment determination or December 31, 2019, whichever comes first; and, (4) make a good faith initial pro rata repayment of $40,372.

The Audit Division recommends that the Commission reject JSFP's proposal in its entirety to further delay the repayment notification deadline. (See OGC comments in attached LRA #1021.)

**Finding 1. Net Outstanding Campaign Obligations - Surplus**
Review of JSFP's financial activity through December 31, 2016 and estimated winding down costs indicated that the Candidate had a surplus of funds as of her Date of Ineligibility (DOI) in the amount of $200,856. In response to the Preliminary Audit Report (PAR), JSFP stated that it disagreed with the audited Statement of Net Outstanding Campaign Obligations (NOCO) and provided documentation and an updated NOCO to support its position that, at the time of DOI, the Candidate's NOCO was in a deficit position and no repayment was required. In response to the DFAR, JSFP contends that the Candidate did not owe a repayment. According to JSFP, if the audited NOCO had included additional winding down costs totaling $258,973, the Candidate's NOCO would have reflected a deficit amount totaling $58,117, and ultimately no repayment to the United States Treasury would be required. No documentation was provided by JSFP to support this position or the additional winding down costs. As such, the Audit staff has not made any adjustments to the audited NOCO included in the DFAR.

The Audit staff recommends that the Commission make a determination that a pro rata repayment of $40,372 is repayable to the United States Treasury.

**Finding 2. Matching Funds Received in Excess of Entitlement**
The NOCO statement prepared by the Audit staff indicated a surplus position, as of August 6, 2016, the Candidate's DOI. Therefore, JSFP was not entitled to the matching fund payment it received on January 18, 2017. In response to the DFAR, JSFP contends that it did not agree that the Candidate was in a surplus position. JSFP explained that it experienced confusion with respect to initial bank balances, ballot access costs and its calculation of winding down expenses at the time it submitted its last matching fund request, but JSFP still considered the NOCO balance to be in a deficit position. JSFP did not provide any documents to support its assertion.

The Audit staff recommends that the Commission make a determination that $134,900 is repayable to the United States Treasury.

**Finding 3. Misstatement of Financial Activity**
In response to the PAR, JSFP agreed to file amended reports to correct the misstatement. In response to the DFAR, JSFP stated it was still planning on filing the amendments but needed additional time. To date, no amendments have been filed to correct the public record.

The Audit staff recommends that the Commission find, in 2015, JSFP understated its reported receipts and disbursements by $31,495 and $35,042 respectively; and in 2016, JSFP understated its reported receipts, disbursements and ending cash by $996,384, $800,310 and $192,527 respectively.

**Finding 4. Disclosure of Debts and Obligations**
In response to the PAR and DFAR, JSFP stated it was in the process of making the necessary amendments to correct the disclosure of debts and obligations. To date, no amended reports have been filed to correct the public record.

The Audit staff recommends that the Commission find that JSFP did not disclose debts totaling $17,015 on Schedule D-P (Debts and Obligations), as required.

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 Mary Moss or Nicole Burgess at 694-1200.

Attachments:
Draft Final Audit Report of the Audit Division on Jill Stein for President
Legal Analysis, dated February 13, 2019

cc: Office of General Counsel

# Draft Final Audit Report of the Audit Division on Jill Stein for President
(January 17, 2015 – December 31, 2016)

## Why the Audit Was Done

Federal law requires the Commission to audit every political committee established by a candidate who receives public funds for the primary campaign.[1] The audit determines whether the candidate was entitled to all of the matching funds received, whether the campaign used the matching funds in accordance with the law, whether the candidate is entitled to additional matching funds, and whether the campaign otherwise complied with the limitations, prohibitions, and disclosure requirements of the election law.

## 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 Campaign (p. 3)

Jill Stein for President is the principal campaign committee for Jill Stein, a candidate for the Green Party nomination for the office of President of the United States. The Committee is headquartered in Lexington, Massachusetts. For more information, see the chart on the Campaign Organization, p. 3.

## Financial Activity[2] (p. 4)

| | |
|---|---|
| • **Receipts** | |
| o Contributions from Individuals | $ 11,010,439 |
| o Matching Funds Received | 456,035 |
| o Loans Received | 40,000 |
| o Offsets to Operating Expenditures | 716,735 |
| **Total Receipts** | **$ 12,223,209** |
| • **Disbursements** | |
| o Operating Expenditures | $ 11,885,379 |
| o Transfers to Other Authorized Committees | 22,300 |
| o Fundraising Disbursements | 15,156 |
| o Contribution Refunds | 2,465 |
| o Other Disbursements | 250 |
| **Total Disbursements** | **$ 11,925,550** |

## Findings and Recommendations (p. 5)

- Net Outstanding Campaign Obligations - Surplus (Finding 1)
- Matching Funds Received in Excess of Entitlement (Finding 2)
- Misstatement of Financial Activity (Finding 3)
- Reporting of Debts and Obligations (Finding 4)

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[1] 26 U.S.C. §9038(a).

[2] These figures contain primary, general and recount activity. The general and recount activity combined accounted for approximately $9,590,974, or 78% of total receipts, and approximately $9,618,886 or 81% of total disbursements. See Committee Structure on p. 1.

# Draft Final Audit Report of the Audit Division on Jill Stein for President

(January 17, 2015 – December 31, 2016)

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# Part I
# Background

## Authority for Audit
This report is based on an audit of Jill Stein for President (JSFP), undertaken by the Audit Division of the Federal Election Commission (the Commission) as mandated by Section 9038(a) of Title 26 of the United States Code. That section states, "After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received [matching] payments under section 9037." Also, Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

## Scope of Audit
Unless noted in the Committee Structure section below, this audit examined JSFP's primary election activity only. The following areas were covered by this audit:
1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The receipt of transfers from other authorized committees.
4. The disclosure of contributions and transfers received.
5. The disclosure of disbursements, debts and obligations.
6. The recordkeeping process and completeness of records.
7. The consistency between reported figures and bank records.
8. The accuracy of the Statement of Net Outstanding Campaign Obligations.
9. The campaign's compliance with spending limits.
10. Other campaign operations necessary to the review.

## Committee Structure
JSFP was the only campaign committee authorized by Jill Stein (the Candidate) for the 2016 Presidential election and conducted primary, general and recount activity for the Candidate. JSFP opened six bank accounts: one checking and one savings account for each activity. JSFP deposited contributions received before the Candidate's nomination into the primary checking account, and most contributions received after the nomination into the general checking account. JSFP received matching funds for its primary campaign. This audit covered JSFP's primary election activity to determine if the expenses were qualified campaign expenses defrayed in the connection with the primary election.[3]

[3] Under Title 26, this audit included an examination of JSFP's Statement of Net Outstanding Campaign Obligations based solely on JSFP's primary election activity for the purpose of determining the extent to which the Candidate was entitled to primary matching funds (Finding 1). Due to the committee's structure, this audit also covered a Title 52 examination of JSFP's overall consistency between reported figures and bank activity, which included general and recount activity. For clarification, the Audit staff has indicated in Finding 3 – Misstatement of Financial Activity, those transactions that were not related to primary election activity.

## 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," JSFP requested early consideration of two legal questions raised during the audit. The first question pertained to whether the Commission's original determination of the Candidate's date of ineligibility (DOI) was proper. The second question was whether committees should be permitted to incur winding down expenses and other primary expenses after the DOI if they are clearly incurred to improve compliance with existing laws and regulations or if they are clearly required in the course of seeking the qualification for the ballot in various states.[4]

The Commission concluded, by a vote of 4-0, to reaffirm JSFP's original DOI as August 6, 2016.[5] (See Finding 1, p. 7.)

## Inventory of Campaign Records

The Audit staff routinely conducts an inventory of campaign records before it begins audit fieldwork. JSFP's records were materially complete when fieldwork commenced.[6]

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[4] Although JSFP's request purported to identify three separate questions for review, two of the questions raised the same essential issue, which is whether the Commission's original DOI determination was proper. Therefore, those two questions were consolidated into a single question.

[5] JSFP presented no argument in its Request for Consideration of a Legal Question regarding the second question, however, the response to this question is addressed directly in the Commission's regulations. The regulations provide for the payment of winding down costs, i.e. costs associated with the termination of political activity, including compliance with statutory post-election requirements and other specifically defined administrative costs. 11 CFR §§ 9034.4(a)(3) and 9034.11. Because the regulations directly address the payment of winding down costs, there was no need for the Commission to reach a determination on the second question in the request.

[6] The Audit staff encountered delays prior to fieldwork due to JSFP's inability to timely provide complete computerized information.

# Part II
# Overview of Campaign

## Campaign Organization

| | |
|---|---|
| **Important Dates** | |
| • Date of Registration | July 14, 2015 |
| • Eligibility Period[7] | April 13, 2016 – August 6, 2016 |
| • Audit Coverage[8] | January 17, 2015 – December 31, 2016 |
| **Headquarters** | Lexington, Massachusetts |
| | |
| **Bank Information** | |
| • Bank Depositories | One |
| • Bank Accounts | Six (One checking and one savings account each for primary, general and recount activity) |
| **Treasurer** | |
| • Treasurer When Audit Was Conducted | Steven Welzer |
| • Treasurer During Period Covered by Audit | Steven Welzer |
| **Management Information** | |
| • Attended Commission Campaign Finance Seminar | No |
| • Who Handled Accounting and Recordkeeping Tasks | Paid Staff |

[7] On March 28, 2016, the Candidate submitted a signed letter (dated March 18, 2016 and subsequently revised on April 5, 2016), to the Commission seeking to become eligible to receive Presidential primary matching funds and agreeing that she and her authorized committee would comply with the conditions set forth in 11 CFR §9033.1(b). A threshold submission was submitted on March 28, 2016, and the Commission certified the Candidate as eligible to receive matching funds on April 13, 2016. The period during which the Candidate was eligible for matching funds ended on August 6, 2016, the Candidate's DOI.

[8] The audit covered the period from JSFP's first bank deposit on January 17, 2015. The Audit staff also conducted limited reviews of receipts and expenditures after December 31, 2016, to determine whether the Candidate was eligible to receive additional matching funds.

# Overview of Financial Activity
## (Audited Amounts)[9]

| | |
|---|---|
| **Cash-on-hand @ January 17, 2015** | **$ 0** |
| **Receipts** | |
| o Contributions from Individuals[10] | 11,010,439 |
| o Matching Funds Received[11] | 456,035 |
| o Loans Received | 40,000 |
| o Offsets to Operating Expenditures | 716,735 |
| **Total Receipts** | **$ 12,223,209** |
| | |
| **Disbursements** | |
| o Operating Expenditures | 11,885,379 |
| o Transfers to Other Authorized Committees | 22,300 |
| o Fundraising Disbursements | 15,156 |
| o Contribution Refunds | 2,465 |
| o Other Disbursements | 250 |
| **Total Disbursements** | **$ 11,925,550** |
| **Cash-on-hand @ December 31, 2016** | **$ 297,659** |

[9] These figures contain primary election, general election and recount activity. See Committee Structure on p. 1.

[10] JSFP received approximately 50,924 contributions from 42,486 individuals totaling $2,135,681 for primary election activity.

[11] As of the Candidate's DOI, August 6, 2016, JSFP had received matching funds totaling $456,036. JSFP received an additional $134,900 on January 18, 2017, for a total of $590,936.

# Part III
# Summaries

## Findings and Recommendations

### Finding 1. Net Outstanding Campaign Obligations - Surplus

The Audit staff's review of JSFP's financial activity through December 31, 2016, and estimated winding down costs indicated that the Candidate had a surplus of funds as of her DOI in the amount of $200,856. Of this surplus amount, JSFP is required to make a pro rata repayment of the $40,372.

In JSFP's initial Statement of Net Outstanding Campaign Obligations (NOCO) filed during the matching fund period, cash on hand was understated and both accounts payable and winding down expenses were overstated. As such, JSFP's NOCO indicated an apparent deficit position and therefore eligible to receive matching funds. The Audit staff's analysis of the NOCO, however, determined that surplus funds were received and the Candidate was not eligible for all of the matching funds she received. The Preliminary Audit Report recommended that JSFP provide evidence that the Candidate did not have surplus funds as of her DOI.

In response to the Preliminary Audit Report recommendation, JSFP disagreed it was in a surplus position and stated if the disallowed ballot access costs and recently updated winding down estimates were considered, it would instead be in a deficit position and therefore not be required to make a repayment. JSFP provided documentation and an updated NOCO to support its position. Based on this documentation and JSFP's 2017 and 2018 reported activity on Schedule B (Itemized Disbursements), the Audit staff updated its NOCO to reflect increased ballot access costs incurred prior to DOI and increased winding down actual costs. These adjustments reduced the repayment amount, but the revised NOCO still reflected a surplus position. Therefore, the Audit staff recommends that the Commission make a determination that $40,372 is repayable to the United States Treasury. (For more detail, see p. 7.)

### Finding 2. Matching Funds Received in Excess of Entitlement

The Audit staff's NOCO statement, as presented in Finding 1, indicated a surplus position as of August 6, 2016, the Candidate's DOI. Therefore, JSFP was not entitled to the matching fund payment of $134,900 it subsequently received on January 18, 2017. The Preliminary Audit Report recommended that JSFP provide evidence that the Candidate did not have surplus funds as of her DOI.

In response to the Preliminary Audit Report recommendation, JSFP provided documentation and an updated NOCO, and stated that it was entitled to all matching fund payments due to its increased winding down expenses, even if previously disallowed ballot access and other expenses were not considered. After the Audit staff incorporated the expenses that were documented as pertaining to the Primary election into its revised NOCO, JSFP was still in a surplus position and therefore not entitled to the matching fund payment it received after the Candidate's DOI. Therefore, the Audit staff recommends that the Commission make a determination that $134,900 is repayable to the United States Treasury. (For more detail, see p. 14.)

### Finding 3. Misstatement of Financial Activity

During audit fieldwork, a comparison of JSFP's reported financial activity with its bank records revealed a misstatement of receipts and disbursements for 2015 and 2016 and a misstatement of ending cash in 2016. In 2015, JSFP understated its reported receipts and disbursements by $31,495 and $35,042 respectively; and in 2016, JSFP understated its reported receipts, disbursements and ending cash by $996,384, $800,310 and $192,527 respectively. The Preliminary Audit Report recommended that JSFP amend its disclosure reports to correct the misstatements.

In response to the Preliminary Audit Report recommendation, JSFP related it was in the process of making the necessary amendments to correct the misstatements but no reports were filed. (For more detail, see p. 15.)

### Finding 4. Disclosure of Debts and Obligations

During audit fieldwork, the Audit staff identified debts totaling $17,015 not disclosed on Schedule D-P (Debts and Obligations), as required. The Preliminary Audit Report recommended that JSFP amend its reports to disclose the outstanding debt.

In response to the Preliminary Audit Report recommendation, JSFP related it was in the process of making the necessary amendments to correct the disclosure of debts and obligations but no reports were filed. (For more detail, see p. 18.)

## Summary of Amounts Owed to the United States Treasury

| | | |
|---|---|---|
| Finding 1 (p. 7) | Pro-rata portion of the Surplus Matching Funds | $ 40,372 |
| Finding 2 (p. 14) | Matching Funds received in Excess of Entitlement | $ 134,900 |
| | **Total Due United States Treasury** | **$ 175,272** |

# Part IV
# Findings and Recommendations

## Finding 1. Net Outstanding Campaign Obligations - Surplus

### Summary
The Audit staff's review of JSFP's financial activity through December 31, 2016, and estimated winding down costs indicated that the Candidate had a surplus of funds as of her DOI in the amount of $200,856. Of this surplus amount, JSFP is required to make a pro rata repayment of the $40,372.

In JSFP's initial Statement of Net Outstanding Campaign Obligations (NOCO) filed during the matching fund period, cash on hand was understated and both accounts payable and winding down expenses were overstated. As such, JSFP's NOCO indicated an apparent deficit position and therefore eligible to receive matching funds. The Audit staff's analysis of the NOCO, however, determined that surplus funds were received and the Candidate was not eligible for all of the matching funds she received. The Preliminary Audit Report recommended that JSFP provide evidence that the Candidate did not have surplus funds as of her DOI.

In response to the Preliminary Audit Report recommendation, JSFP disagreed it was in a surplus position and stated if the disallowed ballot access costs and recently updated winding down estimates were considered, it would instead be in a deficit position and therefore, not be required to make a repayment. JSFP provided documentation and an updated NOCO to support its position. Based on this documentation and JSFP's 2017 and 2018 reported activity on Schedule B (Itemized Disbursements), the Audit staff updated its NOCO to reflect increased ballot access costs incurred prior to DOI and increased winding down actual costs. These adjustments reduced the repayment amount, but the revised NOCO still reflected a surplus position. Therefore, the Audit staff recommends that the Commission make a determination that $40,372 is repayable to the United States Treasury.

### Legal Standard
**A. Net Outstanding Campaign Obligations (NOCO).** Within 15 days after the candidate's date of ineligibility (see definition below), the candidate must submit a statement of "net outstanding campaign obligations." This statement must contain, among other things:
- The total of all committee assets including cash-on-hand, amounts owed to the committee and capital assets listed at their fair market value;
- The total of all outstanding obligations for qualified campaign expenses; and
- An estimate of necessary winding-down costs. 11 CFR §9034.5(a).

**B. Date of Ineligibility.** The date of ineligibility is whichever of the following dates occurs first:

- The day on which the candidate ceases to be active in more than one state;
- The 30th day following the second consecutive primary in which the candidate receives less than 10 percent of the popular vote;
- The end of the matching payment period, which is generally the day when the party nominates its candidate for the general election; or
- In the case of a candidate whose party does not make its selection at a national convention, the last day of the last national convention held by a major party in the calendar year. 11 CFR §§9032.6 and 9033.5.

**C. Qualified Campaign Expense.** Each of the following expenses is a qualified campaign expense.

- An expense that is:
  - Incurred by or on behalf of the candidate (or his or her campaign) during the period beginning on the day the individual becomes a candidate and continuing through the last day of the candidate's eligibility under 11 CFR §9033.5;
  - Made in connection with the candidate's campaign for nomination; and
  - Not incurred or paid in violation of any federal law or the law of the state where the expense was incurred or paid. 11 CFR §9032.9.
- An expense incurred for the purpose of determining whether an individual should become a candidate, if that individual subsequently becomes a candidate, regardless of when that expense is paid. 11 CFR §9034.4.
- An expense associated with winding down the campaign and terminating political activity. 11 CFR §9034.4(a)(3).

**D. Value of Capital Assets**. The fair market value of capital assets is 60% of the total original cost of the assets when acquired, except that assets that are received after the date of ineligibility must be valued at their fair market value on the date received. A candidate may claim a lower fair market value for a capital asset by listing the asset on the NOCO statement separately and demonstrating, through documentation, the lower fair market value. 11 CFR §9034.5(c)(1).

**E. Winding Down Costs.** A primary election candidate who runs in the general election must wait until 31 days after the general election before using any matching funds for winding down costs, regardless of whether the candidate receives matching funds for the general election.
11 CFR §9034.11(d).

**F. Documentation of Disbursements.** Each candidate shall have the burden of proving that disbursements made by the candidate and/or her authorized committee are qualified campaign expenses. 11 CFR §9033.11.

**G. Surplus.** The Commission may determine through audits and examinations that the candidate's net outstanding campaign obligations, as defined in 11 CFR §9034.5, reflect a surplus. When a surplus is identified, the candidate shall, within 30 days of the ineligibility date, repay to the United States Treasury an amount which represents the amount of matching funds contained in the candidate's surplus. The amount shall be an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to total deposits made to the candidate's accounts. The Commission will provide the candidate with a written notice of its repayment determination.
11 CFR §§9038.2(b)(1)(ii) and (c)(1) and 9038.3(c)(1).

**H. Entitlement to Matching Payments after Date of Ineligibility.** If, on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31st of the Presidential election year, provided that he or she still has net outstanding campaign debts on the day when the matching payments are made. 11 CFR §9034.1(b).

## Facts and Analysis

### A. Facts

The Candidate's DOI was August 6, 2016. The Audit staff reviewed JSFP's financial activity through December 31, 2016; analyzed actual and projected winding down costs;[12] and prepared the NOCO that appears below.

**Jill Stein for President**
**Statement of Net Outstanding Campaign Obligations**
**As of August 6, 2016**
**As determined at August 31, 2018**

| | | |
|---|---|---|
| **Assets** | | |
| Cash in Bank | $ 792,935 [a] | |
| Accounts Receivable | 13,289 | |
| Physical Assets @ 60% depreciation | 4,200 | |
| **Total Assets** | | **$ 810,424** |
| | | |
| **Liabilities** | | |
| Accounts Payable for Qualified Campaign Expenses as of 8/6/16 | $ (237,602) | |
| Loan Payable as of 8/6/2016 | ( 40,000) | |
| Actual Winding Down Costs (12/9/16 – 8/31/18) | (262,611) | |
| Estimated Winding Down Costs (9/1/18 – 7/31/2019) | ( 69,355) [b] | |
| **Total Liabilities** | | **$ (609,568)** |
| | | |
| **Net Outstanding Campaign Obligations –Surplus** | | **$ 200,856** |

**Footnotes to NOCO Statement:**

[a] Amount includes contributions dated prior to DOI and deposited after DOI.
[b] Estimated winding down costs for future reportable periods only. This amount will be compared to actual winding down costs and will be adjusted accordingly. Estimated winding down presented in the preliminary audit report was reduced from $100,880 to $69,335 to reflect the remaining winding down period.

[12] The actual winding down costs were reviewed through August 31, 2018, the last date JSFP provided banking and disbursement documentation to support its actual winding down expenses.

**i. Surplus Pro-Rata Repayment Calculation**
The Audit staff's NOCO calculations indicated there were surplus funds of $200,856 as of DOI. Of this amount, $40,372 ($200,856 x .2010[13]) is the pro-rata portion of the surplus that is repayable to the United States Treasury.

**ii. NOCO Differences:** The primary differences between JSFP's NOCO and the NOCO prepared by the Audit staff are discussed below:

**a. Cash In Bank**
The primary difference between the assets section of the NOCO presented above and those prepared by JSFP is the cash in bank balance. JSFP understated cash by $313,079. Most of the understatement of cash represented funds received prior to the Candidate's DOI, but deposited after, with a majority consisting of contributions less than $200 made by credit card. Further, a majority of these credit card contributions were included in JSFP's receipts database as contributions made to the Primary election and were reported as unitemized contributions. The remaining difference pertained to outstanding disbursement checks that had not cleared the bank as of DOI that were not included in JSFP's cash in bank calculation. The understatement of assets caused the NOCO statements to show a larger deficit and matching fund entitlement than was the case.

**b. Accounts Payable for Qualified Campaign Expenses**

**1. Ballot Access Petitioning Expenses**
The primary difference between the accounts payable section of the NOCO presented on the previous page and those prepared by JSFP is with the amount of ballot access petitioning expenses.[14] JSFP included all ballot access petitioning expenses, including those incurred after DOI, thus overstating the amount calculated by the Audit staff by $255,671.[15] As noted in the legal standards above, only expenses incurred on or before DOI can be considered qualified campaign expenses. Therefore, the Audit staff did not include ballot access petitioning expenses incurred after DOI in its calculation of the NOCO. Furthermore, in many instances, the incurrence dates of the ballot access petitioning expenses were not sufficiently documented by JSFP and JSFP made no additional documentation available. Due to the lack of documentation, the Audit staff also did not include these undocumented expenditures in its NOCO calculations.

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[13] This figure (.2010), as calculated pursuant to 11 CFR §9038.3(c)(1), represents JSFP's repayment ratio and was calculated by dividing the total matching funds received as of DOI ($456,035) by the adjusted total deposits made to the candidate's accounts as of DOI ($2,269,118). Therefore, the repayment ratio was $456,035/$2,269,118 = 20.10%

[14] Ballot access petitioning is required for all states when a minor party candidate seeks to be included on the General election ballot for the state. Each state has unique petitioning requirements and cutoff dates, and some dates were subsequent to the Candidate's DOI.

[15] The Audit staff's review of all disbursements paid post DOI also resulted in the identification of additional expenses unrelated to ballot access that were not included in JSFP's NOCO accounts payable section.

**2. Winding Down Expenses**

The Audit staff's initial calculation of actual winding down expenses excluded expenses that were not adequately documented by JSFP. As of the date of the PAR, JSFP had not provided banking and supporting disbursement documentation for winding down expenses after August 1, 2017. Therefore, the winding down expenses for the months not documented were initially reflected on the NOCO as $0.[16] Estimated monthly winding down expenses only include future reporting periods.

JSFP's NOCO also included winding down expenses that were incurred after DOI but before the end of the expenditure report period, December 9, 2016, totaling $42,727. Since the Candidate participated in the General election, the Audit staff considered disbursements on or before December 9, 2016[17] to be expenses pertaining to the General election, in accordance with 11 CFR §§9002.12(a) and 9034.11(d), and therefore did not include them on the NOCO as winding down expenses for the Primary election.

Both winding down expense adjustments discussed above reduce the amount of liabilities on the NOCO and therefore reduce the amount of the matching fund entitlement.

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

The Audit staff presented a preliminary NOCO statement and related work papers to the JSFP representative at the exit conference. The JSFP representative stated he would need to review the work papers to determine why all credit card contributions had not been included in the cash on hand in the NOCO. He also related he disagreed with how the ballot access petitioning costs were allocated on the NOCO and stated he based this on previous audit reports. The representative stated it was his understanding that all ballot access costs were Primary election expenses regardless of the date they were incurred. In response to the exit conference, the JSFP representative provided documentation to support that certain ballot access petitioning costs were incurred prior to DOI.

Subsequent to the exit conference, JSFP requested early consideration of two legal questions raised during the audit. The first question pertained to whether the Commission's original determination of the Candidate's DOI was proper. The second question was whether committees should be permitted to incur winding down expenses and other primary expenses after the DOI if they are clearly incurred to improve compliance with existing laws and regulations or if they are clearly required in the course of seeking the qualification for the ballot in various states.[18]

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[16] As of the date of the PAR, the excluded months were August 2017 through July 2018.

[17] General election date = November 8, 2016 + 31 days = December 9, 2016.

[18] Although JSFP's request purported to identify three separate questions for review, two of the questions raised the same essential issue, which is whether the Commission's original DOI determination was proper. Therefore, those two questions were consolidated into a single question.

The Commission concluded, by a vote of 4-0, to reaffirm JSFP's original DOI as August 6, 2016. [19]

The Preliminary Audit Report recommended that JSFP provide evidence that the audited NOCO was not in a surplus position. Absent such evidence, the Audit staff stated it would recommend that the Commission make a determination that $66,196, representing the pro-rata portion of the surplus, was repayable to the United States Treasury.

**C. Committee Response to Preliminary Audit Report**
In response to the Preliminary Audit Report recommendation, JSFP continued to maintain its position that ballot access laws in each state should dictate which expenses qualify as qualified campaign expenses for the Primary election, and not necessarily the candidate's DOI. The Commission, however, concluded by a vote of 4-0 that JSFP's DOI was August 6, 2016. As noted in the legal standards above, only expenses incurred on or before DOI can be considered qualified campaign expenses. Therefore, the Audit staff did not include ballot access petitioning expenses incurred after DOI in its calculation of the NOCO.

JSFP also provided documentation and an updated NOCO, which, when compared to its initial NOCO, reflected an overall increase in total assets of $332,051, the majority of which included an increase in cash on hand of $314,561. The Audit staff concurred with $313,079, with the difference of $1,482 being JSFP's overstatement of cash on hand.

JSFP's updated NOCO also included an overall increase in total obligations of $294,820, all of which pertained to "estimated winding down expenses" that JSFP's NOCO reflected as $516,789. JSFP did not provide a listing to support all of the winding down expenses that justify this increase. JSFP provided bank statements for Primary and General election bank accounts only, some check copies written on Primary, General and Recount bank accounts, and accounting and payroll listings of selected expenses paid in 2017 and 2018. However, none of this documentation included election designation information. This was important because JSFP paid certain winding down expenses, such as salary, that were fully documented with payroll processing reports but those reports did not include the amount allocated to the Primary election for each pay-period and/or employee. To supplement the Committee's documentation, the Audit staff used the reports filed by JSFP with the Commission to calculate the amount allocated by the Committee to the Primary election. The Audit staff's analysis resulted in additional actual winding down expenses of $123,967 and a reduction in the estimated winding down expenses of $31,525.

In addition to the analysis of winding down expenses, the Audit staff also reviewed invoices that were previously submitted and identified additional accounts payable expenses totaling $36,035.

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[19] JSFP presented no argument in its Request for Consideration of a Legal Question regarding the second question, however, the response to this question is addressed directly in the Commission's regulations. The regulations provide for the payment of winding down costs, i.e. costs associated with the termination of political activity, including compliance with statutory post-election requirements and other specifically defined administrative costs. 11 CFR §§ 9034.4(a)(3) and 9034.11. Because the regulations directly address the payment of winding down costs, there was no need for the Commission to reach a determination on the second question in the request.

Although the Audit staff could not confirm JSFP's total obligations increase, it did verify additional accounts payable based on invoices, totaling $36,035, additional actual winding down expenses totaling $123,967, and a reduction in estimated winding down expenses of $31,525, for a net increase in obligations of $128,477 ($36,035 + 123,967 – 31,525), and updated the NOCO above accordingly.

The updated NOCO reduced the amount of the surplus from $329,333 to $200,856 however, a pro-rata repayment of the surplus was still required. Therefore, the Audit staff recommends that the Commission make a determination that $40,372 is repayable to the United States Treasury.

## Finding 2. Matching Funds Received in Excess of Entitlement

### Summary

The Audit staff's NOCO statement, as presented in Finding 1, indicated a surplus position as of August 6, 2016, the Candidate's DOI. Therefore, JSFP was not entitled to the matching fund payment of $134,900 it subsequently received on January 18, 2017. The Preliminary Audit Report recommended that JSFP provide evidence that the Candidate did not have surplus funds as of her DOI.

In response to the Preliminary Audit Report recommendation, JSFP provided documentation and an updated NOCO, and stated that it was entitled to all matching fund payments due to its increased winding down expenses, even if previously disallowed ballot access and other expenses were not considered. After the Audit staff incorporated the expenses that were documented as pertaining to the Primary election into its revised NOCO, JSFP was still in a surplus position and therefore not entitled to the matching fund payment it received after the Candidate's DOI. Therefore, the Audit staff recommends that the Commission make a determination that $134,900 is repayable to the United States Treasury.

### Legal Standard

**A. Entitlement to Matching Payments after Date of Ineligibility.** If, on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31$^{st}$ of the Presidential election year, provided that he or she still has net outstanding campaign debts on the day when the matching payments are made. 11 CFR §9034.1(b).

**B. Repayments.** The Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such excessive payments include, but are not limited to, payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding obligations. 11 CFR §§9034.5 and 9038.2 (b)(1)(i).

### Facts and Analysis

**A. Facts**
On January 18, 2017, JSFP received its only post-DOI matching fund payment of $134,900. The Audit staff's NOCO calculations indicated, however, that JSFP was in a surplus position as of DOI and was not entitled to receive additional matching funds (see Finding 1, p. 9). Therefore, JSFP is required to make a dollar for dollar repayment of this entire matching fund payment to the United States Treasury.

**B. Preliminary Audit Report & Audit Division Recommendation**
The Audit staff presented this matter to the JSFP representative at the exit conference in conjunction with the presentation of the audit calculated NOCO discussed in Finding 1 above. JSFP's response pertaining to receipt of matching funds in excess of entitlement is also detailed in Finding 1 above.

The Preliminary Audit Report recommended that JSFP provide evidence that it did not receive matching funds in excess of entitlement. Absent such evidence, the Audit staff stated it would recommend that the Commission make a determination that $134,900 was repayable to the United States Treasury.

**C. Committee Response to Preliminary Audit Report**
In response to the Preliminary Audit Report recommendation, JSFP provided documentation and an updated NOCO, and stated that even if all ballot access and other previously disallowed expenses were not considered primary election expenses, JSFP was still entitled to all matching fund payments it received due to its updated projections for winding down expenses. The Audit staff disagrees. As discussed in Finding 1 above, after the Audit staff incorporated the expenses that could be documented as pertaining to the Primary election into its revised NOCO, JSFP was still in a surplus position and therefore not entitled to the matching fund payment it received after the Candidate's DOI. The Audit staff recommends that the Commission make a determination that $134,900 is repayable to the United States Treasury.

## Finding 3. Misstatement of Financial Activity

### Summary

During audit fieldwork, a comparison of JSFP's reported financial activity with its bank records revealed a misstatement of receipts and disbursements for 2015 and 2016 and a misstatement of ending cash in 2016. In 2015, JSFP understated its reported receipts and disbursements by $31,495 and $35,042 respectively; and in 2016, JSFP understated its reported receipts, disbursements and ending cash by $996,384, $800,310 and $192,527 respectively. The Preliminary Audit Report recommended that JSFP amend its disclosure reports to correct the misstatements.

In response to the Preliminary Audit Report recommendation, JSFP related it was in the process of making the necessary amendments to correct the misstatements but no reports were filed.

## 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)(l), (2), (3), (4) and (5).

## Facts and Analysis

### A. Facts

As part of audit fieldwork, the Audit staff reconciled JSFP's reported activity[20] with its bank records for calendar years 2015 and 2016. The reconciliation revealed that JSFP misstated its receipts and disbursements for both years. The following charts outline the discrepancies between JSFP's disclosure reports and its bank records.

| 2015 Reported Activity to Bank Activity | | | |
|---|---|---|---|
| | Reported | Bank Records | Discrepancy |
| Beginning Cash Balance @ January 1, 2015 | $0 | $0 | $0 |
| Receipts | $244,196 | $275,691 | $31,495 Understated |
| Disbursements | $221,985 | $257,027 | $35,042 Understated |
| Ending Cash Balance @ December 31, 2015 | $22,211 | $18,664 | $3,547 Overstated |

The understatement of receipts resulted from the following:

| | | |
|---|---|---|
| • Contributions from individuals not on reports | + | $43,877 |
| • Unexplained difference | - | 12,382 |
| **Net Understatement of Receipts** | + | $31,495 |

[20] Due to JSFP's consolidated reporting as one entity for primary, general and recount activity; the incorrect identification of election designations on the reports; the missing election designation information in some of the database records; and the large volume of transactions not required to be itemized, it was impossible for the Audit staff to exclude the general and recount activity from this reconciliation, especially during the post DOI period, which was August 7, 2016 through December 31, 2016.

The understatement of disbursements resulted from the following:

| | | |
|---|---|---|
| • Payments for salaries and wages not reported | + | $45,364 |
| • Disbursements reported but did not clear the bank | - | 14,903 |
| • Credit card fees not reported | + | 4,455 |
| • Miscellaneous disbursements not reported | + | 126 |
| **Net Understatement of Disbursements** | + | $35,042 |

The $3,547 overstatement of the ending cash balance resulted from the misstatements described above.

| 2016 Reported Activity to Bank Activity[21] | | | |
|---|---|---|---|
| | Reported | Bank Records | Discrepancy |
| Beginning Cash Balance @ January 1, 2016 | $22,211 | $18,664 | $3,547 |
| Receipts | $10,951,133 | $11,947,517 | $996,384[22] Understated |
| Disbursements | $10,868,212 | $11,668,522 | $800,310[23] Understated |
| Ending Cash Balance @ December 31, 2016 | $105,132 | $297,659 | $192,527 Understated |

The understatement of receipts resulted from the following:

| | | |
|---|---|---|
| • Contributions from individuals not reported | + | $565,893 |
| • Contributions from individuals reported, not supported by bank deposit | - | 128,420 |
| • Offsets to operating disbursements not reported | + | 6,328 |
| • In-kind contributions not reported as a receipt | + | 247 |
| • Interest Income underreported | + | 25 |
| • Unexplained difference[24] | + | 552,311 |
| **Net Understatement of Receipts** | | $996,384 |

[21] This activity represents primary election, general election and recount activity. See Committee Structure, p. 1.

[22] General election and recount activity represents $815,959, or 82% of the understated receipts totals.

[23] General election and recount activity represents $688,355 or 86% of the understated disbursement totals.

[24] Due to the volume of contributions and an incomplete receipts database from JSFP, the specific individual contributors could not be identified; however, it appeared that the majority of this unexplained difference pertained to deposits in the bank made after the general election.

The understatement of disbursements resulted from the following:

| | | |
|---|---|---|
| • Credit card fees not reported | + | $451,344 |
| • Disbursements to vendors not reported | + | 365,676 |
| • Disbursements reported but did not clear the bank | - | 74,774 |
| • Disbursements directly from Paypal receipts, not reported | + | 35,762 |
| • Payments for salaries and wages, not reported | + | 27,000 |
| • In-kind contributions not reported as disbursement | + | 247 |
| • Unexplained difference | - | 4,945 |
| **Net Understatement of Disbursements** | | $800,310 |

The $192,527 understatement of the ending cash balance resulted from the misstatements described above.

**B. Preliminary Audit Report & Audit Division Recommendation**
The Audit staff presented this matter to the JSFP representative at the exit conference along with schedules detailing the discrepancies. During the exit conference, the JSFP representative stated he had no explanation for the discrepancies but would research and determine if there was a pattern that would explain the cause. In its response to the exit conference, JSFP made no comment on this finding.

The Preliminary Audit Report recommended that JSFP amend its disclosure reports to correct the misstatements.

**C. Committee Response to Preliminary Audit Report**
In response to the Preliminary Audit Report recommendation, JSFP related it was in the process of making the necessary amendments to correct the misstatements but no reports were filed.

## Finding 4. Disclosure of Debts and Obligations

### Summary
During audit fieldwork, the Audit staff identified debts totaling $17,015 not disclosed on Schedule D-P (Debts and Obligations), as required. The Preliminary Audit Report recommended that JSFP amend its reports to disclose the outstanding debt.

In response to the Preliminary Audit Report recommendation, JSFP related it was in the process of making the necessary amendments to correct the disclosure of debts and obligations but no reports were filed.

### Legal Standard
**A. Continuous Reporting Required.** An authorized committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

**B. Separate Schedules.** An authorized committee must file separate schedules for debts owed by and to the committee with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

**C. Itemizing Debts and Obligations.**
- Once it has been outstanding 60 days from the date incurred, a debt of $500 or less must be reported on the next regularly scheduled report.
- A debt exceeding $500 must be disclosed in the report that covers the date on which the debt was incurred, except reoccurring administrative expenses (such as rent) shall not be reported as a debt before the payment due date. 11 CFR §104.11(b).

**D. Disputed Debts.** A disputed debt is a bona fide disagreement between the creditor and the committee as to the existence of a debt or the amount owed by the committee. Until the creditor and committee resolve the dispute (assuming the creditor did provide something of value), the committee must disclose:
- The amount the committee admits it owes;
- The amount the creditor claims is owed; and
- Any amounts the committee has paid the creditor. 11 CFR §116.10.

## Facts and Analysis

### A. Facts
During audit fieldwork, the Audit staff used the available disbursement records to reconcile the accounts of JSFP's largest primary election vendors, including accounts payable expenses for the NOCO. The Audit staff identified debts owed to these vendors totaling $17,015 that were not disclosed on Schedule D-P, as required. For one transaction totaling $13,114, the majority of the error pertained to the disputed debt with one advertiser that was initially invoiced to JSFP for services in August 2016 and was ultimately paid in January 2017. During audit fieldwork, a JSFP representative related the amount of this invoice had been in dispute, but agreed that this debt should have been reported until the final invoice amount was negotiated and paid.

### B. Preliminary Audit Report & Audit Division Recommendation
The Audit staff presented this matter to the JSFP representative at the exit conference and provided schedules detailing the unreported debts for each relevant reporting period. This matter was discussed with the JSFP representative during fieldwork and at the exit conference. The representative stated he was familiar with the matter and understood the finding. In its response to the exit conference, JSFP made no comment on this finding.

The Preliminary Audit Report recommended that JSFP provide documentation demonstrating that the amount owed of $17,015 did not require reporting as debt on Schedule D-P. Absent such documentation, the Preliminary Audit Report recommended that JSFP amend its reports to disclose the outstanding debt and continue to disclose it until extinguished.

### C. Committee Response to Preliminary Audit Report

In response to the Preliminary Audit Report recommendation, JSFP related it was in the process of making the necessary amendments to correct the disclosure of debts and obligations but no reports were filed.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 13, 2019

**MEMORANDUM**

**TO:** Patricia C. Orrock
Chief Compliance Officer

**FROM:** Neven F. Stipanovic NFS
Acting Associate General Counsel
Policy Division

Lorenzo Holloway LH
Assistant General Counsel
Compliance Advice

Danita Alberico DA
Attorney

**SUBJECT**: Audit Division Recommendation Memorandum on Jill Stein for President (LRA # 1021)

## I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Audit Division Recommendation Memorandum ("ADRM") on Jill Stein for President ("Committee"). The ADRM makes recommendations on the four findings set forth in the Draft Final Audit Report ("DFAR"). Those findings are: Finding 1 - Net Outstanding Campaign Obligations – Surplus; Finding 2 – Matching Funds Received in Excess of Entitlement; Finding 3 – Misstatement of Financial Activity; and Finding 4 - Disclosure of Debts and Obligations. We concur with these findings. We comment, however, on a proposal presented by the Committee in response to the DFAR to delay the Commission's repayment determination. We recommend that the Committee's proposal be rejected in light of the Committee's repeated failure to timely engage with and respond to the Audit Division's requests for documents and information. If you have any questions, please contact Danita Alberico or Joshua Blume, the attorneys assigned to this audit.

## II. THE COMMISSION SHOULD CONSIDER AND DENY THE COMMITTEE'S PROPOSAL TO DELAY THE REPAYMENT DETERMINATION

In response to DFAR Finding 1 (Net Outstanding Campaign Obligations ("NOCO")), the Committee contends that the NOCO statement is incorrect and wrongly results in a repayment obligation. The Committee requests that the Commission delay making a repayment determination to give it an opportunity to work with Audit staff to resolve discrepancies it purports exist in the NOCO statement. In exchange for the Commission delay in making a repayment determination, the Committee proposes to: (1) waive its right to have the audit concluded by September 2019; (2) comply with any repayment determinations identified by December 31, 2019; (3) make a repayment within 60 days of a repayment determination or December 31, 2019, whichever comes first; and, (4) make a good faith initial pro rata repayment of $40,372.

We advise that you present the Committee's proposal to the Commission for consideration, as ultimately it is up to the Commission to decide whether to accept the proposal. The Audit Division could do so by revising the ADRM to include the Committee's proposal. We also advise that you include a recommendation as to whether the Commission should accept the Committee's proposal.

In our view, the Committee's proposal should be rejected. The Committee seeks additional time to work with the Audit staff on purported issues in the NOCO statement, yet throughout this entire audit process the Committee was uncooperative. The Committee has ignored scheduled conferences, repeatedly missed deadlines, and failed to respond to the Audit Division's numerous requests for supporting documentation that would have helped the auditors verify the NOCO statement. For example, the audit entrance conference and audit fieldwork were significantly delayed because it took the Committee more than six months to provide the auditors the required preliminary pre-audit materials as set forth in the audit notification letter. The notification letter had given the Committee 44 days within which to submit the required materials.

The Committee failed to attend, or even notify the auditors as a courtesy that it would not attend, the November 30, 2017 telephonic exit conference. Notably, prior to that scheduled exit conference, the auditors had emailed the Committee detailed schedules supporting each potential finding, including the audited NOCO statement and associated winding down expenses, placing the Committee on notice of its potential repayment obligations more than a year ago.

The exit conference was rescheduled for December 6, 2017, and the auditors again notified the Committee of its potential findings, including the audited NOCO statement and winding down expenses. During the rescheduled exit conference the auditors requested that the Committee submit additional bank statements and an updated disbursement database to support the actual winding down expenses that were paid after the auditors left the audit site. The Committee did not provided these materials in response to the exit conference. The Committee, however, did eventually provide the documents, on September 26, 2018, in response to the Preliminary Audit Report ("PAR").

On July 11, 2018, the auditors sent the Committee the PAR and detailed schedules including the updated NOCO statement and associated winding down expenses. Although the Committee was repeatedly reminded of the deadline to respond to the PAR, the Committee waited until the September 11, 2018 due date to request an extension to respond. The Committee was granted a 15-day extension to respond after signing a tolling agreement.

On September 26, 2018, the Committee responded to the PAR and submitted some bank statements as supporting documentation. The Committee, however, did not provide an updated list of actual winding down expenses. Because of incomplete documentation, the auditors could not verify all winding down expenses in the Committee's NOCO statement.

On November 19, 2018, the auditors sent the DFAR to the Committee and again included detailed schedules to support Audit's updated NOCO statement and the associated winding down expenses. The Committee submitted a narrative statement in response to the DFAR, noting additional expenses. The Committee, however, did not provide any additional bank statements or other documentation, nor did the Committee provide a list of the additional winding down costs to support the expenses noted in its narrative response.

The Commission must notify the candidate of any repayment determination as soon as possible, but not later than three years after the close of the matching payment period, or August 21, 2019, here. 26 U.S.C. § 9038(c). The Commission's issuance of the final audit report to the candidate under 11 C.F.R. § 9038.1(d) constitutes notification for repayment purposes. 11 C.F.R. § 9038.2(a)(2). In light of the Commission's statutory obligation to timely make a repayment determination and given the Committee's repeated failure to timely engage with and respond to the Audit Division's requests for documents and information, the Committee's proposal to delay the repayment determination should be rejected. Once the Commission notifies the Committee of the repayment determination, the Committee will have 60 days to dispute the repayment determination and resolve any purported NOCO statement discrepancy in an administrative review.[1] 11 C.F.R. § 9038.2(c)(2).

[1] The Committee may also request an oral hearing before the Commission to dispute the repayment determination. 11 C.F.R. § 9038.2(c)(2)(ii).