

FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 24, 2018

MEMORANDUM

To: The Commission

Through: Alec Palmer
Staff Director

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

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

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Audit Manager

By: Jeffrey V. Spilizewski *JVS*
Lead Auditor

Subject: Proposed Final Audit Report on the Hawaii Democratic Party (A13-07)

Attached for your approval is the subject report. The report has been written in accordance with Directive 70. Documents related to this audit report can be viewed in the Voting Ballot Matters folder.

This report is being circulated on a 72 hour no objection basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session. If you have any questions, please contact Jeff Spilizewski or Douglas Kodish at 694-1200.

Attachment:

Proposed Final Audit Report on the Hawaii Democratic Party



Proposed Final Audit Report on the Hawaii Democratic Party (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 Hawaii Democratic Party² is a state party committee headquartered in Honolulu, Hawaii. For more information, see the chart on the Committee organization, p. 3.

Financial Activity³ (p. 4)

• Receipts	
○ Contributions from Individuals	\$ 190,885
○ Contributions from Party and Political Committees	274,173
○ Transfers from Affiliates	116,387
○ Loans Received	30,000
○ Transfers from Non-federal and Levin Funds	122,196
○ Other Receipts	455,855
Total Receipts	\$1,189,496
• Disbursements	
○ Operating Expenditures	\$ 621,546
○ Coordinated Party Expenditures	129,725
○ Loan Repayments Made	10,000
○ Refunds of Contributions	20,052
○ Other Disbursements	108,490
○ Federal Election Activity	272,159
Total Disbursements	\$1,161,972
• Levin Receipts	\$23,564
• Levin Disbursements	\$23,564

¹ 52 U.S.C. §30111(b).

² On October 4, 2016, the Hawaii Democratic Party changed its name to the Democratic Party of Hawaii.

³ The amounts shown on this page and on page four have been updated from the previous audit reports to reflect the removal of the Convention Account activity as reportable. (See Finding 1).

Commission Findings (p. 5)

- Misstatement of Financial Activity (Finding 1)
- Receipt of Contributions that Exceed Limits (Finding 2)
- Receipt of Apparent Impermissible Funds (Finding 3)
- Reporting of Debts and Obligations (Finding 4)
- Recordkeeping for Employees (Finding 5)
- Failure to Properly Report Media Related Expenditures (Finding 6)
- Allocation of Expenditures (Finding 7)

Additional Issue (p. 39)

Failure to Properly Report Media Related Expenditures-
Dissemination

Proposed Final Audit Report on the Hawaii Democratic Party

(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 Hawaii Democratic Party (HDP), 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 and loans;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
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 HDP 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 will 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 HDP representatives of the payroll requirement and 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 HDP employees paid with 100 percent federal funds and reported as such.

Audit Hearing

HDP declined the opportunity for a hearing before the Commission on matters presented in this report.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	December 17, 1986
• Audit Coverage	January 1, 2011 - December 31, 2012
Headquarters	
Honolulu, Hawaii	
Bank Information	
• Bank Depositories	One
• Bank Accounts	Four Federal and Three Non-Federal
Treasurer	
• Treasurer When Audit Was Conducted	Yuriko J. Sugimura (07/20/94 – 08/20/14); Florence Kong Kee (08/20/14 – 07/09/16); Tambry Young (07/09/16 – Present)
• Treasurer During Period Covered by Audit	Yuriko J. Sugimura
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity⁴

(Audited Amounts)

Cash-on-hand @ January 1, 2011	\$ 8,365
Receipts	
○ Contributions from Individuals	190,885
○ Contributions from Party and Political Committees	274,173
○ Transfers from Affiliates	116,387
○ Loans Received	30,000
○ Transfers from Non-federal and Levin Funds	122,196
○ Other Receipts	455,855
Total Receipts	\$ 1,189,496
Disbursements	
○ Operating Expenditures	621,546
○ Coordinated Party Expenditures	129,725
○ Loan Repayments Made	10,000
○ Refunds of Contributions	20,052
○ Other Disbursements	108,490
○ Federal Election Activity	272,159
Total Disbursements	\$ 1,161,972
Cash-on-hand @ December 31, 2012	\$ 34,864
Levin Cash-on-hand @ October 31, 2012	\$ 0
Total Levin Receipts	23,564
Total Levin Disbursements	23,564
Levin Cash-on-hand @ December 31, 2012	\$ 0

⁴ See footnote 3.

Part III Summaries

Commission Findings

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of HDP's bank activity with its most recent amended reports filed prior to the audit revealed material misstatements in both 2011 and 2012. In response to the Interim Audit Report (IAR) recommendation, HDP filed amended disclosure reports for 2011 and 2012 which materially corrected the misstatements. Also, in response to the IAR recommendation, HDP Counsel (Counsel) stated that HDP did not believe the Convention Account (CA) should be included in the misstatement finding.

After consideration of Counsel's response and consultation with the Commission's Office of General Counsel, the Audit staff determined in the Draft Final Audit Report (DFAR), based on available information, that the CA was not a federal account since its activity was non-federal. Consequently, the Audit staff excluded the CA and its activity from the misstatement finding calculation. However, since HDP originally disclosed the CA activity on its federal reports, the beginning cash for 2011⁵ and receipts and disbursements for 2012 were further misstated and needed to be corrected. In response to the DFAR recommendation, HDP amended its disclosure reports to correct the misstatements and reconcile its ending cash balance.

In addition, a comparison of HDP's bank activity with its original reports filed for 2011 and 2012 also revealed a material misstatement of disbursement activity. HDP made no comments in its response to the IAR. The removal of the CA and its activity in the DFAR resolved this portion of the finding.

The Commission approved a finding that HDP misstated its financial activity for calendar years 2011 and 2012. The Commission further approved a finding that HDP did not materially misstate its original disclosure reports. (For more detail, see p. 9.)

Finding 2. Receipt of Contributions that Exceed Limits

During audit fieldwork, the Audit staff identified contributions from two political action committees that exceeded the limitation by \$20,000. Both of the excessive contributions were untimely refunded. However, documentation was not provided to demonstrate that one refund totaling \$5,000 had cleared the bank. In response to the IAR recommendation, Counsel provided documentation demonstrating the refund for \$5,000

⁵ The beginning cash misstatement amount flows through to cause an additional misstatement in ending cash for 2011 and beginning cash for 2012.

had cleared the bank. The Audit staff concluded that HDP untimely resolved excessive contributions totaling \$20,000.

The Commission approved a finding that HDP untimely resolved excessive contributions totaling \$20,000. (For more detail, see p. 14.)

Finding 3. Receipt of Apparent Impermissible Funds

During audit fieldwork, the Audit staff identified 75 receipts, totaling \$169,586, deposited into HDP's federal accounts during 2012 that appeared to be from impermissible sources. In response to the IAR recommendation, HDP Counsel stated that a majority of the impermissible contributions were received in connection with HDP's state convention; and therefore, Counsel believed that the CA should be removed from the impermissible funds analysis. Counsel stated that state convention activity should not be considered federal activity. Also, Counsel believed that amounts transferred from HDP's federal account⁶ to its CA for non-federal purposes (convention fundraising) should mitigate other impermissible funds. In addition, HDP showed that \$5,080 of receipts were permissible, \$27,000 of receipts were untimely refunded, and filed amended reports for \$115,000 of impermissible receipts from corporations on Schedule D (Debts and Obligations).

After consideration of Counsel's response and consultation with the Commission's Office of General Counsel, the Audit staff determined in the DFAR, based on available information, that the CA was not a federal account since its activity was non-federal. Consequently, the Audit staff concluded that \$22,006 in receipts deposited into the CA were not impermissible and excluded this amount from the finding. In addition, the calculated amount of impermissible contributions was reduced by \$10,959 for transfers made within appropriate timeframes from one of the federal accounts to the CA, leaving an impermissible balance of \$104,541. Based on available documentation, the Audit staff concluded that HDP accepted 15 impermissible receipts totaling \$131,541, of which \$27,000 was untimely refunded. In response to the DFAR, HDP filed amended reports disclosing the impermissible receipts totaling \$104,541 on Schedule D.

The Commission approved a finding that HDP accepted impermissible funds totaling \$131,541, of which \$27,000 was untimely refunded. (For more detail, see p. 16.)

Finding 4. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff identified debts and obligations from 17 vendors totaling \$115,967, which were not itemized or were under reported on Schedules D (Debts and Obligations). In response to the IAR recommendation, HDP filed amended disclosure reports for 2011 and 2012 correctly reporting and disclosing these debts and obligations on Schedule D.

The Commission approved a finding that HDP failed to properly report debts and obligations totaling \$115,967. (For more detail, see p. 22.)

⁶ There were two federal accounts that made transfers to the CA.

Finding 5. Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that HDP did not maintain any monthly payroll logs, 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 payments to HDP employees totaling \$60,923 for which HDP did not maintain monthly payroll logs. This consisted of \$48,510 for which payroll was allocated between federal and non-federal funds, and \$12,413 for which payroll was exclusively paid with non-federal funds. In response to the IAR recommendation, Counsel stated that the payroll logs could not be located but that HDP had implemented procedures to maintain the necessary documentation for payroll.

The Commission approved a finding that HDP did not maintain monthly logs totaling \$60,923. (For more detail, see p. 25.)

Finding 6. Failure to Properly Report Media Related Expenditures

During audit fieldwork, the Audit staff identified disbursements totaling \$30,148, which appeared to be media related independent expenditures requiring disclosure on Schedule E (Itemized Independent Expenditures), that HDP disclosed on Schedule B, Line 30b (Federal Election Activity) and Schedule F (Coordinated Party Expenditures). Of the \$30,148, HDP did not file the required 24-hour reports for those items that should have been reported on Schedule E totaling \$29,725.

In response to the IAR recommendation, Counsel stated these expenditure were coordinated (and amended reports were filed showing these expenditure as coordinated on Schedule F) and not independent expenditures. Counsel added that, although the expenditures exceeded HDP's coordinated expenditure limit, this only occurred as a result of an administrative oversight, a failure to contact the Democratic Senatorial Campaign Committee (DSCC) to obtain a higher spending authority.

As a result of HDP's response to the IAR recommendation, the DFAR was revised to reflect that HDP made coordinated expenditures totaling \$129,725, but only had coordinated spending authority for \$102,600. Therefore, HDP exceeded its spending limit by \$27,125.

The Commission approved a finding that HDP had exceeded its coordinated spending limit by \$15,203 but had not exceeded the overall spending limit, subject to the excision or relocation to the Additional Issue section of this report, an expenditure for the production and design costs associated with a television advertisement totaling \$11,922. Accordingly, this portion of the finding is presented in the "Additional Issue" section of this report. (For more detail, see p. 27.)

Finding 7. Allocation of Expenditures

During audit fieldwork, the review of disbursements made from the federal and non-federal accounts identified an apparent non-federal overfunding of activity in the amount of \$82,722. In response to the IAR recommendation, HDP filed amended reports and

submitted additional documentation for certain expenditures. Based on the new documentation, the Audit staff revised its calculation and concluded in the DFAR that the non-federal account did not overfund the federal account.

The Commission approved a recommendation that HDP did not materially overfund its federal accounts with funds from its non-federal accounts. (For more detail, see p. 33.)

Additional Issue

Failure to Properly Report Media Related Expenditures-Dissemination

During audit fieldwork, the Audit staff identified disbursements totaling \$30,148, which appeared to be media related independent expenditures requiring disclosure on Schedule E (Itemized Independent Expenditures), that HDP disclosed on Schedule B, Line 30b (Federal Election Activity) and Schedule F (Coordinated Party Expenditures). Of the \$30,148, HDP did not file the required 24-hour reports for those items that should have been reported on Schedule E totaling \$29,725.

In response to the IAR recommendation, Counsel stated these expenditure were coordinated (and amended reports were filed showing these expenditure as coordinated on Schedule F) and not independent expenditures. Counsel added that, although the expenditures exceeded HDP's coordinated expenditure limit, this only occurred as a result of an administrative oversight, a failure to contact the DSCC to obtain a higher spending authority.

As a result of HDP's response to the IAR recommendation, the DFAR was revised to reflect that HDP made coordinated expenditures totaling \$129,725, but only had coordinated spending authority for \$102,600. Therefore, HDP exceeded its spending limit by \$27,125.

The Commission did not approve, by the required four votes, the excessive coordinated finding amount recommended by the Audit staff. After considering certain production and design costs related to a television advertisement totaling \$11,922, the Commission directed the Audit Division to excise this amount from the finding or move it to an "Additional Issue" section of the report. This matter was moved to the Additional Issue's section of the report pursuant to Commission Directive 70.⁷ (For more detail, see p. 39.)

⁷ Available at <http://classic.fec.gov/directives/CommissionDirectives.shtml>

Part IV

Commission Findings

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of HDP's bank activity with its most recent amended reports filed prior to the audit revealed material misstatements in both 2011 and 2012. In response to the Interim Audit Report (IAR) recommendation, HDP filed amended disclosure reports for 2011 and 2012 which materially corrected the misstatements. Also, in response to the IAR recommendation, HDP Counsel (Counsel) stated that HDP did not believe the Convention Account (CA) should be included in the misstatement finding.

After consideration of Counsel's response and consultation with the Commission's Office of General Counsel, the Audit staff determined in the Draft Final Audit Report (DFAR), based on available information, that the CA was not a federal account since its activity was non-federal. Consequently, the Audit staff excluded the CA and its activity from the misstatement finding calculation. However, since HDP originally disclosed the CA activity on its federal reports, the beginning cash for 2011⁸ and receipts and disbursements for 2012 were further misstated and needed to be corrected. In response to the DFAR recommendation, HDP amended its disclosure reports to correct the misstatements and reconcile its ending cash balance.

In addition, a comparison of HDP's bank activity with its original reports filed for 2011 and 2012 also revealed a material misstatement of disbursement activity. HDP made no comments in its response to the IAR. The removal of the CA and its activity in the DFAR resolved this portion of the finding.

The Commission approved a finding that HDP misstated its financial activity for calendar years 2011 and 2012. The Commission further approved a finding that HDP did not materially misstate its original disclosure reports.

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).

⁸ The beginning cash misstatement amount flows through to cause an additional misstatement in ending cash for 2011 and beginning cash for 2012.

Facts and Analysis

A. Misstatement of Financial Activity– Most Recent Reports Filed Prior to the Audit

1. Facts

The Audit staff reconciled HDP's reported financial activity with its bank records for calendar years 2011 and 2012. The following charts outline the discrepancies between HDP's disclosure reports and its bank records. The succeeding paragraphs explain why the discrepancies occurred.

2011 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash-on-Hand @ January 1, 2011	\$ 44,653	\$ 8,365	\$36,288 Overstated
Receipts	\$282,712	\$295,136	\$12,424 Understated
Disbursements	\$278,375	\$290,981	\$12,606 Understated
Ending Cash-on-Hand @ December 31, 2011	\$ 48,990	\$ 12,520	\$36,470 Overstated

The beginning cash-on-hand was overstated by \$36,288 and the discrepancy is unexplained, but likely resulted from prior period discrepancies.

The understatement of receipts resulted from the following:

• Unreported in-kind contributions ⁹	\$12,156
• Return deposit items reported as disbursements instead of a negative entry on Schedule A	(50)
• Unexplained difference	<u>318</u>
Net Understatement of Receipts	<u>\$12,424</u>

The understatement of disbursements resulted from the following:

• Unreported in-kind contributions ¹⁰	\$12,156
• Disbursements not reported	4,890
• Disbursements reported but not in bank activity	(4,269)
• Disbursement amounts reported incorrectly	157

⁹ All unreported in-kind contribution discrepancies during calendar years 2011 and 2012 were for disbursements paid by the Democratic National Committee (DNC) on behalf of HDP for voter file updates and maintenance. The DNC reported these transactions as in-kind contributions made to HDP. To help assure the correct cash balance is reported, these amounts should be disclosed as in-kind contributions on Schedules A and B.

¹⁰ See footnote 7.

• Return deposit items reported as disbursements instead of a negative entry on Schedule A	(50)
• Unexplained difference	<u>(278)</u>
Net Understatement of Disbursements	<u>\$12,606</u>

The overstatement of \$36,470 of the ending cash-on-hand was a result of the reporting discrepancies described above.

2012 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash-on-Hand @ January 1, 2012	\$ 48,990	\$ 12,520	\$ 36,470 Overstated
Receipts	\$875,660	\$1,032,269	\$156,609 Understated
Disbursements	\$895,253	\$1,009,925	\$114,672 Understated
Ending Cash-on-Hand @ December 31, 2012	\$ 29,397	\$ 34,864	\$ 5,467 Understated

The overstatement of beginning cash-on hand of \$36,470 was a result of the reporting discrepancies noted for 2011 above.

The understatement of receipts resulted from the following:

• Unreported in-kind contributions	\$ 16,208
• Receipts over-reported	(25,937)
• Receipts under-reported	179,118
• Over-reported unitemized receipts	(21,774)
• Return deposit items reported as disbursements instead of a negative entry on Schedule A	(1,665)
• Unexplained difference	<u>10,659</u>
Net Understatement of Receipts	<u>\$156,609</u>

The understatement of disbursements resulted from the following:

• Unreported in-kind contributions	\$ 16,208
• Disbursements not reported	101,152
• Disbursements reported but not in bank activity	(2,497)
• Disbursement reported as memo entry clearing bank	5,000
• Inter-account transfer reported	(4,205)
• Disbursement amounts reported incorrectly	679
• Return deposit items reported as disbursements instead of a negative entry on Schedule A	(1,665)
Net Understatement of Disbursements	<u>\$114,672</u>

The \$5,467 understatement of the ending cash-on-hand was a result of the 2012 reporting discrepancies noted above.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of the misstated amounts. HDP representatives stated they would amend their reports in response to the IAR.

The IAR recommended that HDP amend its disclosure reports to correct the misstatements and reconcile the cash balance on its most recent report to identify any subsequent discrepancies that could affect the recommended adjustments. The IAR also recommended that HDP adjust the cash-on-hand balance, as necessary, on its most recent report, noting that the adjustment is the result of prior period audit adjustments.

3. Committee Response to Interim Audit Report

In response to the IAR recommendation, HDP filed amended disclosure reports for 2011 and 2012 that corrected the misstatements. The amended 2012 disclosure reports also added Levin activity that was not previously reported. In addition, Counsel stated that the HDP did not believe the CA activity should have been included in this finding,¹¹ but decided not to remove this account from its federal reports when it filed amendments; however, it acknowledged that it had inadvertently and incorrectly included some of the activity of this account in its federal reports.

4. Draft Final Audit Report

After consideration of Counsel's response to the IAR and consultation with our Office of General Counsel, the Audit staff determined, based on available information, that the CA was not a federal account since its activity was non-federal. Consequently, the Audit staff excluded the CA and its activity from the misstatement finding calculation which resulted in a revision of the misstated amounts as show below:¹²

- Beginning cash for 2011 was overstated by \$37,313.
- Ending cash for 2011 and beginning cash for 2012 were overstated by \$37,495.
- Receipts for 2012 were understated by \$18,700.
- Disbursements for 2012 were overstated by \$24,263.

The Audit staff recommended that HDP amend its disclosure reports to correct the misstatements and reconcile the cash balance on its most recent report to identify any subsequent discrepancies that could affect the recommended adjustments. The Audit staff further recommended that HDP adjust the cash-on-hand as necessary on its most recent report, noting that the adjustment is the result of prior period audit adjustments.

¹¹ Further explanation of Counsel's response is contained under the Committee's Response to the Interim Audit Report, Finding 3, Receipt of Apparent Impermissible Funds.

¹² The amounts that need to be removed from the amended reports reflect the balances and activity of the CA. The CA beginning and ending cash balance for 2011 and the beginning cash balance for 2012 was \$1,025 (the CA had a zero ending cash balance for 2012), the 2012 receipts activity was \$221,074, and the disbursement activity was \$222,098.

5. Committee Response to the Draft Final Audit Report

In response to the DFAR, HDP filed amended disclosure reports for 2011 and 2012 that removed the convention account (CA) activity.

Commission Conclusion

On December 14, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that HDP misstated its financial activity for calendar years 2011 and 2012.

The Commission approved the Audit staff's recommendation.

B. Misstatement of Financial Activity – Original Reports Filed

1. Facts

During audit fieldwork, in addition to examining HDP's most recent reports filed prior to the audit notification, the Audit staff compared HDP's originally filed reports with its bank records. The purpose of this additional reconciliation was to identify the degree to which HDP had misstated its original filings.

The Audit staff calculated that HDP understated disbursements on the original reports filed by \$358,942 over the two-year period (2011-2012). This figure includes the \$12,606 and \$114,672 understatement of disbursements from 2011 and 2012 discussed in Section A. above (Misstatement of Financial Activity – Most Recent Reports Filed Prior to the Audit).

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the understatement of disbursements on its original reports during the exit conference and provided HDP representatives a copy of the relevant schedule. HDP representatives had no specific comments at the time.

The IAR recommended that HDP provide any additional comments it deemed necessary with respect to this matter.

3. Committee Response to Interim Audit Report

HDP did not provide any additional comments regarding the understatement of disbursements on its original report and no further action was required.

4. Draft Final Audit Report

The removal of the CA and its activity resolved this portion of the finding. See the CA discussion in part A above.

5. Committee Response to the Draft Final Audit Report

HDP provided no additional comment to this finding in its response to the DFAR.

Commission Conclusion

On December 14, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that HDP did not materially misstate its original disclosure reports.

The Commission approved the Audit staff's recommendation.

Finding 2. Receipt of Contributions that Exceed Limits

Summary

During audit fieldwork, the Audit staff identified contributions from two political action committees that exceeded the limitation by \$20,000. Both of the excessive contributions were untimely refunded. However, documentation was not provided to demonstrate that one refund totaling \$5,000 had cleared the bank. In response to the IAR recommendation, Counsel provided documentation demonstrating the refund for \$5,000 had cleared the bank. The Audit staff concluded that HDP untimely resolved excessive contributions totaling \$20,000.

The Commission approved a finding that HDP untimely resolved excessive contributions totaling \$20,000.

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).

A state, district or local committee of a political party may not receive more than a total of \$10,000 per calendar year from a non-multicandidate political committee. 52 U.S.C. §30116(a)(1)(D) and 11 CFR §110.1(c)(5).

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

HDP accepted contributions from two political action committees that exceeded the limitation by \$20,000. One contribution from a non-multicandidate political action committee was received on March 15, 2012 for \$25,000, resulting in an excessive contribution of \$15,000. HDP untimely refunded the excessive portion on September 28, 2012 (197 days later).

The second contribution from a multicandidate political action committee was received on October 19, 2012 for \$10,000, resulting in an excessive contribution of \$5,000. HDP reported an untimely refund of the excessive portion on June 19, 2013 (243 days later); however, documentation was not provided that demonstrated the refund check had cleared the bank.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of the apparent excessive contributions. HDP representatives had no specific comments at the time.

The IAR recommended that HDP provide documentation demonstrating that the refund, totaling \$5,000, reported on June 19, 2013, had cleared the bank. Absent that documentation, it was recommended that HDP void the original refund check and issue another refund for the excessive portion, or if funds were not available to make the necessary refund, disclose the excessive portion on Schedule D until funds became available to satisfy the obligation.

C. Committee Response to Interim Audit Report

In response to the IAR recommendation, HDP provided documentation demonstrating that the refund, totaling \$5,000, had cleared the bank.

D. Draft Final Audit Report

The DFAR acknowledged that HDP provided a copy of the refund, totaling \$5,000. The Audit staff concluded that HDP untimely resolved excessive contributions totaling \$20,000.

E. Committee Response to the Draft Final Audit Report

HDP provided no additional comment to this finding in its response to the DFAR.

Commission Conclusion

On December 14, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that HDP untimely resolved excessive contributions totaling \$20,000.

The Commission approved the Audit staff's recommendation.

Finding 3. Receipt of Apparent Impermissible Funds

Summary

During audit fieldwork, the Audit staff identified 75 receipts, totaling \$169,586, deposited into HDP's federal accounts during 2012 that appeared to be from impermissible sources. In response to the IAR recommendation, HDP Counsel stated that a majority of the impermissible contributions were received in connection with HDP's state convention; and therefore, Counsel believed that the CA should be removed from the impermissible funds analysis. Counsel stated that state convention activity should not be considered federal activity. Also, Counsel believed that amounts transferred from HDP's federal account¹³ to its CA for non-federal purposes (convention fundraising) should mitigate other impermissible funds. In addition, HDP showed that \$5,080 of receipts were permissible, \$27,000 of receipts were untimely refunded, and filed amended reports for \$115,000 of impermissible receipts from corporations on Schedule D (Debts and Obligations).

After consideration of Counsel's response and consultation with the Commission's Office of General Counsel, the Audit staff determined in the DFAR, based on available information, that the CA was not a federal account since its activity was non-federal. Consequently, the Audit staff concluded that \$22,006 in receipts deposited into the CA were not impermissible and excluded this amount from the finding. In addition, the calculated amount of impermissible contributions was reduced by \$10,959 for transfers made within appropriate timeframes from one of the federal accounts to the CA, leaving an impermissible balance of \$104,541. Based on available documentation, the Audit staff concluded that HDP accepted 15 impermissible receipts totaling \$131,541, of which \$27,000 was untimely refunded. In response to the DFAR, HDP filed amended reports disclosing the impermissible receipts totaling \$104,541 on Schedule D.

The Commission approved a finding that HDP accepted impermissible funds totaling \$131,541, of which \$27,000 was untimely refunded.

Legal Standard

A. Receipt of Prohibited Contributions – General Prohibition. Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans) from the following prohibited sources:

- Corporations organized by authority of any law of Congress;
- Labor Organizations;
- National Banks (except a loan made in accordance with the applicable banking laws and regulations and in the ordinary course of business);
- Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government);

¹³ There were two federal accounts that made transfers to the CA.

- Foreign Nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence); foreign governments and foreign political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b); and
- In the name of another. 52 U.S.C. §§30118, 30119, 30121, and 30122.

B. Definition of Limited Liability Company. A limited liability company (LLC) is a business entity recognized as an LLC under the laws of the State in which it was established. 11 CFR §110.1(g)(1).

C. Application of Limits and Prohibition to LLC Contributions. A contribution from an LLC is subject to contribution limits and prohibitions, depending on several factors, as explained below:

1. LLC as Partnership. The contribution is considered a contribution from a partnership if the LLC chooses to be treated as a partnership under Internal Revenue Service (IRS) tax rules, or if it makes no choice at all about its tax status. A contribution by partnership is attributed to each partner by his or her share of the partnership profits. 11 CFR §110.1 (e)(1) and (g)(2).
2. LLC as Corporation. The contribution is considered a corporate contribution-and is barred under the Act-if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are traded publicly. 11 CFR § 110.1(g)(3).
3. LLC with Single Member. The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1 (g)(4).

D. Limited Liability Company's Responsibility to Notify Recipient Committee. At the time it makes a contribution, an LLC must notify the recipient committee:

- That it is eligible to make the contribution; and
- In the case of an LLC that considers itself a partnership (for tax purposes), how the contribution should be attributed among the LLC's members. 11 CFR §110.1(g)(5).

E. Questionable Contributions. If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
 - Return the contribution to the contributor without depositing it; or
 - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3 (b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).

4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. If the contribution cannot be determined to be legal, the treasurer shall, within thirty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. 11 CFR §103.3(b)(1).

F. Contributions to delegate and delegate committees. Funds received for the purpose of furthering the selection of a delegate to a national nominating convention are contributions for the purpose of influencing a federal election. 11 CFR §110.14(c).

G. Federal v. Nonfederal Account. The federal account may contain only those funds that are permissible under the federal election law; the nonfederal 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 prohibited sources, such as corporations and labor organizations. 11 CFR §102.5 (a)(1)(i) and (a)(3).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified 75 receipts totaling \$169,586 deposited into HDP's federal account during 2012 that appeared to be from impermissible sources. The sources of these receipts were as follows:

Source	Number of Transactions	Total
Labor Unions	8	\$6,871
Corporations	20	\$141,005
Limited Liability Companies	13	\$10,455
Unregistered Organizations ¹⁴	34	\$11,255
Total	75	\$169,586

The purposes of these receipts were mostly for:

- Contributions¹⁵ – 20 transactions totaling \$96,421;
- State party convention fees (i.e. registration fee, convention booth fee) – 49 transactions totaling \$15,085; and
- Democratic National Convention Credentials – 4 transactions totaling \$58,000.

¹⁴ An unregistered organization is a political committee that has not registered with the Federal Election Commission.

¹⁵ Three corporate contributions were erroneously disclosed as political action committees and two were erroneously disclosed as individuals.

Four of the receipts from corporations, totaling \$27,000, were untimely refunded. However, documentation was not available demonstrating the refund checks had cleared the bank. The remaining 71 receipts totaling \$142,586 remain unresolved.

Hawaii state campaign finance statutes permit the acceptance of funds by a party from labor unions, domestic corporations,¹⁶ and limited liability companies in an aggregate amount no greater than \$25,000 in any two-year election period. However, federal regulations prohibit such contributions to be deposited into a federal account or used to influence federal elections.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of the apparent impermissible receipts. HDP representatives stated they would review the schedule.

The IAR recommended that HDP submit documentation demonstrating that these receipts were refunded in a timely matter, were timely transferred to a non-federal account, or were not from prohibited sources. Absent this documentation, the IAR recommended that HDP refund the impermissible receipts or if funds were not available to make the necessary refunds, disclose the impermissible receipts on Schedule D until funds become available to satisfy the obligation. In addition, with respect to receipts received for the Hawaii state party convention, the IAR recommended that HDP submit documentation demonstrating that these receipts were not obtained in connection with a nominating convention that nominated candidates for federal office.

C. Committee Response to Interim Audit Report

In response to the IAR recommendation, Counsel stated that a majority of the impermissible contributions were received in connection with HDP's state convention, and that these contributions were merely pass-through contributions used to underwrite the state convention.¹⁷ Counsel explained that this account was established for the sole purpose of administering HDP's biennial convention and that Commission regulations specifically permit state parties to exclusively use non-federal funds to pay for convention expenses and all funds deposited into this account were used solely for that purpose. Accordingly, Counsel argued that no reimbursement to the non-federal account should be required because state convention expenses are payable with non-federal funds (11 C.F.R. §100.24(c)(3)) and were paid immediately. Also, that a transfer of funds, \$56,000,¹⁸ from its federal account to the CA had occurred to cover a convention fundraising shortfall that should be considered a mitigating factor when considering the

¹⁶ Foreign corporations, including a domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where administrative control is retained by the foreign corporation are prohibited under Hawaii state campaign finance statutes.

¹⁷ Counsel reiterated his response to Finding 1, Misstatement of Financial Activity, that stated the CA should not be considered a federal account, and that state convention expenses are payable with nonfederal funds.

¹⁸ Transfers from other federal accounts into the CA totaled \$78,164.

amount of “misdeposits.” Counsel also stated, that subsequent to the 2012 convention, HDP had properly paid for convention expenses directly from non-federal accounts, and had done so previously. Finally, Counsel pointed out that state convention contributions included contributions from unregistered candidates for local office and that HDP believed these committees had sufficient permissible funds to make contributions under 11 C.F.R. §102.5(b)(1).¹⁹

Other items addressed in Counsel’s response were as follows: that \$80 in receipts were for two vendor refunds; documentation demonstrating that one receipt for \$5,000 was from an LLC having non corporate tax status; and documentation demonstrating that four receipts from corporations, totaling \$27,000, were untimely refunded and that the refunds had been deposited by the contributor.

D. Draft Final Audit Report

The Audit staff disagreed with Counsel that a majority of the impermissible contributions were received in connection with HDP’s state convention. Of the \$169,586 in impermissible receipts identified in the IAR, only \$22,006 (or 13%) were deposited into the CA.²⁰ The remaining \$147,580 (or 87%) were not identified as state party convention related and were deposited into other federal accounts.

The Audit staff agreed with Counsel that the CA receipts and expenditures were used for administering HDP’s biennial convention. However, the Audit staff noted that as part of the initial audit process, bank account information was gathered, and this information included confirmation from HDP’s Executive Director that the CA was a federal account. As such, during the 2011 and 2012 audit period, the CA was treated as a federal account by HDP. All receipts, expenses and account balances of this account were reported as federal activity on its disclosure reports and none of this activity was disclosed on its state reports filed with the State of Hawaii Campaign Spending Commission.²¹ Because HDP reported activity for the CA as a federal account and confirmed to the Audit staff it was a federal account, the Audit staff treated it as such. As a federal account, these receipts were subject to the prohibitions of the Act.

In response to Counsel’s statement that HDP properly paid convention expenses prior to and subsequent to the 2012 election cycle, the Audit staff did not audit HDP for these coverage periods and could not speak to whether HDP properly paid for these state convention expenses. However, the Audit staff noted that for the previous four state conventions, beginning in 2004, that state party convention fees were reported as receipts and the state party convention expenses reported as disbursements on its federal reports,

¹⁹ The Audit staff was not provided documentation to support this contention; the unresolved amount is \$500.

²⁰ These deposits consisted of \$19,021 (or 11%) reported as state party convention fees and \$2,985 (or 2%) not reported as state party convention related.

²¹ HDP did not report transfers from other federal accounts, which corresponds to the account being treated as Federal. Also, as mentioned in the Misstatement Finding (Finding 1), the Committee had an opportunity, in response to the IAR, to file amended reports to exclude the CA, but did not.

but none of this activity was disclosed on HDP's state reports filed with the State of Hawaii Campaign Spending Commission.²²

The selection of HDP delegates to the Democratic National Committee Convention occurs, per its constitution and bylaws, at its state convention.²³ The IAR recommendation requested documentation that would show HDP did not receive impermissible funds that were used for a nominating convention that nominated candidates for federal office. No additional documentation about the usage of impermissible receipts was provided. Lacking this information, and with the information available to date, the Audit staff could not determine if and to what extent impermissible receipts were in connection with a federal election. After consideration of Counsel's response and consultation with the Commission's Office of General Counsel, the Audit staff determined, based on available information, that the CA was not a federal account and its activity was not federal. Consequently, the Audit staff concluded that \$22,006 in receipts deposited into the CA were not impermissible and excluded this amount from the finding.

Also, in response to the IAR recommendation, HDP filed amended reports disclosing ten impermissible receipts from corporations, totaling \$115,000, on Schedule D. Counsel stated that the impermissible funds would be refunded to the donors, if and when funds became available. Counsel reiterated his statement that HDP should be allowed to reduce the impermissible amount based upon transfers of federal funds to its CA (as mentioned earlier in this section). However, most of the transfers (\$67,205 of the \$78,164) were not related to the impermissible receipts as the transfers were made prior to the receipt of the impermissible contributions. Accordingly, the Audit staff reduced the finding amount by \$10,959 for transfers made within the permissible timeframes.²⁴

The Audit staff reviewed Counsel's response and the documentation provided and determined that the \$80 in receipts were vendor refunds and the contribution of \$5,000 from the LLC was a permissible receipt, both for which the finding amount was reduced. Also, that \$27,000 was untimely refunded to four corporate entities.

The chart below shows the description and amount of impermissible receipts after adjustments for information provided in HDP's response to the IAR.

²² Some other convention expenses, such as county convention expenses, were reported on HDP's state reports.

²³ 2012 By-Laws of the Democratic Party of Hawaii and the 2012 Constitution of the Democratic Party of Hawaii.

²⁴ 11 C.F.R. §103.3(b) allows 30 days for refunds of impermissible receipts.

Description	Number of Transactions	Total
IAR Impermissible Receipts	75	\$169,586
Impermissible Receipts deposited into the Convention Account	(57)	(\$22,006)
Corporate contribution disclosed on Schedule D reduced by Federal transfers occurring within permissible timeframes.	(0) ²⁵	(\$10,959)
Vendor refunds	(2)	(\$80)
LLC taxed as a partnership	(1)	(\$5,000)
Amount of Impermissible Receipts before Refunds	15	\$131,541
Less: Amount Untimely Refunded	(4)	(\$27,000)
Remaining Impermissible Funds (Schedule D)	11	\$104,541

The Audit staff concluded that HDP accepted 15 impermissible receipts totaling \$131,541. However, HDP untimely refunded \$27,000, so that \$104,541 needed to be reported on Schedule D. The Audit staff recommended that HDP file an amended report to reduce its disclosure of impermissible receipts on Schedule D to \$104,541. Also, the Audit staff recommended that HDP provide documentation that would allow the Audit staff to determine if and to what extent impermissible receipts were in connection with a federal election.

E. Committee Response to the Draft Final Audit Report

In response to the DFAR, HDP filed amended reports to reduce its disclosure of impermissible receipts on Schedule D to \$104,541. Documentation was not provided with regard to impermissible receipts that were in connection to a federal election.

Commission Conclusion

On December 14, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that HDP accepted impermissible funds totaling \$131,541, of which \$27,000 was untimely refunded.

The Commission approved the Audit staff's recommendation.

Finding 4. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff identified debts and obligations from 17 vendors, totaling \$115,967, which were not itemized or were under reported on Schedules D (Debts and Obligations). In response to the IAR recommendation, HDP filed amended

²⁵ The amount of an impermissible corporate contributions to which the transfer of \$10,959 was applied only partially reduced the impermissible contribution amount, as such, the number count of impermissible contributions did not change.

disclosure reports for 2011 and 2012 correctly reporting and disclosing these debts and obligations on Schedule D.

The Commission approved a finding that HDP failed to properly report debts and obligations totaling \$115,967.

Legal Standard

Reporting of Debts and Obligations.

- A. Continuous Reporting Required.** A political 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.** A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together 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.**
- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it 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. 11 CFR §104.11(b).
- D. Advances by Committee Staff and Other Individuals.**
1. **Scope.** This section applies to individuals who are not acting as commercial vendors. Individuals who are acting as commercial vendors shall follow the requirements of 11 CFR §§116.3 and 116.4.
 2. **The treatment as contributions.** The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or political committee is a contribution unless the payment is exempted under 11 CFR 100.79, it shall be considered a contribution by the individual unless-
 - a) The payment is for the individual's transportation expenses incurred while traveling on behalf of a candidate or political committee of a political party or for usual and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate or political committee of a political party; and
 - b) The individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. For purposes of this section, the closing date shall be the date indicated on the billing statement which serves as the cutoff date for determine which charges are included on that billing statement. In addition, "subsistence expense" includes

only expenditures for personal living expenses related to a particular individual traveling on committee business, such as food or lodging. 11 CFR §116.5(b).

3. **Treatment as debts.** A political committee shall treat the obligation arising from a payment described in paragraph (b) of this section as an outstanding debt until reimbursed. 11 CFR §116.5(c).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff used available disbursement records to reconcile the accounts²⁶ of 17 HDP vendors. This review identified debts and obligations from these vendors, totaling \$115,967 that were not itemized or were underreported on Schedule D for 2011 and 2012. Of this amount, \$68,744 were debts not reported, and \$47,223 were debts that were under reported. These vendors provided HDP with services such as office space, polling, accounting, database accounting software, website hosting, printing, insurance, telephone, copier lease, and staff reimbursements.²⁷

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of the debts and obligations that were not itemized or were under reported. HDP representatives stated they would review the schedule of debts and obligations.

The IAR recommended that HDP provide additional documentation demonstrating that these transactions were not obligations which required reporting on Schedule D. Absent such documentation, the Audit staff recommended that HDP amend its reports to correctly report and disclose these debts and obligations on Schedule D.

C. Committee Response to Interim Audit Report

In response to the IAR recommendation, HDP filed amended disclosure reports for 2011 and 2012 that correctly reported and disclosed these debts and obligations on Schedule D.

D. Draft Final Audit Report

The DFAR acknowledged that HDP filed amended disclosure reports for 2011 and 2012 that correctly reported and disclosed these debts and obligations on Schedule D.

E. Committee Response to the Draft Final Audit Report

HDP provided no additional comment to this finding in its response to the DFAR.

²⁶ The reconciliation consisted of calculating invoiced and paid amounts for each reporting period in the 2011-2012 election cycle. The Audit staff then determined whether any outstanding debts were correctly disclosed on Schedule D. Each debt amount was counted once, even if it required disclosure over multiple reporting periods.

²⁷ Staff reimbursements consisted of three individuals with debts not reported totaling \$10,768 and debts under reported totaling \$1,998.

Commission Conclusion

On December 14, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that HDP failed to properly report debts and obligations totaling \$115,967.

The Commission approved the Audit staff's recommendation.

Finding 5. Recordkeeping for Employees**Summary**

During audit fieldwork, the Audit staff determined that HDP did not maintain any monthly payroll logs, 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 payments to HDP employees totaling \$60,923 for which HDP did not maintain monthly payroll logs. This consisted of \$48,510 for which payroll was allocated between federal and non-federal funds, and \$12,413 for which payroll was exclusively paid with non-federal funds. In response to the IAR recommendation, Counsel stated that the payroll logs could not be located but that HDP had implemented procedures to maintain the necessary documentation for payroll.

The Commission approved a finding that HDP did not maintain monthly logs totaling \$60,923.

Legal Standard

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

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

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

Facts and Analysis**A. Facts**

During audit fieldwork, the Audit staff reviewed disbursements for payroll. HDP did not maintain any monthly payroll logs or equivalent records to document the percentage of time each employee spent in connection with a federal election. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee

salaries and wages. For 2011 and 2012, HDP did not maintain monthly logs for \$60,923 in payroll.²⁸ This amount includes payroll paid as follows to HDP employees:

1. Employees reported on Schedule H4 (Disbursements for Allocated Federal/Nonfederal Activity) and paid with federal and non-federal funds during the same month (totaling \$48,510); and
2. Employees paid exclusively with non-federal funds in a given month and not reported by HDP (totaling \$12,413).

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of the disbursements for payroll lacking monthly payroll logs. HDP representatives had no specific comments at the time.

The IAR recommended that HDP provide evidence that it maintained monthly time logs to document the percentage of time an employee spent in connection with a federal election; or implement a plan to maintain monthly payroll logs in the future.

C. Committee Response to Interim Audit Report

In response to the IAR recommendation, HDP stated that it could not locate the time logs requested in the IAR, but had implemented procedures that will maintain the necessary documentation in connection with payroll and fringe benefit expenses in the future.

D. Draft Final Audit Report

The DFAR acknowledged that HDP implemented a plan to maintain monthly payroll logs. The Audit staff concluded that HDP did not maintain monthly logs for payroll totaling \$60,923.

E. Committee Response to the Draft Final Audit Report

HDP provided no additional comment to this finding in its response to the DFAR.

Commission Conclusion

On December 14, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that HDP did not maintain monthly logs totaling \$60,923.

The Commission approved the Audit staff's recommendation.

²⁸ 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 do not include fringe benefits.

Finding 6. Failure to Properly Report Media Related Expenditures

Summary

During audit fieldwork, the Audit staff identified disbursements totaling \$30,148, which appeared to be media related independent expenditures requiring disclosure on Schedule E (Itemized Independent Expenditures), that HDP disclosed on Schedule B, Line 30b (Federal Election Activity) and Schedule F (Coordinated Party Expenditures). Of the \$30,148, HDP did not file the required 24-hour reports for those items that should have been reported on Schedule E totaling \$29,725.

In response to the IAR recommendation, Counsel stated these expenditure were coordinated (and amended reports were filed showing these expenditure as coordinated on Schedule F) and not independent expenditures. Counsel added that, although the expenditures exceeded HDP's coordinated expenditure limit, this only occurred as a result of an administrative oversight, a failure to contact the Democratic Senatorial Campaign Committee (DSCC) to obtain a higher spending authority.

As a result of HDP's response to the IAR recommendation, the DFAR was revised to reflect that HDP made coordinated expenditures totaling \$129,725, but only had coordinated spending authority for \$102,600. Therefore, HDP exceeded its spending limit by \$27,125.

The Commission approved a finding that HDP had exceeded its coordinated spending limit by \$15,203 but had not exceeded the overall spending limit, subject to the excision or relocation to the Additional Issue section of this report, an expenditure for the production and design costs associated with a television advertisement totaling \$11,922. Accordingly, this portion of the finding is presented in the "Additional Issue" section of this report.

Legal Standard

A. Definition of Independent Expenditures. An independent expenditure is an expenditure made for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents.

A clearly identified candidate is one whose name, nickname, photograph or drawing appears, or whose identity is apparent through unambiguous reference, such as "your Congressman," or through an unambiguous reference to his or her status as a candidate, such as "the Democratic presidential nominee" or "Republican candidate for Senate in this state."

Expressly advocating means any communication that:

- Uses phrases such as "vote for the President" or "re-elect your Congressman" or communications of campaign slogan(s) or individual word(s), which in context

can have no other reasonable meaning than to urge election or defeat of one or more clearly identified candidates; or

- When taken as a whole and with limited references to external events, such as proximity to the election, could be interpreted by a reasonable person only as advocating the election or defeat of one or more clearly identified candidates. 11 CFR §§100.16(a), 100.17 and 100.22.

B. Disclosure Requirements – General Guidelines. An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as a debt on Schedule D. Independent expenditures of \$200 or less need not be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

C. Last-Minute Independent Expenditure Reports (24-Hour Reports). Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election, must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour report is required each time additional independent expenditures aggregate \$1,000 or more. The 24-hour report must be filed on a Schedule E. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

D. Independent Expenditure Reports (48-Hour Reports). Any independent expenditures aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must be disclosed within 48 hours each time the expenditures aggregate \$10,000 or more. The reports must be filed with the Commission within 48 hours after the expenditure is made. 11 CFR §§104.4(f) and 104.5(g)(1).

E. Requirements for Maintaining Records. Reporting committees are required to maintain records which provide, in sufficient detail, the information from which the filed reports may be verified. 11 CFR §104.14(b)(1).

F. Coordinated Party Expenditures. National party committees and state party committees are permitted to purchase goods and services on behalf of candidates in the general election—over and above the contributions that are subject to contribution limits. Such purchases are termed “coordinated party expenditures.” They are subject to the following rules:

- The amount spent on “coordinated party expenditures” is limited by statutory formulas that are based on the Cost of Living Adjustment (COLA) and the voting-age population.

- Party committees are permitted to coordinate the spending with the candidate committees.
- The parties may make these expenditures only in connection with the general election.
- The party committees—not the candidates—are responsible for reporting these expenditures.
- If the party committee exceeds the limits on coordinated party expenditures, the excess amount is considered an in-kind contribution, subject to the contribution limits. 52 U.S.C. §30116(d) and 11 CFR §§109.30 and 109.32.

G. Assignment of Coordinated Party Expenditure Limit. A political party may assign its authority to make coordinated party expenditures to another political party committee. Such an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment. The political party committee that is assigned authority to make coordinated party expenditures must maintain the written assignment for at least three years. 11 CFR §§104.14 and 109.33(a) and (c).

Facts and Analysis

A. Reporting of Independent Expenditures

1. Facts

During audit fieldwork, the Audit staff reviewed disbursements to ensure the reporting completeness and accuracy of independent expenditures. The Audit staff noted that HDP made media-related expenditures totaling \$30,148 and disclosed them as Federal Election Activity or Coordinated Party Expenditures that may be considered independent expenditures. A breakdown of the analysis for these expenditures is as follows:

Apparent Independent Expenditures Reported as Coordinated Party Expenditures and Federal Election Activity (Copy of Communication Made Available)

HDP made 18 apparent independent expenditures totaling \$30,148 for which it provided supporting documentation such as invoices, scripts, ads, etc.

- i) For apparent independent expenditures totaling \$18,226, the communications contained language expressly advocating the election or defeat of a clearly identified candidate as defined under 11 CFR §100.22(a). This amount consisted of costs associated with 16 radio advertisements and one newspaper advertisement containing express advocacy.²⁹ The radio advertisements included the statement: "And on November 6th, let's furlough Linda Lingle!", and included the disclaimer,

²⁹ The newspaper advertisement was not itemized on the FEC report (cost, \$423).

"Paid for by the Democratic Party of Hawaii, which is responsible for the content of this advertising".

The 16 radio advertisements were disclosed on Schedule F as Coordinated Party Expenditures. Aside from being reported as Coordinated Party Expenditures, no documentation was available demonstrating coordination. Also, Counsel for HDP believed these expenditures were not coordinated. Given these reasons, the Audit staff believes the communications should have been reported as Independent Expenditures. However, should HDP continue to maintain that these radio advertisements were not coordinated, the committee would have exceeded its spending limit by \$15,203.

The newspaper advertisement included the statement: "Vote Democrat in the General Election" with pictures below of Barack Obama, Joe Biden, Mazie Hirono, and Tulsi Gabbard. The advertisement included the disclaimer "Paid for by Vote Hawaii 2012,³⁰ Not authorized by any candidate or candidate committee". Given the content and the disclaimer, the Audit staff believes the communication should have been reported as an Independent Expenditure.

- ii) For an apparent independent expenditure totaling \$11,922, the production and design costs associated with a television advertisement were paid by HDP. The television advertisement depicted the Hawaii Senatorial candidate, Linda Lingle, making a speech at the 2008 Republican National convention. While this depiction continued, the narrator stated the Candidate, "Linda Lingle, was wrong then, about a lot of things, and she's wrong for Hawaii now." The Audit staff believes the phrase, "she's wrong for Hawaii" was express advocacy because it had the same meaning as "defeat" and therefore could have no other meaning than to urge the defeat of the Candidate. The television advertisement was disclosed on Schedule B, Line 30(b) as Federal Election Activity and included the disclaimer, "Paid for by Vote Hawaii 2012, not authorized by any candidate or candidate's committee". Given the content and the disclaimer, the Audit staff believes the cost associated with the communication should be reported as an Independent Expenditure.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of disclosure errors for independent expenditures. HDP representatives stated they would review the schedule.

The IAR recommended that HDP provide documentation and evidence that apparent independent expenditures totaling \$30,148 did not require reporting as independent

³⁰ This newspaper advertisement was paid for by the Democratic Party of Hawaii.

expenditures. Absent such evidence, the IAR recommended that HDP amend its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures.

3. Committee Response to Interim Audit Report

In response to the IAR recommendation, Counsel stated that these apparent independent expenditures were coordinated (and amended reports were filed showing these expenditure as coordinated on Schedule F) and not independent expenditures. Counsel also noted that, although the total coordinated expenditures exceeded HDP's coordinated limit, it was only because of an administrative oversight (i.e., a failure to contact DSCC to obtain a higher spending authority).³¹ The response also included a letter from the DSCC Counsel stating that \$5,000 in coordinated spending authority was transferred to HDP on November 1, 2012; and had HDP requested additional spending authority, he knew of no reason why spending authority would have been withheld. Also, the letter provides additional coordinated spending authority to DSCC in the amount of \$92,097.

4. Draft Final Audit Report

The Audit staff accepted HDP's characterization of these communications as coordinated expenditures and not as independent expenditures. However, the Audit staff noted that the 16 radio advertisements, totaling \$17,803, included disclaimer wording for a communication not authorized by a candidate ("Paid for by the Democratic Party of Hawaii, which is responsible for the content of this advertising"). Similarly, the television advertisement, totaling \$11,922, included disclaimer wording for a communication not authorized by a candidate ("Paid for by Vote Hawaii 2012, not authorized by any candidate or candidate's committee").

After further review, the newspaper advertisement classified by the Audit staff as an apparent independent expenditure, totaling \$423, was determined to be federal election activity correctly reported on Schedule B, Line 30(b).

Amended reports, filed in response to the IAR, disclosed the 16 radio advertisements and the television advertisement on Schedule F as coordinated expenditures. This was in addition to a television advertisement, totaling \$100,000, previously reported as a coordinated expenditure on Schedule F. One television advertisement supported the democratic senatorial candidate for general election. The radio advertisements and second television advertisement opposed the republican senatorial candidate for general election. Coordinated expenditures reported on Schedule F totaled \$129,725.

The Audit staff disagreed with HDP's application of the DSCC's coordinated expenditure authority after HDP made coordinated party expenditures. Neither HDP nor the DSCC could locate a record authorizing additional spending authority. 11 CFR §109.33(a) requires that an assignment must be made in writing, state the

³¹ As part of its response, HDP requested that the Final Audit Report reflect that the HDP's spending limit did not exceed the combined coordinated expenditure limit for the 2012 Hawaii Senate election.

amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment.

In similar cases, the Commission has rejected assignments of spending authority after the fact, but did acknowledge in one of the cases that the Committee had not exceeded its combined coordinated expenditure limit, which was the case for HDP. In response to Counsel, the Audit staff revised its schedule of coordinated expenditures to include \$30,148 of media related expenses that were previously thought to be independent expenditures. The revised schedule of coordinated expenditures totaled \$129,725 but HDP had coordinated spending authority of only \$102,600. The Audit staff determined HDP exceeded its coordinated spending limit by \$27,125.

5. Committee Response to the Draft Final Audit Report

In response to the DFAR, Counsel stated, that in a similar situation, the Commission found that the coordinated spending authority had been exceeded but the combined spending authority of the state party and national party had not been exceeded, irrespective of the lack of prior written authorizations.³² Also, Counsel stated that in the aforementioned situation, refunds from the benefitting campaign committee were not required and that the Commission should explain its inconsistent treatment if refunds are now required.³³

Commission Conclusion

On December 14, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that HDP exceeded its coordinated spending limit by \$27,125.

The Commission did not approve, by the required four votes, the Audit Division Recommendation Memorandum, which included the recommendation to find that HDP had exceeded its coordinated spending limit by \$27,125. However, a revised Commission proposal was approved addressing the concern that the Audit staff could not confirm the airing of a television advertisement, but only its production and design costs of \$11,922. Accordingly, the Commission directed the Audit staff to either excise the television advertisement and its cost from the finding or move the advertisement to the “Additional Issue” section and also reduce the finding amount. The Commission approved a finding that HDP exceeded its coordinated spending limit by \$15,203 but that the overall spending limit was not exceeded. The television advertisement is discussed under the “Additional Issue” part of this report.

³² See the Final Audit Report of the Commission for the Democratic Executive Committee of Florida for the 2008 election cycle and the related ADRM Vote Certification dated June 7, 2012.

³³ The DFAR recommended that HDP obtain a refund from the candidate committee. The recommendation has been excluded from this report.

B. Failure to File 24/48-Hour Reports for Independent Expenditures

1. Facts

The Audit staff reviewed the apparent independent expenditures noted above to determine whether additional reporting of a 24/48-hour report was required.³⁴ The Audit staff determined that HDP did not file 24-hour reports, as required for independent expenditures, totaling \$29,725.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of 24-hour reports that were not filed. HDP representatives stated they would review the schedule.

Absent documentation and evidence that apparent independent expenditures totaling \$30,148 did not require reporting as independent expenditures (per Part A. above), the IAR recommended that HDP provide any comments it deems necessary with respect to the 24-hour reports that were not filed.

3. Committee Response to Interim Audit Report

In response to the IAR recommendation, Counsel provided no additional comments regarding 24-hour reports.

4. Draft Final Audit Report

The Audit staff accepted HDP's characterization of the communications noted above in Part A. as coordinated expenditures. As such, no 24-hour reports were required.

5. Committee Response to the Draft Final Audit Report

HDP provided no additional comment regarding 24-hour reports in its response to the DFAR.

Commission Conclusion

See the Commission concluded in Part A of this finding that these expenditures were coordinated and not independent. There is no 24 hour reporting requirement for coordinated expenditures.

Finding 7. Allocation of Expenditures

Summary

During audit fieldwork, the review of disbursements made from the federal and non-federal accounts identified an apparent non-federal overfunding of activity in the amount of \$82,722. In response to the IAR recommendation, HDP filed amended reports and

³⁴ The date the expenditure is publicly distributed serves as the date that the independent expenditure is made for purposes of the additional 24/48-hour report filing requirement. In the absence of a known date for public dissemination, the Audit staff used the invoice date or date of incurrence to determine if a 24/48-hour report was required.

submitted additional documentation for certain expenditures. Based on the new documentation, the Audit staff revised its calculation and concluded in the DFAR that the non-federal account did not overfund the federal account.

The Commission approved a recommendation that HDP did not materially overfund its federal accounts with funds from its non-federal accounts.

Legal Standard

A. 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 expenses; or
- They may establish a separate, federal 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. 11 CFR §106.7(b).

B. 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 106.7(f).

C. Reporting Allocable Expenses. A political committee that allocates federal/nonfederal 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 H4 (Joint Federal/Non-federal Activity Schedule). 11 CFR §104.17(b)(3).

D. Allocation Ratio for Administrative & Generic Voter Drive Costs. State and local party committees must allocate their administrative expenses and generic voter drive costs dependent upon which federal offices appear on the ballot for the election year. The minimum percentage of federal funds would be at least:

- 36 percent if both a Presidential candidate and a Senate candidate appear on the ballot;
- 28 percent if a Presidential candidate but not a Senate candidate appears on the ballot;
- 21 percent if a Senate candidate, but not a Presidential candidate, appears on the ballot; and,
- 15 percent if neither a Presidential nor a Senate candidate appears on the ballot. 11 CFR §106.7(d)(2) and (3).

E. Salaries and Wages. Committees must keep a monthly log of the percentage of time each employee spends in connection with a Federal election. Employees who spend 25 percent or less of their compensated time in a given month on Federal election activity or on activities in connection with a Federal election must either be paid only

from the Federal account or have their salaries allocated as an administrative cost. 11 CFR §106.7(d)(1).

F. Definition of Federal Election Activity. Federal election activity (FEA) is a specifically defined term of art for activity by state, district or local party committees that triggers special payment and reporting requirements. As a general rule, FEA must be paid for with federal funds. No non-federal funds may be used for FEA. There are four types of FEA:

- Voter registration activity during the period 120 days before a regularly scheduled federal election including the election day itself;
- Voter identification, get-out-the-vote and generic campaign activity conducted in connection with an election in which a candidate for federal office appears on the ballot;
- A public communication that refers to a clearly identified candidate for federal office and that promotes, attacks, supports or opposes (PASOs) a candidate for that office. The communication need not expressly advocate the election or defeat of the federal candidate to qualify as FEA; and
- Services provided during any given calendar month by an employee of a state, district or local party committee who spends more than 25 percent of his or her compensated time during that month in activities in connection with a federal election, including FEA mentioned above. 11 CFR §100.24(b).

G. Required accounts for Federal Election Activity. Each State, district, and local party organization or committee that has receipts or makes disbursements for Federal election activity can establish two separate accounts in depositories as follows: One or more Federal accounts, and an account that must function as both a Non-Federal account and a Levin account. If such an account is used, the State, district, and local party must demonstrate through a reasonable accounting method approved by the Commission that whenever such organization makes a disbursement for activities undertaken pursuant to 11 CFR 300.32(b), that organization had received sufficient contributions or Levin funds to make such disbursement. 11 CFR §300.30(c)(3).

H. Receipt of Levin Funds. Levin funds expended or disbursed by any state committee must be raised solely by the committee that expends or disburses them. Each donation must be lawful under the laws of the state in which the committee is organized and the funds solicited must not aggregate more than \$10,000 in a calendar year. Consequently, funds from national party committees, other state, district and local committees, and from federal candidates or officeholders, may not be accepted as Levin funds. 11 CFR §300.31.

I. Disbursements of Levin Funds. A State, district, or local committee of a political party may spend Levin funds on the following types of activity:

- Voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;

- Voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);
- The Federal election activity for which the disbursement is made must not refer to a clearly identified candidate for Federal office; and
- The disbursement must not pay for any part of the costs of any broadcasting, cable, or satellite communication, other than a communication that refers solely to a clearly identified candidate for State or local office. 11 CFR §300.32(b)(1) and (c).

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

K. Contents of Levin Reports. Each report must disclose:

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

Facts and Analysis

A. Facts

During audit fieldwork, the review of disbursements made from the federal and non-federal accounts identified an apparent non-federal overfunding of activity in the amount of \$82,722.

1. **Expenses reported as allocated on Schedules H4.** The Audit staff calculated the non-federal share of expenditures required to be disclosed on Schedules H4 and compared that to the amount transferred from the non-federal account for the period between 2011 and 2012. The non-federal portion of shared activity for this period was \$110,092. However, the non-federal account transferred a net amount of \$160,083, resulting in an overfunding of allocable expenses totaling \$49,991.
 - a) Below is a breakdown of the Audit staff's calculation of overfunding of allocable expenses totaling \$49,991. The following expenses were disclosed on Schedule H4 but, based on available documentation, were not allocable and should have been paid with 100 percent federal funds:

- i) Payroll and Associated Costs: HDP paid expenses from a federal account but disclosed these as allocable administrative expenses on Schedule H4. HDP did not provide monthly logs, timesheets, or affidavits demonstrating that these costs were solely non-federal or allocable expenses (see Finding 5).
 - ii) Generic Voter Drive (GVD) Expenses. HDP paid expenses from a federal account that appeared to be GOTV activity during the FEA time period, but disclosed these as allocable expenses on Schedule H4. A portion of these expenses were disclosed as allocable Generic Voter Drive expenses on Schedule H4. The remaining were disclosed as shared administrative expenses on Schedule H4. Based upon the dates and purpose of the disbursements and the limited documentation provided, it appears these disbursements should have been paid with 100 percent federal funds and not disclosed as shared expenses on Schedules H4.³⁵
 - iii) Miscellaneous Expenses. HDP disclosed expenses on Schedule H4 that were not sufficiently documented to allow the Audit staff to determine whether they could be shared. Included in this total were disbursements for rent and utilities. The documentation to support these disbursements was insufficient to determine if these expenses were made to support the headquarters' office or temporary campaign office locations.
2. **Expenses paid from the non-federal account.** HDP paid certain expenses directly from the non-federal account that appeared to represent 100 percent federal activity or allocable activity that should have been disclosed on Schedules H4, resulting in an overfunding of expenses totaling \$32,731.
- a) Below is a breakdown of the Audit staff's calculation of overfunding of expenses paid from the non-federal account totaling \$32,731. Based on available documentation, these expenses should have been paid with 100 percent federal funds or allocated on Schedules H4:
 - i) Federal Election Activity Expenses. HDP paid expenses totaling \$30,576 from its non-federal account that appeared to be FEA Type II (GOTV) activity that should have been paid with 100% federal funds. Based on available documentation, it appeared these expenses pertained to various GOTV rallies. These costs included consulting services, facility and equipment rentals, food and beverages, entertainment and transportation expenses.

³⁵ For the 2012 election cycle, a candidate for federal office appeared on the ballot in the state of Hawaii. For HDP, the FEA Voter ID, Generic Campaign Activity and GOTV period was June 5, 2012 through November 6, 2012. Further, the FEA voter registration period was November 8, 2011 through March 13, 2012 and April 13, 2012 through November 6, 2012.

- ii) Miscellaneous Administrative Expenses. HDP paid expenses from its non-federal account that, based on available documentation, appeared to be expenses that should have been allocated between the federal and non-federal accounts. The federal share of these expenses totaled \$2,155. These expenses pertained to office rent, bank fees, office vehicle repairs and accounting services.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives schedules identifying the transactions causing the non-federal overfunding. HDP representatives stated they were working on getting three former staff to sign payroll affidavits for disbursements disclosed as allocable administrative expenses on Schedule H4.

The IAR recommended that HDP provide documentation demonstrating that the expenditures above did not cause an over-funding from the non-federal account of \$82,722 (\$49,991 + \$32,731). Absent such evidence, the IAR recommended that HDP reimburse the non-federal account \$82,722 or disclose the non-federal overfunding on Schedule D as a debt until funds become available to satisfy the obligation.

C. Committee Response to Interim Audit Report

In response to the IAR recommendation, HDP provided a declaration that stated several staff payroll payments were made to individuals who worked less than 25% percent of time in a given month on activities in connection with federal elections and federal election activity.

HDP also provided a declaration that asserted that several expenses disallowed by the IAR were in fact ordinary operating costs.

In addition, HDP filed amended disclosure reports in response to the IAR recommendation that moved \$38,251 in federal election activity expenses disclosed on Schedule H4 to Schedule H6 (allocated Levin & federal expenses). HDP provided Schedules L for Levin activity and have moved the necessary portion of allocation transfers to Schedule H5 (Transfers of Levin Funds Received for Allocated Federal Election Activity) so that these activities are properly disclosed as allocable federal election activity. Finally, HDP objected to the inclusion of non-federal bank charges as allocable expenses.

D. Draft Final Audit Report

The Audit staff acknowledged that payroll declarations provided in response to the IAR recommendation were allocable on Schedule H4, and adjusted the calculation for overfunding accordingly. In addition, the Audit staff acknowledged that declarations provided for expenses identified as ordinary operating costs were allocable on Schedule H4, and adjusted the calculation for overfunding accordingly. Also, the Audit staff acknowledged that the expenditures moved from Schedule H4 were expenditures for

federal election activity allocable on Schedule H6, and adjusted the calculation for overfunding accordingly. Finally, the Audit staff agreed that the non-federal bank charges were not an allocable administrative expense, and adjusted the calculation for overfunding accordingly. Based on the documentation provided in response to the IAR recommendation, the Audit revised its funding analysis and concluded the non-federal account did not overfund the federal account.

E. Committee Response to the Draft Final Audit Report

HDP provided no additional comment to this finding in its response to the DFAR.

Commission Conclusion

On December 14, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that HDP did not materially overfund its federal accounts with funds from its non-federal accounts.

The Commission approved the Audit staff's recommendation.

Part V Additional Issue

Failure to Properly Report Media Related Expenditures – Dissemination

Summary

During audit fieldwork, the Audit staff identified disbursements totaling \$30,148, which appeared to be media related independent expenditures requiring disclosure on Schedule E (Itemized Independent Expenditures), that HDP disclosed on Schedule B, Line 30b (Federal Election Activity) and Schedule F (Coordinated Party Expenditures). Of the \$30,148, HDP did not file the required 24-hour reports for those items that should have been reported on Schedule E totaling \$29,725.

In response to the IAR recommendation, Counsel stated these expenditures were coordinated (and amended reports were filed showing these expenditures as coordinated on Schedule F) and not independent expenditures. Counsel added that, although the expenditures exceeded HDP's coordinated expenditure limit, this only occurred as a result of an administrative oversight, a failure to contact the DSCC to obtain a higher spending authority.

As a result of HDP's response to the IAR recommendation, the DFAR was revised to reflect that HDP made coordinated expenditures totaling \$129,725, but only had coordinated spending authority for \$102,600. Therefore, HDP exceeded its spending limit by \$27,125.

The Commission did not approve, by the required four votes, the excessive coordinated finding amount recommended by the Audit staff. After considering certain production and design costs related to a television advertisement totaling \$11,922, the Commission directed the Audit Division to excise this amount from the finding or move it to an "Additional Issue" section of the report. This matter was moved to the Additional Issue's section of the report pursuant to Commission Directive 70.³⁶

Legal Standard

The legal standard in the Finding 6 is incorporated herein.

Facts and Analysis

A. Reporting of Independent Expenditures

1. Facts

During audit fieldwork, the Audit staff reviewed disbursements to ensure the reporting completeness and accuracy of independent expenditures. The Audit staff noted that HDP made media-related expenditures totaling \$30,148 and disclosed them as Federal Election Activity or Coordinated Party Expenditures that may be considered independent expenditures. A breakdown of the analysis for these expenditures is as follows:

Apparent Independent Expenditures Reported as Coordinated Party Expenditures and Federal Election Activity (Copy of Communication Made Available)

HDP made 18 apparent independent expenditures totaling \$30,148 for which it provided supporting documentation such as invoices, scripts, ads, etc.

- i) For apparent independent expenditures totaling \$18,226, the communications contained language expressly advocating the election or defeat of a clearly identified candidate as defined under 11 CFR §100.22(a). This amount consisted of costs associated with 16 radio advertisements and one newspaper advertisement containing express advocacy.³⁷ The radio advertisements included the statement: "And on November 6th, let's furlough Linda Lingle!", and included the disclaimer, "Paid for by the Democratic Party of Hawaii, which is responsible for the content of this advertising".

The 16 radio advertisements were disclosed on Schedule F as Coordinated Party Expenditures. Aside from being reported as Coordinated Party Expenditures, no documentation was available demonstrating coordination. Also, Counsel for HDP believed these expenditures were not coordinated. Given these reasons, the Audit staff believes the communications should have been reported as Independent Expenditures. However, should HDP continue

³⁶ Available at <http://classic.fec.gov/directives/CommissionDirectives.shtml>

³⁷ The newspaper advertisement was not itemized on the FEC report (cost, \$423).

to maintain that these radio advertisements were not coordinated, the committee would have exceeded its spending limit by \$15,203.

The newspaper advertisement included the statement: "Vote Democrat in the General Election" with pictures below of Barack Obama, Joe Biden, Mazie Hirono, and Tulsi Gabbard. The advertisement included the disclaimer "Paid for by Vote Hawaii 2012,³⁸ Not authorized by any candidate or candidate committee". Given the content and the disclaimer, the Audit staff believes the communication should have been reported as an Independent Expenditure.

- ii) For an apparent independent expenditure totaling \$11,922, the production and design costs associated with a television advertisement were paid by HDP. The television advertisement depicted the Hawaii Senatorial candidate, Linda Lingle, making a speech at the 2008 Republican National convention. While this depiction continued, the narrator stated the Candidate, "Linda Lingle, was wrong then, about a lot of things, and she's wrong for Hawaii now." The Audit staff believes the phrase, "she's wrong for Hawaii" was express advocacy because it had the same meaning as "defeat" and therefore could have no other meaning than to urge the defeat of the Candidate. The television advertisement was disclosed on Schedule B, Line 30(b) as Federal Election Activity and included the disclaimer, "Paid for by Vote Hawaii 2012, not authorized by any candidate or candidate's committee". Given the content and the disclaimer, the Audit staff believes the cost associated with the communication should be reported as an Independent Expenditure.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of disclosure errors for independent expenditures. HDP representatives stated they would review the schedule.

The IAR recommended that HDP provide documentation and evidence that apparent independent expenditures totaling \$30,148 did not require reporting as independent expenditures. Absent such evidence, the IAR recommended that HDP amend its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures.

3. Committee Response to Interim Audit Report

In response to the IAR recommendation, Counsel stated that these apparent independent expenditures were coordinated (and amended reports were filed showing these expenditure as coordinated on Schedule F) and not independent expenditures. Counsel also noted that, although the total coordinated expenditures exceeded HDP's coordinated limit, it was only because of an administrative oversight (i.e., a failure to

³⁸ This newspaper advertisement was paid for by the Democratic Party of Hawaii.

contact DSCC to obtain a higher spending authority).³⁹ The response also included a letter from the DSCC Counsel stating that \$5,000 in coordinated spending authority was transferred to HDP on November 1, 2012; and had HDP requested additional spending authority, he knew of no reason why spending authority would have been withheld. Also, the letter provides additional coordinated spending authority to DSCC in the amount of \$92,097.

4. Draft Final Audit Report

The Audit staff accepted HDP's characterization of these communications as coordinated expenditures and not as independent expenditures. However, the Audit staff noted that the 16 radio advertisements, totaling \$17,803, included disclaimer wording for a communication not authorized by a candidate ("Paid for by the Democratic Party of Hawaii, which is responsible for the content of this advertising"). Similarly, the television advertisement, totaling \$11,922, included disclaimer wording for a communication not authorized by a candidate ("Paid for by Vote Hawaii 2012, not authorized by any candidate or candidate's committee").

After further review, the newspaper advertisement classified by the Audit staff as an apparent independent expenditure, totaling \$423, was determined to be federal election activity correctly reported on Schedule B, Line 30(b).

Amended reports, filed in response to the IAR, disclosed the 16 radio advertisements and the television advertisement on Schedule F as coordinated expenditures. This was in addition to a television advertisement, totaling \$100,000, previously reported as a coordinated expenditure on Schedule F. One television advertisement supported the democratic senatorial candidate for general election. The radio advertisements and second television advertisement opposed the republican senatorial candidate for general election. Coordinated expenditures reported on Schedule F totaled \$129,725.

The Audit staff disagreed with HDP's application of the DSCC's coordinated expenditure authority after HDP made coordinated party expenditures. Neither HDP nor the DSCC could locate a record authorizing additional spending authority. 11 CFR §109.33(a) requires that an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment.

In similar cases, the Commission has rejected assignments of spending authority after the fact, but did acknowledge in one of the cases that the Committee had not exceeded its combined coordinated expenditure limit, which was the case for HDP. In response to Counsel, the Audit staff revised its schedule of coordinated expenditures to include \$30,148 of media related expenses that were previously thought to be independent expenditures. The revised schedule of coordinated expenditures totaled \$129,725 but HDP had coordinated spending authority of only

³⁹ As part of its response, HDP requested that the Final Audit Report reflect that the HDP's spending limit did not exceed the combined coordinated expenditure limit for the 2012 Hawaii Senate election.

\$102,600. The Audit staff determined HDP exceeded its coordinated spending limit by \$27,125.

5. Committee Response to the Draft Final Audit Report

In response to the DFAR, Counsel stated, that in a similar situation, the Commission found that the coordinated spending authority had been exceeded but the combined spending authority of the state party and national party had not been exceeded, irrespective of the lack of prior written authorizations.⁴⁰ Also, Counsel stated that in the aforementioned situation, refunds from the benefitting campaign committee were not required and that the Commission should explain its inconsistent treatment if refunds are now required.⁴¹

Commission Conclusion

On December 14, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that HDP exceeded its coordinated spending limit by \$27,125.

The Commission did not approve, by the required four votes, the Audit staff's recommendation to find that HDP had exceeded its coordinated spending limit by \$27,125. However, a revised Commission proposal was approved addressing the concern that the Audit staff could not confirm the airing of a television advertisement, but only its production and design costs of \$11,922. Accordingly, the Audit staff was asked to excise the television advertisement and its cost from the finding or move the advertisement to an "Additional Issue" and to reduce the finding amount. The Commission approved a finding that HDP exceeded its coordinated spending limit by \$15,203 but that the overall spending limit was not exceeded. Pursuant to Commission Directive 70,⁴² this matter is presented as an "Additional Issue."

⁴⁰ See the Final Audit Report of the Commission for the Democratic Executive Committee of Florida for the 2008 election cycle and the related ADRM Vote Certification dated June 7, 2012.

⁴¹ The DFAR recommended that HDP obtain a refund from the candidate committee. The recommendation has been excluded from this report.

⁴² Available at <http://classic.fec.gov/directives/CommissionDirectives.shtml>