

Part IV

Commission Findings

Finding 1. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that DPA failed to disclose debts and obligations owed to 27 vendors totaling \$351,097. In response to the Interim Audit Report recommendation, DPA corrected the public record by filing a Form 99 (Miscellaneous Electronic Submission) which correctly disclosed its debts and obligations. DPA did not comment on this finding in its formal response to the Draft Final Audit Report.

The Commission approved a finding that DPA failed to disclose debts and obligations to vendors totaling \$351,097.

Legal Standard

- 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, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date. 11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed DPA's disbursement records and disclosure reports for proper reporting of debts and obligations. This review identified debts owed to 27 vendors totaling \$351,097⁴ that DPA failed to report on Schedule D (Debts and Obligations) during the audit period. Based on a review of the records, 26 of these vendors provided printing services, event rentals, video production, consulting, IT

⁴ Each debt was counted only once, even if it was required to be disclosed over multiple periods.

work, mailings, utility service, compliance, photography, finance director retainer, legal fees, fundraising, and cleaning services. The remaining vendor was a credit card vendor that DPA did not report on Schedule D during the audit period.

DPA reported debt totaling \$32,984 on Schedule D during the audit period. The Audit staff calculated the debts owed to the vendors based on the invoice date and the subsequent payment date. Debts were outstanding for periods ranging from 15 days to 904 days.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with DPA representatives during the exit conference and provided a schedule detailing the transactions requiring disclosure on Schedule D. During the exit conference, DPA representatives questioned the inclusion of debts relating to recurring administrative expenses. The Audit staff responded that regularly recurring administrative expenses are subject to debt reporting requirements.⁵ In its response to the exit conference, DPA did not provide any further comments.

The Interim Audit Report recommended that DPA provide documentation demonstrating that the transactions totaling \$351,097 were not obligations which required reporting on Schedule D. Absent such documentation, the Interim Audit Report recommended that DPA amend its reports or file a Form 99 (Miscellaneous Electronic Submission)⁶ to correctly disclose these debts and obligations on Schedule D.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, DPA filed a Form 99 (Miscellaneous Electronic Submission) on November 2, 2021, which did not materially correct the public record. Subsequently, DPA filed another Form 99 on January 14, 2022 which corrected the public record by disclosing its debts and obligations.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that DPA filed a Form 99 which corrected the public record by disclosing its debts and obligations.

E. Committee Response to the Draft Final Audit Report

DPA did not comment on this finding in its formal response to the Draft Final Audit Report.

Commission Conclusion

On July 28, 2022, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that DPA failed to disclose debts and obligations to vendors totaling \$351,097.

The Commission approved the Audit staff's recommendation.

⁵ See 11 CFR §104.11(b).

⁶ DPA was advised by the Audit staff that if it chose to file a Form 99 instead of amending its disclosure reports, the form must contain all pertinent information that is required on each schedule.

Finding 2. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that DPA did not maintain any monthly logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2017 and 2018, the Audit staff identified payments to DPA employees totaling \$408,872 for which DPA did not maintain monthly logs. This consisted of payroll which was allocated with federal and non-federal funds and payroll paid exclusively with non-federal funds. In response to the Interim Audit Report recommendation, DPA stated it “has instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds” and “employees who are paid exclusively with non-federal funds are outside the scope of the Commission’s jurisdiction and should not have been included in the finding.” In response to the DFAR, DPA reiterated its position and added that it “plans to create a procedure for recordkeeping for employees paid exclusively with non-federal funds, pending the outcome of the Final Audit Report.” DPA also reiterated that, in its view, payroll records for the employees paid exclusively with non-federal funds should not be included in the finding.

The Commission approved a finding that DPA did not maintain monthly payroll logs or equivalent records, totaling \$408,872, to document the percentage of time each employee spent in connection with a federal election for calendar years 2017 and 2018.

Legal Standard

- A. Maintenance of Monthly Logs.** Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election. Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:
- Employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or have their pay allocated as administrative costs between the federal and non-federal accounts;
 - 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).
- B. Formal Requirements Regarding Reports and Statements.** Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursements for payroll. DPA did not maintain any monthly 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 2017 and 2018, DPA did not maintain monthly logs for \$408,872 in payroll.⁷ This amount includes:

- Payroll totaling \$373,961 for employees reported on Schedule H4 (Disbursements for Allocated Federal and Non-Federal Activity) and paid with an allocation of federal and non-federal funds during the same month;
- Payroll totaling \$1,374 for employees reported on Schedule H4 and/or Schedule B (Itemized Disbursements) and also paid with 100 percent non-federal funds during the same month; and
- Payroll totaling \$33,537 for employees paid exclusively with non-federal funds in a given month.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with DPA representatives during the exit conference and provided a schedule of the payroll transactions. DPA representatives responded that DPA did not maintain monthly logs for employees during calendar years 2017 and 2018 and objected to the request for non-federal employee payroll records. The Audit staff has consistently requested these records and included these types of transactions as findings. Therefore, these transactions were included in the exit conference as a preliminary finding. In its response to the exit conference, DPA did not provide any further comments.

The Interim Audit Report recommended that DPA provide evidence that monthly logs were maintained to document the percentage of time employees spent in connection with a federal election. Absent the provision of monthly logs specific to employees paid with 100% non-federal funds, the Interim Audit Report recommended DPA provide evidence that records consistent with 11 CFR §104.14(b)(1) were maintained to document that certain employees were involved in exclusively non-federal activities. Additionally, the Interim Audit Report recommended that DPA provide and implement a plan to maintain monthly logs and other records consistent with 11 CFR §104.14(b)(1) in the future.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, DPA stated it “has instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds.” DPA further noted that the “inclusion of payroll records for those employees who are paid exclusively with non-federal funds are outside the scope of the Commission’s jurisdiction and should not have been included in the finding.”

⁷ This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, and Request for Early Commission Consideration of a Legal Question, Page 1). Payroll amounts are stated net of taxes and fringe benefits.

The Audit staff concluded that DPA did not provide monthly logs for the \$408,872 in payroll. However, DPA complied with the Interim Audit Report recommendation by implementing a plan to maintain monthly logs for all employees who are paid in part with non-federal funds in the future.

The Audit staff maintained that DPA was required to maintain monthly logs for its employees paid with exclusively non-federal funds, to verify that the employees were not engaged in federal activities. Absent the provision of monthly logs specific to employees paid with exclusively non-federal funds, DPA could have provided evidence that records consistent with 11 CFR §104.14(b)(1) were maintained to document that certain employees were involved in exclusively non-federal activities. Additionally, for employees paid with exclusively non-federal funds, DPA could have also implemented and provided a plan to maintain monthly logs or other records consistent with 11 CFR §104.14(b)(1).

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that DPA did not maintain monthly logs for 2017 and 2018 but instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds in the future.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, DPA reiterated that it “instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds and also plans to create a procedure for recordkeeping for employees paid exclusively with non-federal funds, pending the outcome of the Final Audit Report.” DPA also reiterated that, in its view, payroll records for the employees paid exclusively with non-federal funds should not be included in the finding. DPA further stated that some Commissioners previously determined, in other audits, that employees paid with exclusively non-federal funds was outside the scope of the Commission’s jurisdiction, acknowledging that those Commissioners who voted to determine that such recordkeeping is outside the scope of regulation are no longer members of the Commission. Additionally, DPA stated:

“In response to the lack of four Commissioners to determine that such recordkeeping is required, many party committees have been under the belief that such recordkeeping is not required. If the Commission decides to reverse course and determine by at least four votes that recordkeeping for non-federal payroll is, in fact, required, the DPA requests that the regulated community be given sufficient notice that there are now sufficient votes to require recordkeeping in such instances. In our view, a quiet vote to approve this finding as it is currently constituted is not sufficient notice.”

The Audit staff maintained its position that DPA was required to maintain monthly logs for its employees paid with exclusively non-federal funds, to verify that the employees were not engaged in federal activities. There have been audits in which the Commission did not have four or more affirmative votes to find that monthly payroll logs were

required for employees paid with exclusively non-federal funds. The Audit staff notes, however, that in two recent audits which included non-federal payroll, the Commission approved the recordkeeping for employees finding. The Audit staff, therefore, believes DPA's statement that the Commission has failed to notify the regulated community of its treatment of this issue is inaccurate. See Final Audit Report of the Connecticut Democratic State Central Committee (dated Feb. 23, 2022), pages 10 - 12 (approving a finding for payroll which was allocated with federal and non-federal funds and payroll paid exclusively with non-federal funds); and Final Audit Report of the Republican Party of Minnesota-Federal (dated Feb. 11, 2022), pages 8 - 10 (same).

The Commission also approved other recordkeeping for employees findings in which monthly payroll logs were not maintained for employees paid with exclusively non-federal funds; two of these audits were publicly available when DPA submitted its response to the DFAR. See Final Audit Report on Democratic Party of Hawaii (dated Feb. 16, 2018), pages 25-26 (same); and Final Audit Report on Illinois Republican Party (dated Oct. 24, 2017), pages 12-14 (same). It was in several earlier audits that the Commission did not have four or more affirmative votes to find that monthly payroll logs were required for employees who were paid exclusively with non-federal funds. See Final Audit Report on Utah Republican Party (dated Jan. 23, 2017), Final Audit Report on South Dakota Democratic Party (dated Apr. 27, 2015), Final Audit Report on Kentucky State Democratic Central Committee (dated Apr. 20, 2015), Final Audit Report on Democratic Party of Wisconsin (dated Apr. 6, 2015), Final Audit Report on Democratic Party of Illinois (dated Nov. 5, 2014), Final Audit Report on State Democratic Executive Committee of Alabama (dated May 12, 2014), and the Final Audit Report on the Republican Party of Iowa (dated Mar. 18, 2014).

Commission Conclusion

On July 28, 2022, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that DPA did not maintain monthly payroll logs or equivalent records totaling \$408,872 to document the percentage of time each employee spent in connection with a federal election for calendar years 2017 and 2018.

The Commission approved the Audit staff's recommendation.



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The above-named individual and/or firm is hereby designated as my
 counsel and is authorized to receive any notifications and other communications
 from the Commission and to act on my behalf before the Commission.

10/15/19
 Date

John Unger
 Auditee/ Client Signature

Treasurer
 Title

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

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Date

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Auditee/ Client Signature

Treasurer
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BEFORE THE FEDERAL ELECTION COMMISSION

In the Audit of)	
The Democratic Party of Arkansas)	LRA 1114
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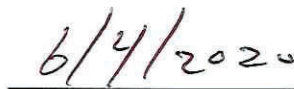
**CONSENT TO EXTEND THE TIME
TO INSTITUTE A CIVIL LAW ENFORCEMENT SUIT**

As consideration for the Federal Election Commission granting an extension of time to June 10, 2020, or eighty-five (85) calendar days beyond the March 17, 2020, due date in which to produce records in accordance with the audit of the Democratic Party of Arkansas ("Committee") pursuant to 52 U.S.C. § 30111(b), the Committee hereby consents to toll the statute of limitations for any civil enforcement action the Commission might institute pursuant to 52 U.S.C. § 30109(a)(6) for a period of eighty-five (85) calendar days.

Accordingly, this agreement will extend the time to institute a civil law enforcement suit for a period of eighty-five (85) calendar days from the expiration date of the five-year statute of limitations found at 28 U.S.C. § 2462 or any other statute of limitations or repose that may apply in this matter.

There will be no additional extension of the time to institute a civil law enforcement suit without the written consent of the Committee.


 John Unger, Treasurer
 Democratic Party of Arkansas


 Date

BEFORE THE FEDERAL ELECTION COMMISSION

In the Audit of)

The Democratic Party of Arkansas)

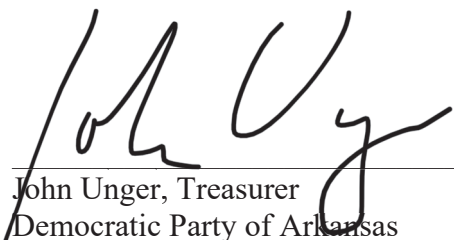
LRA 1114)

**CONSENT TO EXTEND THE TIME
TO INSTITUTE A CIVIL LAW ENFORCEMENT SUIT**

As consideration for the Federal Election Commission granting an additional extension of time to July 27, 2020, or forty-seven (47) calendar days beyond the previous June 10, 2020, due date in which to produce records in accordance with the audit of the Democratic Party of Arkansas ("Committee") pursuant to 52 U.S.C. § 30111(b), the Committee hereby consents to toll the statute of limitations for any civil enforcement action the Commission might institute pursuant to 52 U.S.C. § 30109(a)(6) for an additional period of forty-seven (47) calendar days.

Accordingly, this agreement will extend the time to institute a civil law enforcement suit for an additional period of forty-seven (47) calendar days from the expiration date of the five-year statute of limitations found at 28 U.S.C. § 2462 or any other statute of limitations or repose that may apply in this matter.

There will be no additional extension of the time to institute a civil law enforcement suit without the written consent of the Committee.



John Unger, Treasurer
Democratic Party of Arkansas



Date