



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 6, 2011

MEMORANDUM

TO: Lynn Fraser
Director of Alternative Dispute Resolution

THROUGH: Alec Palmer *AP*
Staff Director

FROM: Patricia Carmona *PC*
Chief Compliance Officer

Thomas Hintermister *TH*
Assistant Staff Director
Audit Division

Alex Boniewicz *AB*
Audit Manager

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SUBJECT: The Democratic Party of Orange County FED PAC (A09-12) – Referral Matter

On September 16, 2011, the Commission approved the Final Audit Report of the Commission on the Democratic Party of Orange County FED PAC. The report was released to the public on September 29, 2011. In accordance with the Commission-approved materiality thresholds, the Final Audit Report includes a matter that meets the criteria for referral to Alternative Dispute Resolution (ADR): Finding – Untimely Deposit of Receipts.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Marty Kuest or Alex Boniewicz at 694-1200.

Attachment: Finding – Untimely Deposit of Receipts.

cc: Reports Analysis Division

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Finding 2. Untimely Deposit of Receipts

Summary

Audit fieldwork indicated that DPOC failed to deposit, within 10 days of receipt, 58 percent of the contributions received during the 2008 election cycle. The delays in depositing these contributions averaged 41 days. The Audit staff recommended that DPOC provide evidence showing that the deposits in question were deposited timely or submit any additional comments relevant to this finding. In response to the Interim Audit Report, a DPOC representative restated the cause of the deposit delays and made assurances that the changes made since the audit will prevent this problem from recurring. The Commission approved the finding that DPOC failed to deposit timely, contributions from individuals.

Legal Standard

Timing of Deposits. A treasurer of a political committee is responsible for making deposits of contributions. These deposits must be made within 10 days of the receipt of the contribution. 11 CFR 103.3(a).

Facts and Analysis

A. Facts

During audit fieldwork, the reconciliation of DPOC's bank activity identified a number of deposits in transit at the end of calendar year 2007. Of the 29 deposits held to be in transit, 24 consisted of contributions received prior to December 2007 and only one of the 29 was deposited within the required 10 days.

A review of all deposits into DPOC's federal account indicated that 230 of 430 contribution deposits were made more than 10 days following the contribution's receipt.¹ On average, the time between receipt and deposit for the late deposits was 41 days, ranging from 11 to 281 days.² Contributions deposited untimely totaled \$213,960 or approximately 58% of the contributions deposited.

There was a greater delay for the deposit of contributions made by credit card than for those made by check. For the late credit card deposits, the average delay between receipt and deposit was 57 days, while the average delay for check batches was 17 days.

DPOC's Treasurer, at the time, discussed this problem in some detail in a written response to questions raised during audit fieldwork:

¹ Since DPOC did not maintain a record showing the actual date a contribution was received, the Audit staff used the dates the batches were recorded in DPOC's accounting records. These dates coincided with the date written on deposit batch preparation sheets. Generally, the checks in the batches were dated a few days prior to the preparation date. The underlying presumption was that to be able to prepare the deposits, DPOC must have the contributions in hand.

² Excluded from this calculation is a March 6, 2006 deposit in transit, which could not be traced to DPOC's bank account, but based on DPOC bank reconciliations, was deposited sometime in March 2008. The time between receipt and deposit may have been in excess of two years.

Merchant services accounts are normally linked to the individual client bank account. Unfortunately, there were inconsistencies while establishing the merchant services account for DPOC and the account was never properly activated. Several months' worth of activity showed the credit card contribution deposits were not properly posting to the Committee bank account. It was eventually discovered that the funds were being held in a standard non-interest bearing checking account established for merchant services hosted by Durkee & Associates. In order to rectify the situation we immediately began to verify each credit card transaction. As soon as all credit card transactions were accounted for, the net total of each credit card batch was transferred into the Committee bank account. In some instances, the transfer checks were voided and re-issued due to a declined credit card or a chargeback within the original batch. This was a lengthy process, but as of the present date, all credit card transactions have been verified and all funds have been transferred properly.

The check deposit delays were due to new office procedures. During this time, we established an in-office e-scanner to process check deposits through our bank. The e-scanner was new technology our bank was testing. This technology placed a check scanner and computer software in our office that allowed us to process deposits in the same manner as a bank teller processes deposits at a bank branch. We agreed to participate in the process as a means for our clients to save courier fees and to allow them to have the benefit of instant credit of deposits. Unfortunately, there were many discrepancies and processing malfunctions which we were not prepared to handle. As a result, many of our deposits were not properly processed and therefore did not settle timely.

It should be noted that we have strict internal controls in place to avoid these types of situations in the future.

The Audit staff notes that it is not clear why this deposit delay problem was not identified and resolved more quickly, since the Treasurer's company, Durkee and Associates, both processed DPOC's credit card contributions³ and regularly reconciled its bank accounts. The delays for the credit card deposits spanned the entire election cycle, although the average time between contribution receipt and deposit in 2008 declined to 35 days from 47 days in 2007. The deposit of checks processed with the new technology may have been the cause of some deposit delays, but this does not explain the late deposits prior to the adoption of the system in December 2007, nor does it explain why six of 13 check deposit batches from December 2008 were late.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, Audit staff restated the issues discussed previously and DPOC representatives did not comment. The Interim Audit Report recommended that DPOC provide evidence showing the deposits in question were deposited timely or submit any additional comments relevant to this finding.

³ Durkee and Associates handles accounting and reporting for a number of political clients, many of which had the same treasurer as DPOC, and used a shared credit card merchant account.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, a DPOC representative restated the position previously presented at the close of audit fieldwork and assured that this problem will not recur.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that a DPOC representative restated their position to this matter with assurances that this problem would not recur.

Commission Conclusion

On September 1, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that DPOC failed to deposit timely, contributions from individuals.

The Commission approved the finding that DPOC failed to deposit timely, contributions from individuals.

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