

Finding 2. Receipt of Prohibited Contributions

Summary

During audit fieldwork, a review of contributions from individuals revealed that ASCAPAC received 102 contributions, totaling \$93,023, from apparent prohibited sources. In response to the Interim Audit Report recommendation, ASCAPAC submitted documentation for contributions totaling \$43,121 and stated contributions totaling \$35,271 would be refunded or given to an eligible charity. Furthermore, for the remaining contributions totaling \$14,631, ASCAPAC stated that it had not yet received all the contributor responses attesting to tax status, but reasonably expected that half of the contributions would be deemed permissible.

Based on the documentation submitted, the Audit staff agreed with ASCAPAC that contributions totaling \$8,575, were not from prohibited sources. Thus, the outstanding contributions as of the Draft Final Audit Report, totaling \$84,448, remained from prohibited sources.

In response to the Draft Final Audit Report, ASCAPAC submitted documentation to show the permissibility of contributions totaling \$4,420. In addition, ASCAPAC issued untimely refunds for contributions totaling \$48,904; and submitted documentation for contributions totaling \$31,124. Based on the documentation, however, these contributions remained impermissible.

The Commission approved a finding that ASCAPAC received contributions totaling \$80,028 from prohibited sources.

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):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
3. Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and
4. 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). 52 U.S.C. §§30118, 30119, 30121, and 30122.

B. Receipt of Prohibited Corporate Contributions. Political committees may not accept contributions from the general treasury funds of corporations. This prohibition applies to any type of corporation including a non-stock corporation, as incorporated membership organization, and an incorporated cooperative. 52 U.S.C. §30118.

C. 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).

D. 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).

E. 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).

F. Questionable Contributions. It is the Treasurer's responsibility to ensure that all contributions are lawful. 11 CFR §103.3(b). 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. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
 - Confirm the legality of the contribution; or

- Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified contributions that appeared to be from prohibited sources. The following chart details the source of these receipts.

Apparent Prohibited Contributions	
Type of Review	100%
Contributions from Limited Liability Companies (LLC)	\$75,462
Contributions from Corporations	\$16,412
Contributions from Professional Limited Liability Companies (PLLC)	\$649
Contributions from Limited Liability Partnerships (LLP)	\$500 ²
Total of Prohibited Contributions	\$93,023

B. Additional Information:

For contributions from corporations, the Audit staff verified the corporate status of the entities, as of the date of the contribution, with the applicable Secretary of State offices. For contributions from Limited Liability Companies (LLC) and Limited Liability Partnerships (LLP), ASCAPAC provided documentation for \$44,194 stating that the partnership elected to be treated as a corporation for tax purposes, or that they had a corporate partner. For the remaining \$31,768 from LLCs and LLPs, ASCAPAC did not provide documentation.

The Audit staff verified the corporate status with the appropriate Secretaries of State for contributions from corporations totaling \$16,412 to ASCAPAC.

ASCAPAC did not maintain a separate account for questionable contributions. However, there was a sufficient balance in its bank account to make refunds of the apparent prohibited contributions.

The contributions originated primarily from surgery centers that were members of the Ambulatory Surgery Center Association.

C. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with ASCAPAC representatives during the exit conference and provided a schedule of the apparent prohibited contributions. ASCAPAC representatives stated that the committee “continues to conduct an extensive, multimodal effort to collect documentation of the tax filing status...” and have provided additional information regarding the

² This was a single contribution from a partnership where both partners were incorporated entities.

eligibility of the contributions to the Audit staff. In addition, they stated that ASCAPAC was in the process of issuing refunds and would provide details once the refund process is completed.

ASCAPAC representatives further stated: "...the Committee accepted contributions from LLCs based on the understanding of the following points:

1. An ASC [Ambulatory Surgery Center], by definition, is owned wholly or in part by a single physician or partnership of physicians, and as such represents an inherently permissible donor under FEC rules and regulations.
2. FEC guidance consistently informs Committees that the contributing LLC is the party affirmatively responsible for notifying the Committee of donor eligibility status. The Committee objects to any assertion by the Audit staff that this affirmative duty somehow rests with it as the recipient PAC. Likewise, the Committee rejects any allegation by the Audit staff that the PAC's staff did anything other than seek full compliance with the "best efforts" obligations set forth in FEC rules and regulations, the Campaign Guide for Corporate and Labor Organizations, and other applicable Commission guidance."

The Audit staff noted that although the contributor is responsible for providing eligibility of its contribution, 11 CFR §103.3(b) states that it is the treasurer's responsibility to ensure that all contributions are lawful and to maintain a record of documentation to that effect. According to the best efforts provisions in 11 CFR §103.3(b), ASCAPAC did not demonstrate best efforts because it did not provide statements from the business entities attesting to the legality of their contributions or refund the potentially prohibited contributions.

The Interim Audit Report recommended that ASCAPAC:

- Provide documentation demonstrating that the apparent prohibited contributions totaling \$93,023 were made with permissible funds or were timely resolved. This documentation should include records that were not made available to the Audit staff during the audit, including tax status information provided by the contributors, or timely refunds (copies of the front and back of negotiated refund checks).
- Absent documentation that the funds were permissible or were timely resolved, ASCAPAC must refund these apparent prohibited contributions to the contributors or disgorge them to a governmental entity or to a qualified charitable organization.³ ASCAPAC should provide proof of any refunds and/or disgorgement by providing the front and back of the negotiated refund checks.
- If funds were not available to make the necessary refunds or disgorgement, ASCAPAC should disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make such refunds.

D. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, ASCAPAC stated that it has undergone an "exhaustive effort" to determine the corporate status of all the contributors in question, and submitted supporting documentation.

³ 26 U.S.C §170(c).

ASCAPAC addressed prohibited contributions in the following three categories, however, the Audit staff could not associate the documentation submitted to the total amounts addressed in the narrative portion of the response:

Contributions Categorized as Permissible (\$43,121)

In the narrative portion of its response, ASCAPAC stated that contributions totaling \$43,121 were permissible. Of these, contributions totaling **\$37,621** were from “eligible” LLCs with a corporate partner, which is allowable as long as no part of the contribution is attributed to the corporation. Additionally, ASCAPAC stated contributions totaling **\$5,500** were received from LLC partnerships with no corporate partner.

Based on documentation ASCAPAC submitted, the Audit staff determined that contributions totaling **\$26,649** were from LLCs and LLPs that elected to be taxed as partnerships by the IRS. Of this amount, contributions totaling:

- **\$16,074** were from LLCs owned by another LLC and/or a corporate partner. Since documentation was not submitted showing tax status of the LLC partner, nor that the contribution was made entirely from the non-corporate partner(s)’ share of the profits, these contributions remain impermissible.
- **\$500** was from an LLP owned by two corporate partners. As this contribution is entirely from corporate entities, the contribution is impermissible.
- **\$1,500** were from an LLC that elected to be taxed as a partnership by the IRS, but since the documentation provided stated that the partners were unaware that a contribution had been made, these contributions remain impermissible.
- **\$8,575** were from LLCs/LLPs that were not owned by another LLC and/or corporate partner. The Audit staff agrees with ASCAPAC that these are contributions from permissible sources.

Contributions Categorized as Prohibited (\$35,271)

In the narrative portion of its response, ASCAPAC stated that contributions totaling \$35,271 were received from corporations or partnerships that elected to be treated as corporations for tax purposes, and agreed to issue refunds. Based on the documentation ASCAPAC submitted, the Audit staff verified contributions totaling \$19,124 were from LLCs that elected to be treated as a corporations for tax purposes, and \$7,115 were from corporations, and thus remain impermissible.

Contributions Without Donor Response (\$14,631)

In the narrative portion of its response, ASCAPAC stated it did not receive responses from contributors attesting to tax status for contributions totaling \$14,631, despite multiple attempts. However, based on the number of responses already received, ASCAPAC reasonably expected that 55%, or \$8,047 would be deemed permissible. Therefore, ASCAPAC estimated that it would refund or disgorge to an eligible charity the remainder of the contributions. ASCAPAC would adjust the actual refund amount based on responses from its contributors.

The Audit staff maintained that, per 11 CFR §103.3(b), unless ASCAPAC submitted documentation to demonstrate these contributions were received from permissible sources, they must still be refunded.

Corrective Action Taken in Response to the Interim Audit Report	
Total Apparent Prohibited Contributions as of Interim Audit Report	\$93,023
Contributions from Partnerships (Supporting documentation provided by committee)	\$8,575
Contributions Refunded	\$0
Prohibited Contributions – <i>Not Resolved</i>	\$84,448

In summary, the remaining apparent prohibited contributions not resolved or refunded total \$84,448 (\$93,023 - \$8,575). As such, ASCAPAC should either issue a refund to the contributors, disgorge the funds to a governmental entity or to a qualified charitable organization, or report them as debts on Schedule D until paid.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that ASCAPAC submitted additional documentation to demonstrate the permissibility of contributions totaling \$8,575.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, ASCAPAC emphasized that the contributions were made and accepted in good faith. ASCAPAC also provided a copy of its updated compliance procedures to prevent prohibited contributions from being accepted in the future and stated that it has updated its “solicitation disclosures to better inform potential contributors about the applicable FEC requirements associated with the contributions and prevent this situation in the future.”

ASCAPAC submitted the following additional documentation:

Prohibited Contributions Untimely Resolved (\$48,904)

- 62 contributions totaling \$48,904⁴, were untimely refunded by ASCAPAC.

⁴ ASCAPAC submitted copies of the issued checks and agreed to provide the copies of the processed checks or bank statement(s) when they become available. To date, the Audit staff has verified refunds totaling \$37,206 with bank records.

Prohibited Contributions Not Resolved (\$31,124)

ASCAPAC submitted documentation for contributions totaling \$31,124 from LLCs that it stated “did not elect to file federal tax returns as a corporation.” Based on the submitted documentation, the Audit staff determined that these contributions remain impermissible for the following reasons:

- Documentation was not submitted showing the contributions had been attributed to the non-corporate partner(s) of the incorporated LLC for 23 contributions totaling \$22,574.
- Documentation was not submitted showing whether the LLC elected to file with the IRS as a corporation or a partnership for four contributions totaling \$2,550.
- Documentation submitted showed the LLC elected to file with the IRS as a corporation for three contributions totaling \$3,500.
- Documentation submitted does not support ASCAPAC’s assertion that four contributions totaling \$2,500 were made only from the non-corporate partners.

Contributions Where Permissibility Was Demonstrated (\$12,995)

- Documentation was submitted showing that the LLC elected to file with the IRS as a partnership for three contributions totaling \$8,575 in response to the Interim Audit Report.
- Documentation was submitted showing the LLC elected to file with the IRS as a partnership for three contributions totaling \$4,420⁵ in response to the Draft Final Audit Report.

Thus, the amount of contributions that were from prohibited sources was reduced to \$80,028⁶.

Corrective Action Taken in Response to the Draft Final Audit Report	
Total Apparent Prohibited Contributions as of Draft Final Audit Report	\$84,448
Contributions from Partnerships (Supporting documentation provided by ASCAPAC)	\$4,420
Contributions Refunded	\$48,904
Prohibited Contributions – <i>Not Resolved</i>	\$31,124

As summarized in the chart above, the remaining apparent prohibited contributions not resolved or refunded total \$31,124 (\$84,448 – \$4,420 – 48,904). ASCAPAC should either issue a refund to the contributors, disgorge the funds to a governmental entity or to a qualified charitable organization. If the funds are not available, ASCAPAC should report them as debts on Schedule D until paid.

⁵ Amount also includes \$120 difference where the Audit staff inadvertently recorded the incorrect amount for two checks due to illegible copies.

⁶ 80,028 = \$93,023 (see Draft Final Audit Report, page 3) - \$8,575 - \$4,420. The deductions are the amounts ASCAPAC was able to demonstrate were from permissible sources.

Commission Conclusion

On July 25, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that ASCAPAC received contributions totaling \$80,028 from prohibited sources.

The Commission approved the Audit staff's recommendation.

Finding 4. Disclosure of Receipts

Summary

During audit fieldwork, the Audit staff identified 124 contributions totaling \$193,623⁷ that were incorrectly disclosed or missing the required disclosure information. In response to the Interim Audit Report recommendation, ASCAPAC stated that it has conducted an “exhaustive effort” to collect the information required and submitted documentation to support its original disclosure reports. ASCAPAC also stated that it would file amendments to correct the outstanding disclosure errors. Based on the documentation submitted, the Audit staff agreed with ASCAPAC that two contributions totaling \$5,000 were correctly disclosed. However, contributions totaling \$188,623 remained either incorrectly disclosed or were missing the required disclosure information. In response to the Draft Final Audit Report, ASCAPAC stated that it has updated its policies and procedures, created new compliance and information-sharing systems, engaged in an internal review of 2017 and 2018 contributions and contracted with an outside vendor to ensure compliance with FEC regulations.

Additionally, ASCAPAC submitted documentation to support that contributions totaling \$1,000 disclosed on the audited disclosure reports were correctly reported, and filed amendments that corrected the disclosure for contributions totaling \$67,508. However, ASCAPAC did not comply with the Interim Audit Report recommendation to amend its disclosure reports to correctly disclose \$120,115 of the contributions.

The Commission approved a finding that ASCAPAC failed to correctly disclose contributions totaling \$187,623⁸ on its disclosure reports.

Legal Standard

Required Information for Contributions. For each itemized contribution, the committee must provide the following information:

- The contributor’s full name and address (including zip code);
- The contributor’s occupation and the name of his or her employer (for individual contributors);
- The date of receipt (the date the committee received the contribution);
- The amount of the contribution; and
- The calendar year-to-date total of all contributions from the same individual. 11 CFR §§100.12 and 104.3(a)(4) and 52 U.S.C. §30104(b)(3)(A).

⁷ See footnote 2.

⁸ \$187,623 = \$193,623 (see Draft Final Audit Report, pages 3-4) -\$1,000- \$5,000 (resolved in response to the Interim Audit Report).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified 124 contributions reported on Schedule A totaling \$193,623⁹ that were incorrectly disclosed or missing the required disclosure information. These reporting errors consisted of the following:¹⁰

- 58 contributions from individuals and business entities totaling \$79,728 that incorrectly disclosed the contributors' name;
- 42 contributions from individuals and business entities totaling \$52,195 that incorrectly disclosed the contribution dates; and
- 53 contributions from partnerships totaling \$109,532 that incorrectly disclosed the partnership attribution for the contributions.

The Audit staff was not able to verify disclosure information for 89 contributions totaling \$60,730 from business partnerships due to the lack of records showing each partner's attribution.¹¹

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the disclosure items at the exit conference and provided schedules of contributions disclosed incorrectly. ASCAPAC representatives stated that they would amend the required disclosure reports to reflect information received from donors.

The Interim Audit Report recommended that ASCAPAC amend its disclosure reports to correctly disclose these contributions on Schedule A, and provide any other comments it deemed necessary.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, ASCAPAC stated that it conducted an "exhaustive effort" to collect the records, and submitted documentation to support its original disclosure reports. ASCAPAC also stated it would file amendments to correct the outstanding disclosure issues. The Audit staff reviewed the documentation and agreed that for two contributions, totaling \$5,000, ASCAPAC correctly disclosed the required information.

ASCAPAC addressed 38 of the contributions that incorrectly disclosed the contributors' name in the following three categories:

- ASCAPAC stated that 16 credit card contributions from individuals that were reported as received from business entities and cited for being incorrectly reported were, in fact, correctly reported. The credit card submission forms only transmitted the name of the individual cardholder, not the company. ASCAPAC explained that the additional documentation submitted contained written confirmation that the reported business entity names accurately reflected the donors.

⁹ See footnote 2.

¹⁰ These three groups of errors and their respective dollar value exceed the amount of total errors of 124 totaling \$193,623 because 29 contributions totaling \$47,832 had multiple disclosure errors. Each contribution was counted once toward the total errors, even if there were multiple errors.

¹¹ See Limitations, p. 1.

The Audit staff did not agree with the explanation provided by ASCAPAC. The Audit staff reviewed the submitted documentation and determined that it did not state that the credit card contributions were from the business entity. For each of these credit card contributions, the Audit staff recommended ASCAPAC submit confirmation that the contributions originated from the business entity and not the individual named on the card.

- ASCAPAC stated that 13 contributions were prohibited and would be refunded or disgorged to an eligible charity.

The Audit staff agreed with ASCAPAC, but maintained that, regardless of the permissibility of a contribution, certain information such as the name, address, date and amount of contribution, and the aggregate total for the contributor, must be disclosed correctly.

- ASCAPAC stated that nine contributions were disclosed with a name other than that on the check, and it would amend its disclosure reports to show the correct name.

The Audit staff agreed with ASCAPAC, and its stated resolution would correct the public record.

As a result, contributions totaling \$188,623 (\$193,623 - \$5,000) remain either incorrectly disclosed or were missing information; amended disclosure reports were still required.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that ASCAPAC stated that it conducted an “exhaustive effort” to collect the records, and submitted documentation to support its original disclosure reports.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, ASCAPAC stated that it has updated its policies and procedures, created new compliance and information-sharing systems, engaged in an internal review of 2017 and 2018 contributions and contracted with an outside vendor to ensure compliance with FEC regulations.

Additionally, ASCAPAC submitted documentation to support that contributions totaling \$1,000 disclosed on the audited disclosure reports were correctly reported, and filed amendments that corrected the disclosure for contributions totaling \$67,508. However, ASCAPAC did not comply with the Interim Audit Report recommendation to amend its disclosure reports to correctly disclose \$120,115 of the contributions.

Thus, the amount that did not meet the disclosure requirements of 11 CFR §§100.12 and 104.3(a)(4) was reduced to \$187,623¹².

¹² \$187,623 = \$193,623 (see Draft Final Audit Report, page 3-4) - \$1,000- \$5,000 (resolved in response to the Interim Audit Report).

Commission Conclusion

On July 25, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that ASCAPAC failed to correctly disclose contributions totaling \$187,623.

The Commission approved the Audit staff's recommendation.

Finding 5. Untimely Deposit of Receipts

Summary

During audit fieldwork, the Audit staff determined that ASCAPAC did not deposit 106 contributions totaling \$84,333 within 10 days of receipt. In response to the Interim Audit Report recommendation, ASCAPAC stated that its policy was to deposit all checks within 10 days of receipt, and that it has worked with its credit card vendor to ensure the timely transfer of contributions. ASCAPAC also stated it has implemented a procedure that all checks would be date stamped upon receipt to ensure a record was maintained. In response to the Draft Final Audit Report, ASCAPAC stated that it has updated its policies and procedures, created new compliance and information-sharing systems, engaged in an internal review of 2017 and 2018 contributions, and contracted with an outside vendor to ensure compliance with FEC regulations.

The Commission approved a finding that ASCAPAC untimely deposited contributions totaling \$84,333.

Legal Standard

- A. Deposit of Receipts.** The treasurer of a political committee must deposit contributions (or return them to the contributors without being deposited) within 10 days of the treasurer's receipt of the contribution. 11 CFR §103.3(a).
- B. Receipt of Contributions.** Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receipt, forward such contribution to the treasurer. If the amount of the contribution is in excess of \$50, such person shall also forward to the treasurer the name and address of the contributor and the date of receipt of the contribution. If the amount of the contribution is in excess of \$200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR §100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution. 52 U.S.C. §30102(b)(2) and 11 CFR §102.8(b).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed available contribution records and identified 106 contributions totaling \$84,333 which ASCAPAC did not deposit within 10 days. This amount represents 23% of the total contributions from individuals.

The Audit staff compared the reported receipt dates¹³ to the deposit dates and determined that it took ASCAPAC, on average, 22 days to deposit these contributions. The untimely deposit of contributions ranged from a minimum of 14 days to a maximum of 74 days.¹⁴

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with ASCAPAC representatives during the exit conference and provided schedules detailing the untimely deposited contributions. ASCAPAC representatives did not provide any comments related to this matter at that time.

In response to the exit conference, ASCAPAC representatives stated that ASCAPAC's policy was to deposit all checks within 10 days of receipt. The representatives stated that two items on the list were erroneous deposits and therefore were not subject to the 10 day deposit regulation. The Audit staff noted that all deposits must be made within 10 days of ASCAPAC's receipt, according to 11 CFR § 103.3(a), regardless of whether or not they were made in error.

In addition, other contributions were received by its compliance consultant and were deposited to a credit card holding account. ASCAPAC classified that account, "as a cash account on the Committee's ledger and the funds were received on the date that the donor initiated the credit card charge." ASCAPAC further stated that those funds were subsequently credited to its checking account and should not be considered untimely deposited. The Audit staff noted that the funds in the credit card holding account were not accessible by ASCAPAC staff until they were deposited to its checking account. Therefore, the Audit staff considered these credit card contributions not deposited timely.

ASCAPAC representatives stated that they did not consider the remaining items on the list to be deposited untimely, however, they did not have documentation of the receipt date. However, to comply with the 10 day deposit regulation in the future, ASCAPAC has implemented a procedure where all contributions would be date stamped upon receipt in order to ensure that the date of receipt would be documented.

In accordance with 11 CFR § 102.8(a), such a procedure should help ensure that the date of receipt is documented and is the date ASCAPAC obtains possession of the contribution. ASCAPAC should then ensure that its deposit is made within 10 days of receiving a contribution to comply with 11 CFR § 103.3(a). Finally, ASCAPAC should ensure that the recorded receipt day was accurately reflected on its disclosure reports.

The Interim Audit Report recommended that ASCAPAC:

- Provide documentation demonstrating that the contributions in question were deposited timely;
- Clarify whether the credit card holding account was its own depository; and
- Submit any comments it deemed relevant to this matter.

¹³ The Audit staff verified the date reported on the disclosure reports was the date received stamped in the contributor records. The Audit staff used the date of the check or the credit card merchant received date to determine timeliness for contributions with no date stamp.

¹⁴ Of these untimely deposited contributions, 70 contributions totaling \$55,993 were not disclosed with the correct date on the disclosure reports. See Finding 4, p. 19.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, ASCAPAC stated that its policy was to deposit all checks within 10 days of receipt, and that it has worked with its credit card vendor to ensure the timely transfer of contributions. ASCAPAC also stated it has implemented a procedure that all checks would be date stamped upon receipt to ensure a record is maintained.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that ASCAPAC stated that its policy was to deposit checks within 10 days of receipt, that it had worked with its credit card vendor to ensure the timely transfer of contributions, and that it had implemented a procedure to date stamp checks upon receipt.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, ASCAPAC stated that it has updated its policies and procedures, created new compliance and information-sharing systems, engaged in an internal review of 2017 and 2018 contributions and contracted with an outside vendor to ensure compliance with FEC regulations. In addition, ASCAPAC submitted its updated policies and procedures, and compliance workflow processes to show the changes it has made to its receipt and deposit procedures.

Commission Conclusion

On July 25, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that ASCAPAC untimely deposited contributions totaling \$84,333.

The Commission approved the Audit staff's recommendation.