FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL: 19-12
DATE REFERRED: 10/08/19
DATE OF NOTIFICATION: 10/09/19
DATE OF LAST RESPONSE: 12/10/19
DATE ACTIVATED: 01/31/20

EXPIRATION OF SOL: 01/09/20 – 12/31/21
ELECTION CYCLE: 2016

SOURCE: Internally Generated

RESPONDENT: Tennessee Democratic Party and Geeta McMillan in her official capacity as treasurer

RELEVANT STATUTES AND REGULATIONS:
52 U.S.C. § 30104(b)(2), (3)(A), (4)
52 U.S.C. § 30116(a)(1)(D), (f)
11 C.F.R. § 102.17(c)(8)(i)(B)
11 C.F.R. § 103.3(b)(3)
11 C.F.R. § 104.3
11 C.F.R. § 106.7(d)(1)
11 C.F.R. § 110.1(b)(3), (5), (c)(5), (k)(3)
11 C.F.R. § 110.9

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter arises from an audit of the Tennessee Democratic Party ("TDP") relating to its activity during the 2016 election cycle. On September 4, 2019, the Commission approved the Proposed Final Audit Report, and the Final Audit Report ("FAR") was released on September 16, 2019.[1] On October 8, 2019, the Audit Division referred four findings from the FAR to the Office of General Counsel ("OGC") for possible enforcement action:

[1] Certification (Sept. 4, 2019), A17-23 (TDP); FEC, FAR of the Commission on the Tennessee Democratic Party (January 1, 2015- December 31, 2016) (Sept. 16, 2019).

- (1)(A) Misstatement of $148,395 in receipts and $147,409 in disbursements (amended reports before the audit notification);
- (1)(B) Misstatement of $1,362,191 in receipts and $1,377,720 in disbursements (original reports);
- (2) Receipt of $166,450 in excessive contributions;
- (3) Failure to itemize memo contributions from joint fundraising activity above the $200 threshold, totaling $1,509,766; and
- (4) Failure to maintain payroll logs, totaling $409,900.[2]

TDP filed a Response disagreeing with the Commission's application of the law regarding excessive contributions.

As explained below, we recommend that the Commission open a Matter Under Review ("MUR") and find reason to believe that TDP violated: (1) 52 U.S.C. § 30104(b)(2), (4) by failing to report total receipts and disbursements; (2) 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B) by failing to itemize contributions; (3) 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions; and (4) 11 C.F.R. § 106.7(d)(1) by failing to maintain monthly payroll logs. In addition, we recommend that the Commission authorize pre-probable cause conciliation with TDP and approve the attached proposed conciliation agreement that contains an opening civil penalty offer

II. FACTUAL AND LEGAL ANALYSIS

TDP is a state party committee of the Democratic Party.[3] As mentioned above, the FAR included four findings that were referred to OGC for possible enforcement action.

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[2] Memorandum from Patricia C. Orrock, Chief Compliance Officer, *et al.*, to Charles Kitcher, Acting Assoc. Gen. Couns. for Enforcement, *et al.* at 1-2, AR 19-12 (TDP) (Oct. 8, 2019) (non-public document); *see* FAR at 1.

[3] FEC Form 1, TDP Amended Statement of Org. at 2 (Feb. 25, 2019).

A. Reporting Violations

1. Misstatement of Total Receipts and Disbursements

The Act requires committee treasurers to accurately disclose total receipts and disbursements.[4] In its original reports, TDP understated receipts by $1,362,191 and understated disbursements by $1,377,720, totaling $2,739,911.[5] Before the audit notification letter, TDP amended its reports to correct some of the misstatements, but continued to understate receipts by $148,395 and understate disbursements by $147,409, totaling $295,804.[6] In response to the Interim Audit Report, on March 26, 2019, TDP amended its reports to correct the remaining misstatements.[7] The vast majority of TDP's misstatements relate to transfers from the Hillary Victory Fund ("HVF") and Tennessee State Party Victory Fund ("TVF") arising from joint fundraising activity, and matching transfers of those same proceeds from TDP to the Democratic National Committee and several state party committees ($2,518,400 out of the aggregate $2,739,911 in misstatements).[8]

Therefore, we recommend that the Commission find reason to believe that TDP violated 52 U.S.C. § 30104(b)(2), (4) by failing to report total receipts and disbursements.

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[4] 52 U.S.C. § 30104(b)(2), (4); *see also* 11 C.F.R. § 104.3.

[5] FAR at 8-9.

[6] *Id.* at 6-8.

[7] *Id.* at 7.

[8] *See* Email from Paula Nurthen, Auditor, FEC, to Justine di Giovanni, Enforcement Attorney, FEC (June 15, 2020, 11:50 EST); FEC Form 3X, TDP Amended 12-Day Pre-General Report (Mar. 26, 2019); FEC Form 3X, TDP Amended 30-Day Post-General Report (Mar. 26, 2019). There have been several other matters involving similar joint fundraising transfers from HVF to state party committees followed by transfers to the Democratic National Committee. *See*, *e.g.*, MUR 7304 (HVF, *et al.*); MUR 7331 (HVF, *et al.*); MUR 7556 (Kansas Democratic Party) (open matter); MUR 7598 (Democratic Party of South Carolina); MUR 7599 (Nevada State Democratic Party); MUR 7600 (Utah State Democratic Committee); MUR 7601 (Kansas Democratic Party) (open matter); RR 17L-48R (Mississippi Democratic Party); RR 18L-19 (Massachusetts Democratic State Committee); RR 18L-21 (Idaho State Democratic Party).

2. Failure to Itemize Contributions

The Act requires political committees to report the identification of each person whose aggregate contributions exceed $200 within the calendar year (or election cycle, in the case of an authorized committee), along with the date and amount of any such contributions.[9] With respect to joint fundraisers, each participating committee shall report its share of the net proceeds as a transfer-in from the fundraising representative and shall also properly itemize its share of gross receipts as contributions from the original contributors.[10]

TDP disclosed $3,113,531 in net proceeds from joint fundraising activity with HVF ($3,021,100) and TVF ($92,431).[11] However, TDP failed to itemize $1,509,766 in contributions that exceeded the $200 itemization threshold—$1,423,722 from HVF and $86,044 from TVF.[12] In response to the Interim Audit Report, TDP filed amended reports itemizing the contributions, though it failed to properly report a gross, unitemized $78,999 joint fundraising contribution from TVF.[13]

Therefore, we recommend that the Commission find reason to believe that TDP violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B) by failing to itemize receipts received via joint fundraising transfers.

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[9] 52 U.S.C. § 30104(b)(3)(A); *see also* 11 C.F.R. § 104.3(a)(4)(i). For contributions by individuals, "identification" consists of name, mailing address, occupation, and employer. 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12.

[10] 11 C.F.R. § 102.17(c)(8)(i)(B).

[11] FAR at 13-14. The HVF funds were subsequently transferred in large part by TDP to the DNC. *See* Email from Paula Nurthen, Auditor, FEC, to Justine di Giovanni, Enforcement Attorney, FEC (Apr. 6, 2020, 12:51 EST).

[12] FAR at 13-14.

[13] *Id.* at 14 n.10.

B. Receipt of Excessive Contributions

The aggregate individual contribution limit to state party committees is $10,000 per calendar year (shared by the state, district, and local party committees).[14] No candidate or committee shall knowingly accept any contribution in violation of the limit.[15] Commission regulations provide that if a committee receives an excessive contribution, the contribution may be deposited into the committee's federal account or refunded.[16] If the contribution is deposited into the committee's federal account, the treasurer must obtain a redesignation or reattribution within 60 days of receipt of the contribution or else refund the contribution.[17]

TDP accepted $166,450 in excessive contributions, which fell into two categories: (1) $151,200 in funds that TDP deposited into its federal account and transferred into its non-federal account within 60 days of receipt but without notifying the contributors; and (2) $15,250 in funds TDP deposited into its federal account, where they remained until the audit.[18] The FAR concluded that TDP subsequently resolved the excessive contributions, albeit untimely, by sending letters notifying the contributors of the transfers and offering them an option to request a refund, and by refunding a contribution at one contributor's request.[19]

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[14] 52 U.S.C. § 30116(a)(1)(D); 11 C.F.R. §§ 110.1(c)(5), 110.3(b).

[15] 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

[16] 11 C.F.R. § 103.3(b)(3).

[17] *Id.* A contribution shall be considered to be "reattributed" to another contributor if: (1) the treasurer asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and (2) within 60 days of the treasurer's receipt of the contribution, the contributor provides a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended. *Id.* § 110.1(k)(3). "Redesignation," which refers to designating a contribution (or the excessive amount of a contribution) for a different election, is available only to authorized committees. *See id.* § 110.1(b)(5).

[18] FAR at 9-13.

[19] *Id.* at 12. Regarding the second category, during the audit, TDP transferred $15,000 to its non-federal account and refunded the remaining $250. *Id.*

Regarding the first category, although TDP did not respond to the Draft FAR and declined the opportunity for a hearing, TDP responded to the letter notifying it of the Audit Referral[20] disagreeing with the Commission's legal conclusion. The Response asserts that "donors are generally aware of a state party's $10,000 federal contribution limit and provide contributions in excess over that amount with the understanding that it is intended to be split between the party committee's federal and non-federal accounts."[21] However, TDP does not support its assertion with any information or documents, nor did it show that its contributors intended that their contributions be split between TDP's federal and non-federal accounts.

The Audit Division specifically raised before the Commission the issue of whether excessive contributions that were timely transferred to a non-federal account should be considered a violation if TDP did not inform the contributors of the transfer or give them the option of a refund.[22] The Commission concluded that such transfers without notification result in the acceptance of excessive contributions.[23] By depositing the funds and transferring them to its non-federal account on its own and without authority from the contributors, TDP took control of the funds and therefore accepted them. TDP did not send letters to the contributors to notify

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[20] Letter from Jeff S. Jordan, Asst. Gen. Couns., FEC, to Neil P. Reiff, Couns. for TDP (Oct. 9, 2019) [hereinafter Notification Letter].

[21] Resp. at 2 (Dec. 10, 2019).

[22] *See* Memorandum from Patricia C. Orrock, Chief Compliance Officer, *et al.*, to FEC, Interim Audit Report of the Audit Division on Tennessee Democratic Party at 1-2 (A17-23) (Dec. 14, 2018) (non-public document).

[23] Certification (Feb. 6, 2019), A17-23 (TDP).

them of the transfers and offer them the opportunity to request a refund until the Interim Audit Report, years after the transfers occurred.[24]

Regarding the second category, TDP deposited $15,250 in excessive contributions to its federal account, where the funds remained until the audit.[25] In response to the Interim Audit Report, in April 2019 TDP disclosed a refund of $250.[26] In July 2019, after the Draft FAR, TDP reported a transfer of $15,000 to its non-federal account.[27] As noted above, in response to the Interim Audit Report, TDP sent letters to the contributors who made the excessive contributions, notifying them that their contributions had been allocated to its non-federal account and offering them an option to request a refund, which one contributor did.[28]

Therefore, we recommend that the Commission find reason to believe that TDP violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions.

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[24] FAR at 12. While 11 C.F.R. § 103.3(b)(3) gives a committee the option of depositing excessive contributions into its federal account and reattributing or redesignating them, the regulation does not give a committee the option of depositing excessive contributions into its federal account and transferring them to its non-federal account, which is what TDP did here. In that situation, the regulation appears to direct that the Committee refund the contribution. However, the FAR states that, by notifying the contributors of the transfers and providing them with an option to request a refund, "TDP resolved the excessive contributions, albeit untimely." *Id.* at 12. This approach, although not specifically provided for in the regulation, achieves the goal of "getting the impermissible funds out of the federal account, and the contributor is given the right to the funds upon request," and accords with the Commission's historic practice. *See* Concurrence of Comm'r Thomas at 2, Advisory Op. 2001-17 (DNC) (explaining that the Commission has historically approved letters from the Reports Analysis Division to political party committees that direct the committees "to make a transfer to the nonfederal account and provide written notice to the contributor that a refund will be made if requested").

[25] FAR at 12. TDP reported the amount as a debt to its non-federal account in response to the Interim Audit Report. *Id.*

[26] *Id.* at 9 n.9.

[27] *Id.*

[28] *Id.* at 12.

C. Failure to Maintain Monthly Payroll Logs

Commission regulations provide that salaries, wages, and fringe benefits paid to state, district, or local party committee employees who spend 25 percent or less of their compensated time in a given month on federal election activity or activity in connection with a federal election may be allocated as administrative costs, *i.e.*, may be paid with a combination of funds from the committee's federal and non-federal accounts.[29] Those employees who spend more than 25 percent of their compensated time on federal election activities may be paid only from a federal account.[30] Commission regulations also provide that, when allocating salary, wage, and fringe benefit payments, political party committees shall "keep a monthly log of the percentage of time each employee spends in connection with a Federal election."[31]

TDP allocated $409,900 in payroll across 2015 and 2016 between federal and non-federal funds but failed to maintain the required monthly payroll logs.[32] Therefore, we recommend that the Commission find reason to believe that TDP violated 11 C.F.R. § 106.7(d)(1) by failing to maintain monthly payroll logs.

[29] 11 C.F.R. § 106.7(c)(1), (d)(1)(i), (d)(2).

[30] *Id.* § 106.7(d)(1)(ii), (d)(2).

[31] *Id.* § 106.7(d)(1).

[32] FAR at 14. Following the Interim Audit Report, TDP states that it implemented procedures to track employees' time as required by the Commission regulations. *Id.* at 16.

IV. RECOMMENDATIONS

1. Open a MUR;

2. Find reason to believe that the Tennessee Democratic Party violated 52 U.S.C. § 30104(b)(2), (4) by failing to report total receipts and disbursements;

3. Find reason to believe that the Tennessee Democratic Party violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B) by failing to itemize receipts received via joint fundraising transfers;

4. Find reason to believe that the Tennessee Democratic Party violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions;

5. Find reason to believe that the Tennessee Democratic Party violated 11 C.F.R. § 106.7(d)(1) by failing to maintain monthly payroll logs;

6. Approve the attached Factual and Legal Analysis;

7. Approve the attached proposed Conciliation Agreement; and

8. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for Enforcement

July 27, 2020
DATE

Stephen Gura
Deputy Associate General Counsel

Claudio Pavia
Acting Assistant General Counsel

Justine A. di Giovanni
Attorney

Attachments:
1. Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Tennessee Democratic Party and Geeta McMillan in her official capacity as treasurer **MUR: _____**

I. INTRODUCTION

This matter arises from an audit of the Tennessee Democratic Party ("TDP") relating to its activity during the 2016 election cycle. On September 4, 2019, the Commission approved the Proposed Final Audit Report, and the Final Audit Report ("FAR") was released on September 16, 2019.[1] The Audit Division referred four findings from the FAR to the Office of General Counsel ("OGC") for possible enforcement action:

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- (3) Failure to itemize memo contributions from joint fundraising activity above the $200 threshold, totaling $1,509,766; and
- (4) Failure to maintain payroll logs, totaling $409,900.[2]

TDP filed a Response disagreeing with the Commission's application of the law regarding excessive contributions.

As explained below, the Commission finds reason to believe that TDP violated: (1) 52 U.S.C. § 30104(b)(2), (4) by failing to report total receipts and disbursements; (2) 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B) by failing to itemize

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[1] Certification (Sept. 4, 2019), A17-23 (TDP); FEC, FAR of the Commission on the Tennessee Democratic Party (January 1, 2015- December 31, 2016) (Sept. 16, 2019).

[2] *See* FAR at 1.

contributions; (3) 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions; and (4) 11 C.F.R. § 106.7(d)(1) by failing to maintain monthly payroll logs.

II. FACTUAL AND LEGAL ANALYSIS

TDP is a state party committee of the Democratic Party.[3] As mentioned above, the FAR included four findings that were referred to OGC for possible enforcement action.

A. Reporting Violations

1. Misstatement of Total Receipts and Disbursements

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[3] FEC Form 1, TDP Amended Statement of Org. at 2 (Feb. 25, 2019).

[4] 52 U.S.C. § 30104(b)(2), (4); *see also* 11 C.F.R. § 104.3.

[5] FAR at 8-9.

[6] *Id.* at 6-8.

[7] *Id.* at 7.

National Committee and several state party committees ($2,518,400 out of the aggregate $2,739,911 in misstatements).[8]

Therefore, the Commission finds reason to believe that TDP violated 52 U.S.C. § 30104(b)(2), (4) by failing to report total receipts and disbursements.

2. Failure to Itemize Contributions

The Act requires political committees to report the identification of each person whose aggregate contributions exceed $200 within the calendar year (or election cycle, in the case of an authorized committee), along with the date and amount of any such contributions.[9] With respect to joint fundraisers, each participating committee shall report its share of the net proceeds as a transfer-in from the fundraising representative and shall also properly itemize its share of gross receipts as contributions from the original contributors.[10]

TDP disclosed $3,113,531 in net proceeds from joint fundraising activity with HVF ($3,021,100) and TVF ($92,431).[11] However, TDP failed to itemize $1,509,766 in contributions that exceeded the $200 itemization threshold—$1,423,722 from HVF and $86,044 from TVF.[12] In response to the Interim Audit Report, TDP filed amended reports itemizing the contributions,

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[8] *See* FEC Form 3X, TDP Amended 12-Day Pre-General Report (Mar. 26, 2019); FEC Form 3X, TDP Amended 30-Day Post-General Report (Mar. 26, 2019). There have been several other matters involving similar joint fundraising transfers from HVF to state party committees followed by transfers to the Democratic National Committee. *See*, *e.g.*, MUR 7304 (HVF, *et al.*); MUR 7331 (HVF, *et al.*); MUR 7598 (Democratic Party of South Carolina); MUR 7599 (Nevada State Democratic Party); MUR 7600 (Utah State Democratic Committee); RR 17L-48R (Mississippi Democratic Party); RR 18L-19 (Massachusetts Democratic State Committee); RR 18L-21 (Idaho State Democratic Party).

[9] 52 U.S.C. § 30104(b)(3)(A); *see also* 11 C.F.R. § 104.3(a)(4)(i). For contributions by individuals, "identification" consists of name, mailing address, occupation, and employer. 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12.

[10] 11 C.F.R. § 102.17(c)(8)(i)(B).

[11] FAR at 13-14. The HVF funds were subsequently transferred in large part by TDP to the DNC.

[12] *Id.*

though it failed to properly report a gross, unitemized $78,999 joint fundraising contribution from TVF.[13]

Therefore, the Commission finds reason to believe that TDP violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B) by failing to itemize receipts received via joint fundraising transfers.

B. Receipt of Excessive Contributions

The aggregate individual contribution limit to state party committees is $10,000 per calendar year (shared by the state, district, and local party committees).[14] No candidate or committee shall knowingly accept any contribution in violation of the limit.[15] Commission regulations provide that if a committee receives an excessive contribution, the contribution may be deposited into the committee's federal account or refunded.[16] If the contribution is deposited into the committee's federal account, the treasurer must obtain a redesignation or reattribution within 60 days of receipt of the contribution or else refund the contribution.[17]

TDP accepted $166,450 in excessive contributions, which fell into two categories: (1) $151,200 in funds that TDP deposited into its federal account and transferred into its non-federal account within 60 days of receipt but without notifying the contributors; and (2) $15,250

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13 *Id.* at 14 n.10.

14 52 U.S.C. § 30116(a)(1)(D); 11 C.F.R. §§ 110.1(c)(5), 110.3(b).

15 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

16 11 C.F.R. § 103.3(b)(3).

17 *Id.* A contribution shall be considered to be "reattributed" to another contributor if: (1) the treasurer asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and (2) within 60 days of the treasurer's receipt of the contribution, the contributor provides a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended. *Id.* § 110.1(k)(3). "Redesignation," which refers to designating a contribution (or the excessive amount of a contribution) for a different election, is available only to authorized committees. *See id.* § 110.1(b)(5).

in funds TDP deposited into its federal account, where they remained until the audit.[18] The FAR concluded that TDP subsequently resolved the excessive contributions, albeit untimely, by sending letters notifying the contributors of the transfers and offering them an option to request a refund, and by refunding a contribution at one contributor's request.[19]

Regarding the first category, although TDP did not respond to the Draft FAR and declined the opportunity for a hearing, TDP responded to the letter notifying it of the Audit Referral[20] disagreeing with the Commission's legal conclusion. The Response asserts that "donors are generally aware of a state party's $10,000 federal contribution limit and provide contributions in excess over that amount with the understanding that it is intended to be split between the party committee's federal and non-federal accounts."[21] However, TDP does not support its assertion with any information or documents, nor did it show that its contributors intended that their contributions be split between TDP's federal and non-federal accounts.

The Commission concludes that excessive contributions that were timely transferred to a non-federal account without notification results in the acceptance of excessive contributions. By depositing the funds and transferring them to its non-federal account on its own and without authority from the contributors, TDP took control of the funds and therefore accepted them. TDP did not send letters to the contributors to notify them of the transfers and offer them the

[18] FAR at 9-13.

[19] *Id.* at 12. Regarding the second category, during the audit, TDP transferred $15,000 to its non-federal account and refunded the remaining $250. *Id.*

[20] Letter from Jeff S. Jordan, Asst. Gen. Couns., FEC, to Neil P. Reiff, Couns. for TDP (Oct. 9, 2019) [hereinafter Notification Letter].

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opportunity to request a refund until the Interim Audit Report, years after the transfers occurred.[22]

Regarding the second category, TDP deposited $15,250 in excessive contributions to its federal account, where the funds remained until the audit.[23] In response to the Interim Audit Report, in April 2019 TDP disclosed a refund of $250.[24] In July 2019, after the Draft FAR, TDP reported a transfer of $15,000 to its non-federal account.[25] As noted above, in response to the Interim Audit Report, TDP sent letters to the contributors who made the excessive contributions, notifying them that their contributions had been allocated to its non-federal account and offering them an option to request a refund, which one contributor did.[26]

Therefore, the Commission finds reason to believe that TDP violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions.

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[22] FAR at 12. While 11 C.F.R. § 103.3(b)(3) gives a committee the option of depositing excessive contributions into its federal account and reattributing or redesignating them, the regulation does not give a committee the option of depositing excessive contributions into its federal account and transferring them to its non-federal account, which is what TDP did here. In that situation, the regulation appears to direct that the Committee refund the contribution. However, the FAR states that, by notifying the contributors of the transfers and providing them with an option to request a refund, "TDP resolved the excessive contributions, albeit untimely." *Id.* at 12. This approach, although not specifically provided for in the regulation, achieves the goal of "getting the impermissible funds out of the federal account, and the contributor is given the right to the funds upon request," and accords with the Commission's historic practice. *See* Concurrence of Comm'r Thomas at 2, Advisory Op. 2001-17 (DNC) (explaining that the Commission has historically approved letters from the Reports Analysis Division to political party committees that direct the committees "to make a transfer to the nonfederal account and provide written notice to the contributor that a refund will be made if requested").

[23] FAR at 12. TDP reported the amount as a debt to its non-federal account in response to the Interim Audit Report. *Id.*

[24] *Id.* at 9 n.9.

[25] *Id.*

[26] *Id.* at 12.

C. Failure to Maintain Monthly Payroll Logs

Commission regulations provide that salaries, wages, and fringe benefits paid to state, district, or local party committee employees who spend 25 percent or less of their compensated time in a given month on federal election activity or activity in connection with a federal election may be allocated as administrative costs, *i.e.*, may be paid with a combination of funds from the committee's federal and non-federal accounts.[27] Those employees who spend more than 25 percent of their compensated time on federal election activities may be paid only from a federal account.[28] Commission regulations also provide that, when allocating salary, wage, and fringe benefit payments, political party committees shall "keep a monthly log of the percentage of time each employee spends in connection with a Federal election."[29]

TDP allocated $409,900 in payroll across 2015 and 2016 between federal and non-federal funds but failed to maintain the required monthly payroll logs.[30] Therefore, the Commission finds reason to believe that TDP violated 11 C.F.R. § 106.7(d)(1) by failing to maintain monthly payroll logs.

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[27] 11 C.F.R. § 106.7(c)(1), (d)(1)(i), (d)(2).

[28] *Id.* § 106.7(d)(1)(ii), (d)(2).

[29] *Id.* § 106.7(d)(1).

[30] FAR at 14. Following the Interim Audit Report, TDP states that it implemented procedures to track employees' time as required by the Commission regulations. *Id.* at 16.