

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

RR21L-35

DATE REFERRED:	June 2, 2021
DATE OF NOTIFICATION:	June 2, 2021
LAST RESPONSE RECEIVED:	July 21, 2021
DATE ACTIVATED:	Aug. 26, 2021
EXPIRATION OF SOL:	Dec. 3, 2025 (earliest) Jan. 30, 2026 (latest)
ELECTION CYCLE:	2020

SOURCE: Internally Generated

RESPONDENT: Hawaii Republican Party and Stephen C. Holck in his official capacity as treasurer

RELEVANT STATUTES AND REGULATIONS: 52 U.S.C. § 30104(b)(2), (4)
11 C.F.R. § 104.3(a), (b)
11 C.F.R. § 102.17

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Reports Analysis Division (“RAD”) referred the Hawaii Republican Party and Stephen C. Holck in his official capacity as treasurer (the “Committee”) to the Office of General Counsel for failing to accurately disclose an aggregate total of \$3,159,637.98 in additional receipts and disbursements on its 2020 30-Day Post-General Report.¹ RAD also referred the

¹ RAD Referral (Hawaii Republican Party) (June 2, 2021) (“Referral”), incorporated herein by reference. According to the Cover Memorandum to the Referral, the additional receipts and disbursements disclosed on the Committee’s amended 2020 30-Day Post -General Report meets the threshold for referral to the Office of General Counsel in accordance with the 2019-2020 RAD Review and Referral Procedures. *See* Cover Memorandum to

1 Hawaii Republican Party to our office for failing to accurately disclose an aggregate total of
2 \$232,980.30 in additional receipts and disbursements in its 2020 Year-End Report. As discussed
3 below, we recommend that the Commission open a MUR and find reason to believe that the
4 Committee violated 52 U.S.C. § 30104(b)(2), (4), 11 C.F.R. § 104.3(a), (b), and 11 C.F.R.
5 § 102.17(c) by failing to report receipts and disbursements. In addition, we recommend that the
6 Commission authorize pre-probable cause conciliation with the Committee and approve the
7 attached proposed conciliation agreement,

8

9 **II. FACTUAL BACKGROUND**

10

11 **A. The Committee's Original 2020 30 Day-Post-General and Year-End Reports**

12 The Committee is a state party committee of the Republican party.² On December 3,
13 2020, the Committee filed its 2020 30-Day Post-General Report covering the period from
14 October 15, 2020 through November 23, 2020.³ The report disclosed \$51,250.00 in receipts on
15 Line 12 (Transfers from Affiliated/Other Party Committees) of the Detailed Summary Page.⁴
16 The report also disclosed \$0.00 in disbursements on Line 22 (Transfers to Affiliated/Other Party
17 Committees) of the Detailed Summary Page.⁵ On January 30, 2021, the Committee filed its
18 2020 Year-End Report covering the period from November 24, 2020, through December 31,

Referral at 1. The additional receipts and disbursements disclosed on the Committee's amended 2020 Year-End Report are referable to the Alternative Dispute Resolution Office ("ADRO") but are included in this Referral in accordance with the Referral Procedures to limit unnecessary duplication of matters. *Id.* at 1-2.

² FEC Form 1, HRP Amended Statement of Org. at 2 (Feb. 24, 2001).

³ Referral at 1.

⁴ *Id.*

⁵ *Id.*

1 2020.⁶ The Report disclosed \$0.00 on Line 12 of the Detailed Summary Page.⁷ The report also
 2 disclosed \$0.00 on Line 22 of the Detailed Summary Page.⁸

3 **B. The Amended 2020 30-Day Post-General Report**

4
 5 On February 28, 2021, the Committee filed an Amended 2020 30-Day Post-General
 6 Report.⁹ The report disclosed \$1,631,068.99 in receipts on Line 12 of the Detailed Summary
 7 Page, an increase in receipts of \$1,579,818.99 from the original report.¹⁰ The report also
 8 disclosed \$1,579,818.99 in disbursements on Line 22 of the Detailed Summary Page, an increase
 9 of \$1,579,818.99 from the original report.¹¹ The Amended 2020 30-Day Post-General Report
 10 included memo text stating in part:

11 “Amended to include JF transfers and associated memos as well as
 12 corresponding transfers to the RNC. These transactions were initially not
 13 reported due to a misunderstanding regarding reporting requirements and
 14 responsibilities”¹²

15
 16 On March 21, 2021, RAD sent a Request for Additional Information (“RFAI”) to the
 17 Committee referencing the Amended 2020 30-Day Post-General Report.¹³ The RFAI
 18 acknowledged the memo text attached to the report but requested additional clarification
 19 regarding the substantial increase in receipts and disbursements disclosed in the Amended 2020
 20 30-Day Post-General Report.¹⁴

6 *Id.* at 2.

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

14 *Id.*

1 **C. The Amended 2020 Year-End Report**

2
3 The Committee also filed an Amended 2020 Year-End Report on February 28, 2021.¹⁵

4 This report disclosed \$116,490.15 on Line 12 of the Detailed Summary Page, an increase in
5 receipts of \$116,490.15 from the original report.¹⁶ The report also disclosed \$116,490.15 in
6 disbursements on Line 22 of the Detailed Summary Page, an increase of \$116,490.15 from the
7 original report.¹⁷ Additionally, the report included memo text stating in part:

8 “Amended to include JF transfer, associated memos, and corresponding
9 transfer to the RNC. These transactions were initially not reported due to a
10 misunderstanding regarding reporting requirements and responsibilities”¹⁸

11
12 On March 21, 2021, RAD sent the Committee an RFAI regarding the Amended 2020
13 Year-End Report.¹⁹ The RFAI acknowledged the memo text attached to the report but requested
14 additional clarification regarding the substantial increase in receipts and disbursements disclosed
15 in the Amended 2020 Year-End Report.²⁰ On April 26, 2021, in a Miscellaneous Report
16 responding to both RFAIs, the Committee said the reports were amended to include the required
17 information and reiterated that the joint fundraising transactions “were not reported due to a
18 misunderstanding regarding reporting requirements.”²¹

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.*

19 *Id.*

20 *Id.*

21 FEC Form 99, Miscellaneous Report to FEC, HRP (Apr. 26, 2021),
<https://docquery.fec.gov/pdf/803/202104269445376803/202104269445376803.pdf>.

1 **D. The Referral**

2
3 On June 2, 2021, RAD referred the matter to the Office of General Counsel for possible
4 enforcement action under 52 U.S.C. § 30109, and on the same day this Office notified the
5 Committee of the referral.²² A copy of the referral was included with the notification.²³ The
6 Committee responded on July 21, 2021.

7 The Committee's Response repeats its previous explanations that its reporting errors
8 stemmed from a misunderstanding of the reporting requirements for joint fundraising.²⁴ The
9 Committee argues that the Commission should dismiss the matter in an exercise of its
10 prosecutorial discretion because the reporting errors "involve[] the inadvertent omission of
11 several transfers, which were immediately and proactively corrected by the Hawaii GOP upon
12 discovery of the omission."²⁵ The Committee also states that it has since begun development of
13 a written compliance manual and is implementing a "transition protocol" to ensure such
14 reporting errors do not happen again.²⁶ If not dismissed, the Committee requests that the matter
15 be transferred to the Alternative Dispute Resolution Program.²⁷

²² See Letter from Jeff S. Jordan to Stephen C. Holk (June 2, 2021); Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 Fed. Reg. 38,617 (Aug. 4, 2009). On April 27, 2021, prior to the referral, the assigned RAD analyst called a representative for the Committee and explained that the increases in receipts and disbursements on the Amended 2020 30-Day Post-General Report and Amended 2020 Year-End Report, may be referred to another Commission office for potential further action. Referral at 3. The Analyst told the Committee representative that the Committee could provide additional clarification for the public record if it wished to do so, but the Committee did not submit additional materials. *Id.*

²³ See Email from Christal Dennis to Stephen C. Holk (June 2, 2021).

²⁴ HRP Resp. at 1 ("When Hawaii GOP officials agreed to participate in Trump Victory, they were not aware that the party was required to report the activity. As such, they did not inform their compliance vendor—who prepares the party's FEC reports—of their participation in Trump Victory.")

²⁵ *Id.*

²⁶ *Id.* at 2. The Committee also states that it plans to have a representative attend a Commission conference or webinar for political party committees. *Id.*

²⁷ *Id.*

1 **III. LEGAL ANALYSIS**

2
3 The Federal Election Campaign Act of 1971, as amended (the “Act”), requires committee
4 treasurers to file reports of receipts and disbursements in accordance with the provisions of
5 52 U.S.C. § 30104.²⁸ These reports must include, *inter alia*, the name of each person who
6 contributes over \$200, the total amount of receipts and disbursements, including transfers from
7 affiliated committees and between political party committees, and appropriate itemizations,
8 where required.²⁹

9 The Act and Commission regulations permit candidates and political committees to
10 engage in joint fundraising activities by establishing a separate political committee to act as their
11 joint fundraising representative.³⁰ Participants must enter into a written agreement that identifies
12 this representative and states the formula for the allocation of fundraising proceeds and
13 expenses.³¹ Commission regulations also require that the representative establish a separate
14 depository account to be used solely for the receipt and disbursement of joint fundraising
15 proceeds and deposit those proceeds in this account within ten days of receipt.³²

16 Under 11 C.F.R. § 102.17(c)(8), a joint fundraising representative must report all funds
17 received in the reporting period they are received and all disbursements in the reporting period
18 they are made.³³ Similarly, the date a contribution is received by the joint fundraising

²⁸ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

²⁹ 52 U.S.C. § 30104(b)(2)-(4); 11 C.F.R. § 104.3(a)-(b).

³⁰ 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17(a)(1)(i).

³¹ 11 C.F.R. § 102.17(c)(1). The fundraising representative must retain a copy of the agreement for three years and make it available to the Commission upon request. *Id.*

³² *Id.* § 102.17(c)(3)(i)-(ii). Each participant committee must amend its Statement of Organization to include the account as an additional depository. *Id.* § 102.17(c)(3)(i).

³³ *Id.* § 102.17(c)(8)(i)-(ii).

1 representative is the date that the participating political committee must report as the date the
2 contribution was received, even if it is disbursed by the joint fundraising representative at a later
3 date and even though the participating political committee is only required to report the proceeds
4 once the funds have been received from the fundraising representative.³⁴ After the joint
5 fundraising representative distributes the net proceeds, the participating committee must report
6 its share received as a transfer-in from the fundraising representative and also file a memo entry
7 on Schedule A itemizing its share of gross receipts as contributions from the original contributors
8 as required by 11 C.F.R. § 104.3(a).³⁵

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16 The Commission recently found reason to believe and entered into conciliation
17 agreements in multiple enforcement matters involving state party committees that made
18 reporting errors stemming from participation in joint fundraising.³⁷ Several involved self-

³⁴ See 11 C.F.R. § 102.17(c)(3)(iii), (c)(8)(i)(A).

³⁵ See *id.* § 102.17(c)(8)(i)(B).

³⁷ See Conciliation Agreement, MUR 7877 (Tennessee Democratic Party) (\$103,000 civil penalty for failing to report total receipts and disbursements, failing to itemize receipts received via joint fundraising transfers, and failing to maintain monthly payroll logs); Conciliation Agreement, MUR 7603 (Wyoming Republican Party, Inc.) (\$52,000 civil penalty for failing to disclose an aggregate total of \$2,890,378.82 in increased activity on its 2016 October Monthly Report, 2016 12-Day Pre-General Report, and 2016 Year-End Report); Conciliation Agreement,

1 reported increased activity and, like the case here, assertions that the omissions were
2 inadvertent.³⁸

3 The RAD Review and Referral Procedures reflect reporting errors and amounts that, in
4 the Commission's judgment, are sufficiently serious to warrant enforcement action.

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7 Accordingly, we recommend that the Commission open a MUR and find
8 reason to believe that the Committee and Stephen C. Holck in his official capacity as treasurer
9 violated 52 U.S.C. § 30104(b)(2) and (4), 11 C.F.R. § 104.3(a), (b), and 11 C.F.R. § 102.17.

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MURs 7556 & 7601 (Kansas Democratic Party) (\$60,000 civil penalty for failing to provide itemized contributor information for contributions received through joint fundraising, failing to accurately disclose debts, failing to accurately report cash on hand, and failing to disclose a total of \$1,904,764.58 in increased activity, in receipts and disbursements on its 2016 12-Day Pre-General Report); Conciliation Agreement, MUR 7600 (Utah State Democratic Committee) (\$16,500 civil penalty for failing to timely disclose \$809,210.25 in financial activity in the form of receipts and transfers on its 2016 12-day Pre-General Election Report); Conciliation Agreement, MUR 7599 (Nevada State Democratic Party) (\$34,000 civil penalty for failing to disclose a total of \$3,313,114.97 in increased activity, in receipts and disbursements on its 2016 30-Day Post-General Report); Conciliation Agreement, MUR 7598 (South Carolina Democratic Party) (\$29,000 civil penalty for failing to disclose \$2,110,627.71 in receipts and disbursements on its 2016 August Monthly Report and 2016 12-Day Pre-General Report); Conciliation Agreement, MUR 7597 (Texas Democratic Party) (\$17,000 civil penalty for failing to disclose a total of \$1.6 million in receipts and disbursements in its 2016 September Monthly Report). State party committees have also negotiated settlements with the Commission's Alternative Dispute Resolution for joint fundraising reporting errors. *See* Negotiated Settlement, ADR 913 (Mississippi Democratic Party) (\$9,000 civil penalty for disclosing \$200,000 in additional receipts and \$200,000 in additional disbursements on Amended 2016 August Monthly Report); Negotiated Settlement, ADR 912 (North Dakota Republican Party) (\$8,000 civil penalty for disclosing \$413,719.04 in additional receipts and \$413,719.04 in additional disbursements on Amended 2016 October Quarterly Report).

³⁸ *See, e.g.*, Response at 1-2, MUR 7603 (Wyoming Republican Party); Response at 1,3, MUR 7599 (Nevada State Democratic Party); Response at 2, MUR 7598 (South Carolina Democratic Party); Response at 1-2, MUR 7597 (Texas Democratic Party).

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V. RECOMMENDATIONS

1. Open a MUR
2. Find reason to believe that the Hawaii Republican Party and Stephen C. Holck in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(2), (4) and 11 C.F.R. §§ 104.3(a), (b); 102.17(c);
3. Approve the attached Factual and Legal Analysis;
4. Authorize pre-probable cause conciliation with the Hawaii Republican Party and Stephen C. Holck in his official capacity as treasurer;
5. Approve the attached Conciliation Agreement; and
6. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for Enforcement

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Dec. 14, 2021
DATE

Peter G. Blumberg
Peter G. Blumberg
Acting Deputy Associate General Counsel for
Enforcement

Jin Lee
Jin Lee
Acting Assistant General Counsel

Christopher S. Curran
Christopher S. Curran
Attorney

- Attachments:
1. Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5
6 **RESPONDENT:** Hawaii Republican Party and **MUR:**
7 Stephen C. Holck in his official
8 capacity as treasurer
9

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11 **I. INTRODUCTION**

12 The Reports Analysis Division (“RAD”) referred the Hawaii Republican Party and
13 Stephen C. Holck in his official capacity as treasurer (the “Committee”) to the Office of General
14 Counsel for failing to accurately disclose an aggregate total of \$3,159,637.98 in additional
15 receipts and disbursements on its 2020 30-Day Post-General Report. RAD also referred the
16 Hawaii Republican Party to our office for failing to accurately disclose an aggregate total of
17 \$232,980.30 in additional receipts and disbursements in its 2020 Year-End Report. As discussed
18 below, the Commission finds reason to believe that the Committee violated 52 U.S.C.
19 § 30104(b)(2), (4), 11 C.F.R. § 104.3(a), (b), and 11 C.F.R. § 102.17(c) by failing to report
20 receipts and disbursements.

21 **I. FACTUAL BACKGROUND**

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¹ FEC Form 1, HRP Amended Statement of Org. at 2 (Feb. 24, 2001).

² RAD Referral at 1 (Hawaii Republican Party) (June 2, 2021) (“Referral”).

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 4 2020 Year-End Report covering the period from November 24, 2020, through December 31,
 5 2020.⁵ The Report disclosed \$0.00 on Line 12 of the Detailed Summary Page.⁶ The report also
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7 **B. The Amended 2020 30-Day Post-General Report**

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 10 Report.⁸ The report disclosed \$1,631,068.99 in receipts on Line 12 of the Detailed Summary
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 14 included memo text stating in part:

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 16 corresponding transfers to the RNC. These transactions were initially not

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 2.

⁶ *Id.*

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⁹ *Id.*

¹⁰ *Id.*

1 reported due to a misunderstanding regarding reporting requirements and
2 responsibilities”¹¹

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4 On March 21, 2021, RAD sent a Request for Additional Information (“RFAI”) to the
5 Committee referencing the Amended 2020 30-Day Post-General Report.¹² The RFAI
6 acknowledged the memo text attached to the report but requested additional clarification
7 regarding the substantial increase in receipts and disbursements disclosed in the Amended 2020
8 30-Day Post-General Report.¹³

9 **C. The Amended 2020 Year-End Report**

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11 The Committee also filed an Amended 2020 Year-End Report on February 28, 2021.¹⁴
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13 receipts of \$116,490.15 from the original report.¹⁵ The report also disclosed \$116,490.15 in
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19

11 *Id.*

12 *Id.*

13 *Id.*

14 *Id.*

15 *Id.*

16 *Id.*

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2 Year-End Report.¹⁸ The RFAI acknowledged the memo text attached to the report but requested
3 additional clarification regarding the substantial increase in receipts and disbursements disclosed
4 in the Amended 2020 Year-End Report.¹⁹ On April 26, 2021, in a Miscellaneous Report
5 responding to both RFAs, the Committee said the reports were amended to include the required
6 information and reiterated that the joint fundraising transactions “were not reported due to a
7 misunderstanding regarding reporting requirements.”²⁰

8 **D. The Referral**

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10 On June 2, 2021, RAD referred the matter to the Office of General Counsel for possible
11 enforcement action under 52 U.S.C. § 30109, and on the same day this Office notified the
12 Committee of the referral.²¹ A copy of the referral was included with the notification.²² The
13 Committee responded on July 21, 2021.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ FEC Form 99, Miscellaneous Report to FEC, HRP (Apr. 26, 2021),
<https://docquery.fec.gov/pdf/803/202104269445376803/202104269445376803.pdf>.

²¹ *See* Letter from Jeff S. Jordan to Stephen C. Holk (June 2, 2021); Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 Fed. Reg. 38,617 (Aug. 4, 2009). On April 27, 2021, prior to the referral, the assigned RAD analyst called a representative for the Committee and explained that the increases in receipts and disbursements on the Amended 2020 30-Day Post-General Report and Amended 2020 Year-End Report, may be referred to another Commission office for potential further action. Referral at 3. The Analyst told the Committee representative that the Committee could provide additional clarification for the public record if it wished to do so, but the Committee did not submit additional materials. *Id.*

²² *See* Email from Christal Dennis to Stephen C. Holk (June 2, 2021).

1 The Committee’s Response repeats its previous explanations that its reporting errors
2 stemmed from a misunderstanding of the reporting requirements for joint fundraising.²³ The
3 Committee argues that the Commission should dismiss the matter in an exercise of its
4 prosecutorial discretion because the reporting errors “involve[] the inadvertent omission of
5 several transfers, which were immediately and proactively corrected by the Hawaii GOP upon
6 discovery of the omission.”²⁴ The Committee also states that it has since begun development of
7 a written compliance manual and is implementing a “transition protocol” to ensure such
8 reporting errors do not happen again.²⁵ If not dismissed, the Committee requests that the matter
9 be transferred to the Alternative Dispute Resolution Program.²⁶

10 **II. LEGAL ANALYSIS**

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12 The Federal Election Campaign Act of 1971, as amended (the “Act”), requires committee
13 treasurers to file reports of receipts and disbursements in accordance with the provisions of
14 52 U.S.C. § 30104.²⁷ These reports must include, *inter alia*, the name of each person who
15 contributes over \$200, the total amount of receipts and disbursements, including transfers from
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²³ HRP Resp. at 1 (“When Hawaii GOP officials agreed to participate in Trump Victory, they were not aware that the party was required to report the activity. As such, they did not inform their compliance vendor—who prepares the party’s FEC reports—of their participation in Trump Victory.”)

²⁴ *Id.*

²⁵ *Id.* at 2. The Committee also states that it plans to have a representative attend a Commission conference or webinar for political party committees. *Id.*

²⁶ *Id.*

²⁷ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

²⁸ 52 U.S.C. § 30104(b)(2)-(4); 11 C.F.R. § 104.3(a)-(b).

1 The Act and Commission regulations permit candidates and political committees to
2 engage in joint fundraising activities by establishing a separate political committee to act as their
3 joint fundraising representative.²⁹ Participants must enter into a written agreement that identifies
4 this representative and states the formula for the allocation of fundraising proceeds and
5 expenses.³⁰ Commission regulations also require that the representative establish a separate
6 depository account to be used solely for the receipt and disbursement of joint fundraising
7 proceeds and deposit those proceeds in this account within ten days of receipt.³¹

8 Under 11 C.F.R. § 102.17(c)(8), a joint fundraising representative must report all funds
9 received in the reporting period they are received and all disbursements in the reporting period
10 they are made.³² Similarly, the date a contribution is received by the joint fundraising
11 representative is the date that the participating political committee must report as the date the
12 contribution was received, even if it is disbursed by the joint fundraising representative at a later
13 date and even though the participating political committee is only required to report the proceeds
14 once the funds have been received from the fundraising representative.³³ After the joint
15 fundraising representative distributes the net proceeds, the participating committee must report
16 its share received as a transfer-in from the fundraising representative and also file a memo entry

²⁹ 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17(a)(1)(i).

³⁰ 11 C.F.R. § 102.17(c)(1). The fundraising representative must retain a copy of the agreement for three years and make it available to the Commission upon request. *Id.*

³¹ *Id.* § 102.17(c)(3)(i)-(ii). Each participant committee must amend its Statement of Organization to include the account as an additional depository. *Id.* § 102.17(c)(3)(i).

³² *Id.* § 102.17(c)(8)(i)-(ii).

³³ *See id.* § 102.17(c)(3)(iii), (c)(8)(i)(A).

1 on Schedule A itemizing its share of gross receipts as contributions from the original contributors
2 as required by 11 C.F.R. § 104.3(a).³⁴

3 Here, the Committee acknowledges that it omitted required receipt and disbursement
4 information on its original 2020 Post-General and 2020 Year-End Reports. Accordingly, the
5 Commission finds reason to believe that the Committee and Stephen C. Holck in his official
6 capacity as treasurer violated 52 U.S.C. § 30104(b)(2) and (4), 11 C.F.R. § 104.3(a), (b), and 11
7 C.F.R. § 102.17.

³⁴ See *id.* § 102.17(c)(8)(i)(B).