



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**MEMORANDUM**

August 2, 2021

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SUBJECT: Interim Audit Report of the Audit Division – Democratic Party of  
Arkansas (LRA 1153)

**I. INTRODUCTION**

The Office of the General Counsel has reviewed the Interim Audit Report (“Report”) on the Democratic Party of Arkansas (“Committee”). The Report contains four findings: (1) Reporting of Debts and Obligations; (2) Recordkeeping for Employees; (3) Reporting of Apparent Independent Expenditures; and (4) Disclosure of Loans and Loan Repayments. We generally concur with the findings, and comment on Findings 2 and 3. If you have any questions, please contact Danita Alberico, the attorney assigned to this audit.

## II. RECORDKEEPING FOR EMPLOYEES (Finding 2)

The Report finds that the Committee did not maintain any monthly payroll logs to document the percentage of time each employee spent in connection with a federal election. For 2017 and 2018, the Audit Division identified payments to Committee employees totaling \$33,537 for employees paid exclusively with nonfederal funds. The Audit Division recommends that the Committee provide evidence that monthly logs were maintained for employees paid solely with nonfederal funds or provide and implement a plan to maintain monthly payroll logs in the future. We recommend that, instead, the Audit Division give the Committee an opportunity to provide a record sufficient to verify that certain employees were involved in exclusively nonfederal activities.

Depending on the percentage of time an employee spends on federal activities, Commission regulations dictate which accounts a committee may use to pay for the salary and benefit of the employee. Accordingly, salaries and benefits for employees who spend more than 25% of their compensated time on federal election activity (“FEA”) or activities in connection with a federal election in a given month must be paid only from a federal account. 52 U.S.C. § 30101(20)(A)(iv); 11 C.F.R. § 106.7(d)(1)(ii); *see also* 52 U.S.C. § 30125(b). Employees who spend 25% or less of their time on FEA or activities in connection with a federal election must either be paid from a federal account or be allocated as administrative costs. 11 C.F.R. §§106.7(c)(1), 106.7(d)(1)(i). Employees who spend none of their compensated time on FEA or activities in connection with a federal election may be paid entirely from a nonfederal account if the funds comply with state law. 11 C.F.R. §106.7(d)(1)(iii).

Commission regulations also require political committees to maintain records that provide in sufficient detail the necessary information and data from which filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness. 11 C.F.R. § 104.14 (b)(1). The Commission, however, has no way of knowing whether an employee spent no time on federal election-related activities unless it can review documentation that indicates that information. We do not believe that a payroll log is necessary to verify this information since only one type of activity (the percentage of time an employee spent in connection with a federal election) must be tracked and verified. Instead, we conclude that a record prepared in accordance with section 104.14(b)(1) would be sufficient for verification purposes. A simplified record for these types of employees would also be less burdensome than a payroll log for a committee to create and maintain. Therefore, we recommend that the Audit Division give the Committee an opportunity to provide records consistent with 11 C.F.R. § 104.14 (b)(1) to show that certain employees were involved in exclusively nonfederal activities.

### III. REPORTING OF APPARENT INDEPENDENT EXPENDITURES (Finding 3)

The Committee reported disbursements totaling \$22,803 as Federal Election Activity. These disbursements were for direct mail pieces, pledge cards, and walking cards. According to the Audit Division, these disbursements should have been reported as independent expenditures and thus disclosed on 24-hour reports because each communication contains express advocacy.

We concur with the auditors that the communications are independent expenditures. However, we address the Committee's argument that its campaign materials (pledge cards and walking cards) are canvassing materials and therefore are not properly regarded as independent expenditures. The Committee contends that canvassing materials, by definition, are distributed by volunteers. The Committee told the auditors that the nature of canvassing materials means that volunteers are involved. The Committee contends that it is thus entitled to the "volunteer materials exemption" ("VME") for the pledge cards and walking cards disbursements without any showing of volunteer involvement.<sup>1</sup> See 52 U.S.C. § 30101(9)(B)(viii); 11 C.F.R. § 100.147.

We disagree with the Committee's contention. Under Commission regulations, the payment by a state or local party committee for the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee *in connection with volunteer activities* on behalf of any nominee(s) of such party is not an expenditure *provided that such materials are distributed by volunteers and not by commercial or for-profit operations*. 11 C.F.R. § 100.147(d). Whether the VME applies, thus, does not hinge on the type of campaign material a committee uses, but, instead, on how the campaign materials are distributed. In particular, the regulation draws a distinction between campaign materials distributed by volunteers, which qualify for the exemption, and those that are distributed by paid workers of commercial entities or for-profit operations, which do not qualify for the exemption. *Id.* To determine whether the VME applies, the Commission must evaluate whether a committee, in fact, used volunteers to distribute campaign materials.

We acknowledge that there is some uncertainty as to what type of information is necessary to show that the VME applies to certain payments. See Draft Final Audit Report on Arizona Republican Party at 11(May 7, 2013) (acknowledging the uncertainty

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<sup>1</sup> The Committee also states that it did not intend for the canvassing materials to be independent expenditures. However, the regulation defining express advocacy, see 11 C.F.R. § 100.22, does not permit an examination of the speaker's intent. "Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures; Final Rule" 60 Fed. Reg. 35,292, 39,295 (July 6, 1995) (explaining that subjective intent is not a relevant consideration in evaluating whether a communication constitutes express advocacy); *FEC v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 466-472 (2007) (subjective intent is irrelevant); see also Final Audit Report on The National Campaign Fund at 11-13 (Nov. 7, 2012) and Final Audit Report on The Legacy Committee Political Action Committee, at 10 (Aug. 15, 2012) (communications intended as fundraising letters not exempt from independent expenditures).

regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption); Memorandum from Christopher Hughey to John D. Gibson, FAR on the Tennessee Republican Party Federal Election Account (LRA 745) at 2-3 Jun. 15, 2009) (discussing Statement of Reasons of Commissioners Petersen, Bauerly, Hunter, and Weintraub in MUR 5598, Utah Republican Party, et al. ; Memorandum from Christopher Hughey to Joseph F. Stoltz, Report of the Audit Division on the Washington State Democratic Central Committee (LRA 737) at 2-3 (Feb. 3, 2010) (same). The amount of volunteer involvement needed to qualify for the VME is also uncertain. *See, e.g.*, Memorandum to Thomas Hintermister from Lisa J. Stevenson, DFAR on the Arizona Republican Party at 3-6 (Apr. 8, 2013) (General Counsel's recommendation is informed by the uncertainty regarding the amount of volunteer involvement needed to qualify for the exemption). Here, however, the Committee has provided no information about volunteer involvement. We believe that a payment may not qualify for the VME based solely on the type of campaign material used, such as the pledge cards and walking cards at issue here. We conclude, therefore, that the Committee must proffer at least some evidence of volunteer involvement before the Audit Division can consider whether the VME applies to the Committee's disbursements.