



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 21, 2023

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Dayna C. Brown *DCB*
Assistant Staff Director
Audit Division

By: William A. Antosz *WA*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the Citizens for Waters
A21-01)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to Citizens for Waters (CFW) on May 22, 2023 (see attachment). CFW did not request an audit hearing.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR.

In response to the DFAR, CFW provided additional information, as noted below.

Finding 1. Misstatement of Financial Activity

In response to the Interim Audit Report, CFW filed amended disclosure reports that materially corrected the public record.

The Audit staff recommends that the Commission find that CFW understated its reported beginning cash on hand balance by \$19,197, overstated disbursements by \$19,691¹, and understated its ending cash on hand balance by \$19,215 in calendar

¹ In its response to the Interim Audit Report, CFW demonstrated that a \$48 disbursement was a 2018 disbursement negotiated in 2019. Therefore, the Audit staff reduced the 2019 bank beginning cash on hand and disbursements accordingly.

year 2019; and understated beginning cash on hand balance, receipts, disbursements and ending cash on hand balance by \$19,215, \$262,391, \$256,164, and \$36,287, respectively, in calendar year 2020.

Finding 2. Receipt of Contributions in Excess of the Limit

In response to the DFAR, CFW provided documentation to demonstrate that \$8,400 of the \$19,000 in refund checks issued for excessive contributions have been negotiated by the contributors. Additionally, CFW provided documentation that an additional \$10,900 was disgorged to the U.S. Treasury. As such, CFW resolved, albeit untimely, the excessive contributions.²

The Audit staff recommends that the Commission find that CFW received excessive contributions from individuals totaling \$19,000.

Finding 3. Cash Disbursements

In response to the DFAR, CFW provided a letter signed by the Campaign Manager stating that all cash was used for the canvassing program. CFW stated that it “made its best efforts to comply with the Federal Election Campaign Act during the COVID-19 pandemic while also navigating challenges presented to the canvass workers in cashing checks.” CFW stated that:

The Office of General Counsel “OGC”) asserts that the Committee failed to keep the required records to document cash payments. However, the Committee provided records for cash disbursements totaling \$6,390. Although the Committee could not provide documentation for all cash payments, records for a substantial amount of the cash payments were provided which is materially distinguishable from the facts presented in the MUR referenced by the OGC.

Further, CFW stated that it made only four cash payments and provided records for a substantial amount of the cash disbursements, whereas the committee referenced in the MUR engaged in a “pattern of making cash disbursements and intentionally falsifying and concealing its activity.”

The Act specifies that “[n]o disbursements may be made (other than petty cash disbursements ...) ... except by check.”³ The Act further states that committees “may maintain a petty cash fund for disbursements not in excess of \$100 to any person in connection with a single purchase or transaction.”⁴ As such, the Audit staff recommends that the Commission find that CFW made excessive cash disbursements totaling \$7,000.

Finding 4. Contributions from Unregistered Political Organizations

In response to the DFAR, CFW stated that the unresolved amount should be reduced by a total of \$339,566, as follows:

² The amount that CFW disgorged to the U.S. Treasury of \$10,900, was \$300 more than the remaining excessive contribution amount calculated by the Audit staff of \$10,600. CFW included a \$2,500 contribution from an individual in its calculation, while only \$2,200 of that \$2,500 contribution was in excess of the limit.

³ 52 U.S.C. § 30102(h)(1); *see also* 11 C.F.R. § 102.10.

⁴ 52 U.S.C. § 30102(h)(2); *see also* 11 C.F.R. § 102.11.

1. \$261,866, supported by letters from the unregistered organizations, verifying the funds' permissibility;
2. \$57,700, supported by:
 - a. checks from individuals, rather than the unregistered organizations credited with the receipts subtotaling \$3,500); and
 - b. links to organizations' non-federal campaign finance filings to demonstrate that the non-federal committees disclosed having sufficient funds from permissible sources equaling the amounts that were given to CFW (subtotaling \$54,200); and
3. \$20,000, supported by evidence of timely refunds.⁵

CFW stated that the remaining funds, totaling \$121,914, could not be verified as federally permissible funds and will be disgorged to the U.S. Treasury. Subsequent to its DFAR response, CFW provided documentation to demonstrate that \$81,914 was disgorged, albeit untimely, however, this did not materially resolve the matter. Additionally, CFW stated "we disagree with OGC's assertion that the slate mailer payments received by unregistered political committees were advances rather than reimbursements. While the Committee did not immediately make payments to vendors, the Committee *incurred* costs associated with the design, production and mailing of the slate mailers and are reflected as debts on campaign reports."

The Audit staff's review of CFW's documentation indicated that CFW double counted by including two refunds in more than one of the three categories. Based on the documentation provided, the Audit staff concluded that CFW timely refunded non-federal funds, totaling \$20,000, and submitted sufficient documentation to demonstrate that receipts, totaling \$264,386, were made with permissible funds, as follows:

1. \$260,886⁶ for which CFW submitted letters sufficiently verifying the funds' permissibility; and
2. \$3,500 for receipts from individuals credited to unregistered organizations.

Although CFW's response indicates that the amount that could not be verified as federally permissible was \$121,914, the Audit staff calculated that CFW has not demonstrated that receipts, totaling \$173,114 (\$457,500 - \$284,386), were made with permissible funds. The additional \$51,200⁷ (\$173,114 - \$121,914) of impermissible funds in the Audit staff's calculation were funds that CFW stated were permissible and for which it provided links to the non-federal committees' state filings, in section 2.b above. Although the Audit staff agrees that the state filings for these committees disclose funds from permissible sources, the Audit staff

⁵ The total of the three categories CFW sets forth in its DFAR response, \$339,566 (\$261,866 + \$57,700 + \$20,000), when subtracted from the DFAR unresolved amount (\$457,500) results in a revised total of \$117,934, although the DFAR response presents an unexplained revised total of \$121,914.

⁶ The Audit staff's total for category 1. is \$980 lower than CFW's due to CFW's overinclusion of \$1,000 that was refunded (and included in category 3.) and under inclusion of \$20 in an apparent data entry error in category 1.

⁷ The Audit staff's total for category 2.b. is \$3,000 lower than CFW's due to CFW's overinclusion of \$3,000 that was refunded (and included in category 3).

maintains the funds could not be verified as being solely from permissible sources for the following reasons:

- there were also impermissible funds disclosed on state filings such as funds from corporations, labor unions, and non-federal committees, and
- disclosures on state filings do not demonstrate that funds were from permissible sources. Source documents such as contributor check copies or letters of permissibility from the non-federal committees are examples of sufficient and appropriate sources of such permissibility.

The Audit staff recommends that the Commission find that CFW has not demonstrated that receipts, totaling \$173,114, were made with permissible funds.

The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

If this memorandum is approved, the Proposed Final Audit Report will be prepared and circulated within 30 days of the Commission's approval.

If this Audit Division Recommendation Memorandum is not approved on a tally vote, Directive No. 70 states that the matter will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Bill Antosz or Dayna Brown at 694-1200.

Attachments:

- Draft Final Audit Report of the Audit Division on the Citizens for Waters
- Comments on Citizens for Waters Response to the Draft Final Audit Report, dated July 12, 2023 (LRA 1144)

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on Citizens for Waters

(January 1, 2019 - December 31, 2020)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Campaign p. 2)

Citizens for Waters is the principal campaign committee for Maxine Waters, Democratic candidate for the United States House of Representatives from the state of California, 43rd Congressional District, and is headquartered in Norwalk, California.² For more information, see the Campaign Organization chart, p.2.

Financial Activity p. 2)

• Receipts	
○ Contributions from Individuals	\$ 616,178
○ Contributions from Political Committees	918,592
○ Offsets to Operating Expenditures	18,258
○ Other Receipts	573,000
Total Receipts	\$ 2,126,028
• Disbursements	
○ Operating Expenditures	\$ 2,066,627
○ Contribution Refunds	8,397
○ Other Disbursements	108,628
Total Disbursements	\$ 2,183,652

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Receipt of Contributions in Excess of the Limit (Finding 2)
- Cash Disbursements (Finding 3)
- Contributions from Unregistered Political Organizations (Finding 4)

¹ 52 U.S.C. §30111(b).

² During the 2019 – 2020 audit period CFW was headquartered in Long Beach, CA. CFW filed an amended Statement of Organization on April 1, 2022, changing its address to Norwalk, CA.



Draft Final Audit Report of the Audit Division on Citizens for Waters

(January 1, 2019 - December 31, 2020)

DRAFT

Table of Contents

	Page
Part I. Background	
Authority for Audit	1
Scope of Audit	1
Part II. Overview of Campaign	
Campaign Organization	2
Overview of Financial Activity	2
Part III. Summaries	
Findings and Recommendations	3
Part IV. Findings and Recommendations	
Finding 1. Misstatement of Financial Activity	5
Finding 2. Receipt of Contributions in Excess of the Limit	8
Finding 3. Cash Disbursements	11
Finding 4. Contributions from Unregistered Political Organizations	13

Part I

Background

Authority for Audit

This report is based on an audit of the Citizens for Waters (CFW), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of excessive contributions;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the evaluation of a daily cash analysis;
6. the review of disbursements for personal use of funds;
7. the review of political party contribution discrepancies;
8. the consistency between reported figures and bank records;
9. the completeness of records; and
10. other committee operations necessary to the review.

Part II

Overview of Campaign

Campaign Organization

Important Dates	
• Date of Registration	May 23, 1983
• Audit Coverage	January 1, 2019 - December 31, 2020
Headquarters	
Norwalk, California	
Bank Information	
• Bank Depositories	One
• Bank Accounts	One checking
Treasurer	
• Treasurer When Audit Was Conducted	David Gould
• Treasurer During Period Covered by Audit	David Gould
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Treasurer

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2019	\$ 414,778
Receipts	
○ Contributions from Individuals	616,178
○ Contributions from Political Committees	918,592
○ Offsets to Operating Expenditures	18,258
○ Other Receipts	573,000
Total Receipts	\$ 2,126,028
Disbursements	
○ Operating Expenditures	2,066,627
○ Contribution Refunds	8,397
○ Other Disbursements	108,628
Total Disbursements	\$ 2,183,652
Cash on hand @ December 31, 2020	\$ 357,154

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of CFW's reported financial activity with its bank records revealed a misstatement of the beginning cash on hand, disbursements, and the ending cash on hand for calendar year 2019, as well as a misstatement of the beginning cash on hand, receipts, disbursements, and the ending cash on hand for calendar year 2020. Specifically, for 2019, CFW understated the beginning cash on hand by \$19,245, overstated disbursements by \$19,643, and understated the ending cash on hand by \$19,215. For 2020, CFW understated the beginning cash on hand, receipts, disbursements, and the ending cash on hand by \$19,215, \$262,391, \$256,164, and \$36,287, respectively. In response to the Interim Audit Report recommendation, the CFW representative stated that many of the misstatements were attributable to software technical issues, and that CFW is in the process of filing amendments to accurately reflect its financial activity. Subsequent to the February 7, 2023, due date of its response to the Interim Audit Report, CFW filed amended disclosure reports to address this finding³. Absent the full review of the amended disclosure reports, CFW's financial activity for 2019 and 2020 remains misstated.

(For more detail, see p. 5.)

Finding 2. Receipt of Contributions in Excess of the Limit

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that CFW received apparent excessive contributions totaling \$19,000. These errors occurred as a result of CFW not resolving the excessive portion of contributions by obtaining signed reattribution letters from its contributors or issuing refunds of the excessive portion of contributions in a timely manner. In response to the Interim Audit Report recommendation, CFW provided copies of the front of refund checks issued totaling \$19,000, but did not provide cancelled checks to the contributors or an acceptable alternative. The Audit staff maintains that CFW has not resolved excessive contributions totaling \$19,000.

(For more detail, see p. 8.)

Finding 3. Cash Disbursements

During audit fieldwork, the Audit staff determined that CFW made three cash disbursements and issued one check payable to cash, which exceeded the cash disbursement limit by \$7,000. The Act requires political committees to make all

³ CFW filed amended disclosure reports from March 3 through March 23, 2023, to address Finding 1, Misstatement of Financial Activity. Since these amendments were filed after the required due date, they will be examined in full during the next phase of the audit process.

disbursements, except those from a petty cash fund, by check or similar draft drawn on a committee account, not to exceed \$100. In response to the Interim Audit Report recommendation, the CFW representative stated that circumstances related to the COVID-19 pandemic made it difficult for canvassers to cash checks; therefore, CFW issued cash to its canvassers rather than checks. Further, the representative stated the campaign manager made best efforts to track all cash expenditures and is willing to make a declaration that the cash paid to canvassers furthered the canvassing program. The Audit staff maintains that CFW made excessive cash disbursements totaling \$7,000. (For more detail, see p. 11)

Finding 4. Contributions from Unregistered Political Organizations

During audit fieldwork, the Audit staff identified that CFW accepted 47 payments, totaling \$568,000, from unregistered non-federal committees and made an aggregate of \$567,230 in disbursements related to the production and distribution of “slate ballot mailers.”

In response to the Interim Audit Report recommendation, the CFW representative asserted that the payments received were not contributions but rather reimbursements from non-federal committees for costs associated with their non-federal candidates appearing on the Candidate’s slate mailer brochure. The CFW representative stated that CFW took proactive measures to verify funds received were from federally permissible sources, and its misstatement of the applicable individual contribution limit and omission of some prohibited sources on notices was unintentional. The CFW representative provided copies of nine letters of permissibility, totaling \$110,500, and stated that CFW is “in the process of reviewing and confirming that funds received from the unregistered political organizations were from federally permissible funds to determine and disgorge any impermissible funds to the US Treasury”. Absent additional documentation, the Audit staff maintains that CFW has not demonstrated that funds received from unregistered non-federal committees, totaling \$457,500 (\$568,000 - \$110,500), were made with permissible funds. (For more detail, see p. 13.)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of CFW's reported financial activity with its bank records revealed a misstatement of the beginning cash on hand, disbursements, and the ending cash on hand for calendar year 2019, as well as a misstatement of the beginning cash on hand, receipts, disbursements, and the ending cash on hand for calendar year 2020. Specifically, for 2019, CFW understated the beginning cash on hand by \$19,245, overstated disbursements by \$19,643, and understated the ending cash on hand by \$19,215. For 2020, CFW understated the beginning cash on hand, receipts, disbursements, and the ending cash on hand by \$19,215, \$262,391, \$256,164, and \$36,287, respectively. In response to the Interim Audit Report recommendation, the CFW representative stated that many of the misstatements were attributable to software technical issues, and that CFW is in the process of filing amendments to accurately reflect its financial activity. Subsequent to the February 7, 2023, due date of its response to the Interim Audit Report, CFW filed amended disclosure reports to address this finding⁴. Absent the full review of the amended disclosure reports, CFW's financial activity for 2019 and 2020 remains misstated.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the election cycle;
- The total amount of disbursements for the reporting period and for the election cycle; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), 2), (3), 4), and (5).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled CFW's reported financial activity with its bank records for calendar years 2019 and 2020. The reconciliation identified that CFW misstated the beginning cash on hand, disbursements, and the ending cash on hand for 2019, as well as the beginning cash on hand, receipts, disbursements, and the ending cash on hand for 2020. The following charts detail the discrepancies between CFW's disclosure reports and its bank activity. The succeeding paragraphs explain why the discrepancies occurred.

⁴ CFW filed amended disclosure reports from March 3 through March 23, 2023, to address Finding 1, Misstatement of Financial Activity. Since these amendments were filed after the required due date, they will be examined in full during the next phase of the audit process.

2019 Campaign Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash on hand @ January 1, 2019	\$395,533	\$414,778	\$19,245 Understated
Receipts	\$788,943	\$775,747	\$13,196 Overstated
Disbursements	\$585,307	\$565,664	\$19,643 Overstated
Ending Cash on hand @ December 31, 2019	\$605,646 ⁵	\$624,861	\$19,215 Understated

The beginning cash on hand was understated by \$19,245 and the reporting discrepancy is unexplained, but likely resulted from prior period discrepancies.

The overstatement of receipts resulted from the following:

- Receipt reported that did not clear the bank (\$13,000)
 - Unexplained differences (196)
- Overstatement of Receipts** **(\$13,196)**

The overstatement of disbursements resulted from the following:

- Disbursements reported that did not clear the bank \$19,326
 - Unexplained differences 317
- Overstatement of Disbursements** **\$19,643**

The \$19,215 understatement of the ending cash on hand was a result of the reporting discrepancies described above, as well as overstating the ending cash on hand by \$6,477 on CFW's 2019 July Quarterly Report.

2020 Campaign Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash on hand @ January 1, 2020	\$605,646	\$624,861	\$19,215 Understated
Receipts	\$1,087,889	\$1,350,280	\$262,391 Understated
Disbursements	\$1,361,823	\$1,617,987	\$256,164 Understated
Ending Cash on hand @ December 31, 2020	\$320,867 ⁶	\$357,154	\$36,287 Understated

⁵ The reported 2019 ending cash on hand does not equal the 2019 beginning cash on hand plus reported receipts minus reported disbursements. This was due to a mathematical discrepancy on the 2019 July Quarterly Report in which the ending cash on hand was overstated by \$6,477.

⁶ The reported 2020 ending cash on hand does not equal the 2020 beginning cash on hand plus reported receipts minus reported disbursements. This was due to mathematical discrepancies on several 2020 reports which understated the ending cash on hand by \$10,845.

The understatement of receipts resulted from the following:

• Receipts not reported ⁷	\$262,248
• Unexplained differences	<u>143</u>
Understatement of Receipts	<u>\$262,391</u>

The net understatement of disbursements resulted from the following:

• Disbursements not reported ⁸	\$275,753
• Disbursements reported, but not clearing the bank	(18,875)
• Unexplained differences	<u>(714)</u>
Net Understatement of Disbursements	<u>\$256,164</u>

The \$36,287 understatement of the ending cash on hand was a result of the reporting discrepancies described above, as well as a math errors of \$10,845 relating to CFW's reported ending cash on hand on its 2020 disclosure reports.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter during the exit conference with the CFW representatives and provided schedules detailing the misstatements of financial activity. During the exit conference, the CFW representatives stated that its failure to file activity for eight days of the 2020 Post General Report was a simple oversight, and the receipts and disbursements not filed during this period represented the majority of the 2020 misstatement. The CFW representatives stated they may file a Form 99 to correct the misstatements.

The CFW representatives did not provide a written exit conference response for this finding.

The Interim Audit Report recommended that CFW amend its disclosure reports or file a Form 99⁹ (Miscellaneous Electronic Submission) to correct the misstatements noted above. In addition, the Interim Audit Report recommended that CFW reconcile the cash on hand balance on its most recently filed report to include these adjustments and correct any subsequent discrepancies.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, the CFW representative stated that many of the misstatements were attributable to software technical issues, and that the issues were further exacerbated by the COVID-19 pandemic as technical issues continued

⁷ The majority of receipts and disbursements not reported were during the eight-day period from October 15, 2020 through October 22, 2020. CFW inadvertently filed its 2020 30-Day Post-Election Report with the start date of October 23, 2020 instead of October 15, 2020 and therefore, did not report any receipts or disbursements during this period.

⁸ See *supra* footnote 7.

⁹ If CFW chooses to file a Form 99, instead of amending its disclosure reports, the form must contain all pertinent information that is required on the schedule.

to grow but company customer support was reduced. The CFW representative stated that CFW is in the process of filing amendments to accurately reflect its financial activities.

Subsequent to the February 7, 2023 due date of its response to the Interim Audit Report, CFW filed amended disclosure reports to address this finding. Given that the amendments were filed late and to ensure the timely progression of the audit, they will be reviewed in the next phase of the audit process. Absent the full review of the filed amended disclosure reports, CFW's financial activity for 2019 and 2020 remains misstated.

Finding 2. Receipt of Contributions in Excess of the Limit

Summary

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that CFW received apparent excessive contributions totaling \$19,000. These errors occurred as a result of CFW not resolving the excessive portion of contributions by obtaining signed reattribution letters from its contributors or issuing refunds of the excessive portion of contributions in a timely manner. In response to the Interim Audit Report recommendation, CFW provided copies of the front of refund checks issued totaling \$19,000, but did not provide cancelled checks to the contributors or an acceptable alternative. The Audit staff maintains that CFW has not resolved excessive contributions totaling \$19,000.

Legal Standard

- A. Authorized Committee Limits.** For the 2020 election, an authorized committee may not receive more than a total of \$2,800 per election from any one person or \$5,000 per election from a multicandidate political committee. 52 U.S.C. §§30116(a)(1 A) and (a) 2)(A); 11 CFR §§110.1(a) and (b) and 110.9.
- B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
- Return the questionable check to the donor; or
 - Deposit the check into its federal account and:
 - Keep enough money in the account to cover all potential refunds;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
 - Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation); and
 - If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), 4) and (5) and 110.1(k 3) ii)(B).

C. Joint Contributions. Any contribution made by more than one person (except for a contribution made by a partnership) must include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

D. Reattribution of Excessive Contributions. The Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

- The reattribution must be signed by both contributors;
- The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- How the contribution was attributed; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3) B).

Facts and Analysis

A. Facts

1. Facts

During audit fieldwork, the Audit staff conducted a review of all contributions to identify apparent excessive contributions from individuals, as noted below.

Excessive Contributions - 100% Review	
Excessive Contribution Amount	\$19,000
Total Amount of Excessive Contributions	\$19,000
Reason for Excessive Contributions	
Contributions not resolved via signed reattribution letter or refund	\$19,000
Total Amount of Excessive Contributions	\$19,000

2. Additional Information

CFW did not maintain a separate account for questionable contributions. However, CFW did maintain a sufficient balance in its bank account to make refunds of the apparent excessive contributions.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the CFW representatives during the exit conference and provided a schedule of the apparent excessive contributions. During the exit conference, the CFW representatives stated that they would provide documentation related to these contributions.

The CFW representatives did not provide a written exit conference response for this finding.

The Interim Audit Report recommended that CFW:

- Provide evidence demonstrating that the contributions in question were not excessive, or if excessive, were resolved in a timely manner. This evidence should have included documentation that was not made available to the Audit staff during the audit, including copies of solicitation cards completed by the contributors at the time of their contribution that clearly informed the contributors of the limitations or timely refunds or reattributions for excessive contributions.
- Absent such demonstration, CFW should have reviewed its contributions to determine which are excessive and how each can be resolved, and/or offer a refund for any remaining excessive amounts. CFW must either provide evidence that the excessive contribution amounts were refunded or, for any excessive contributions for which CFW was unable to process a refund for any reason, provide evidence that the excessive contribution amounts were disgorged to the U.S. Treasury. For a reattribution, both the contributor and the individual to whom a contribution was reattributed must be notified.
- If funds were not available to make the necessary refunds, CFW should have disclosed the contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make such refunds.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, the CFW representative stated that CFW made best efforts to ensure contributions were within the contribution limits. Further, CFW stated the excessive contributions totaling \$19,000 were inadvertent and CFW issued refunds as part of its Interim Audit Report response. CFW provided copies of the front of the refund checks, totaling \$19,000, but did not provide cancelled checks to the contributors or an acceptable alternative. The Audit staff maintains that the apparent excessive contributions, totaling \$19,000, have not been resolved.

Finding 3. Cash Disbursements

Summary

During audit fieldwork, the Audit staff determined that CFW made three cash disbursements and issued one check payable to cash, which exceeded the cash disbursement limit by \$7,000. The Act requires political committees to make all disbursements, except those from a petty cash fund, by check or similar draft drawn on a committee account, not to exceed \$100. In response to the Interim Audit Report recommendation, the CFW representative stated that circumstances related to the COVID-19 pandemic made it difficult for canvassers to cash checks; therefore, CFW issued cash to its canvassers rather than checks. Further, the representative stated the campaign manager made best efforts to track all cash expenditures and is willing to make a declaration that the cash paid to canvassers furthered the canvassing program. The Audit staff maintains that CFW made excessive cash disbursements totaling \$7,000.

Legal Standard

- A. Disbursement by Check.** A political committee may only make expenditures in cash, not to exceed \$100, from a petty cash fund. A written journal for such cash expenditures is to be maintained by the treasurer. All other disbursements shall be made by check or similar draft drawn on account(s) established at the campaign's depository(ies). 52 U.S.C. §30102(h)(2).
- B. Petty Cash Fund.** A political committee may maintain a petty cash fund out of which it may make expenditures not in excess of \$100 to any person per purchase per transactions.

It is the duty of the treasurer to keep and maintain a written journal of all petty cash disbursements. The written journal shall include:

- Name and address of every person to whom any disbursement is made;
- Date;
- Amount;
- Purpose; and
- If disbursement is made for a candidate, the journal shall include the name of that candidate and the office (including State and Congressional district) sought by such candidate. 11 CFR §102.11.

C. Required Records for Disbursements. For each disbursement, the treasurer of a political committee must keep records on the:

- Amount;
- Date;
- Name and address of the payee;¹⁰
- Purpose (a brief description of why the disbursement was made ;
- If the disbursement was made on behalf of a candidate, the candidate's name and office sought by the candidate; and
- If the disbursement was in excess of \$200, the records must include a receipt or an invoice from payee, or a cancelled check or share draft to the payee. If the disbursement was made by credit card, the record must include the monthly statement or customer receipt and the cancelled check used to pay the credit card bill. 52 U.S.C. §30102(c) and 11 CFR §102.9(b).

D. Preserving Records and Copies of Records. The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 52 U.S.C. §30102(d).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff examined bank records and the disbursement database provided by CFW and identified four transactions, totaling \$7,400, involving cash disbursements, each of which exceeded the \$100 transaction limit for cash disbursements. One transaction was a check payable to "Cash" in the amount of \$500; the remaining three transactions consisted of cash withdrawals from CFW's bank account.

CFW provided records for cash disbursements totaling \$6,390. Records for cash disbursements totaling \$1,010 were not provided. The cash disbursements were used to pay various individuals for Get Out the Vote (GOTV) activity.

The Audit staff notes that political committees may maintain a petty cash fund out of which they may make expenditures not to exceed \$100 to any person, per purchase, and per transaction. The political committees must maintain a written journal of all petty cash disbursements per 11 C.F.R. §102.11. However, CFW did not maintain a petty cash fund. CFW confirmed that there was no petty cash fund and a review of CFW's disbursement records did not yield any evidence to demonstrate that CFW established or maintained a petty cash fund. The Audit staff concludes that four cash disbursements, in excess of \$100, totaling \$7,000, were excessive cash disbursements.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the CFW representatives during the exit conference and provided a schedule of the cash disbursements. During the exit

¹⁰ The payee is usually the person providing the goods or services to the committee. In the case of travel advances, however, the payee is the person receiving the advance. 11 CFR §102.9(b)(2).

conference, the CFW representatives stated that in hindsight, CFW should have written checks instead of making cash payments but mentioned that, due to the large number of individuals participating in the GOTV activity, it was easier to pay cash than to issue checks. The CFW representatives stated that they would provide comments related to this finding.

The CFW representatives did not provide a written exit conference response for this finding.

The Interim Audit Report recommended that CFW demonstrate its compliance with the Act regarding cash disbursements, submit the missing disbursement records, and provide any relevant comments.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, the CFW representative stated that CFW issued cash to its canvassers to pay for canvassing costs instead of checks because, during the COVID-19 pandemic, check cashing stores and banks were closed or maintained limited hours, making it difficult for canvassers to cash checks. The CFW representative also stated that the Candidate's constituents are "comprised of many low-wage and working-class communities who regularly work paycheck to paycheck and, in many instances, cash their checks immediately at check-cashing stores or directly from the banks".

The CFW representative further stated that the campaign manager made best efforts to track all cash expenditures, but she was unable to provide CFW with all disbursement records. According to CFW, the campaign manager would be willing to make a declaration that "the cash received was used to pay canvassers and in furtherance of the canvassing program."

The Audit staff maintains that CFW has not demonstrated its compliance with the Act regarding cash disbursements, and that CFW has made excessive cash disbursements totaling \$7,000.

Finding 4. Contributions from Unregistered Political Organizations

Summary

During audit fieldwork, the Audit staff identified that CFW accepted 47 payments, totaling \$568,000, from unregistered non-federal committees and made an aggregate of \$567,230 in disbursements related to the production and distribution of "slate ballot mailers."

In response to the Interim Audit Report recommendation, the CFW representative asserted that the payments received were not contributions but rather reimbursements from non-federal committees for costs associated with their non-federal candidates appearing on the Candidate's slate mailer brochure. The CFW representative stated that

CFW took proactive measures to verify funds received were from federally permissible sources, and its misstatement of the applicable individual contribution limit and omission of some prohibited sources on notices was unintentional. The CFW representative provided copies of nine letters of permissibility, totaling \$110,500, and stated that CFW is “in the process of reviewing and confirming that funds received from the unregistered political organizations were from federally permissible funds to determine and disgorge any impermissible funds to the US Treasury.” Absent additional documentation, the Audit staff maintains that CFW has not demonstrated that funds received from unregistered non-federal committees, totaling \$457,500 (\$568,000 - \$110,500), were made with permissible funds.

Legal Standard

- A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,800 per election from any one person or \$5,000 per election from a multicandidate political committee. 52 U.S.C §30116 and 11 CFR §110.9.
- B. Definition of Election.** Each of the following is considered a separate election, with a separate limit:
- Primary election or a caucus or convention with authority to nominate the candidate for the general election.
 - General election.
 - Runoff.
 - Special election. 52 U.S.C. §30101(1) and 11 CFR §§100.2, 110.1(j)(1), and 110.2(i)(1).
- C. Organizations Not Registered With the Commission.** Any organization that makes contributions and expenditures, but that does not qualify as a political committee under 11 CFR §100.5, must keep records of receipts and disbursements and, upon request, must make such records available for examination by the Commission. The organization must demonstrate through a reasonable accounting method that, whenever such an organization makes a contribution or expenditure, the organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution or expenditure. 11 CFR §102.5(b).
- D. 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 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).

E. Soft Money – Federal Candidates. A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of one or more candidates or individuals holding Federal office, shall not solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act. 52 U.S.C. §30125(e)(1 A).

Facts and Analysis

A. Facts

Based on a review of all receipts and disbursements relating to a slate ballot mailer program, the Audit staff identified 47 payments totaling \$568,000 received from unregistered non-federal committees, for which CFW made an aggregate of \$567,230 in disbursements related to the production and distribution of these mailers, including outstanding debt disclosed by CFW. CFW received these funds from unregistered non-federal committees that could receive funds from prohibited sources or in amounts exceeding the Act's limitations.

The mailers were produced and distributed during the 2020 primary and general elections. The mailers listed and expressly advocated the election of certain non-federal candidates and the Candidate.¹¹ The mailers featured a prominent picture or likeness of the Candidate on the front page and were promoted as the Candidate's official sample ballot, containing brief quotes that conveyed the Candidate's opinions and endorsements of the non-federal candidates listed. CFW represented to the Audit staff that each candidate would be included in the mailers only if their respective committees reimbursed CFW for the full production and distribution costs attributed to him or her.

¹¹ The general election period mailer also endorsed Joseph R. Biden and Kamala D. Harris for President and Vice President, respectively.

On October 21, 2004, the Federal Election Commission issued an Advisory Opinion (AO 2004-37) concerning the application of the Act and Commission regulations to the arrangements with, and payments by, any Federal candidates who will be included in CFW's proposed mailers.

The Commission concluded that reimbursements by the authorized committees of the Federal candidates listed in the mailers in amounts equal to the attributable costs associated with each candidate's listing would not constitute support to CFW because, in this situation, mere reimbursement of the costs associated with the production and distribution of the proposed mailer within a reasonable period of time would not constitute "anything of value" to CFW under the Act provision now codified at 52 U.S.C. §30101(8)(A) i)¹² and 11 CFR §100.52. See Advisory Opinion 2004-1. Therefore, such reimbursements would not be subject to the Act's limits now codified at 52 U.S.C. §§30102(e)(3) and 30116(a)(2)(A). To the extent that any reimbursement by a candidate's authorized committee exceeded the costs attributed to that candidate, such excess reimbursement would constitute a contribution to CFW and would be subject to the Act's applicable contribution limit. See the Act provisions now codified at 52 U.S.C. §30102 e)(3)(B); 52 U.S.C. §30116(a)(1)(A); 11 CFR §102.12(c)(2); 11 CFR §110.1(d). The cost for the participating candidates and committees would be attributed by the proportion of space devoted to each candidate as compared to the total space devoted to all candidates, per 11 CFR §106.1(a)(1).

The Audit staff notes that AO 2004-37 did not address non-federal candidate involvement.¹³

The Audit staff, upon consultation with the Office of General Counsel, concluded the following:

- CFW cannot rely on AO 2004-37 with regard to the non-federal committee transactions. AO 2004-37 addressed the question of whether receipts and disbursements associated with the production and distribution of a mailer would constitute contributions from or to Federal candidates included in the mailer. The facts in this audit are materially distinguishable from the facts presented in AO 2004-37, given that the transactions during the audit period involved non-federal candidates and committees.
- For the same reason outlined above, CFW cannot rely on AO 2004-37 with regard to reporting these transactions.
- CFW's mailer program does not comply with the requirements of 52 U.S.C §30125(e)(1)(A). Funds received, spent, or disbursed in connection with an election for federal office, including for Federal Election Activity, must comply

¹² On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

¹³ CFW stated in its AO request that it was not requesting the Commission's opinion regarding the application of the Act and Commission regulations to any arrangements with, or payments by, non-federal candidates or their committees.

with the amount limitations, source prohibitions, and reporting requirements of the Act. “Federal Election Activity” includes a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for state or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate). CFW received and spent funds for mailers that constitute Federal Election Activity. CFW received the funds from unregistered non-federal committees, depositing them in its sole campaign depository, and made disbursements for the production and distribution of mailers that promote, or expressly advocate the election of a clearly identified Federal candidate. CFW received these funds from unregistered non-federal committees that could receive funds from prohibited sources or in amounts exceeding the Act’s limitations. Moreover, these unregistered non-federal committees did not report the funds to the Commission.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the CFW representatives during the exit conference and in subsequent written and oral communications and provided schedules of receipts and disbursements relating to the mailers. During the exit conference, the CFW representatives stated they would review the schedules.

In response to the exit conference, the CFW representatives provided two sample slate ballot mailers to document how the unregistered non-federal committees that made payments to CFW appeared on the slate ballot mailers. One slate ballot mailer provided was for the 2020 primary election period and the other slate ballot mailer provided was for the 2020 general election period.

In addition, CFW provided copies of invoices and letters sent to 21 unregistered non-federal committees, totaling \$221,000. The invoices stated the reimbursements to CFW must meet the requirements of federal law, payments from corporations or labor unions could not be used to make the reimbursements, referenced the Candidate’s “Sample Ballots and Voter Recommendations” and included a line for the unregistered non-federal committees to sign and date acknowledging receipt of the invoice and the “requirements of federal law.” However, the letters provided to the unregistered non-federal committees stated that they could use individual contributions of \$5,000 or less to reimburse CFW for the slate ballot mailer program costs. \$5,000 exceeds the \$2,800 federal limit for contributions from individuals, and therefore the Audit staff did not accept the signed invoices as sufficient to determine the permissibility of funds received from unregistered non-federal committees. The Audit staff, in consultation with the Office of General Counsel, also considered the following factors:

- The invoices were silent as to the reporting requirements of the unregistered non-federal committees;
- The invoices cited some, but not all, prohibited sources;

- Some of the reimbursement checks appear to be from individuals' checking accounts rather than the unregistered non-federal committees' accounts, and may have exceeded the individual contribution limit; and
- CFW received funds that the unregistered non-federal committees did not report to the Commission. 52 U.S.C. § 30125(e)(1)(A).

The Interim Audit Report recommended that CFW:

- Provide evidence that the receipts in question were made from permissible funds; or
- Refund the impermissible funds and provide evidence of such refunds; or
- Disgorge any impermissible funds, for which CFW was unable to process a refund for any reason, to the U.S. Treasury and provide evidence of such disgorgement; or
- If funds were not available to make the necessary refunds or disgorgement, disclose the receipts requiring refunds on Schedule D (Debts and Obligations) until funds become available to make such refunds.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, the CFW representative stated that payments received by CFW were not contributions but rather reimbursements from non-federal committees for costs associated with their non-federal candidates appearing on the Candidate's slate mailer brochure. CFW disagrees that it cannot rely on Commission Advisory Opinion 2004-37, given that it "addresses reimbursements for Federal candidates ... *exactly* the same in that the non-federal committees were reimbursing [CFW] for its fair share of costs to appear on [the Candidate's] slate mailer brochure." CFW agrees that the slate mailers constitute Federal Election Activity and are, therefore, subject to the limitations, prohibitions, and reporting requirements of the Act. However, CFW maintains it did not "solicit, receive, direct, transfer, or spend funds for the slate mailer brochure using non-federal funds."

Further, the CFW representative stated that CFW took proactive measures to verify funds were from federally permissible sources, and that the misstatement of the individual contribution limit and omission of some prohibited sources on notices was unintentional. CFW stated that it is "in the process of reviewing and confirming that the funds received from the unregistered political organizations were from federally permissible funds to determine and disgorge any impermissible funds to the US Treasury." Nine copies of federally permissible letters, totaling \$110,500, were provided to the Audit staff.

The Audit staff acknowledges that CFW has demonstrated that receipts totaling \$110,500 were made with permissible funds and maintains that CFW has not demonstrated that the remaining receipts, totaling \$457,500 (\$568,000 - \$110,500), were made with permissible funds.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

July 12, 2023

TO: Patricia C. Orrock
Chief Compliance Officer

Dayna C. Brown
Assistant Staff Director, Audit Division

FROM: Neven F. Stipanovic *NFS*
Associate General Counsel, Policy Division

Jessica Selinkoff *\$*
Assistant General Counsel, Compliance Advice

Margaret J. Forman *MJF*
Attorney

SUBJECT: Audit Division Recommendation Memorandum on Citizens for Waters
(LRA 1144)

Per Directive 70, the Audit Division Recommendation Memorandum (“ADRM”) on Citizens for Waters (“CFW”) attaches a copy of the Draft Final Audit Report (“DFAR”) and makes recommendations in light of CFW’s response to the DFAR. OGC concurs with the ADRM’s recommendations that the Commission make the four findings in the amounts identified in the ADRM, which reduced the amount in Finding 1 by \$48 and Finding 4 by \$284,386 from the amounts presented in the DFAR. The analysis below addresses CFW’s response to DFAR Findings 3 and 4.

I. CASH DISBURSEMENTS (FINDING 3)

CFW made three cash disbursements and issued one check payable to cash, for a total of \$7,400, all disbursed to Karen Waters; these disbursements exceeded the statutory cash

disbursement limit by \$7,000.¹ In response to the DFAR, CFW asserted that it provided “records for a substantial amount of the cash payments.”² CFW provided a letter signed by Karen Waters that lists her four cash receipts and declares that “[t]he cash payments were paid directly to canvassers and used to pay for canvass program costs.”³ This letter did not provide any information about the cash disbursements to specific canvassers or associate such canvasser disbursements to one of the four cash disbursements from CFW to Karen Waters.

The Federal Election Campaign Act, 52 U.S.C. §§ 30101-45, (the “Act”) and Commission regulations specify that all disbursements, other than petty cash disbursements, must be made by check and further specify that committees must maintain a written journal of all petty cash disbursements (including the name and address of recipient and the date, amount, and purpose of disbursement).⁴ CFW has previously stated that it does not maintain a petty cash fund.⁵ To the extent that CFW’s cash disbursements to Karen Waters constitute a *de facto* petty cash fund, CFW has not provided the required documentation for such a fund to explain how Karen Waters disbursed the cash she received from CFW.

The letter from Karen Waters does not verify the cash disbursements to anyone but Karen Waters, and such disbursements exceed the cash disbursement limit by \$7,000. Furthermore, none of the 78 canvasser contracts provided by CFW earlier in the audit process contain the information necessary to verify cash disbursements from Karen Waters to those canvassers.⁶

The contracts provided by CFW are generally prepared form contracts to perform future canvassing work (though there are six handwritten agreements) that do not independently confirm that the work was performed or that the contract amount was paid and, if paid, that it was paid by the funds Karen Waters received from CFW. Only forty-three of the contracts were signed. The prepared contracts have blanks for the dates of performance, though these fields were filled in on only three contracts, one of which was not signed and another of which left the contractor address blank. The third of these (a contract with “Kyle” to work for \$30 on 9/26) appears in order and has a handwritten notation “paid 9/26,” though the payment notation does not include the amount paid. Though 26 of the contracts include a handwritten “paid” notation, none of these indicate the date(s) of work or payment and only 8 include the amount that was paid (all stating “cash \$50”), though 5 of these contracts were not signed. One of the contracts (with “Leroy” with handwritten notation “9/26 Paid”) was executed on 10/24/20, almost a month after the handwritten payment date.

¹ See DFAR at 11-13.

² DFAR Response at 1 (June 9, 2023).

³ *Id.*, attachment. Although Karen Waters’ letter is dated April 30, 2023, the Audit Division did not receive the letter until CFW attached it to the June 9, 2023, DFAR Response.

⁴ 52 U.S.C. § 30102(h)(1); 11 C.F.R. §§ 102.10, 102.11.

⁵ See DFAR at 12.

⁶ The DFAR Legal Analysis incorrectly stated that there were 18 contracts. See OGC DFAR Legal Analysis at 3.

The first canvasser contract date is September 19, 2020, which is almost seven months after the first cash disbursement to Karen Waters on March 2, 2020, and more than a month before CFW's next three cash disbursements to Karen Waters.

As previously explained in OGC's analysis of the DFAR, a committee may be found to violate 52 U.S.C. § 30102(h) when it pays staff in cash and does not maintain a "comprehensive record of all cash disbursements."⁷ CFW argues in its DFAR Response that its facts are distinguishable from the facts in MUR 7126 (Michigan Democratic State Central Committee), which OGC cited in support of that proposition.⁸ While it is true that the Commission found reason to believe the Michigan Democratic State Central Committee violated more than seven different statutory provisions in connection with cash-based bingo fundraisers, and while it is true that CFW has not engaged in most of the activity conciliated in MUR 7126 or at the same scale, the basic obligations concerning petty cash disbursements described in MUR 7126 are indistinguishable. The Commission concluded in MUR 7126 that a committee violates 52 U.S.C. § 30102(h) if it does not keep comprehensive records regarding its cash disbursements to bingo workers. CFW must similarly provide records supporting its cash disbursements to canvassers.

If making cash disbursements to its canvassers, CFW had to keep the information specified in 11 C.F.R. § 102.11 (the "comprehensive record" described in MUR 7126) so that the Commission can verify the payee, date, amount, and purpose of each disbursement. For the reasons stated above, the letter attached to the DFAR Response and the canvasser contracts do not satisfy CFW's obligation to provide a comprehensive record of such disbursements.

II. CONTRIBUTIONS FROM UNREGISTERED POLITICAL ORGANIZATIONS (FINDING 4)

Finding 4 concerns receipts by CFW from non-federal political organizations that cannot be verified as having been made with federal funds.⁹ Based on documentation provided by CFW in response to the DFAR, the ADRM recommends reducing the amount in Finding 4 by \$284,386, from \$457,500 to \$173,114.

⁷ OGC DFAR Legal Analysis at 3-4 (citing Conciliation Agreement ¶¶ IV.3, IV.16, V.5, MUR 7126 (Michigan Democratic State Central Committee) (May 11, 2017) and quoting Factual and Legal Analysis at 11, MUR 7126 (Michigan Democratic State Central Committee)).

⁸ DFAR Response at 1-2 (asserting that CFW made only four cash disbursements while the Michigan Democratic State Central Committee engaged in a larger pattern of such disbursements while "intentionally falsifying and concealing its activity").

⁹ See 52 U.S.C. § 30125(e)(1)(A) (requiring that funds received, spent, or disbursed in connection with an election for federal office, including for federal election activity, comply with amount limitations, source prohibitions, and reporting requirements of the Act); 11 C.F.R. § 300.61 (same).

In its DFAR Response, CFW argues that the amount in Finding 4 should be reduced by a total of \$339,566, as follows:

- (1) \$261,866, supported by letters from the unregistered organizations, verifying the funds' permissibility;
- (2) \$57,700, supported by:
 - a. checks from individuals, rather than the unregistered organizations credited with the receipts (subtotaling \$3,500); and
 - b. organizations' non-federal campaign finance filings (subtotaling \$54,200); and
- (3) \$20,000, supported by evidence of timely refunds.¹⁰

Auditors' review of CFW's documentation showed that CFW double counted by including two refunds in more than one of the three categories. As discussed below, Audit staff also could not verify \$51,200¹¹ in CFW receipts in category 2(b) for which the submitted documentation of permissibility consists of links to the unregistered organizations' campaign finance filings with state or local governments in California. In sum, Audit staff concluded that CFW had submitted sufficient documentation to remove \$284,386 in receipts from Finding 4, as follows:

- (1) \$260,886¹² for which CFW submitted letters sufficiently verifying the funds' permissibility;
- (2) \$3,500 for receipts from individuals credited to unregistered organizations; and
- (3) \$20,000 in receipts that had been timely refunded.

A. Insufficiency of Non-Federal Filings to Document Permissibility of Receipts

Candidates and their authorized committees are prohibited from knowingly accepting contributions that exceed the limits of the Act or that are not subject to the prohibitions of the Act, including from corporations, labor organizations, federal contractors, and foreign nationals.¹³ Moreover, an unregistered organization that makes a contribution or payment to a political committee "must demonstrate through a reasonable accounting method that ...the organization has received sufficient funds subject to the limitations and prohibitions of the Act

¹⁰ See DFAR Response at 2. The total of the three categories CFW sets forth in the DFAR Response (\$261,866 + \$57,700 + \$20,000 = \$339,566) when subtracted from the DFAR amount (\$457,500) results in a revised total of \$117,934, although the DFAR Response presents a revised total of \$121,914.

¹¹ Audit staff's total for category (2)(b) is \$3,000 lower than CFW's due to CFW's overinclusion of \$3,000 that was refunded (and included in category (3)).

¹² Audit staff's total for category (1) is \$980 lower than CFW's due to CFW's overinclusion of \$1,000 that was refunded (and addressed in category (3)) and under inclusion of \$20 in an apparent data entry error in category (1).

¹³ See 52 U.S.C. §§ 30116(f), 30118(a), 30119, 30121(a).

to make such contribution ...or payment.”¹⁴ A political committee’s “treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received ...exceed the contribution limitations.”¹⁵

Audit staff appropriately concluded that the links to the state and local filings do not demonstrate that the unregistered organizations maintained sufficient funds from permissible sources equaling the amounts contributed to CFW.¹⁶ Because CFW referred Audit staff only to raw, non-federal filings, Audit staff has no information to verify the accuracy of the activity reported by these nonfederal organizations to the non-federal campaign finance authorities. Moreover, as addressed in the ADRM, the state and local filings indicate that, in addition to disclosing federally-permissible receipts, the unregistered organizations also disclosed receipts from corporations, labor unions, and other non-federal organizations, all of which appear to be federally-prohibited sources for authorized committees like CFW. Additionally, Audit staff has no information from the non-federal filings that each of the unregistered organizations can demonstrate through a reasonable accounting method that only receipts from permissible sources which comply with the Act’s contribution limits were used to provide funds to CFW.¹⁷

B. Inapplicability of Advisory Opinion 2004-37 (Waters)

In response to the Interim Audit Report (“IAR”) and OGC’s legal analysis of the IAR, CFW argued that it could rely on Advisory Opinion 2004-37 (Waters) to receive the payments from unregistered organizations included in Finding 4, an argument OGC again addressed in legal analysis of the DFAR.¹⁸ Most of OGC’s DFAR analysis focused on explaining that Advisory Opinion 2004-37 was distinguishable from the receipts addressed in Finding 4 because Advisory Opinion 2004-37 addressed receipts from federal committees (and explicitly did not address non-federal receipts) rather than the receipts from unregistered organizations at issue in Finding 4.

¹⁴ 11 C.F.R. § 102.5(b)(1) (also requiring that all unregistered organizations who make contributions to political committees “must keep records of receipts and disbursements and, upon request, must make such records available for examination by the Commission”).

¹⁵ 11 C.F.R. § 103.3(b).

¹⁶ See Factual & Legal Analysis (“F&LA”) at 6-7, MUR 8074 (Kim Klacik for Congress) (finding reason to believe committee violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 103.3(b) by knowingly accepting a prohibited \$500 contribution from an unregistered organization); F&LA at 4-5, MUR 7872 (South Dakota Democratic Party) (finding reason to believe, after an audit, that a state party committee violated 11 C.F.R. § 103.3(b) by accepting 31 contributions totaling \$23,827 from unregistered organizations without ascertaining whether the underlying funds complied with the limitations and prohibitions of the Act).

¹⁷ See *supra*, n.14 and related text; see also Advisory Opinion 2007-26 (Schock) at 3 (approving of Last In, First Out accounting method); Advisory Opinion 2006-38 (Casey State Committee) at 3 (approving of First In, First Out and Last In, First Out accounting methods); Advisory Opinion 1997-20 (McCarthy) (describing acceptable accounting methods under 11 C.F.R. § 104.12 and an alternative approach for determining permissible funds for a committee that had cash on hand upon registration after making a contribution).

¹⁸ See DFAR Legal Analysis at 4-6; IAR Response at 2-3 (Feb. 7, 2023); IAR Legal Analysis (Sept. 6, 2022).

In response to the DFAR, CFW is silent about whether it can rely on Advisory Opinion 2004-37 but does disagree with one sentence in the DFAR legal analysis that addressed a second basis for distinguishing Advisory Opinion 2004-37: that the advisory opinion addressed reimbursements, rather than advances, of funds.¹⁹ CFW states, in response to the DFAR, that it disagrees that it received advance payments and asserts that, although it “did not immediately make payments to vendors, the Committee *incurred* costs associated with the design, production and mailing of the slate mailers and are reflected as debts on campaign reports.”²⁰

In fact, CFW did receive advance payments. Audit staff determined that CFW did not make its first brochure mailer disbursement (excluding refunds to unregistered organizations) until April 24, 2020. Two and a half months before that disbursement, on February 11, 2020, CFW received the first two payments from unregistered organizations, totaling \$25,000. CFW’s 2020 Pre-primary Report, covering the period of these receipts, discloses no outstanding debts with a reported purpose of “design,” “production,” or “mailing” of the slate or brochure mailers, though it does disclose an outstanding \$2,022.15 debt to Karen Waters for “Slate Mailer Management Fees” that appears to have been first incurred before the 2018 election.²¹

In the next reporting period (April 2020 Quarterly Report, covering February 13 to March 31, 2020), CFW received an additional \$150,000 in February 2020 and \$27,000 in March 2020 from unregistered organizations, for a to-date total of \$202,000. CFW’s April 2020 Report discloses one new debt with a reported purpose of “design,” “production,” or “mailing” of the slate or brochure mailers — a \$4,066.35 debt to Political Data, Inc., for “Mail File for Slate Mailer” — in addition to several other slate mailer debts for other purposes: the outstanding \$2,022.15 debt and a new \$63,632.58 debt to Karen Waters for “Slate Mailer Management Fees”; a new \$11,500 debt to a compliance firm for “Slate Mailer Reporting Services”; and four debts for partial refunds to unregistered organizations, totaling \$5,000.²²

¹⁹ See DFAR Legal Analysis at 4 (stating that “CFW received funds from non-federal committees starting months in advance of the first disbursements it made for the associated brochures, a fact that is materially distinguishable from the facts presented in Advisory Opinion 2004-37, which addressed reimbursements (rather than advances) from federal (rather than non-federal) committees” and citing 52 U.S.C. § 30101(8)(A)(i) and 11 C.F.R. § 100.52 (defining contribution to include advances for the purpose of influencing any election for federal office)).

²⁰ CFW DFAR Response at 2 (emphasis in original). CFW did not identify the relevant reported debts in its response.

²¹ See CFW Amended 2020 Pre-Primary Report at 42 (Mar. 9, 2023), <https://docquery.fec.gov/pdf/889/202303099578980889/202303099578980889.pdf>; see also CFW Amended 2019 Year End Report at 125 (Mar. 3, 2023) (disclosing reduction of debt to \$2,022.15); CFW Amended Oct. 2019 Quarterly Report at 110 (Mar. 3, 2023) (disclosing reduction of debt to \$47,022.15); CFW Amended July 2019 Quarterly Report at 98 (Mar. 3, 2023) (disclosing reduction of debt to \$103,022.15); CFW Amended Apr. 2019 Quarterly Report at 74 (Mar. 16, 2023) (disclosing reduction of debt to \$133,022.15); CFW Amended 2018 Year End Report at 21 (Jan. 15, 2019) (disclosing outstanding debt of \$183,022.15); CFW Amended 2018 Post-General Report at 93 (Apr. 12, 2019) (disclosing addition to \$94,000 debt to new \$183,022.15 total).

²² See CFW Amended Oct. 2020 Quarterly Report at 75-8 (Mar. 3, 2023), <https://docquery.fec.gov/pdf/931/202303099578980931/202303099578980931.pdf>.

It appears that CFW received funds from unregistered political organizations in advance of both its disbursements and debt that it incurred for the program. And by doing so, CFW cannot rely on Advisory Opinion 2004-37, which is materially distinguishable by addressing only reimbursements and not advance payments. Moreover, Advisory Opinion 2004-37 is also distinguishable in that it addresses receipts from only federal committees while, in this audit, CFW received funds from unregistered organizations.²³

²³ In its DFAR Response, CFW also asserts that it can demonstrate through reasonable accounting methods that CFW had federally permissible funds from which to pay for the brochure mailers, notwithstanding any remaining non-federal funds the Commission determines that CFW received. *See* DFAR Response at 2. Because the DFAR and ADRM include a finding for receipt of non-federal funds but no finding regarding the spending of non-federal funds, we do not address that argument here.