



Interim 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.



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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. The Audit staff recommends that CFW amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission) to correct the misstatements.

(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. The Audit staff recommends that CFW provide documentation demonstrating that the contributions were not excessive, or if excessive, were resolved in a timely manner. Absent such a demonstration, CFW should resolve the excessive contributions by submitting signed reattribution letters, issuing refunds or disgorging to the U.S. Treasury any refunds it is unable to process.

(For more detail, see p. 7.)

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 Federal Election Campaign Act (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. The Audit staff recommends that CFW demonstrate compliance with the Act regarding cash disbursements, provide any relevant comments, and submit the missing disbursement records.

(For more detail, see p. 10)

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.”

The Audit staff recommends that CFW demonstrate that all receipts for the “slate ballot mailer” program were made with permissible funds and, if unable to make such a demonstration, issue refunds or disgorge the impermissible funds to the U.S. Treasury. (For more detail, see p. 12.)

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. The Audit staff recommends that CFW amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission) to correct the misstatements.

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.

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 ³	\$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	<u>(196)</u>
Overstatement of Receipts	<u>(\$13,196)</u>

The overstatement of disbursements resulted from the following:

• Disbursements reported that did not clear the bank	\$19,326
• Unexplained differences	<u>317</u>
Overstatement of Disbursements	<u>\$19,643</u>

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 ⁴	\$357,154	\$36,287 Understated

³ 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.

⁴ 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 ⁵	\$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 ⁶	\$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 Audit staff recommends that, within 30 calendar days of service of this report, CFW amend its disclosure reports or file a Form 99⁷ (Miscellaneous Electronic Submission) to correct the misstatements noted above. In addition, the Audit staff recommends that CFW reconcile the cash on hand balance on its most recently filed report to include these adjustments and correct any subsequent discrepancies.

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

⁵ 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.

⁶ See *supra* footnote 5.

⁷ 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.

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. The Audit staff recommends that CFW provide documentation demonstrating that the contributions were not excessive, or if excessive, were resolved in a timely manner. Absent such a demonstration, CFW should resolve the excessive contributions by submitting signed reattribution letters, issuing refunds or disgorging to the U.S. Treasury any refunds it is unable to process.

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
Contributions not resolved via signed reattribution letter or refund	
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 Audit staff recommends that, within 30 calendar days of service of this report, CFW:

- Provide evidence demonstrating that the contributions in question were not excessive, or if excessive, were resolved in a timely manner. This evidence should include 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 (copies of the front and back of negotiated refund checks) or reattributions for excessive contributions.
- Absent such demonstration, CFW should review 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 (copies of the front and back of negotiated checks) 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 are not available to make the necessary refunds, CFW should disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make such refunds.

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 Federal Election Campaign Act (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. The Audit staff recommends that CFW demonstrate compliance with the Act regarding cash disbursements, provide any relevant comments, and submit the missing disbursement records.

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;⁸
- 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.

⁸ 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).

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 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 Audit staff recommends that, within 30 calendar days of service of this report, CFW demonstrate its compliance with the Act regarding cash disbursements, submit the missing disbursement records, and provide any relevant comments.

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."

The Audit staff recommends that CFW demonstrate that all receipts for the "slate ballot mailer" program were made with permissible funds and, if unable to make such a demonstration, issue refunds or disgorge the impermissible funds to the U.S. Treasury.

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.⁹ 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.

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)¹⁰ and 11 CFR §100.52. See Advisory

⁹ The general election period mailer also endorsed Joseph R. Biden and Kamala D. Harris for President and Vice President, respectively.

¹⁰ 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.

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.¹¹

The Audit staff, upon consultation with the Office of General Counsel, concludes 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 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.

¹¹ 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.

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 the 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 Audit staff recommends that, within 30 calendar days of service of this report, CFW:

- Provide evidence that the receipts in question were made from permissible funds; or
- Refund the impermissible funds and provide evidence of such refunds (copies of front and back of the refund check); or
- Disgorge any impermissible funds, for which CFW is unable to process a refund for any reason, to the U.S. Treasury and provide evidence of such disgorgement; or

- If funds are 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.