



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

September 15, 2023

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SUBJECT: Draft Final Audit Report on Oklahoma Leadership Council (LRA 1158)

The Office of the General Counsel has reviewed the Draft Final Audit Report (“DFAR”) on Oklahoma Leadership Council (“OLC”) and concurs with the DFAR’s seven findings. We analyze, below, four of these findings.¹

**I. CONTRIBUTIONS FROM UNREGISTERED POLITICAL ORGANIZATIONS
(FINDING 3)**

Political committees, including state party committees like OLC, that have federal and non-federal accounts may not deposit funds into the federal account that are not subject to the prohibitions and limitations of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the

¹ We concur in but do not analyze Finding 1 (Misstatement of Financial Activity), Finding 2 (Increased Activity), and Finding 4 (Reporting of Debts and Obligations).

“Act”).² The treasurer of a political committee is responsible for ensuring that all contributions received comply with those limitations and prohibitions.³ If a treasurer deposits a contribution presenting a genuine question of whether it was made by a corporation, labor organization, foreign national, or federal contractor, the treasurer must make a “request for evidence of the legality of the contribution,” such as “a statement by the contributor explaining why the contribution is legal.”⁴ The treasurer must “refund the contribution to the contributor” within 30 days of receipt “if the contribution cannot be determined to be legal.”⁵

Under Commission regulations, organizations that are not political committees (“unregistered organizations”) that make contributions must keep records of receipts and disbursements.⁶ Moreover, an unregistered organization that makes a contribution 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 to make such contribution.”⁷

OLC received and deposited 15 contributions from unregistered organizations totaling \$16,981. The 15 unregistered organizations appear to be state and local party organizations, state candidate committees, and state PACs; most, but not all, of these entities appear to be registered under state law with the Oklahoma Ethics Commission.⁸ Oklahoma state law appears to restrict receipts by state-registered committees by amount limitations and source prohibitions that generally align with the Act’s limitations and prohibitions, with the exception of the federal contractor prohibition.⁹ Unlike the Act, Oklahoma state law appears to allow state-registered

² 11 C.F.R. § 102.5(a)(1)(i); *see also* 52 U.S.C. §§ 30116(f), 30118(a), 30119, 30121(a)(setting forth amount limitations and prohibitions against contributions by corporations, federal contractors, and foreign nationals); 52 U.S.C. § 30125 (setting forth soft money restrictions); 11 C.F.R. § 300.30(b)(3)(i) (setting forth restriction on state party committees that “[o]nly contributions that are permissible pursuant to the limitations and prohibitions of the Act may be deposited into any Federal account”).

³ 11 C.F.R. § 103.3(b).

⁴ 11 C.F.R. § 103.3(b)(1).

⁵ *Id.*

⁶ *Id.* § 102.5(b)(1) (also requiring such unregistered organizations to “make such records available for examination by the Commission”).

⁷ *Id.*

⁸ *See* Non-Candidate Listing, Okla. Ethics Comm’n, https://apps.ok.gov/ethics/public/noncand_list.html (last visited Sept. 7, 2023); Candidate Listing, Okla. Ethics Comm’n, https://apps.ok.gov/ethics/public/cand_list.html (last visited Sept. 7, 2023).

⁹ *See, e.g.*, 2020 State Elections: Contribution Chart, Okla. Ethics Comm’n, https://www.ok.gov/ethics/Campaign_Finance_Reporting/Contributions_Table/index.html; 21 OK Stat § 187.2; Okla. Ethics Comm’n, Rule 2.23 (prohibiting corporate and labor union contributions to any political party, political

committees to accept contributions from federal contractors. Thus, the contributions from unregistered organizations present two genuine questions about their legality. First, contributions OLC received from the unregistered organizations that filed with the Oklahoma Ethics Commission present a genuine question as to whether they were comprised of funds from a prohibited source: federal contractors. Second, OLC's contributions from unregistered organizations that did not file with the Oklahoma Ethics Commission present a genuine question as to whether they were comprised of funds from all federal prohibited sources.

OLC's treasurer therefore had an obligation, under 11 C.F.R. § 103.3(b)(1), to inquire about, and receive evidence of, the legality of these contributions, specifically, whether the contributions were made from funds subject to the limitations and prohibitions of the Act.¹⁰ Because the unregistered organizations had an obligation, under 11 C.F.R. § 102.5(b)(1), to keep records and demonstrate the permissibility of their contributions, OLC's inquiries, if it made them, should have resulted in documentation to provide to Audit staff in response to recommendations at the Exit Conference and in the Interim Audit Report ("IAR"). OLC has not provided Audit staff with any information or documentation about efforts it made to determine the legality of these contributions, or any evidence of legality it received from these contributors.¹¹ We therefore concur in the DFAR's inclusion of these receipts in Finding 3.

II. RECORDKEEPING FOR COMMUNICATIONS (FINDING 5).

The Act specifies that the treasurer of a political committee shall preserve all records and accounts required to be kept for three years after the report to which such records and accounts relate is filed.¹² Commission regulations governing "formal requirements" relating to reports require that committees "shall maintain all records ... which shall provide in sufficient detail the necessary information and data from which the filed reports and statements can be verified, explained, clarified, and checked for accuracy and completeness."¹³

The DFAR identifies 35 disbursements, totaling \$378,222, for communications — reported as, variously, operating expenditures and Federal Election Activity ("FEA") (including FEA paid entirely with federal funds) — for which OLC provided insufficient documentation to verify the accurate classification of the reported communication type. OLC provided invoices but not the communications themselves for most of the reported disbursements in the proposed finding (\$364,620 for 18 reported communications); for the remainder of the proposed finding

action committee or candidate); Okla. Ethics Comm'n, Rule 2.17, Commission Comments (noting that contributions from foreign nationals are prohibited under federal law).

¹⁰ *See id.* § 103.3(b)(1).

¹¹ OLC did not provide a response to the IAR and, in response to the Exit Conference, provided only a general statement that it would amend its reports. It has not yet amended its reports.

¹² 52 U.S.C. § 30102(d); *see also* 11 C.F.R. § 102.9(b).

¹³ 11 C.F.R. § 104.14(b)(1).

(\$13,602 for 17 reported communications), OLC provided neither invoices nor the communications. Audit staff recommended at the Exit Conference and in the IAR that OLC provide documentation, including invoices, the communications, and information associating each communication with an invoice, so that they may ascertain the nature and the proper reporting of the disbursements. OLC has not, to date, provided such information and documentation.

We thus concur with this finding in the DFAR because additional documentation in the form of the communications themselves is necessary to verify that the correct purpose was reported for each communication, and that the characterization of each communication (as operating expenditure or FEA) matches the content of that communication. The invoices alone, for those communications for which OLC provided them, do not independently satisfy the requirements of 11 C.F.R. § 104.14(b)(1). The invoices do not contain each of the elements by which accurate reporting of the communications can be verified, explained, clarified, and checked for accuracy and completeness.¹⁴

Different types of communications are reported on different Schedules and lines, with specific reported information required for the different types. For example, IEs are reported on Schedule E and must report, *inter alia*, the candidate supported or opposed, that candidate's office sought, the congressional district, and the election.¹⁵ Allocated expenses are reported on Schedule H4 and must report, *inter alia*, the type of allocated activity or event while FEA paid for with entirely federal funds is reported on Schedule B.¹⁶ Without reference to the content of a communication, Audit staff cannot determine that a disbursement for a mailer reported on Schedule B as a non-candidate communication should, instead, have been reported as an IE on Schedule E or a coordinated party expenditure on Schedule F because the communication, in fact, contained express advocacy.¹⁷

Because OLC has not met its obligation to maintain and submit records by which Audit staff can verify the 35 disbursements, OGC concurs with the inclusion of this recordkeeping finding in the DFAR.

¹⁴ *Id.*; and see, e.g., 11 C.F.R. §§ 102.9(a), (b), 104.3(b), 104.4, 104.10(a), 106.7, 109.10, 109.20, and 300.36. (regulations governing different communication types, requiring additional information for some types of communications, such as whether a communication supported or opposed a candidate, who the communication benefited, the referenced candidate's district, and identification of the election).

¹⁵ 11 C.F.R. § 104.3(b)(3)(vii), 104.4.

¹⁶ See FEC Form 3X.

¹⁷ See 52 U.S.C. § 30101(17) (defining "independent expenditure"); 11 C.F.R. § 100.22 (defining "expressly advocating").

III. RECORDKEEPING FOR EMPLOYEES (FINDING 6).

Auditors determined that OLC failed to maintain required monthly payroll logs or records for 10 payroll payments to 4 employees totaling \$25,031.¹⁸ This includes nine payments to three employees reported on Schedule H4 (Disbursements for Allocated Federal and Non-Federal Activity) but paid with federal funds from the federal account, and one payment to one employee with 100% non-federal funds from the non-federal account in a month in which OLC also reported a payment to that employee on Schedule B, Line 30(b) (Federal Election Activity Paid Entirely With Federal Funds).

As discussed above, the Act and Commission regulations provide that a Committee shall maintain records for the matters required to be reported, and those records must provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness.¹⁹ Under Commission regulations, payroll paid “to State, district, or local party committee employees who spend 25 percent or less of their compensated time in a given month on Federal election activity or on activity in connection with a Federal election” may be allocated as administrative costs; *i.e.*, may be paid with a combination of funds from the committee’s federal and non-federal accounts.²⁰ Commission regulations also provide that when allocating payroll, party committees are required to “keep a monthly log of the percentage of time each employee spends in connection with a Federal election.”²¹

Because OLC has not provided payroll logs, Audit staff does not have sufficient information to verify, explain, clarify, and check for accuracy and completeness the one payment of payroll with 100% non-federal funds in a month in which OLC also reported a payment to that employee for FEA. As for the three employees paid with entirely federal funds but reported on Schedule H4, the Commission has determined that when considering failures to keep payroll logs under 11 C.F.R. § 106.7(d)(1), “as an exercise of prosecutorial discretion, the Commission will not pursue a recordkeeping violation for the failure to keep time logs or provide affidavits to

¹⁸ As used in this section, “payroll” includes salary, wages, and fringe benefits. Payroll payment amounts in Finding 6 are stated net of taxes and fringe benefits.

¹⁹ See 52 U.S.C. § 30102(d); 11 C.F.R. § 104.14(b)(1).

²⁰ 11 C.F.R. § 106.7(c)(1), (d)(1)(i), (d)(2); see also 52 U.S.C. §§ 30101(2)(A)(iv), 30125(b)(1) (defining “Federal Election Activity” to include certain salary payments and requiring use of only federal funds for FEA, respectively); State, District, and Local Party Committee Payment of Certain Salaries and Wages, 70 Fed. Reg. 75,379 (Dec. 20, 2005) (explaining rulemaking history and amendment of rules at 11 C.F.R. § 106(c)-(d) and 11 C.F.R. part 300).

²¹ 11 C.F.R. § 106.7(d)(1). Committees may also provide documentation consistent with 11 C.F.R. § 104.14(b)(1) to demonstrate that an employee was involved in exclusively non-federal activities. See Final Audit Report of the Commission on Republican Party of Minnesota — Federal at 8-10; see also Conciliation Agreement ¶V.1, MUR 8042 (Republican Party of Minnesota — Federal) (conciliating violation, post-audit).

account for employee salaries paid for with 100% federal funds *and reported as such.*²² OLC appears to have made payroll payments for three employees with 100% federal funds, but did not report them as such.²³ Because these employees were reported as receiving an allocation of federal and non-federal funds, they do not meet the conditions for exclusion from a finding on the recordkeeping requirements.²⁴ And because OLC has not provided auditors with payroll logs for these employees, Audit staff cannot verify, explain, clarify, and check the reported payments for accuracy and completeness or explain why the reporting seems at odds with the type of funds used for the payroll payment.²⁵

Because OLC did not maintain and submit records, including the required payroll logs necessary to verify the percentage of time each employee spent in connection with a federal election, we concur with the inclusion of this recordkeeping finding in the DFAR.

IV. REPORTING OF APPARENT INDEPENDENT EXPENDITURES (FINDING 7).

A. Reporting of Apparent Independent Expenditures

The Act requires nonauthorized political committees to report, among other information, the “name and address of each ... person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year ... in connection with an independent expenditure by the reporting committee.”²⁶ The required information for an independent expenditure (“IE”) “shall be reported on Schedule E as part of a report covering the reporting period in which the aggregate disbursement for any independent expenditure to any person exceeds \$200 per calendar year.”²⁷

Audit staff identified apparent IEs totaling \$345,389 on Schedule B, Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds) that the Committee should have disclosed on either (1) Schedule E, Line 24 (Itemized Independent Expenditures), for the subset of the total

²² Vote Certification, Request for Consideration of a Legal Question by the Democratic Party of Illinois (Nov. 30, 2012) (emphasis added).

²³ Finding 6 does not include 109 payments to employees paid with 100% federal funds and reported as such. *See* DFAR, Part I, Background, Commission Guidance (explaining prior Commission determination of log obligation for employees paid exclusively with federal funds).

²⁴ *See supra*, note 22 and related text.

²⁵ *See supra*, notes 13, 19, and related text.

²⁶ 52 U.S.C. § 30104(b)(6)(B)(iii) (also requiring reporting of the date, amount, and purpose of the independent expenditure (“IE”) and the name and office sought by the candidate the IE supports or opposes); *see also id.* § 30101(17) (defining “independent expenditure”).

²⁷ 11 C.F.R. § 104.3(b)(3)(vii)(C).

that were publicly disseminated and paid for in the same reporting period,²⁸ or (2) on both Schedules D (Debts and Obligations) and E, for the subset of the total that were publicly disseminated in a reporting period prior to payment in a later reporting period.²⁹ Properly reporting IEs supports the Commission’s public disclosure priorities because campaign finance data is sorted and accessed differently based on the schedules and line numbers on which data is reported, to meet the needs of those exploring the data. OGC thus concurs with this portion of Finding 7 in the DFAR.

B. Failure to File 24-Hour or 48-Hour Reports for Apparent Independent Expenditures

Finding 7 also addresses OLC’s failure to file any 24-hour or 48-hour reports of IEs during the 2019-2020 audit period.

The Act requires a political committee that “makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of an election [to] file a report describing the expenditures within 24 hours.”³⁰ After the initial report, a political committee must “file an additional report within 24 hours after each time [it] makes or contracts to make independent expenditures aggregating an additional \$1,000 with respect to the same election as that to which the initial report relates.”³¹

The Act also requires a political committee that “makes or contracts to make independent expenditures aggregating \$10,000 or more at any time up to and including the 20th day before the date of an election [to] file a report describing the expenditures within 48 hours.”³² After the initial report, a political committee must “file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional

²⁸ See Bipartisan Campaign Reform Act of 2002 Reporting, 68 Fed. Reg. 404, 407 (Jan. 3, 2003) (“If the communication is . . . publicly disseminated and paid for in the same reporting period, then the political committee must report the [IE] on Schedule E for that reporting period.”). OLC publicly disseminated and paid for \$282,474 of the IEs in the same reporting period.

²⁹ See *id.* (“If the communication is aired in one reporting period (e.g., during August for a monthly filer) and payment is made in a later reporting period (e.g., during September), then the political committee must report the independent expenditure as a memo entry on Schedule E on its August report if the \$10,000 threshold has been exceeded and on Schedule D if it is a reportable debt under 11 CFR 104.11. The September report should show a payment on Schedule E and the same payment on Schedule D, if applicable.”); see also 11 C.F.R. §§ 104.3(b)(3)(vii), 104.4(a), 104.11. OLC publicly disseminated IEs for which it paid \$62,915 in a later reporting period.

³⁰ 52 U.S.C. § 30104(g)(1)(A).

³¹ *Id.* § 30104(g)(1)(B).

³² *Id.* § 30104(g)(2)(A).

\$10,000 with respect to the same election as that to which the initial report relates.”³³ Both the 24- and 48-hour reports must be filed on Schedule E of FEC Form 3X.³⁴

The 48-hour IE reporting period for the November 3, 2020, general election extended up to and including October 14, 2020 and the 24-hour IE reporting period was from October 15 to November 1, 2020.³⁵ Audit staff identified nine disbursements on Schedule B to vendor Axiom Strategies totaling \$182,168 for “campaign mailers” that appear, based on the invoice dates, to have been disseminated in the 48-hour IE reporting period.³⁶ Audit staff also identified nine disbursements on Schedule B to vendor Axiom Strategies totaling \$144,292 for “campaign mailers” that appear, based on the invoice dates, to have been disseminated in the 24-hour IE reporting period.³⁷ OGC concurs with including these communications in this portion of Finding 7.

³³ *Id.* § 30104(g)(2)(B).

³⁴ 11 C.F.R. § 104.4(b).

³⁵ 24- and 48-Hour Reports of Independent Expenditures periods: general election (2020), <https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/2020-reporting-dates/24-and-48-hour-reports-independent-expenditures-periods-general-election-2020/>.

³⁶ The invoice dates are from September 30 to October 14, 2020.

³⁷ The invoice dates are from October 15 to October 23, 2020.