



May 25, 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

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By: Camilla Reminsky *CR*  
Lead Auditor

Subject: Audit Division Recommendation Memorandum on Steve Daines for Montana (A21-04)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to Steve Daines for Montana (SDFM) on March 31, 2023 (see attachment). SDFM 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, SDFM provided additional information, as noted below. Additionally, the Office of General Counsel (OGC) issued comments (LRA 1146, dated May 24, 2023, attached) on SDFM's response to the DFAR.

**Finding 1. Receipt of Contributions in Excess of the Limit**

In response to the DFAR, SDFM provided additional check copies, totaling \$18,300, to substantiate refunded checks for excessive contributions. SDFM further stated that it "intends to resolve all remaining excessive contributions that have not be[en]

refunded, reattributed, or redesignated as permitted at the conclusion of this audit once the Commission's findings are finalized."

SDFM reiterated its objection to the use of sampling in the audit process. SDFM stated that it was able to resolve a "significant number" of the excessive contributions specifically identified by the Audit staff and provided to the committee, however, it does not "understand how it is possible that it could have corrected the remaining *projected* errors that were not specifically identified." SDFM noted that the projected amount has no "complete, itemized list of identified and confirmed excessive contributions," and that the projected amount may vary by hundreds of thousands of dollars. Accordingly, SDFM objects to the placement on the public record of a report stating that SDFM did not resolve excessive contributions based on a sample projection when it "worked diligently to correct the actual, identified excessive contributions that the Audit Division brought to its attention."

Audit sampling is a well-established method used in both public and private sectors during audits which have a large data population. It is used when the manual inspection of the entire population is deemed impractical, either due to the prohibitive costs involved or the sheer volume of data being audited. By selecting a representative subset of the population using statistical methods, auditors can obtain a comprehensive understanding of the population's composition and characteristics, without the need for a time-consuming and potentially costly full-data inspection. The Audit staff restates that the use of statistical sampling has been approved by the Commission for use in Title 52 audits for over 30 years, and the Audit staff notified SDFM of the possible use of sampling to project the dollar value of exceptions, errors, or discrepancies in its Audit Notification Letter dated April 28, 2021. The Audit staff acknowledges that no specific list of contributions was given to SDFM to remediate the sample projection. However, it should be noted that, after being advised of the sample projection of excessive contributions at the February 25, 2022 exit conference, it was incumbent upon SDFM (1) to conduct a thorough review of the contributions received, and once completed, refund all excessive contributions found, or (2) disgorge the amount of excessive contributions projected by the sample review to the U.S. Treasury. Both are acceptable options to remediate sample projections of errors. However, SDFM did not utilize either of these options. The Audit staff notes that, after notification of the errors at the exit conference, SDFM had more than 14 months in which to examine its own records to further identify and refund any discovered excessive contributions.

The Audit staff recommends that the Commission find that SDFM received excessive contributions from individuals totaling \$496,604.

## **Finding 2. Disclosure of Debts and Obligations**

In response to the DFAR, SDFM reiterated its position that the ad buy of \$108,750 was not placed at the time of the invoice. Instead, SDFM contends the ad buy was delayed until September 2020, at which time SDFM issued payment. SDFM stated, "To the best of the Committee's knowledge, its media vendor did not withdraw and reissue the June 2020 invoice." Additionally, SDFM stated, "The Committee did not produce written records evidencing the delay of the ad buy. It is possible that arrangements were made by telephone and no written records exist. The Committee

contends, however, that its explanation is reasonable and entirely consistent with the realities of media placement/ad buy invoicing, and that no substantiating written documentation is necessary in these circumstances.” SDFM further restated that it had received several invoices during one reporting period, and it paid the invoices early in the next reporting period. SDFM “contends that the absence of this debt reporting is immaterial to the public record.”

The Audit staff maintains its position that the ad buy of \$108,750 required debt reporting. According to bank records and FEC disclosure reports filed during the 2020 election cycle, SDFM spent more than \$4.5 million with this specific media vendor. Given this significant business relationship, the Audit staff recommended SDFM provide documentation to substantiate its “delayed” placement contention. Without some form of evidence that SDFM and the media vendor did not abide by the terms of the invoice, the Audit staff must solely rely on the media vendor invoice for determining required debt reporting. Regarding the invoice payments that SDFM characterizes as “immaterial to the public record”, 11 CFR §104.11(b) is clear that a debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred, and there are no exceptions to this reporting requirement.

The Audit staff recommends that the Commission find that SDFM failed to disclose debts and obligations totaling \$373,967.

### **Finding 3. Disclosure of Receipts**

In response to the DFAR, SDFM reiterated its objection to the use of sampling in this audit. SDFM stated that it was able to address the errors found within the sample itself, which were provided by the Audit staff, however, it “does not understand how it is possible that it could have corrected the remaining *projected* errors that were not specifically identified.” SDFM noted that “as we understand it, no complete, itemized list of identified and confirmed incorrect disclosures actually exists,” and that “the total [projected error] figure may be incorrect by hundreds of thousands of dollars.” Accordingly, SDFM objects to the Commission’s placement of a report on the public record stating that it failed to correct 97% of the disclosure errors for contributions from individuals and that its disclosure errors remain materially incorrect. SDFM stated, “both assertions are deeply misleading and quite simply incorrect.” SDFM added that it “worked diligently to correct the actual, identified reporting errors that the Audit Division brought to its attention, and objects to being faulted for not correcting unspecified *projected* disclosure errors.” Regarding the disclosure of joint fundraising receipts, SDFM stated that a significant portion of the error amount consists of “minor reporting errors that in no way materially impacted the public record or deprived anyone of information.” SDFM noted that it mistakenly reported the date of receipt as the date it received the transfer from the joint fundraising committee, rather than the date the contribution was received by the joint fundraising committee. SDFM characterized this as a “harmless error” as the “contributor’s identity and the contribution amount were reported on the public record as required.”

The Audit staff maintains its position on the use of statistical sampling as outlined in Finding 1 (Receipt of Contributions in Excess of the Limit). However, the Audit staff notes that, in this finding, SDFM did not correct the disclosure of any of the

specific errors included in the sample projection and provided by the Audit staff to SDFM via spreadsheet during the February 25, 2022 exit conference. This contradicts SDFM's statement that it "worked diligently to correct the actual, identified reporting errors that the Audit Division brought to its attention". These contribution errors, along with all the other errors outlined in this memorandum, were provided to SDFM more than 14 months ago. Regarding the disclosure of joint fundraising receipts, 11 CFR §102.17(c)(3)(iii) and (c)(8)(i)(B) state a joint fundraising participant must report the date of receipt of a contribution received through a joint fundraising committee as the day the joint fundraising representative received the contribution.

The Audit staff recommends that the Commission find that SDFM failed to correctly disclose receipts totaling \$1,469,835.

OGC 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 Camilla Reminsky or Kendrick Smith at 694-1200.

Attachments:

- Draft Final Audit Report of the Audit Division on Steve Daines for Montana
- Comments on Steve Daines for Montana Response to the Draft Final Audit Report, dated May 24, 2023 (LRA 1146)

cc: Office of General Counsel



# Draft Final Audit Report of the Audit Division on Steve Daines for Montana (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.<sup>1</sup> 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)

Steve Daines for Montana is the principal campaign committee for Steve Daines, Republican candidate for the United States Senate from the state of Montana, and is headquartered in Helena, Montana. For more information, see the Campaign Organization Chart, p. 2.

## Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 27,131,569
○ Contributions from Political Committees	3,304,667
○ Transfers from Authorized Committees	1,371,488
○ Other Receipts	71,802
<b>Total Receipts</b>	<b>\$ 31,879,526</b>
• Disbursements	
○ Operating Expenditures	\$ 29,508,162
○ Transfers to Authorized Committees	7,754
○ Contribution Refunds to Individuals	498,117
○ Contribution Refunds to Political Committees	34,003
○ Other Disbursements	3,173,883
<b>Total Disbursements</b>	<b>\$ 33,221,919</b>

## Findings and Recommendations (p. 4)

- Receipt of Contributions in Excess of the Limit (Finding 1)
- Disclosure of Debts and Obligations (Finding 2)
- Disclosure of Receipts (Finding 3)

<sup>1</sup> 52 U.S.C. §30111(b).



# **Draft Final Audit Report of the Audit Division on Steve Daines for Montana**

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(January 1, 2019 - December 31, 2020)

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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of Steve Daines for Montana (SDFM), 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 disclosure of debts and obligations;
6. the consistency between reported figures and bank records;
7. the completeness of records; and
8. other committee operations necessary to the review.



## Part II

### Overview of Campaign

#### Campaign Organization

<b>Important Dates</b>	
• Date of Registration	November 12, 2010
• Audit Coverage	January 1, 2019 – December 31, 2020
<b>Headquarters</b>	
Helena, Montana	
<b>Bank Information</b>	
• Bank Depositories	Three
• Bank Accounts	Three checking, One money market, One CD
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Lorna Kuney
• Treasurer During Period Covered by Audit	Lorna Kuney
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

## Overview of Financial Activity (Audited Amounts)

<b>Cash on hand @ January 1, 2019</b>	<b>\$ 1,450,176</b>
<b>Receipts</b>	
○ Contributions from Individuals	27,131,569
○ Contributions from Political Committees	3,304,667
○ Transfers from Authorized Committees	1,371,488
○ Other Receipts	71,802
<b>Total Receipts</b>	<b>\$ 31,879,526</b>
<b>Disbursements</b>	
○ Operating Expenditures	29,508,162
○ Transfers to Authorized Committees	7,754
○ Contribution Refunds to Individuals	498,117
○ Contribution Refunds to Political Committees	34,003
○ Other Disbursements	3,173,883
<b>Total Disbursements</b>	<b>\$ 33,221,919</b>
<b>Cash on hand @ December 31, 2020</b>	<b>\$ 107,783</b>

## **Part III**

### **Summaries**

#### **Findings and Recommendations**

##### **Finding 1. 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, as revised for the Draft Final Audit Report, indicated that SDFM received apparent excessive contributions totaling \$496,604. These errors occurred as a result of SDFM not resolving the excessive portions of contributions by requesting and receiving signed reattribution letters from its contributors, issuing refunds for the excessive portion of contributions in a timely manner, or ensuring that issued refunds were resolved in a timely manner. In response to the Interim Audit Report recommendation, SDFM maintained its objection to the use of sampling to estimate or project errors. SDFM resolved excessive contributions, totaling \$114,177, albeit untimely. SDFM stated that an additional \$36,000 in refunds were issued; however, it did not provide cancelled checks to the contributors, or an acceptable alternative, to substantiate these refunds. The Audit staff recommends that SDFM provide documentation demonstrating that the remaining excessive contributions, totaling \$382,427, were not excessive, or if excessive, that the contributions were resolved in a timely manner. Absent such demonstration, the Audit staff further recommends that SDFM obtain a signed reattribution letter from each contributor, refund any remaining excessive amounts, or disgorge to the U.S. Treasury any refunds it has been unable to process.

(For more detail, see p. 6.)

##### **Finding 2. Disclosure of Debts and Obligations**

During audit fieldwork, the Audit staff noted that SDFM failed to disclose debts and obligations to five vendors, totaling \$373,967. In response to the Interim Audit Report recommendation, SDFM filed amended disclosure reports; however, it did not include these debts and obligations. In its narrative response, SDFM stated that an ad buy of \$108,750 did not require reporting because it was not incurred at the time of the invoice. SDFM stated the ad buy was “delayed” and the invoice was paid, instead, when the vendor indicated the obligation was made. SDFM did not provide additional documentation, such as email communications with the vendor, to substantiate this position. SDFM further stated that invoices, totaling \$48,868, did not require reporting as debts because the invoiced amounts were disputed, and it paid the invoices once clarification was received from the vendor. Regarding the remaining debts and obligations, SDFM stated that the debts should be excluded from the finding because they only overlapped reporting periods by 6-8 days and were therefore “...immaterial to the public record.”

The Audit staff maintains that SDFM should provide documentation to support its position that the ad buy was delayed and appropriately paid once incurred. For the

possible disputed debts and remaining obligations, the explanations provided by SDFM do not exclude the debts and obligations from the reporting requirements. Absent the provision of supporting documentation, the Audit staff maintains that these debts and obligations were required to be reported on Schedule D (Debts and Obligations). (For more detail, see p. 11.)

### **Finding 3. Disclosure of Receipts**

During audit fieldwork, the Audit staff reviewed receipts to verify the accuracy of the information disclosed on SDFM's reports. The review indicated that SDFM did not correctly disclose contributions from individuals and political committees, totaling \$568,804 and \$39,000, respectively on Schedule A (Itemized Receipts). In addition, the Audit staff determined that SDFM received a total of \$1,409,254 in net proceeds from joint fundraising activity from 22 joint fundraising committees. However, SDFM did not itemize or correctly disclose transfers and memo entries, totaling \$843,231, on Schedule A, as required. Finally, the Audit staff determined that SDFM received a total of \$9,400 in net proceeds through one conduit. The conduit was itemized on Line 12 (Transfers from Other Authorized Committees) instead of disclosed as a memo entry, and the original contributors, totaling \$9,400, were not itemized. In response to the Interim Audit Report recommendation, SDFM maintained its objection to the use of sampling to estimate or project errors. Additionally, SDFM filed amended reports for the 2020 election cycle; however, the amended reports did not materially correct the public record. SDFM's amended reports corrected most of the disclosure errors for the political committees, the joint fundraising activity, and the conduit. However, nearly all of the identified errors for contributions from individuals remain inaccurately disclosed.<sup>2</sup> The Audit staff recommends that SDFM amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission) to correctly disclose the contributions from individuals totaling \$549,204. (For more detail, see p. 14.)

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<sup>2</sup> The disclosure errors for contributions from individuals are presented in the chart, Disclosure Errors for Individuals, on page 16.

## Part IV

# Findings and Recommendations

### **Finding 1. 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, as revised for the Draft Final Audit Report, indicated that SDFM received apparent excessive contributions totaling \$496,604. These errors occurred as a result of SDFM not resolving the excessive portions of contributions by requesting and receiving signed reattribution letters from its contributors, issuing refunds for the excessive portion of contributions in a timely manner, or ensuring that issued refunds were resolved in a timely manner. In response to the Interim Audit Report recommendation, SDFM maintained its objection to the use of sampling to estimate or project errors. SDFM resolved excessive contributions, totaling \$114,177, albeit untimely. SDFM stated that an additional \$36,000 in refunds were issued; however, it did not provide cancelled checks to the contributors, or an acceptable alternative, to substantiate these refunds. The Audit staff recommends that SDFM provide documentation demonstrating that the remaining excessive contributions, totaling \$382,427, were not excessive, or if excessive, that the contributions were resolved in a timely manner. Absent such demonstration, the Audit staff further recommends that SDFM obtain a signed reattribution letter from each contributor, refund any remaining excessive amounts, or disgorge to the U.S. Treasury any refunds it has been 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)(ii)(B).

**E. Redesignation of Excessive Contributions.** When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

- The redesignation must be signed by the contributor;
- The redesignation 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(b)(5).

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

When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. 11 CFR §110.1(b)(5)(ii)(B)(1)-(4).

The committee is required to notify the contributor of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the option to receive a refund instead.

## Facts and Analysis

### A. Facts

#### 1. Facts

The Audit staff utilized sample testing and a review of other contributions, not included in the sample population, to identify apparent excessive contributions from individuals, as noted below.

<b>Excessive Contributions - Testing Method</b>	
Sample Projection Amount <sup>3</sup>	\$291,803
100% Review of High Dollar Contributions	\$152,451 <sup>4</sup>
100% Review of Contributions Received Through Joint Fundraisers	\$52,350
<b>Total Amount of Excessive Contributions</b>	<b>\$496,604</b>
<b>Reason for Excessive Contributions</b>	
Contributions Not Resolved via Signed Reattribution Letter or Refund	\$496,604

<sup>3</sup> The sample error amount (\$291,803) was projected using a Monetary Unit Sample with a 95 percent confidence level. The sample estimate could be as low as \$143,260 or as high as \$583,597.

<sup>4</sup> After reviewing the response to the Interim Audit Report, the Audit staff removed one contribution totaling \$2,800 from the finding. This contribution, while excessive, was refunded prior to the Audit. Additionally, the Audit staff removed excessive contributions, totaling \$2,400, after discovering that the contributions were presumptively redesignated by SDFM prior to the Audit. As such, the finding has been updated from \$501,804 in total excessive contributions to \$496,604.

<b>Excessive Contributions - Testing Method</b>	
<b>Total Amount of Excessive Contributions</b>	<b>\$496,604</b>

## **2. Additional Information**

The errors were primarily a result of SDFM not resolving the excessive portions of contributions made on single/joint account checks, credit card, or through a joint fundraiser by requesting signed reattribution letters or a refund. SDFM did issue refunds, however, some of the refunds were not cashed by the contributors. The total amount of refunds issued, but not cashed, is \$60,327.

SDFM did not maintain a separate account for questionable contributions. Based on its cash on hand at the end of the audit period, it appears that SDFM did not maintain sufficient funds to refund the apparent excessive contributions.

### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with SDFM representatives at the exit conference and provided a schedule of the apparent excessive contributions. SDFM representatives questioned the use of sampling in the audit, and the Audit staff explained that the Audit Division has used statistical sampling for many years and that it is a widely used tool in accounting and auditing. The Audit staff then walked SDFM representatives through each excessive contribution, at their request.

In response to the exit conference, SDFM representatives stated that they object to the use of sampling to project errors. The Audit staff notes that the use of statistical sampling has been approved by the Commission for use in Title 52 audits for over 30 years.

SDFM representatives also contended that contributions, for which it issued refunds but the refund checks were not cashed by the contributors, should be treated as a separate category from those contributions that were never refunded. The Audit staff acknowledged that SDFM issued refund checks, which were not cashed, for excessive contributions; however, these checks should have been re-issued, or the excessive amounts disgorged to the U.S. Treasury, so that the amount of the excessive contribution did not remain in SDFM's bank accounts.

SDFM representatives also objected to the inclusion of a contribution that they stated was not actually excessive. SDFM's database records and its disclosure reports showed the receipt of three contributions on the same date from a single contributor, one in the amount of \$5,600, and two in the amount of \$2,800 each. The \$5,600 contribution was refunded timely, via a credit card chargeback, so SDFM did not believe this contributor made excessive contributions. However, the Audit staff reviewed the credit card records provided by SDFM, and found three contributions from this same contributor, all on the same date, each for \$5,600, for a total of \$16,800. There was one chargeback that refunded one of the \$5,600 contributions in a timely manner. SDFM may designate one of the remaining two \$5,600 contributions, as \$2,800 for the primary election and



presumptively redesignate \$2,800 to the general election. However, the final \$5,600 contribution remains excessive and should be refunded.

The Interim Audit Report recommended that SDFM:

- Provide evidence, which demonstrates that the contributions, totaling \$496,604,<sup>5</sup> were not excessive, or if excessive, were resolved in a timely manner.
- Absent such demonstration, SDFM should have obtained a signed authorization letter from the contributor, refunded any remaining excessive amounts, or disgorged any refunds, which were not cashed by the contributors, to the U.S. Treasury.
- If funds were not available to make such refunds, SDFM should have reported the excessive contributions as debts owed on Schedule D (Debts and Obligations) until funds became available to make the refunds.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, SDFM representatives maintained their objection to the use of sampling to project errors. The Audit staff reiterates that the use of statistical sampling has been approved by the Commission for use in Title 52 audits for over 30 years.

SDFM representatives also restated their contention that contributions, for which it issued refund checks, but the refund checks were not cashed by the contributors, should be treated as a separate category from contributions that were never refunded. The Audit staff again acknowledges that SDFM issued refund checks for excessive contributions, which were not cashed; however, these refund checks should have been voided and re-issued, or the excessive amounts disgorged to the U.S. Treasury, so that the excessive contributions did not remain in SDFM's bank accounts.

In addition, SDFM stated that excessive contributions, totaling \$56,920, were disgorged to the U.S. Treasury and provided bank records showing the same. SDFM further stated that "all remaining contributions specifically identified by the Audit Division as excessive" were refunded, and that the refunds were reported on its 2022 October Quarterly Report, with additional refunds to appear on its next disclosure report. SDFM reported refunds, totaling \$96,782, on its 2022 October Quarterly Report, however, bank records documenting the refunds were provided for only \$57,282 of the \$96,782 in reported refunds.

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<sup>5</sup> See footnote 4.

<b>Corrective Action Taken by SDFM – Excessive Contributions</b>	
Total Excessive Contributions as of the Draft Final Audit Report	\$496,604 <sup>6</sup>
Contributions Refunded – <i>Issued Untimely, Refunds Supported by Documentation – Resolved</i>	\$57,282 <sup>7</sup>
Contributions Disgorged to the U.S. Treasury – <i>Disgorged Untimely, Disgorgements Supported by Documentation – Resolved</i>	\$56,895 <sup>8</sup>
Contributions Refunded – <i>Issued Untimely, No Documentation to Support Refunds – Not Resolved</i>	\$36,000 <sup>7</sup>
Amount of Excessive Contributions – <i>Not Resolved</i>	\$382,427

The Audit staff concludes that SDFM resolved excessive contributions, totaling \$114,177,<sup>9</sup> albeit untimely. The Audit staff recommends that SDFM provide documentation demonstrating that the remaining excessive contributions, totaling \$382,427,<sup>10</sup> were not excessive, or if excessive, were resolved in a timely manner. Absent such demonstration, the Audit staff further recommends that SDFM obtain a signed reattribution letter from each contributor, refund any remaining excessive amounts, or disgorge to the U.S. Treasury any refunds it has been unable to process.

## **Finding 2. Disclosure of Debts and Obligations**

### **Summary**

During audit fieldwork, the Audit staff noted that SDFM failed to disclose debts and obligations to five vendors, totaling \$373,967. In response to the Interim Audit Report recommendation, SDFM filed amended disclosure reports; however, it did not include these debts and obligations. In its narrative response, SDFM stated that an ad buy of \$108,750 did not require reporting because it was not incurred at the time of the invoice. SDFM stated the ad buy was “delayed” and the invoice was paid, instead, when the

<sup>6</sup> See footnote 4.

<sup>7</sup> The reported refunds, totaling \$96,782, exceed the amount of the corrective action taken (\$57,282 + \$36,000 = \$93,282) because SDFM refunded \$3,500 in contributions that were not included in the violation amount for this finding.

<sup>8</sup> The reported disgorgements to the U.S. Treasury (\$56,920) exceed the amount of the corrective action taken (\$56,895) because SDFM disgorged \$25 in contributions that were not included in the violation amount for this finding.

<sup>9</sup> \$57,282 + \$56,895 = \$114,177

<sup>10</sup> \$496,604 - \$114,177 = \$382,427

vendor indicated the obligation was made. SDFM did not provide additional documentation, such as email communication with the vendor, to substantiate this position. SDFM further stated that invoices, totaling \$48,868, did not require reporting as debts because the invoiced amounts were disputed, and it paid the invoices once clarification was received from the vendor. Regarding the remaining debts and obligations, SDFM stated that the debts should be excluded from the finding because they only overlapped reporting periods by 6-8 days and were therefore "...immaterial to the public record."

The Audit staff maintains that SDFM should provide documentation to support its position that the ad buy was delayed and appropriately paid once incurred. For the possible disputed debts and remaining obligations, the explanations provided by SDFM do not exclude the debts and obligations from the reporting requirements. Absent the provision of supporting documentation, the Audit staff maintains that these debts and obligations were required to be reported on Schedule D (Debts and Obligations).

### **Legal Standard**

- A. Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).
- B. Separate Schedules.** A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).
- C. Itemizing Debts and Obligations.**
- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
  - A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).
- D. Reporting Disputed Debts**
- A disputed debt shall be reported in accordance with 11 CFR§ 104.3(d) and 104.11 if the creditor has provided something of value to the political committee. Until the dispute is resolved, the political committee shall disclose on the appropriate reports any amounts paid to the creditor, any amount the political committee admits it owes and the amount the creditor claims is owed. The political committee may also note on the appropriate reports that the disclosure of the disputed debt does not constitute an admission of liability or a waiver of any claims the political committee may have against the creditor. 11 CFR §116.10(a).

## **Facts and Analysis**

### **A. Facts**

During audit fieldwork, the Audit staff reviewed SDFM's disbursement records and disclosure reports for the proper reporting of debts and obligations. This review identified debts, owed to five vendors totaling \$373,967,<sup>11</sup> that SDFM failed to report on Schedule D during the audit period. Based on a review of the records, these vendors provided advertising, fundraising, direct mail, website and listing services, shipping, event catering, and consulting services. SDFM reported debt, totaling \$758,664, on Schedule D during the audit period. The Audit staff calculated the debts, owed to the vendors, based on the invoice date and the subsequent payment date. Debts were outstanding for periods ranging from 13 to 108 days.

### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with SDFM representatives at the exit conference and provided a schedule detailing those transactions requiring disclosure on Schedule D. The SDFM representatives had no comments at that time.

In response to the exit conference, SDFM provided additional documentation for \$23,907 of the outstanding debt showing that the invoices were provided at a later date than the dates reflected on these invoices. As a result, this amount was deducted from the overall undisclosed debt balance discussed at the exit conference and is not included in this finding. SDFM did not provide comments on the remaining undisclosed debts.

The Interim Audit Report recommended that SDFM provide additional documentation demonstrating that the transactions, totaling \$373,967, were not obligations which required reporting on Schedule D. Absent such documentation, it was further recommended that SDFM amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission)<sup>12</sup> to disclose these debts and obligations.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, an SDFM representative stated that while one debt for an ad buy, totaling \$108,750, was invoiced in June 2020, SDFM did not actually purchase this ad buy until September of 2020, and therefore no reporting of the debt was required. In addition, the SDFM representative stated that SDFM disputed the amount of two debts owed to one vendor totaling \$48,868, and once that dispute was resolved, the debts were paid promptly. Finally, the SDFM representative stated that the remaining debts were only unreported for brief periods of time (6-8 days), and are therefore "...immaterial to the public record," as the debts were paid in the subsequent reporting period.

Regarding the ad buy, the Audit staff requested additional documentation, such as an email with the vendor, to verify this, and none was provided. For the debts that SDFM

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<sup>11</sup> Each debt was counted only once, even if it was required to be disclosed over multiple periods.

<sup>12</sup> If SDFM chooses to file a Form 99 instead of amending its disclosure reports, the form must contain all pertinent information that is required on each schedule.

disputed, the Audit staff notes that, per 11 CFR §116.10(a), disputed debts must be reported if the creditor has provided something of value to the political committee. Furthermore, the Audit staff notes that 11 CFR §104.11(b) states that debts in excess of \$500 must be disclosed in the report that covers the date on which the debt was incurred. Each of these debts exceeded \$500 and were not paid in the reporting period in which they were incurred.

Absent the provision of documentation to show that the \$108,750 ad buy was not actually incurred in June 2020, the Audit staff maintains that all the transactions, totaling \$373,967, were debts and obligations that required reporting on Schedule D.

### **Finding 3. Disclosure of Receipts**

#### **Summary**

During audit fieldwork, the Audit staff reviewed receipts to verify the accuracy of the information disclosed on SDFM's reports. The review indicated that SDFM did not correctly disclose contributions from individuals and political committees, totaling \$568,804 and \$39,000 respectively, on Schedule A (Itemized Receipts). In addition, the Audit staff determined that SDFM received a total of \$1,409,254 in net proceeds from joint fundraising activity from 22 joint fundraising committees. However, SDFM did not itemize or correctly disclose transfers and memo entries, totaling \$843,231, on Schedule A, as required. Finally, the Audit staff determined that SDFM received a total of \$9,400 in net proceeds through one conduit. The conduit was itemized on Line 12 (Transfers from Other Authorized Committees) instead of disclosed as a memo entry, and the original contributors, totaling \$9,400, were not itemized. In response to the Interim Audit Report recommendation, SDFM maintained its objection to the use of sampling to estimate or project errors. Additionally, SDFM filed amended reports for the 2020 election cycle; however, the amended reports did not materially correct the public record. SDFM's amended reports corrected most of the disclosure errors for the political committees, the joint fundraising activity, and the conduit. However, nearly all of the identified errors for contributions from individuals<sup>13</sup> remain inaccurately disclosed. The Audit staff recommends that SDFM amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission) to correctly disclose the contributions from individuals totaling \$549,204.

#### **Legal Standard**

- A. Itemization Required for Contributions from Individuals.** An authorized candidate committee must itemize any contribution from an individual if it exceeds \$200 per election cycle, either by itself or when combined with other contributions from the same contributor. 52 U.S.C. §30104(b)(3)(A). (Authorized)
- B. Election Cycle.** The election cycle begins on the first day following the date of the previous general election and ends on the date of the next general election. If

<sup>13</sup> See chart, Disclosure Errors for Individuals, on page 16.

contributions and expenditures are designated for another election cycle, then the election cycle begins when the first contribution is received or expenditure is made. 11 CFR §100.3(b).

- C. Required Information for Contributions from Individuals.** For each itemized contribution from an individual, the committee must provide the following information:
- The contributor’s full name and address (including zip code);
  - The contributor’s occupation and the name of his or her employer;
  - The date of receipt (the date the committee received the contribution);
  - The amount of the contribution; and
  - The calendar year-to-date (Unauthorized) election cycle-to-date (Authorized) total of all contributions from the same individual. 11 CFR §§100.12 and 104.3(a)(4) and 52 U.S.C. §30104(b)(3)(A).
- D. Best Efforts Ensures Compliance.** When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee’s reports and records will be considered in compliance with the Act. 52 U.S.C. §30102(i).
- E. Definition of Best Efforts.** The treasurer and the committee will be considered to have used “best efforts” if the committee satisfied all of the following criteria:
- All written solicitations for contributions included:
    - A clear request for the contributor's full name, mailing address, occupation, and name of employer; and
    - The statement that such reporting is required by Federal law.
  - Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
  - The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee’s records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).
- F. Itemization of Contributions from Joint Fundraising Efforts.** After the joint fundraising representative distributes the net proceeds, each participating political committee reports its share as a transfer-in from the joint fundraising representative and itemizes the transfer on a separate schedule A for that Line. Using the records received from the joint fundraising representative, a participating committee also must itemize its share of gross receipts as contributions from the original donors on a memo entry Schedule A to the extent required under 11 CFR §104.3(a).

When itemizing gross contributions, the participant must report the date of receipt as the day the joint fundraising representative received the contribution. 11 CFR §102.17(c)(3)(iii) and (c)(8)(i)(B).

## Facts and Analysis

### A. Disclosure of Receipts

#### 1. Facts

The Audit staff utilized sample testing and a review of other contributions not included in the sample population to identify contributions from individuals, totaling \$568,804, and political committees, totaling \$39,000, which were not correctly disclosed on Schedule A of SDFM's disclosure reports. These reporting errors consisted of the following.

<b>Disclosure of Contributions - Testing Method</b>	
Sample Projection Amount <sup>14</sup>	\$535,012
100% Review of High Dollar Contributions from Individuals	\$33,792
100% Review of Contributions from Political Committees	\$39,000
<b>Total Error Amount</b>	<b>\$607,804</b>

The types of errors discovered in the sample review include incorrect disclosure of receipt date, name, and/or disclosure without a partnership attribution.

<b>Disclosure Errors for Individuals</b>	
Type of Review	100%
Contributions Disclosed without Partnership Attribution	\$19,600
Contributions Disclosed with Incorrect Receipt Date	\$5,600
Contributions Disclosed with Incorrect Amount	\$5,592
Contributions Disclosed with Incorrect Name	\$3,000
<b>Total Error Amount</b>	<b>\$33,792</b>

<sup>14</sup> The sample error amount (\$535,012) was projected using a Monetary Unit Sample with a 95 percent confidence level. The sample estimate could be as low as \$273,748 or as high as \$970,100.

<b>Disclosure Errors for PACs<sup>15</sup></b>	
Type of Review	100%
Contributions Disclosed without an Address	\$27,000
Contributions Disclosed with Incorrect Name	\$16,000
Contributions Disclosed with an Incorrect Election Designation	\$1,000
<b>Total Error Amount</b>	<b>\$39,000</b>

## **2. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the disclosure errors at the exit conference and provided schedules detailing the incorrectly disclosed contributions. SDFM representatives inquired, and the Audit staff confirmed the method for determining date errors, and that contemporaneous documentation would be sufficient to show the date of the contribution receipt.

In response to the exit conference, SDFM stated that the date reported was correct for two contributions. The Audit staff accepted SDFM's explanation, and those contributions are not included in the error amounts within the report. Additionally, SDFM representatives stated that they object to the use of sampling to project errors. The Audit staff reiterated that the use of statistical sampling has been approved by the Commission for use in Title 52 audits for over 30 years. Finally, SDFM indicated that it would amend disclosure reports to correct the errors.

The Interim Audit Report recommended that SDFM amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission)<sup>12</sup> to correctly disclose these contributions.

## **3. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, SDFM maintained its objection to the use of sampling to estimate or project errors. SDFM amended all of its disclosure reports for calendar years 2019 and 2020 to correct the disclosure of contributions, as detailed below. Furthermore, an SDFM representative stated their belief that several contributions noted by the Audit staff as being reported with an incorrect date "...involve immaterial discrepancies that have no impact on the public record." The Audit staff notes that committees are required to report the date of receipt of a contribution. In the case of these contributions, SDFM did not

<sup>15</sup> This group of errors and their respective dollar value exceed total errors (\$39,000) because one contribution, totaling \$5,000, had multiple disclosure errors. Each contribution was only counted once, toward the total error amounts, even if there were multiple errors.



provide proof of a receipt date that differed from documentation provided. Therefore, the Audit staff maintains that these discrepancies should be corrected and SDFM should amend its disclosure reports.

<b>Corrective Action Taken by SDFM – Disclosure of Receipts</b>	
Incorrect Disclosures as of the Interim Audit Report	\$607,804
Reports Amended - 100% Review of High Dollar Contributions from Individuals – <i>Corrected</i>	\$19,600
Reports Amended - 100% Review of Contributions from Political Committees – <i>Corrected</i>	\$38,000
Amount of Incorrectly Disclosed Contributions – <i>Not Resolved</i>	\$550,204 <sup>16</sup>

The Audit staff concludes that incorrect disclosure of receipts, totaling \$550,204, remains unresolved.

## **B. Disclosure of Joint Fundraising Transfers and Memo Entries**

### **1. Facts**

During audit fieldwork, the Audit staff determined that SDFM received a total of \$1,409,254 in net proceeds from joint fundraising activity from 22 joint fundraising committees. However, SDFM did not itemize or correctly disclose transfers and memo entries, totaling \$843,231, on Schedules A (Itemized Receipts). These reporting errors consisted of the following:

<b>Disclosure Errors<sup>17</sup></b>	
Type of Review	100%
Transfers Disclosed on Schedule A – Missing Address	\$84,110
Transfers Disclosed on Schedule A – Incorrect Receipt Date	\$78,941
Transfers Disclosed on Schedule A – Incorrect Amount	\$111

<sup>16</sup> \$607,804 - \$19,600 - \$38,000 = \$550,204. This amount includes contributions from individuals, totaling \$549,204, and contributions from political committees, totaling \$1,000.

<sup>17</sup> These groups of errors and their respective dollar value exceed total errors (\$843,231) because three contributions, totaling \$5,100, had multiple disclosure errors. Each contribution was only counted once toward the total error amount, even if there were multiple errors.

<b>Disclosure Errors<sup>17</sup></b>	
Memo Entries Not Itemized	\$306,585
Memo Entries Disclosed on Schedule A - Incorrect Receipt Date	\$345,034
Memo Entries Disclosed on Schedule A – Apparent Duplicate Entries	\$22,250
Memo Entries Disclosed on Schedule A – Incorrect Address	\$5,100
Memo Entries Disclosed on Schedule A – Incorrect or Missing Name	\$3,200
Memo Entries Disclosed on Schedule A – Incorrect Election Designation	\$2,400
Memo Entries Disclosed on Schedule A – Incorrect Aggregate Total	\$600
<b>Total Error Amount</b>	<b>\$843,231</b>

## **2. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with SDFM representatives at the exit conference and provided schedules detailing the missing or incorrectly disclosed contributions. SDFM representatives did not directly comment on these errors in response to the exit conference.

The Interim Audit Report recommended that SDFM amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission)<sup>12</sup> to correctly disclose the joint fundraising transfers and memo entries.

## **3. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, SDFM amended all of its disclosure reports for calendar years 2019 and 2020 to correct the disclosure of transfers and memo entries, as detailed below.

<b>Corrective Action Taken by SDFM – Disclosure of Joint Fundraising Transfers and Memo Entries</b>	
Incorrect Disclosures as of the Interim Audit Report	\$843,231
Reports Amended – <i>Transfers Corrected</i>	\$163,162
Reports Amended – <i>Memo Entries Corrected</i>	\$669,132
Amount of Incorrect Disclosures Remaining– <i>Not Resolved</i>	\$10,937 <sup>18</sup>

The Audit staff concludes that the incorrect disclosure of joint fundraising transfers and memo entries, totaling \$10,937, remains unresolved.

### **C. Disclosure of Contribution from a Conduit**

#### **1. Facts**

During audit fieldwork, the Audit staff determined that SDFM received a total of \$9,400 in net proceeds through one conduit. The conduit was itemized on Line 12 (Transfers from Other Authorized Committees), however, the original contributors, totaling \$9,400, were not itemized. This resulted in a total of \$18,800 of incorrectly disclosed contributions. These reporting errors consisted of the following.

<b>Disclosure Errors</b>	
Type of Review	100%
Conduit Incorrectly Itemized on Line 12	\$9,400
Contributors Not Itemized	\$9,400
<b>Total Error Amount</b>	<b>\$18,800</b>

#### **2. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with SDFM representatives at the exit conference and provided schedules detailing the missing or incorrectly disclosed contributions. SDFM representatives did not directly comment on these errors in response to the exit conference.

<sup>18</sup> \$843,231 - \$163,162 - \$669,132 = \$10,937

The Interim Audit Report recommended that SDFM amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission)<sup>12</sup> to itemize the required contributions and report the conduit as a memo entry.

### 3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, SDFM amended all of its disclosure reports for calendar years 2019 and 2020 to correct the disclosure of contribution from a conduit, as detailed below.

<b>Corrective Action Taken by SDFM – Disclosure of Contribution from a Conduit</b>	
Incorrect Disclosures as of the Interim Audit Report	\$18,800
Reports Amended – <i>Conduit Corrected</i>	\$9,400
Reports Amended – <i>Contributors Corrected</i>	\$6,600
Amount of Incorrectly Disclosed Contributions – <i>Not Resolved</i>	\$2,800 <sup>19</sup>

The Audit staff concludes that the incorrect disclosure of a \$2,800 contribution from one contributor remains unresolved.

In summary, the Audit staff concludes that SDFM corrected 97% of the disclosure errors for political committees, 99% of disclosure errors for the joint fundraising activity, and 85% of the disclosure errors for the conduit. However, because SDFM did not correct 97% of the disclosure errors for contributions from individuals, totaling \$549,204, SDFM's disclosure errors remain materially incorrect.<sup>20</sup> Therefore, the Audit staff recommends that SDFM amend its disclosure reports or file a Form 99 to correctly disclose the remaining contributions from individuals totaling \$549,204.

<sup>19</sup> \$18,800 - \$9,400 - \$6,600 = \$2,800.

<sup>20</sup> The Audit staff calculated the percentages of the corrected disclosure information by dividing the disclosure errors resolved by total disclosure errors for each disclosure category.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

May 24, 2023

**MEMORANDUM**

**TO:** Patricia C. Orrock  
Chief Compliance Officer

Dayna C. Brown  
Assistant Staff Director, Audit Division

**FROM:** Neven Stipanovic *NS*  
Associate General Counsel, Policy Division

Jessica Selinkoff *JS*  
Assistant General Counsel, Compliance Advice

Joshua Blume *JB*  
Attorney

**SUBJECT:** Audit Division Recommendation Memorandum on Steve Daines for Montana (LRA 1146)

The Office of the General Counsel has reviewed the Audit Division Recommendation Memorandum (“ADRM”) on Steve Daines for Montana (“SDFM”). Per Directive 70, the ADRM attaches a copy of the Draft Final Audit Report (“DFAR”), which has already been sent to the Committee. The DFAR contains three findings: (1) Receipt of Contributions in Excess of the Limit, (2) Disclosure of Debts and Obligations, and (3) Disclosure of Receipts. OGC concurs with the ADRM’s recommendations that the Commission make all three findings in the amounts presented in the DFAR. The analysis below explains this concurrence, notwithstanding SDFM’s objections in response to the DFAR.

**I. FINDINGS 1 AND 3: STATISTICAL SAMPLING**

Portions of Findings 1 and 3 include errors identified by Audit staff’s use of statistical sampling. SDFM opposed the Audit staff’s use of statistical sampling to project errors in Findings 1 and 3 in response to the Exit Conference and to the Interim Audit Report (“IAR”), but

without providing specific reasons.<sup>1</sup> SDFM has now explained its objection to sampling in response to the DFAR.<sup>2</sup> Regarding Findings 1 and 3, SDFM argues that the use of sampling is improper because the committee cannot identify and correct disclosure errors projected through sampling, and because the broad range of projected error misrepresents the total value of SDFM's errors.

The Commission previously rejected a similar challenge to statistical sampling in an audit

[REDACTED] OGC concludes that statistical sampling in Commission audits, as approved by the Commission [REDACTED] remains a valid, useful, and appropriate audit tool. Thus, as explained further below, OGC concludes that the use of statistical sampling in the SDFM audit is proper and concurs in the findings in which statistical sampling was used.

### A. Statistical Sampling Procedures

Statistical sampling is a common auditing tool.<sup>4</sup> The American Institute of Certified Public Accountants ("AICPA"), a professional organization that sets standards of ethics for CPAs as well as standards for the conduct and quality of audits,<sup>5</sup> sets standards for the conduct of sampling in audits.<sup>6</sup> The AICPA audit sampling standards define "audit sampling" as "[t]he selection and evaluation of less than 100 percent of the population of audit relevance such that

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<sup>1</sup> See Exit Conference Response at 2 (Mar. 11, 2022) (stating SDFM "objects generally to the use of a 'sample review' for the purpose of projecting errors"); IAR Response at 1 (Oct. 31, 2022) ("At the outset, we note that the Committee maintains its objection to the use of sampling to estimate or project errors.").

<sup>2</sup> DFAR Response at 1-2, 4-7 (Apr. 18, 2023).

[REDACTED]

<sup>4</sup> Memorandum from Joe Stoltz, Assistant Staff Director, Audit Division, to the Commission, Audit Sampling Policy and Procedures at 1 (Aug. 12, 2010) ("Attachment").

<sup>5</sup> See generally About Us: Purpose in Action, AICPA & CIMA, <https://www.aicpa-cima.com/about/landing/purpose-in-action> (last visited May 18, 2023).

<sup>6</sup> AICPA Auditing Standards Board, Statement on Auditing Standards: Audit Sampling, at AU-C § 530 *et seq.* (2021) ("AICPA Audit Sampling Standards"); see also Clarified Statements on Auditing Standards, AICPA, <https://us.aicpa.org/research/standards/auditattest/clarifiedsas> (last visited May 18, 2023) (explaining and linking to all current auditing standards).

the auditor expects the items selected (the sample) to be representative of the population and, thus, likely to provide a reasonable basis for conclusions about the population.”<sup>7</sup> The AICPA audit sampling standards also contain guidelines for auditors to use in sample design; sample size and the selection of items for testing; performing audit procedures; determining the nature and causes of deviations or misstatements; projecting the results of sampling; and evaluating those results.<sup>8</sup> The AICPA audit sampling standards elaborate on each of the definitions and guidelines in interpretive commentary.

The Commission’s Audit Division began to use statistical sampling in 1980 on the advice of the accounting firm Ernst and Whinney, now Ernst and Young, to assess the matching fund submissions of presidential committees seeking public funding.<sup>9</sup> Sampling has been standard practice in all Commission audits to evaluate compliance with the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), including those of committees not receiving public funds, for decades and its use has been included in Commission-approved audit programs since at least 1990; statistical sampling in the SDFM audit is governed by the current Commission-approved Audit Program and Materiality Thresholds. The Audit Division’s statistical sampling procedures are standardized and conducted with the assistance of a computer program from AICPA that determines the appropriate sample size, selects the sample from a computer file, and analyzes the sample results.<sup>10</sup>

Federal courts have upheld the use of statistical sampling by government agencies in several contexts in which the size of the populations to be reviewed would make individual review prohibitively costly or inefficient.<sup>11</sup> As a practical matter, the Commission’s Audit

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<sup>7</sup> AICPA Audit Sampling Standards, at AU-C § 530.05 (2021) (further defining “representative” to mean that “evaluation of the sample will result in conclusions that, subject to the limitations of sampling risk, are similar to those that would be drawn if the same procedures were applied to the entire population”).

<sup>8</sup> *Id.* at AU-C §§ 530.06-.11.

<sup>9</sup> *See* Attachment at 2; *see also* 11 C.F.R. §§ 9007.1(f)(1), 9038.1(f)(1) (expressly authorizing sampling in public finance audits); Public Financing of Presidential Primary and General Election Candidates, 60 Fed. Reg. 31854, 31862 (June 16, 1995) (explaining that “[t]he use of statistical sampling is legally acceptable for projecting certain components of a large universe, such as excessive and prohibited contributions”) (citations omitted).

<sup>10</sup> *See* Attachment at 2 (explaining that the original software came from AICPA and was updated in 2006-07 with the help of a statistical consulting firm). The Audit Division continues to use this software today.

<sup>11</sup> *See, e.g., In re Chevron*, 109 F.3d 1016, 1020 (5<sup>th</sup> Cir. 1997) (citing cases endorsing use of inferential statistics in different contexts while holding that, when used for class action tort litigation, plaintiffs selected must be shown to be representative of class before extrapolation to class may occur); *Hilao v. Estate of Marcos*, 103 F.3d 767, 785-86 (9<sup>th</sup> Cir. 1996) (upholding use of sampling to determine validity of claims selected for sampling); *Chaves County Home Health Service, Inc. v. Sullivan*, 931 F.2d 914, 917-919 (D.C. Cir. 1991) (upholding use of sampling in review of Medicare overpayments when individualized review conducted preceding initial payout by Medicare contractors); *Ratanasen v. State of California, Department of Health Services*, 11 F.3d 1467, 1471 (9<sup>th</sup> Cir. 1993) (Medicare overpayments); *Michigan Dep’t of Education v. U.S. Dep’t of Education*, 875 F.2d 1196 (6<sup>th</sup> Cir. 1989) (vocational rehabilitation); *Illinois Physicians Union v. Miller*, 675 F.2d 151, 157 (7<sup>th</sup> Cir. 1982) (“in view of the enormous logistical problems of Medicaid enforcement, statistical sampling is the only feasible method available”); *Georgia v. Califano*, 446 F. Supp. 404 (N.D. Ga. 1977) (Medicaid overpayments); *see also United States v. Annamalai*, 939 F.3d 1216, 1236-37 (11<sup>th</sup> Cir. 2019) (distinguishing decisions of other circuits approving

Division would be unable to perform much of its work without statistical sampling because of the resources required for individual review and the size of the populations to be evaluated. In this audit, for example, statistical sampling was used to project errors for Finding 1 (Receipt of Excessive Contributions), in which there were 569,271 individual transactions and 85 joint fundraising distributions totaling \$29,288,400.37,<sup>12</sup> and for subpart A of Finding 3 (Reporting of Receipts/Disclosure of Contributions), in which there were 91,515 reported transactions totaling \$16,714,128.65.

By its very nature, statistical sampling provides estimates rather than precise values; no sampling procedure may be conducted with 100 percent confidence. The Audit Division's sampling method typically results in an estimate of the amount of error in a population at a 95 percent confidence level — a commonly used level — and audit reports specify the upper and lower ranges of the statistical estimate.<sup>13</sup>

### C. SDFM's Contentions

SDFM's first objection to sampling is that it cannot identify and correct projected or estimated disclosure errors because "no complete, itemized list of identified and confirmed excessive contributions actually exists" for sample-projected errors.<sup>14</sup> SDFM cites no authority for its contention that audit staff must identify individual contributions accepted and misreported by SDFM before SDFM corrects its reports.

In fact, the Act and Commission regulations place such responsibility on a committee treasurer. As relevant to the excessive contributions in Finding 1, Commission regulations specify that the committee "treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations."<sup>15</sup> As relevant to the identification of contributors in Finding 3, the Act states that "[e]ach treasurer of a political committee shall file reports of receipts..." and specifies that such reports shall include, among other information, the full name of certain contributors and "the date and amount of any such contribution."<sup>16</sup> Moreover, Commission regulations require that

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use of statistical extrapolation or sampling to determine reasonable estimate of loss for purpose of applying U.S. Sentencing Guidelines and concluding sampling inappropriate because based on unfounded factual assumption).

<sup>12</sup> Each joint fundraising distribution included multiple memo entries itemizing individual contributors. *See* 11 C.F.R. § 102.17(c)(8)(B) (requiring participating committees to report contributions received via distribution of net proceeds from joint fundraising representative in memos on Schedule A).

<sup>13</sup> *See, e.g.*, DFAR on SDFM at notes 3 and 12; *and see* Attachment at 3 (explaining that a 95 percent confidence level means that if an infinite number of samples of the same size were drawn from the same population, the identified range will contain the actual value in 95 percent of the samples).

<sup>14</sup> DFAR Response at 2.

<sup>15</sup> 11 C.F.R. § 103.3(b).

<sup>16</sup> 52 U.S.C. §§ 30104(a)(1) and (b)(3), 30101(13).



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” and committee treasurers “shall be personally responsible for the timely and complete filing” of a report “and for the accuracy of any information or statement contained in it.”<sup>17</sup> There is no provision of the Act or Commission regulations that relieves committees and treasurers of these responsibilities during the course of an audit or in circumstances where the Commission or its staff brought inaccuracies to the treasurer’s attention.

With the assistance of statistical sampling, auditors can estimate the prevalence of errors in a large population and identify their salient characteristics to aid the committee in identifying reporting errors and correcting them.<sup>18</sup> This helps committees undergoing an audit to fulfill their duty to identify and correct inaccurate reporting, but it does not relieve them of the need to fulfill that duty themselves by reviewing their records.<sup>19</sup>

The Committee’s second objection to sampling is that the presentation, in a final audit report, of the broad range of estimated error value arguably could overstate the true error value by hundreds of thousands of dollars, especially if it indicates SDFM did not correct those errors. SDFM argues that the audit report’s identification of unresolved errors is “greatly inflated by the projected sample amount.”<sup>20</sup> As with the first objection, SDFM provides no authority in support of its contention.

SDFM’s objection appears to be to the nature of statistical inference used in sampling, generally, which, as discussed above, is a scientifically validated technique used to extrapolate the characteristics of large populations from representative samples. Statistical sampling, as discussed above, has been approved by the Commission, is consistent with industry standards, and has, in other contexts, been approved by courts. The Audit staff’s sampling program ensures that error projections are precise to a 95 percent confidence level given the margin of error, which is a high degree of precision considering that a perfect, or 100 percent, confidence level is not possible in statistical extrapolation.

While such extrapolations are necessarily estimates and have associated margins of error, they do capture the approximate prevalence of error in the tested population and are therefore

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<sup>17</sup> 11 C.F.R. § 104.14(b)(1), (d); *see also* Advisory Opinion 1995-10 (Helms for Senate) (discussing in detail treasurer’s various recordkeeping and reporting obligations); Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 1, 5 (Jan. 3, 2005) (same).

<sup>18</sup> *See* Attachment at 3 (explaining that by examining the specific errors identified in the sample, committees may be able to determine how their systems failed and take corrective action).

<sup>19</sup> *See, e.g.*, Final Audit Report of the Commission on Weber for Congress at 10-11 (Sept. 1, 2022) (indicating that audited committee “reviewed its contribution records and identified an additional ten excessive contributions” for which it took efforts to make corrections identified in sample projection of error, materially resolving finding); Final Audit Report of the Commission on Paul Tonko for Congress at 6 (Nov. 2, 2012) (approving finding despite committee argument that IAR did not associate projected amount with particular contribution rendering it impossible for the committee to demonstrate that its contributions were made with permissible funds).

<sup>20</sup> DFAR Response at 2.

valid components of audit findings. The specific projected error amounts in Findings 1 and 3A present, with 95% confidence, the value of SDFM's errors, and the ranges illustrate, in dollar terms for Findings 1 and 3A, the margin of error.<sup>21</sup> Understood in this way, the ranges within which projected error amounts are located do not "inflate" the magnitude of errors in the population but instead reliably convey the magnitude of the errors in the population, which in Findings 1 and 3A total hundreds of thousands of dollars.

To the extent that SDFM disputes, as circumstantial evidence, the use of sampling in establishing its *level* of non-compliance, such an evidentiary argument is better suited for the post-audit enforcement process, if any such process follows this audit. Even in an enforcement context, however, the level of proof would not require 100% certainty. The information before the Commission at the reason to believe stage of an enforcement matter need only raise a reasonable inference, *i.e.*, credibly allege, that a violation occurred,<sup>22</sup> and a post-enforcement civil proceeding following a finding of probable cause would require the Commission to establish a violation of the Act based upon only the preponderance of the evidence.<sup>23</sup>

SDFM does not argue that the use of sampling in this audit has revealed no errors. Indeed, the samples themselves revealed such errors and identified those to SDFM. SDFM also does not argue that the use of statistical sampling in this audit has not revealed material errors. As discussed above, it did. In an audit of another committee that made a similar objection to sampling, the Commission approved the sampling-based finding.<sup>24</sup> OGC concludes that the objection in this audit should similarly be rejected.<sup>25</sup>

## II. FINDING 2: DEBT

A portion of Finding 2 concerns SDFM's failure to report a debt relating to a June 2020 invoice from digital media buyer Connell Donatelli, Inc., in the amount of \$108,750, which states that payment is due upon receipt, but that SDFM did not pay until September 2020.

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<sup>21</sup> In Finding 1, the projected sample error amount is \$291,803, in a range that could be as low as \$143,260 and as high as \$583,597. In Finding 3 subpart A, the projected sample error amount is \$535,012, in a range that could be as low as \$273,748 or as high as \$970,100.

<sup>22</sup> See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12545 (Mar. 16, 2007) (explaining also that "reason to believe" findings "indicate only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred").

<sup>23</sup> See *Herman & MacLean v. Huddleston*, 459 U.S. 375, 387 (1983) ("In a typical civil suit for money damages, plaintiffs must prove their case by a preponderance of the evidence.").

<sup>24</sup> See Final Audit Report of the Commission on Paul Tonko for Congress, at 6 (Nov. 2, 2012).

<sup>25</sup> In another audit, the audited committee examined its records and amended its reports of outstanding debt after receiving Audit's sampling-based finding. It then showed Audit that the sample exceeded the actual amount of debt reporting that required correction and Audit adjusted its finding accordingly. Final Audit Report of the Commission on Djou for Hawaii, at 8 (Oct. 2, 2012). Here, in contrast, the Committee has declined to examine its records in response to the sampling-based finding.

Section 104.11(b) of Commission regulations requires that debts exceeding \$500 be disclosed in the report that covers the date on which the debt was incurred.

SDFM asserts that this unpaid invoice was not a debt because “the advertising buy that was to be funded with the invoiced amount was not placed at that time; rather it was delayed until September 2020” although the vendor “did not withdraw and reissue the June 2020 invoice.”<sup>26</sup> SDFM argues that it did not submit supporting documentation for this assertion because a lack of documentation allegedly “is reasonable and entirely consistent with the realities of media placement/ad buy invoicing.”<sup>27</sup> SDFM further asserts that invoices for television and radio advertising buys “are typically issued ... in advance ... *before* any actual contractual obligation to the television or radio station exists,” though the media buyer “generally does not commit to purchase airtime until payment is received.”<sup>28</sup> Therefore, SDFM asserts, “an invoice for an ad buy does not (in most cases) reflect an actual, incurred legal obligation,” until the ad is placed and the ad buyer has the committee’s funds, at which point “the ad buyer then incurs the obligation on the committee’s behalf” to the station’s brokers.<sup>29</sup> SDFM presents no authority in support of its position.

OGC concludes that, without any supporting documentation that payment was not due on the date indicated on the face of the invoice (because the buy was delayed or for some other reason), including the invoiced amount as an unreported debt in the finding is appropriate and consistent with prior audits.<sup>30</sup>

By analogy, in enforcement matters concerning whether a committee received an impermissible extension of credit, the Commission has required some proffer of evidence from the respondent in support of an assertion that an extension of credit was made in the ordinary course of business under 11 C.F.R. § 116.3.<sup>31</sup> While the present finding concerns debt reporting

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<sup>26</sup> DFAR Response at 3.

<sup>27</sup> *Id.* (explaining, in response to DFAR recommendation that SDFM provide some form of documentary evidence to corroborate the delayed media buy, that “it is possible that arrangements were made by telephone and no written records exist”).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* (internal emphasis omitted).

<sup>30</sup> The Commission has previously approved proposed debt findings in cases where committee arguments were not adequately supported by documentation. *See* Final Audit Report on Conservative Majority Fund, at 22 (Dec. 14, 2017) (inadequate documentation to support claim that certain debts were not incurred by committee but by separate organization); Final Audit Report on Utah Republican Party, at 21 (Jan. 23, 2017) (inadequate documentation to support using incurrence dates other than dates appearing on expense reimbursement forms submitted by staff member); Final Audit Report on Friends of Weiner, at 11 (July 22, 2009) (no documentation to support assertions regarding credit card debt).

<sup>31</sup> *See* 11 C.F.R. § 116.3 (providing that corporate vendor that extends credit in the ordinary course of business — as determined by factors including whether vendor followed its established procedures and past practice and whether extension conformed to the usual and normal practice in the vendor’s trade or industry — will not be deemed to have made an impermissible contribution); *and compare* Factual and Legal Analysis at 10, MUR 7343

rather than extension of credit, SDFM similarly asserts that it followed industry practice in the ordinary course of business. OGC therefore concludes that SDFM may overcome the presumption that payment was due on the date indicated on the face of the invoice, and substantiate its assertion of industry practice, with the types of documentation the Commission has accepted in those MURs as evidence of the usual and normal practice in the vendor's trade or industry under 11 C.F.R. § 116.3(c)(3). Such documentation could include, in addition to sworn statements by the relevant SDFM and Connell Donatelli persons, documents detailing Connell Donatelli's invoicing practices, and documents substantiating counsel's unsworn assertions regarding media buying industry practices.

#### Attachment

Memorandum from Joe Stoltz, Assistant Staff Director, Audit Division, to Commission on Audit Sampling Policy and Procedures (Aug. 12, 2010).

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(Highway 31) (finding RTB on lack of documentation); Factual and Legal Analysis, at 6-10, MUR 6101 (Heller for Congress) (same); *and* Conciliation Agreement, MUR 5396 (Bauer for President 2000) (Nov. 16, 2004); *with* Factual and Legal Analysis at 8-14, MUR 6141 (Dave Reichert for Congress) (finding no RTB on sworn statements attesting to practices); *and* Factual and Legal Analysis at 18, MUR 6023 (John McCain 2008) (finding no RTB on documentation showing reasonable resolution of commercial dispute).



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August 12, 2010

MEMORANDUM

**SENSITIVE**

TO: THE COMMISSION *AP*

THROUGH: ALEC PALMER  
ACTING STAFF DIRECTOR  
PATRICIA CARMONA *PC*  
CHIEF COMPLIANCE OFFICER

FROM: JOE STOLTZ *J.S.*  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: AUDIT SAMPLING POLICY AND PROCEDURES

At the Executive Session of July 27, 2010, the Commission requested information on the use of sampling in the audit process. Presented below is a summary of the use of this tool in Commission audits.

Sampling is a common auditing tool. While the use of this tool by the Audit Division has become more sophisticated over time, its goal remains the same: to evaluate transactions for compliance with the requirements of the Federal Election Campaign Act (FECA) by examining a portion of those transactions. The May 2008 *American Institute of Certified Accountants (AICPA) Audit Guide, Audit Sampling* defines audit sampling as the application of an audit procedure to less than 100 percent of the items in an account balance or class of transactions for the purpose of evaluating some characteristic of the balance or class. While both statistical and non-statistical sampling can be used in the audit function, the Audit Division relies on statistical sampling. In statistical samples, the sample is selected on a random basis. This means that each item has an equal chance of being selected, which allows the calculation of not only a value for the estimated characteristic of interest, but also the probability that the estimate is correct within a range. With non-statistical sampling, no such calculation is possible.

Sampling is an efficient and effective tool. Many of the populations the Audit Division evaluates are quite large and cannot practically be evaluated on a 100 percent basis.

Statistical audit sampling falls within two broad categories, attribute sampling and variables sampling. Attribute sampling examines how many transactions in a population have a specific characteristic, for example, how **many** contributions are in whole or in part in excess of the limitations. Variables sampling predicts the value of a given variable, for example, how

much did a committee receive in excessive contributions. The Audit Division commonly employs variables sampling.

The Audit Division uses Monetary or Dollar Unit Sampling (DUS) for most of the testing during audits.<sup>1</sup> According to the *AICPA Audit Guide, Audit Sampling*, DUS is a sampling tool that was developed and adapted specifically for audit use, and has been used in auditing since the 1960s. In the audit context, DUS has advantages such as simplicity compared to other variables sampling methods, and it is well suited for accounting populations that typically have low misstatement rates. DUS uses attribute sampling theory to reach conclusions about a population in dollar amounts rather than rates of occurrence. One advantage of DUS is that it automatically selects a sample in proportion to an item's value or dollar amount. Thus, provided that the population is homogenous (i.e., items to be sampled are found to vary in value over a relatively narrow range), it is unnecessary to stratify<sup>2</sup> a population to reduce its variability. The sampling program used by the Audit Division selects from a population of pennies; thus, for a transaction to be selected, a penny associated with it must be selected. The larger the transaction, the more likely it is that one of its pennies will be included in the sample. DUS can also easily accommodate a situation where a particular transaction contains the characteristic of interest but not in its entirety. For example, a \$1,000 contribution that exceeds the limitation by \$100 is recognized as one-tenth excessive (rather than excessive in whole).

The Commission began using DUS in audits 30 years ago. DUS was originally used to review matching fund submissions. The recommendation that DUS be used in our work came from a study performed on the matching fund process by the accounting firm Ernst and Whinney; now Ernst and Young. Based on the results of DUS, the Commission could reject a percentage of the amount submitted for matching that was found to be defective and approve for matching the corresponding amount which was found in compliance with the applicable requirements.<sup>3</sup>

The original software, which the Audit Division used to determine the appropriate sample size, select the sample from a computer file, and analyze the sample results, came from the AICPA. In late 2006 and early 2007 a statistical consulting firm was engaged to update this software using the same algorithms as contained in the original program. The revised program incorporates a graphic user interface making it considerably more user-friendly. It also uses a more modern random number algorithm.

As a rule, the Audit Division tests receipts and disbursements on a sample basis. However, there are exceptions. Very small populations are more efficiently reviewed on a 100 percent basis. Condition of records can also be a factor in the decision. A very well organized record system may make a 100 percent review more efficient, whereas sampling may be more efficient for a less well-arranged record system of similar size. A very high exception rate may indicate the need to review on a 100 percent basis or to segregate a portion of a population for

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<sup>1</sup> Although this plan is called Dollar Unit Sampling, it is something of a misnomer; the Audit Division's program goes further and actually samples on the penny.

<sup>2</sup> Stratification is the process of grouping items in the population into relatively homogeneous subgroups before sampling.

<sup>3</sup> In 1992, DUS was incorporated into the Title 26 audit programs for the testing of contributions from individuals.

100 percent review and use sampling to evaluate the remainder. DUS sample size is very sensitive to rate of occurrence of the characteristic of interest. For example a sample of 300 produces a sampling error of approx 1% if one exception is observed. To produce the same sampling error with 2 exceptions requires a sample of 400. If some subset of transactions can be conveniently segregated for 100 percent review, it can be more efficient than relying entirely on sampling.

Samples produce an estimate of the value of the characteristic of interest, not a precise count. They produce this estimate at a much lower cost to both the Commission and the audited committee. The confidence that one may have in that estimate is calculable, as is the potential sampling error. The Audit Division uses a confidence level of 95 percent, which is a commonly used level. This level of confidence literally means that if an infinite number of samples of the same size were randomly drawn from the same population, in 95 percent of the samples the range produced by the estimate and the sampling error will contain the actual value in the population. The sampling error, usually expressed as a percentage or dollar value, is a measure of the potential error in the population. The sampling error for various sample tests is specified in the Audit Division Materiality Thresholds and varies depending on the characteristic being tested and the rate of occurrence in the sample. The sample size and therefore the staff time needed to review the sample is very sensitive to both rates of occurrence and to sampling error. The levels set are an attempt to balance efficiency and precision in the estimate.

In responding to a sample-based finding, the audited committee will not have a complete listing of all the problem transactions in the population tested. Rather, it will have the estimate of the amount of non-compliance and, unless it compromises the integrity of the sample, a list of the problem transactions found in the sample. By reviewing the problem transactions, the committee may be able to determine how its systems failed and take corrective action. When the sample deals with characteristics such as missing records, the sample errors may not be shared directly with the committee. Instead the committee may be asked to review the whole deposit which contains an unidentified sample item, or the sample items may be communicated directly to a third party such as the committee's bank and the records provided directly to the auditors. This preserves the integrity of the sample so that it may be used to evaluate the committee's corrective efforts.

If a committee can demonstrate that one or more transactions identified as problematic in the sample were actually in compliance, then the sample projection will be modified. However, once a correct sample projection has been established, the correction of a few sample items does not resolve the level of non-compliance found in the population tested. Rather it is the responsibility of the audited committee to research and resolve the non-compliance in the entire population. In the case of excessive or prohibited contributions, the committee has the option of making a disgorgement to the U.S. Department of Treasury rather than researching the entire population for non-compliance. If the sample results indicate that the committee's reports should be amended, it is the committee's responsibility to take the needed corrective action, including identifying all of the transactions that require correction.

Should you have any questions or require further clarification, please contact Joe Stoltz at extension 1209.