



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 1, 2021

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

FROM: Neven Stipanovic *NFS*
Associate General
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Assistant General Counsel
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SUBJECT: Interim Audit Report on the US Veterans Assistance Foundation (LRA 1105)

I. INTRODUCTION

The Office of the General Counsel has reviewed the draft Interim Audit Report (“IAR”) on the US Veterans Assistance Foundation (“Committee”). The draft IAR contains five findings: (1) Misstatement of Financial Activity; (2) Disclosure of Occupation and Name of Employer; (3) Disclosure of Disbursements; (4) Recordkeeping for Disbursements and Use of Designated Depository; and (5) Failure to File 24/48-Hour Reports.¹ We comment on Findings 3 and 4 and otherwise concur with the findings. If you have any questions, please contact Joshua Blume, the attorney assigned to this audit.

¹ We recommend that the Commission consider this document in Executive Session because the Commission may eventually decide to pursue an investigation of matters contained in the proposed IAR. 11 C.F.R. § 2.4(a) and (b)(6).

II. DISCLOSURE OF DISBURSEMENTS (Finding 3).

The draft IAR states that although the Committee reported having made expenditures to vendors directly from the federal account maintained at its designated depository, certain bank records examined by the Audit Division show that at least some of these funds were disbursed directly to the account of a limited liability company (“LLC”) rather than to the vendors. This LLC bears the name of the Committee and was created approximately three months after the registration of the Committee.² The Committee appears to have used the LLC account as an intermediate vehicle for the payment of some, but not all, of its expenses.³

The draft IAR states that the Committee disclosed the above expenditures inaccurately, in that the intermediate payee, the LLC, was not disclosed at all, and the ultimate payees were not disclosed through memo entries, but instead directly in the reports.⁴ Commission regulations require nonconnected committees to report each person to whom an expenditure is made in an aggregate amount exceeding \$200 within the calendar year to meet the committees’ operating expenses, together with the date, amount, and purpose of such operating expenditure. 11 C.F.R. §§ 104.3(b)(3)(i), (vii), 104.9(a), (b).⁵ These regulations do not distinguish between ultimate payees and intermediate payees or contain specific instructions regarding either type of entity.

The Audit Division has informed us that it relied on the Commission’s Ultimate Payee Interpretive Rule for its conclusion that the Committee inaccurately reported the disbursements. Reporting Ultimate Payees of Political Committee Disbursements (“Ultimate Payee Interpretive Rule”), 78 Fed. Reg. 40,625 (Jul. 8, 2013). The Ultimate Payee Interpretive Rule clarifies the reporting regulations and provides further guidance regarding how political committees should report disbursements in three specific situations: (1) The committee reimburses an individual who used personal funds to pay committee expenses aggregating more than \$200 to a single vendor; (2) An authorized committee of a candidate reimburses a candidate who used personal funds to pay committee expenses aggregating to more than \$200 to a single vendor, and (3) The

² In its response to the Audit Division’s exit conference memorandum, the Committee denies the existence of the LLC. However, the Audit Division has verified the existence of the LLC on a website maintained by the Nevada Secretary of State. The treasurer of the Committee, Robert Piaro, is listed on the website as one of three managers of the LLC. Further, Mr. Piaro’s daughters, Michelle Hammen and Melissa Stelter, who are assistant treasurer and paid staff of the Committee, respectively, are listed on the website as the other two managers of the LLC. See <https://esos.nv.gov/Entity/Search/BusinessInformation> (last visited Mar. 4, 2021).

³ Operating expenditures, such as expenditures for payroll, telephone, cable, and other legal fees, as well as independent expenditures, were paid directly from the Committee’s designated depository account. Nevertheless, the categories of expenditure routed through the LLC account, including fundraising expenses and some legal fees, comprise approximately 90 percent of the Committee’s total expenditures.

⁴ The Committee argues that 52 U.S.C. § 30109(b) does not address accounting practices such as the use of memo entries. The Audit Division responds that the statute concerns persons not filing required reports and observes that although the required reports were filed, they were filed incorrectly. We note that 52 U.S.C. § 30109(b) is not relevant to the reporting issues. Rather, it requires the Commission to notify an entity that has failed to file a required report of the violation, before undertaking enforcement action, and to publish a list of non-filers. It is not itself a source of reporting requirements.

⁵ Section 104.9 speaks of reporting persons to whom expenditures are made from the reporting committee’s federal account(s).

committee's payment of its credit card bill includes charges of more than \$200 to a single vendor. *Id.*, at 40,626.

We do not believe that the Ultimate Payee Interpretive Rule directly addresses this reporting situation. First, the Ultimate Payee Interpretive Rule by its terms is limited to the above three scenarios. *See* Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,626 ("Further, the Commission is only addressing the three issues at hand . . ."). Second, and more fundamentally, the Committee here did report its ultimate payees. The Commission regulations' intent regarding the reporting of disbursements are thus satisfied.⁶ We, therefore, recommend that the Audit Division remove the aspect of Finding 3 that concludes that the Committee failed to report the LLC as the intermediate payee.⁷

Because of the importance of this question of whether the reporting of the intermediate payee is necessary in this situation, we recommend that the Audit Division raise the issue for the Commission's consideration in the cover memorandum accompanying the transmission of the audit report to the Commission.

III. RECORDKEEPING FOR DISBURSEMENTS AND USE OF DESIGNATED DEPOSITORY (Finding 4)

The draft IAR correctly notes that by routing expenditures from its designated depository account through the LLC account, the Committee may have violated 52 U.S.C. § 30102(h) and 11 C.F.R. § 103.3(a), which require committees to make all disbursements, except those for petty cash, through checks drawn on a designated depository account. Because the Committee's funds were routed through the LLC account before being disbursed to the vendors, and the composition of funds in the LLC account is unknown, the Committee may have impermissibly commingled its funds with the personal funds of an individual or with corporate funds. Political committees are forbidden from commingling their funds with the personal funds of an individual. 52 U.S.C.

⁶ Since the LLC might have served as a conduit for the disbursement of funds to the vendors, reporting the LLC as the immediate payee but failing to disclose the ultimate payee vendors could have resulted in a reporting violation. *See* MUR 6724 (Bachmann for President and MichelePAC), Factual and Legal Analysis to Peter Waldron, at 8-9 (July 13, 2017) ("The Commission has determined, however, that merely reporting the immediate recipient of a committee's payment will not satisfy the requirements of [52 U.S.C. §] 30104(b)(5) when the facts indicate that the immediate recipient is merely a conduit for the intended recipient of the funds.") (footnote omitted).

⁷ Finding 3 separately discusses approximately \$26,000 in payroll disbursements reported as paid directly to employees in the reports, instead of reported as payments to the payroll processing company with memo entries detailing payment to the employees. The Commission has instructed committees to report payroll expenditures as they would report credit card expenditures as discussed in the Ultimate Payee Interpretive Rule, with appropriate itemization involving memo entries. *See* MUR 6818 (Allen Weh for Senate), Factual and Legal Analysis, at 4, n.17 (June 15, 2017). *See also* <https://transition.fec.gov/rad/pacs/FederalElectionCommission-RAD-PACs.shtml#disb10> (instruction to payment to the payroll company on line 21(b) and to itemize payments to individual salary recipients in memo entries). In the MUR, the committee had reported only its lump sum expenditures to the intermediate payroll processor and had failed to itemize the ultimate payroll recipients. MUR 6818 (Allen Weh for Senate), Factual and Legal Analysis at 5-6 (identifying violation but dismissing in exercise of prosecutorial discretion). Here, however, as the Committee did report the ultimate payees, our analysis above would also apply to this aspect of the finding, and therefore should be removed from Finding 3 for the same reasons. This aspect should also be included in Audit Division's cover memorandum to the Commission, as discussed in the next paragraph.

§ 30102(b)(3); 11 C.F.R. § 102.15. Contributions also may not be commingled with corporate funds. *See* 52 U.S.C. § 30118; 11 C.F.R. § 102.15 (cross referencing 52 U.S.C. § 30118 and Part 114 of the Commission’s regulations). *See also* Advisory Opinion 2017-06 (Stein-Gottlieb) at 8 (concluding that a corporation’s proposed method of collecting and forwarding contributions to political committees was permissible because, among other reasons, the funds would be kept in a separate account, which would “prevent any commingling of contributions and corporate funds”), Advisory Opinion 1990-01 (Digital Corrections) (concluding that a corporation transmitting funds to political committees must keep such funds in a separate account and such funds “may not be commingled with the funds of [a corporation]”). We do not know whether the LLC account contained any personal funds of an individual. Nor do we know whether the LLC is treated for taxation purposes as a corporation, 11 C.F.R. § 110.1(g), and, if so, whether the Committee’s funds may be distinguished from the LLC’s funds in the LLC account according to generally accepted accounting principles. We note, however, that if one or both of these situations is the case here, routing Committee funds through the LLC may have resulted in impermissible commingling of funds.