



FEDERAL ELECTION COMMISSION
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June 14, 2017

MEMORANDUM

AGENDA DOCUMENT NO. 17-24-A
AGENDA ITEM
FOR HEARING OF JUNE 22, 2017

To: The Commission

Through: Alec Palmer
Staff Director

From: Patricia C. Orrock *PCO*
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Subject: Audit Hearing for the Illinois Republican Party (A13-09)

Attached for your information is a copy of the Draft Final Audit Report (DFAR) and Office of General Counsel legal analysis that was mailed to the Illinois Republican Party (IRP) on March 29, 2017. Counsel representing IRP responded to the DFAR on April 17, 2017, and requested a hearing before the Commission to discuss DFAR Finding 2 (Reporting of Apparent Independent Expenditures), Finding 3 (Recordkeeping for Communications), and Finding 4 (Receipt of Apparent Prohibited In-Kind Contributions). The hearing was granted on April 24, 2017, and has been scheduled for June 22, 2017.

Finding 2 - Reporting of Apparent Independent Expenditures

Finding 2 is based on IRP's failure to comply with 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11 and 11CFR §§104.4(f) and 104.5(g)(1) and (g)(2). The Federal Election Campaign Act ("Act") and related regulations require the filing of independent expenditure reports and provide the disclosure requirements of independent expenditures.

In the Interim Audit Report (IAR) presented to IRP, Finding 2 noted that IRP disclosed on Schedule B, Line 30(b), (Federal Election Activity paid Entirely with Federal Funds), 16

mailers totaling \$273,126¹ that appeared to be independent expenditures that should have been disclosed on Schedule E, Line 24, (Independent Expenditures). IRP also did not provide invoices associated with 27 mailers that contained express advocacy as defined under 11 CFR 100.22(a). The IAR recommended that IRP provide evidence to support that the communications were not required to be disclosed as independent expenditures. In addition, it was recommended that IRP amend its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures. Lastly, it was recommended that IRP provide documentation to support the date of public dissemination for each communication to determine whether the filing of a 24/48 hour report was required.

In response to the IAR recommendation, IRP stated all direct mail at issue was intended to be processed as non-allocable mail, and not as independent expenditures. To document the use of volunteers, IRP provided four volunteer sign in sheets, three sworn affidavits from IRP individuals involved with the IRP mail program and 24² pictures of individuals sorting, bundling and placing mailers into mail bags.³

The DFAR concluded that the documentation provided in support of the volunteer materials exemption was consistent with such evidence provided in past audits with respect to four mailers totaling \$33,972 for which IRP provided two sign in sheets and photographs. As a result, these disbursements are no longer being considered independent expenditures. For the remaining 12 mailers totaling \$239,154 (\$273,126 - \$33,972) and the 27 mailers without invoices that IRP claimed the volunteer materials exemption was applicable, the Audit staff again recommended that IRP provide evidence to support that application of the volunteer materials exemption to the specific communications involved. Lastly, the Audit staff considered the 39 (12+27) apparent independent expenditures to be independent expenditures that required either 24 or 48 hour reports. In view of the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the Audit staff recommended that IRP provide more detailed information and documentation for any volunteer involvement associated with each mailer.

In response to the DFAR, IRP stated that throughout the audit process they searched diligently, but did not possess any additional invoices or information regarding the direct mail communications. In addition, IRP referred to an affidavit provided to the Audit staff that stated that given the level of coordination between the IRP and Republican federal candidates, making independent expenditures on behalf of the candidates would have been nearly impossible and impractical.

¹ This amount will be reduced by \$33,972. Four mailers were determined not to be independent expenditures as documentation provided by IRP related to the volunteer materials exemption was reexamined.

² There were 10 additional photographs provided by IRP that appear to contain similar individuals at the same facility, however, the Audit staff was not able to associate these with any of the mailers or sign in sheets provided by IRP.

³ This documentation was provided during fieldwork, in response to the exit conference and in response to the IAR.

Finding 3 - Recordkeeping for Communications

Finding 3 is based on IRP's failure to comply with 11 CFR §104.14(b)(1) and 52 U.S.C. §30102(d). The Federal Election Campaign Act ("Act") and related regulations require each political committee to maintain records with respect to matters required to be reported and preserve all records and copies for 3 years after the reports is filed.

In the Interim Audit Report (IAR) presented to IRP, Finding 3 noted that IRP reported 19 expenditures totaling \$357,613 for which documentation was insufficient to make a determination pertaining to whether the disbursements were correctly reported on Schedule B, Line 30(b) or Schedule H4 (Disbursements for Allocated Federal/Non-federal Activity). IRP did not provide either invoices or copies of the communications for disbursements totaling \$280,277. These disbursements were paid to four mail vendors and three phone bank vendors and were disclosed on Schedule B and Schedule H4 with the purpose of FEA Volunteer Mail, Advocacy calls for Federal candidates, Direct Mail Services, equipment and phone minutes for Federal candidates and Auto-Dialer for Federal candidates. In addition, IRP reported disbursements totaling \$77,336⁴ to two mail vendors. These disbursements were reported on Schedule B, Line 30(b) with the purpose of "FEA Volunteer Mail – Walsh". The only documentation provided for these mail communications were invoices.

The IAR identified two categories of communications: (1) disbursements without invoices or copies of communications; and, (2) disbursements where the invoice(s) were provided but no copies of the communications were provided. In response to the IAR recommendation, IRP stated that it searched its records and was not able to locate additional documents to substantiate the disclosures. Absent the provision of these records, the Audit staff considered the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1).

The DFAR concluded that absent the provision of the records, the Audit staff considers the matter a violation of the recordkeeping requirement at 11 CFR §104.14(b)(1).

In response to the DFAR, IRP stated that they have searched their records and have no additional documents.

Finding 4 - Receipt of Apparent Prohibited In-Kind Contributions

Finding 4 is based on IRP's failure to comply with 52 U.S.C. §§30119, 30121 and 11 CFR §100.52. The Federal Election Campaign Act ("Act") and related regulations prohibit candidate and committees from accepting contributions in the form of money in-kind contributions or loans from Corporations, Labor Organizations, National Banks, Federal Government Contractors or Foreign Nationals.

In the IAR presented to IRP, Finding 4 noted that the Audit staff identified apparent prohibited in-kind contributions totaling \$72,880. The apparent prohibited in-kind contributions consisted of payments for postage paid directly to a mail vendor used by IRP for at least 14

⁴ The amount of invoices associated for these mailers is \$129,490 which is included in Finding 4.

mailers⁵. The postage paid was identified from invoices IRP provided that were for two Congressional candidate committees, Joe Walsh for Congress Committee and Plummer for Congress. Contained on each of the 14 invoices was an amount for postage that read, "Postage – Paid Directly to Mail House". A search of IRP bank statements, both federal and non-federal, did not show these amounts being paid.

In response to the IAR recommendation, IRP did not specifically address the amounts for postage apparently paid on its behalf. IRP contended that such amounts were permissibly spent by IRP on behalf of the Walsh and Plummer campaigns for non-allocable mail.

The DFAR concluded that absent specific evidence addressing these postage costs, the \$72,880 in costs paid on its behalf are considered a prohibited contribution to IRP.

In response to the DFAR, IRP stated that all funds it paid for direct mail to support federal candidates were raised in accordance with federal limits and source prohibitions. They added that they continue to search for records to further support this contention, to the extent that it is not supported by the records produced thus far in this audit.

Attachments:

- Draft Final Audit Report of the Audit Division on the Illinois Republican Party
- Office of General Counsel's Legal Analysis dated January 31, 2017
- IRP Response to the Draft Final Audit Report, dated April 17, 2017

cc: Office of General Counsel

⁵ A complete set of invoices was not supplied. The amount of possible prohibited contributions may be higher.



Draft Final Audit Report of the Audit Division on the Illinois Republican Party

(January 1, 2011 - December 31, 2012)

Why the Audit Was Done

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

Future Action

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

About the Committee (p. 2)

The Illinois Republican Party is a state party committee headquartered in Chicago, Illinois. For more information, see the chart on the Committee Organization. p.2.

Financial Activity² (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 1,129,720
○ Contributions from Political Committees	1,201,954
○ Transfers from Affiliated and Other Political Committees	1,576,813
○ Transfers from Non-federal Account	395,959
○ Other Receipts	344,928
Total Receipts	\$ 4,649,374
• Disbursements	
○ Operating Expenditures	\$ 1,295,631
○ Federal Election Activity	3,122,532
○ Contributions to Federal Candidates	5,500
○ Other Disbursements	163,600
Total Disbursements	\$ 4,587,263

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Reporting of Apparent Independent Expenditures (Finding 2)
- Recordkeeping for Communications (Finding 3)
- Receipt of Apparent Prohibited In-Kind Contributions (Finding 4)
- Reporting of Debts and Obligations (Finding 5)
- Recordkeeping for Employees (Finding 6)

¹ 52 U.S.C. §30111(b).

² IRP had a Levin account that began the audit period with a balance of \$0, made no expenditures for Levin activity, and an ending balance of \$459.

Draft Final Audit Report of the Audit Division on the Illinois Republican Party

(January 1, 2011 - December 31, 2012)



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Part I

Background

Authority for Audit

This report is based on an audit of the Illinois Republican Party (IRP), 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 must 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 disclosure of individual contributors' occupation and name of employer;
2. the disclosure of disbursements, debts and obligations;
3. the disclosure of expenses allocated between federal and non-federal accounts;
4. the consistency between reported figures and bank records;
5. the completeness of records;
6. the disclosure of independent expenditures; and
7. other committee operations necessary to the review.

Commission Guidance

Request for Early Commission Consideration of a Legal Question

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," several state party committees unaffiliated with IRP requested early consideration of a legal question raised during audits covering the 2010 election cycle. Specifically, the Commission addressed whether monthly time logs under 11 CFR §106.7(d)(1) were required for employees paid with 100 percent federal funds.

The Commission concluded, by a vote of 5-1, that 11 CFR §106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission decided it will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. The Audit staff informed IRP representatives of the payroll log requirement and of the Commission's decision not to pursue recordkeeping violations for failure to keep payroll logs for salaries paid and correctly reported as 100 percent federal. This audit report does not include any findings or recommendations with respect to IRP employees paid with 100 percent federal funds and reported as such.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	July 10, 1976
• Audit Coverage	January 1, 2011 - December 31, 2012
Headquarters	Chicago, Illinois
Bank Information	
• Bank Depositories	One
• Bank Accounts	Four Federal and Two Non-federal
Treasurer	
• Treasurer When Audit Was Conducted	Judy Diekelman - May 20, 2014 - Present Dave Syverson - through May 19, 2014
• Treasurer During Period Covered by Audit	Dave Syverson
Management Information	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid and Volunteer Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2011	\$ 24,000
Receipts	
○ Contributions from Individuals	1,129,720
○ Contributions from Political Committees	1,201,954
○ Transfers from Affiliated and Other Political Committees	1,576,813
○ Transfers from Non-federal Account	395,959
○ Other Receipts	344,928
Total Receipts	\$ 4,649,374
Disbursements	
○ Operating Expenditures	1,295,631
○ Federal Election Activity	3,122,532
○ Contributions to Federal Candidates	5,500
○ Other Disbursements	163,600
Total Disbursements	\$ 4,587,263
Cash-on-hand @ December 31, 2012	\$ 86,111

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of IRP's reported financial activity with bank records revealed a misstatement of receipts, disbursements and ending cash for 2011 and a misstatement of receipts and disbursements for 2012. In 2011, IRP overstated its receipts by \$36,327, its disbursements by \$46,370 and understated its ending cash by \$13,717. In 2012, IRP understated its receipts by \$254,528 and its disbursements by \$295,544.

In response to the Interim Audit Report recommendation, IRP amended its disclosure reports to materially correct the misstatements for both 2011 and 2012. (For more detail, see p. 6.)

Finding 2. Reporting of Apparent Independent Expenditures

During audit fieldwork, the Audit staff reviewed disbursements totaling \$273,126 that IRP disclosed on Schedule B, Line 30(b), (Federal Election Activity Paid Entirely with Federal Funds), that appeared to be mailers or media-related independent expenditures that should have been disclosed on Schedule E, Line 24, (Independent Expenditures).

Additionally, IRP did not provide sufficient documentation pertaining to dissemination dates to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$273,126. IRP also did not provide invoices associated with 27 mailers that contained express advocacy as defined under 11 CFR 100.22 (a).

In response to the Interim Audit Report recommendation, IRP stated "...that these 27 direct mail communications were non-allocable, candidate-specific volunteer mass mailings." IRP supplied a third affidavit from IRP's former Deputy Executive Director who stated that during the 2012 cycle, IRP supported its federal candidates through the use of non-allocable mail processed by volunteers.

The Audit staff reexamined the documentation provided by IRP related to the volunteer materials exemption for specific communications totaling \$33,972 and determined the disbursements were not independent expenditures. For the remaining communications consisting of \$239,154 (\$273,126 - \$33,972) and the 27 mailers with no invoices that IRP claims the volunteer materials exemption is applicable, the Audit staff again recommends that the IRP provide further evidence to support the application of volunteer materials exemption to the specific communications involved. Absent further evidence that these communications qualify for the volunteer materials exemption, the Audit staff considers these communications to be independent expenditures. (For more detail, see p. 8.)

Finding 3. Recordkeeping for Communications

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. IRP reported 19 expenditures totaling \$357,613,³ on Schedule B, Line 30(b) and Schedule H4 (Disbursements for Allocated Federal/Non-federal Activity) with the purposes of FEA Volunteer Mail, Advocacy calls for Federal candidates, Direct Mail Services, equipment and phone minutes for Federal candidates and Auto-Dialer for Federal candidates. Documentation that was provided by IRP was insufficient to make a determination pertaining to the purpose for these disbursements and verification as Federal Election Activity or Allocated Federal/Non-federal Activity.

In response to the Interim Audit Report recommendation, IRP stated that it has searched its records and was unable to locate additional documents to substantiate these disclosures. Absent the provision of these records, the Audit staff considers the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1). (For more detail, see p. 14.)

Finding 4. Receipt of Apparent Prohibited In-Kind Contributions

During audit fieldwork, the Audit staff identified apparent prohibited in-kind contributions totaling \$72,880 to the benefit of IRP. The apparent prohibited in-kind contributions consisted of postage for campaign mailers invoiced to IRP but apparently paid by an unknown source. In response to the Interim Audit Report recommendation, IRP did not specifically address the amounts for postage apparently paid on its behalf. IRP has not complied with the recommendation to identify the source of payment for the postage. Absent such a demonstration, the \$72,880 in postage costs are considered a prohibited contribution to IRP. (For more detail, see p. 16.)

Finding 5. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff noted that IRP failed to report debts and obligations to 14 vendors totaling \$294,117⁴ on Schedule D (Debts and Obligations). In response to the Interim Audit Report recommendation, IRP amended its disclosure reports to materially correct the disclosure of debts and obligations to these vendors. (For more detail, see p. 18.)

Finding 6. Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that IRP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to IRP employees totaling \$558,089 for which IRP did not maintain monthly payroll logs. This consisted of \$542,812 for which payroll was allocated with federal and non-federal funds, and \$15,277 for which payroll was exclusively non-federal. In response to the Interim Audit Report recommendation, IRP acknowledged that it does not possess any monthly payroll logs for

³ Two disbursements totaling \$52,504 were not reported, but are included in the \$357,613.

⁴ This amount will be updated to \$257,396 based on additional information reviewed in response to IRP's response to the Interim Audit Report.

employees for the 2011 – 2012 time period. IRP stated that it did maintain these logs during the 2014 election cycle and going forward, they will continue to maintain monthly payroll logs. As such, IRP has complied with the Interim Audit Report recommendation by providing details of its plan to maintain monthly payroll logs in the future. (For more detail, see p. 19.)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of IRP's reported financial activity with bank records revealed a misstatement of receipts, disbursements and ending cash for 2011 and a misstatement of receipts and disbursements for 2012. In 2011, IRP overstated its receipts by \$36,327, its disbursements by \$46,370 and understated its ending cash by \$13,717. In 2012, IRP understated its receipts by \$254,528 and its disbursements by \$295,544.

In response to the Interim Audit Report recommendation, IRP amended its disclosure reports to materially correct the misstatements for both 2011 and 2012.

Legal Standard

Contents of Reports. Each report must disclose:

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

Facts and Analysis

A. Facts

As part of audit fieldwork, the Audit staff reconciled IRP's reported financial activity with its bank records for 2011 and 2012. The reconciliation determined that for 2011, IRP misstated receipts, disbursements and ending cash and for 2012, misstated receipts and disbursements. The following charts outline the discrepancies between IRP's disclosure reports and its bank records.

2011 Reported Activity to Bank Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2011	\$20,326	\$24,000	\$3,674 Understated
Receipts	\$776,115	\$739,788	\$36,327 Overstated
Disbursements	\$749,945	\$703,575	\$46,370 Overstated
Ending Cash Balance @ December 31, 2011	\$46,496	\$60,213	\$13,717 Understated

The beginning cash balance was understated by \$3,674 and is unexplained, but likely resulted from prior-period discrepancies.

The overstatement of receipts resulted from the following:

• Transfers from the non-federal account, reported in error	- \$32,070
• Unexplained differences	- <u>4,257</u>
Overstatement of Receipts	- <u><u>\$36,327</u></u>

The overstatement of disbursements resulted from the following:

• The net over reporting of disbursements	- \$46,612
• Unexplained differences	+ <u>242</u>
Net Overstatement of Disbursements	- <u><u>\$46,370</u></u>

The Audit staff identified 29 disbursements totaling \$52,262 that were reported in January 2011, but not found on bank statements provided. IRP changed depositories prior to the audit cycle. The Audit staff requested the bank statements of the prior depository for the month of January 2011. These statement(s) were not provided to the Audit staff. IRP stated they requested the bank statements but were not able to obtain them. The \$13,717 understatement of the ending cash balance resulted from the misstatements described above.

2012 Reported Activity to Bank Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2012	\$45,721 ⁵	\$60,213	\$14,492 Understated
Receipts	\$3,655,057	\$3,909,585	\$254,528 Understated
Disbursements	\$3,588,143	\$3,883,687	\$295,544 Understated
Ending Cash Balance @ December 31, 2012	\$113,410	\$86,111	\$27,299 Overstated

The understatement of receipts resulted from the following:

• Transfers from Political Committees	+ \$50,000
• In-kind contributions from Political Committees	+ 33,973
• Transfers from the non-federal account	+ 36,453
• Settlement Accounting Fees, not reported	+ 22,126
• In-kind postage paid by other than IRP ⁶	+ 72,880
• Unexplained differences	+ <u>39,096</u>
Understatement of Receipts	+ <u><u>\$254,528</u></u>

⁵ IRP filed an amended report that reduced its beginning cash by a total of \$775 from the reported 2011 ending cash.

⁶ The source of the payments has not been identified by IRP to the Audit staff. See Finding 4.

The understatement of disbursements resulted from the following:

• Under-reporting of disbursements	+ \$168,321
• In-kind postage paid by other than IRP	+ 72,880
• Underreporting of in-kinds from Political Committees	+ 33,973
• Settlement of Accounting Fees, not reported	+ 22,126
• Unexplained differences	- <u>1,756</u>
Net Understatement of Disbursements	<u>+ \$295,544</u>

The \$27,299 overstatement of ending cash balance resulted from the misstatements described above.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided work papers and discussed the reporting errors that caused the misstatements with IRP representatives. They asked questions about several items and stated that they would file the amendments to ensure that the IRP reports were accurate.

The Interim Audit recommended that IRP amend its disclosure reports to correct the misstatements for 2011 and 2012.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, IRP amended its disclosure reports to materially correct the misstatements for both 2011 and 2012 reports.

Finding 2. Reporting of Apparent Independent Expenditures

Summary

During audit fieldwork, the Audit staff reviewed disbursements totaling \$273,126 that IRP disclosed on Schedule B, Line 30(b), (Federal Election Activity Paid Entirely with Federal Funds), that appeared to be mailers or media-related independent expenditures that should have been disclosed on Schedule E, Line 24, (Independent Expenditures).

Additionally, IRP did not provide sufficient documentation pertaining to dissemination dates to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$273,126. IRP also did not provide invoices associated with 27 mailers that contained express advocacy as defined under 11 CFR 100.22 (a).

In response to the Interim Audit Report recommendation, IRP stated "...that these 27 direct mail communications were non-allocable, candidate-specific volunteer mass mailings." IRP supplied a third affidavit from IRP's former Deputy Executive Director who stated that during the 2012 cycle, IRP supported its federal candidates through the use of non-allocable mail processed by volunteers.

The Audit staff reexamined the documentation provided by IRP related to the volunteer materials exemption for specific communications totaling \$33,972 and determined the disbursements were not independent expenditures. For the remaining communications consisting of \$239,154 (\$273,126 - \$33,972) and the 27 mailers with no invoices that IRP claims the volunteer materials exemption is applicable, the Audit staff again recommends that the IRP provide further evidence to support the application of volunteer materials exemption to the specific communications involved. Absent further evidence that these communications qualify for the volunteer materials exemption, the Audit staff considers these communications to be independent expenditures.

Legal Standard

A. Definition of Independent Expenditures. The term “independent expenditure” means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in coordination with any candidate or authorized committee or agent of a candidate. No expenditure shall be considered independent if the person making the expenditure allows a candidate, a candidate’s authorized committee or their agents, or a political party committee or its agents to become materially involved in decisions regarding the communication as described in 11 CFR 109.21(d)(2), or shares financial responsibility for the cost of production or dissemination with any such person. 11 CFR §100.16(a) & (c).

B. Expressly Advocating. Expressly advocating means any communication that – (a) Uses phrases such as “vote for the president,” “re-elect your Congressman,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for the Republican challenger for U.S. Senate in Georgia,” accompanied by a picture of one or more candidate(s), or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s). (b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s). 11 CFR §100.22.

C. Disclosure Requirements – General Guidelines. An independent expenditure shall be reported on Schedule E (Itemized Independent Expenditures) if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as a debt on Schedule D. Independent expenditures of \$200 or less need not be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

D. Last-Minute Independent Expenditure Reports (24-Hour Reports). Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election, must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour report is required each time additional independent expenditures aggregate \$1,000 or more. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate,

reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

E. Independent Expenditure Reports (48-Hour Reports). Any independent expenditures aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must be disclosed within 48 hours each time the expenditures aggregate \$10,000 or more. The reports must be received by the Commission within 48 hours after the expenditure is made. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$10,000. 11 CFR §§104.4(f) and 104.5(g)(1).

F. Formal Requirements Regarding Reports and Statements. Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).

G. Volunteer Activity. The payment by a state committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a contribution, provided that the conditions below are met.

1. Such payment is not for costs incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public communication or political advertising. The term direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.
2. The portion of the cost of such materials allocable to Federal candidates must be paid from contributions subject to the limitations and prohibitions of the Act.
3. Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate for federal office.
4. Such materials are distributed by volunteers and not by commercial or for-profit operations.
5. If made by a political committee, such payments shall be reported by the political committee as a disbursement in accordance with 11 CFR §104.3 but need not be allocated to specific candidates in committee reports.
6. The exemption is not applicable to campaign materials purchased by the national party committees. 11 CFR §100.87 (a), (b), (c), (d), (e) and (g) and 11 CFR §100.147 (a), (b), (c), (d), (e) and (g).

Facts and Analysis

A. Reporting of Apparent Independent Expenditures

1. Facts

During audit fieldwork, the Audit staff reviewed disbursements to ensure proper reporting. The Audit staff notes that IRP did not disclose any independent expenditures on Schedule E, however it made apparent media-related expenditures totaling \$273,126 and disclosed them as Federal Election Activity (FEA). These communications, as well as 27 other mailers that are not associated with invoices, were identified as possible independent expenditures. To document the use of volunteers, IRP provided four volunteer sign in sheets, two sworn affidavits for which the authors attest to the use of volunteers in all the mailers and 24 photographs of volunteer involvement in seven of the mailers.⁷ Based on the documentation provided, the Audit staff was only able to match four mailers and two sign in sheets to photographs for which an invoice was provided, totaling \$33,972, see (a.) below. Two additional sign in sheets were provided, however, they could not be associated with invoices for mailers, see (b.) below. Of the two sign in sheets that could not be associated with invoices, only one could be associated with a mailer.

A breakdown analysis of these expenditures is as follows:

a. Apparent Independent Expenditures Reported as FEA Volunteer Mail (Associated Invoice Provided)

IRP made 16 apparent independent expenditures totaling \$273,126 for which it provided a copy of the mailer with an associated invoice. Mailers totaling \$33,972 for which IRP provided two sign in sheets and photographs are included in the \$273,126 total. According to the Audit staff, each of these mailers contained language expressly advocating the election or defeat of a clearly identified candidate as defined under 11 CFR §100.22(a), or when taken as a whole and with limited reference to external events could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) as defined under 11 CFR §100.22(b).

b. Apparent Independent Expenditures Reported as FEA Volunteer Mail (No Invoices Associated)

IRP provided 27 different mailers that contained language expressly advocating the election or defeat of clearly identified candidates, as defined under 11 CFR 100.22(a).

IRP did not provide sufficient information to allow each of the 27 communications to be associated with an invoice. Without this additional information, the Audit staff is unable to calculate the disbursement amount for the 27 mailers.

⁷ This documentation was provided both during fieldwork and in response to the exit conference. There were 10 additional photographs provided by IRP that appear to contain similar individuals at the same facility, however, the Audit staff was not able to associate them with any of the mailers or sign in sheets provided by IRP.

c. Volunteer Material Exemption

In response to the Audit's staff's request during fieldwork for documentation to support the volunteer materials exemption that the committee reported, IRP provided 24 pictures of individuals sorting, bundling and placing the mailers into mail bags. IRP supplied three volunteer sign in sheets for three different mailers. Seven different mailers can be seen in the pictures provided. Each of the volunteer sign in sheets contained two names. Two of the sign in sheets were dated September 13, 2012 and each had the name of a Republican congressional candidate.

The Commission has addressed the applicability of the volunteer materials exemption in the Final Audit Reports of the Arizona Republican Party, the Democratic Executive Committee of Florida, and the Tennessee Republican Party. In these reports, the Commission recognized a lack of clarity regarding the application of the volunteer materials exemption. The Commission had attempted to formulate a consensus policy regarding what constitutes substantial volunteer involvement for the purpose of applying the exemption,⁸ but this was never achieved. Since a lack of clarity exists concerning the application of the volunteer materials exemption, it follows that the type and amount of documentation needed to support volunteer involvement is also unclear.

In view of the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the Audit staff recommended that, IRP provide more detailed information and documentation for any volunteer involvement associated with each mailer.

2. Interim Audit Report & Audit Division Recommendation

This issue was presented at the exit conference. The Audit staff provided a schedule detailing these expenditures to IRP representatives. IRP representatives stated that the expenditures were not independent expenditures but were non-allocable mailers. IRP officials stated that the direct mail expenditures were for candidate specific mass mailings for which volunteers were utilized.

In response to the exit conference, IRP provided one additional sign in sheet that was dated September 20, 2012⁹ to document the use of volunteers in their mail program. They also provided two sworn affidavits from individuals. In one sworn affidavit, an individual explained that he oversaw the volunteer component of IRP's mail program and that for every mail piece that IRP sent on behalf of federal candidates, volunteers processed those mail pieces in accordance with FEC guidelines. Further, the individual described the process performed by the volunteers as follows: the volunteers unpacked mail pieces; sorted by address; banded together mail pieces, placed them in bags and loaded them for transport. In the second sworn affidavit another individual stated he would go on to become the volunteer coordinator and that as a regular volunteer for IRP, he spent a great deal of time

⁸ Proposed Interim Enforcement Policy, Agenda document No. 10-16.

⁹ IRP provided three sign in sheets during field work.

processing volunteer mail for IRP on behalf of Republican congressional candidates. He described the same basic process as the first individual about the involvement of the volunteers IRP used for Republican candidates for Congress.

The Interim Audit Report recommended that IRP provide:

- Additional invoices and/or information for the 27 mailers containing express advocacy; and
- Documentation and evidence that apparent independent expenditures totaling \$273,126 and the 27 mailers containing express advocacy did not require reporting as independent expenditures.

In addition the Interim Audit Report recommended absent such evidence, IRP amend its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, IRP stated "...that these 27 direct mail communications were non-allocable, candidate-specific volunteer mass mailings." IRP referred to two sworn affidavits it previously provided to the Audit staff from two committee individuals who were involved in its mail program that were responsible for the volunteer component of the volunteer mail. Both sworn affidavits described the process by which IRP volunteers regularly processed all of IRP's non-allocable mail. IRP supplied a third sworn affidavit from IRP's former Deputy Executive Director who stated that in the 2012 cycle, IRP supported its federal candidates through the use of non-allocable mail processed by volunteers.

With respect to the four mailers totaling \$33,972 for which IRP provided two sign in sheets and photographs, the Audit staff believes the documentation provided in support of the volunteer materials exemption is consistent with such evidence provided in past audits. As a result, these disbursements are no longer being considered independent expenditures. For the remaining 12 mailers totaling \$239,154 (\$273,126 - \$33,972) and the 27 mailers without invoices that IRP claims the volunteer materials exemption is applicable, the Audit staff again recommends that IRP provide further evidence to support the application of the volunteer materials exemption to the specific communications involved. Such evidence will assist the Commission in determining if the volunteer materials exemption is applicable to these communications.

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

1. Facts

In addition to not reporting any independent expenditures during the audit period, IRP also did not file 24 or 48-hour reports for any independent expenditures. Therefore, the apparent independent expenditures identified above by the Audit staff may also have required such filings.

2. Interim Audit Report & Audit Division Recommendation

This issue was presented at the exit conference. The Audit staff provided a schedule detailing these expenditures to IRP representatives. IRP representatives stated that the expenditures were not independent expenditures but were non-allocable mailers that used volunteers.

The Interim Audit Report recommended that IRP provide documentation to support the date of public dissemination for each of the 16 apparent independent expenditures totaling \$273,126 and the 27 mailers to determine whether a 24 or 48 hour report was required.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, IRP stated that all direct mail at issue was intended to be processed as non-allocable mail, and not as independent expenditures. With respect to the four mailers totaling \$33,972 for which IRP provided two sign in sheets and photographs, the Audit staff believes the documentation provided in support of the volunteer materials exemption is consistent with such evidence provided in past audits. As a result, these disbursements are no longer being considered independent expenditures. Absent further evidence that the remaining communications totaling \$239,154 (\$273,126 - \$33,972) qualify for the volunteer materials exemption, the Audit staff considers the 39 (27+12) apparent independent expenditures above to be independent expenditures that also required either 24 or 48 hour reports.

Finding 3. Recordkeeping for Communications

Summary

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. IRP reported 19 expenditures totaling \$357,613,¹⁰ on Schedule B, Line 30(b) and Schedule H4 (Disbursements for Allocated Federal/Non-federal Activity) with the purposes of FEA Volunteer Mail, Advocacy calls for Federal candidates, Direct Mail Services, equipment and phone minutes for Federal candidates and Auto-Dialer for Federal candidates. Documentation that was provided by IRP was insufficient to make a determination pertaining to the purpose for these disbursements and verification as Federal Election Activity or Allocated Federal/Non-federal Activity.

In response to the Interim Audit Report recommendation, IRP stated that it has searched its records and was unable to locate additional documents to substantiate these disclosures. Absent the provision of these records, the Audit staff considers the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1).

¹⁰ Two disbursements totaling \$52,504 were not reported, but are included in the \$357,613.

Legal Standard

- A. Formal Requirements Regarding Reports and Statements.** Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).
- B. Preserving Records and Copies of Reports.** The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 52 U.S.C. §30102(d).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. IRP reported 19 expenditures totaling \$357,613 for which documentation was insufficient to make a determination pertaining to whether these disbursements were correctly reported on Schedule B, Line 30(b) or Schedule H4.

The Audit staff's analysis resulted in the following:

- i. **Disbursements- No Invoices or Copies of Communications Provided (\$280,277)**
Disbursements totaling \$280,277 were paid to four mail vendors and three phone bank vendors, and were disclosed on Schedule B and Schedule H4, with purposes of FEA Volunteer Mail, Advocacy calls for Federal candidates, Direct Mail Services, equipment and phone minutes for Federal candidates and Auto-Dialer for Federal candidates. Without sufficient details, the Audit staff is unable to verify IRP's reporting of these amounts as Federal Election Activity or Allocated Federal/Non-federal Activity. The Audit staff requested copies of the invoices for the associated mail pieces and phone bank scripts for each phone disbursement. To date, these invoices or other information to associate the payments to a particular communication have not been provided.
- ii. **Disbursements- Invoices Provided – Not Able to Associate with Copies of Communications (\$77,336)**
IRP reported paying disbursements totaling \$77,336¹¹ to two mail vendors. IRP disclosed three disbursements on Schedule B, Line 30(b) with purposes of "FEA Volunteer Mail – Walsh". For these disbursements, IRP provided invoices but did not provide information about the related mail communications. Without sufficient details, the Audit staff is unable to verify IRP's reporting of these amounts as FEA Volunteer Mail. The Audit staff requested information that would allow an association between the invoice and the communication, however, to date IRP has not provided this information.

¹¹ The amount of invoices associated for these mailers is \$129,490. This is part of Finding 4.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented IRP schedules of the disbursements for which further records were necessary to verify the accuracy of reporting. At that time the Audit staff again requested that IRP provide invoices, copies of communications and scripts that would associate each invoice to the corresponding communication to the committee disclosure reports. The Interim Audit Report recommended that IRP provide the invoices, scripts and associated mail communications for the disbursements totaling \$357,613.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, IRP stated that it searched its records and was not able to locate additional documents to substantiate these disclosures. Absent the provision of the records, the Audit staff considers the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1).

Finding 4. Receipt of Apparent Prohibited In-Kind Contributions

Summary

During audit fieldwork, the Audit staff identified apparent prohibited in-kind contributions totaling \$72,880 to the benefit of IRP. The apparent prohibited in-kind contributions consisted of postage for campaign mailers invoiced to IRP but apparently paid by an unknown source. In response to the Interim Audit Report recommendation, IRP did not specifically address the amounts for postage apparently paid on its behalf. IRP has not complied with the recommendation to identify the source of payment for the postage. Absent such a demonstration, the \$72,880 in postage costs are considered a prohibited contribution to IRP.

Legal Standard

A. Receipt of Prohibited Contributions – General Prohibition. Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Labor Organizations; or
 - National Banks;
3. Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and
4. Foreign Nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence; foreign governments and foreign political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b)). 52 U.S.C. §§30119 and 30121.

B. Contribution. A gift, subscription, loan (except a loan made in accordance with 11 CFR 100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office is a contribution. The term anything of value includes all in-kind contributions, of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services. 11 CFR §100.52.

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified apparent prohibited in-kind contributions totaling \$72,880. The apparent prohibited in-kind contributions consisted of payments for postage paid directly to a mail vendor used by IRP for at least 14 mailers that IRP sent out.¹² This amount was identified from invoices IRP provided that were for two Congressional candidates, Joe Walsh for Congress Committee and Plummer for Congress.¹³ Contained on each of the 14 invoices was an amount for postage that read, “Postage – Paid Directly to Mail House”. IRP bank statements, both federal and non-federal, do not show these amounts being paid. The amount paid for postage that could not be traced to IRP bank statements is \$72,880. However, the Audit staff notes that other mailings associated with Candidates that IRP sent out appeared to involve postage paid for by the Candidates’ authorized committees. For example, the Randy Hultgren for Congress committee, transferred \$71,379 to IRP and reported the transfers as, “Direct Mail Production.” IRP reported spending \$70,622 for three mailers in which the purpose was, FEA Volunteer Mail Hultgren for Congress.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided the supporting documentation and work papers for the apparent prohibited in-kind contributions. The IRP representative stated that the amounts were for one of the Republican Congressional candidates.

The Interim Audit Report recommended that IRP provide evidence demonstrating that the in-kind contributions in question were made with permissible funds or refund such contributions. In addition, the Interim Audit Report recommended that if funds are not available to make the necessary refunds or disgorgement, IRP should disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make such refunds.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, IRP did not specifically address the amounts for postage apparently paid on its behalf. IRP has not complied with the recommendation to identify the source of payment for the postage. Absent such a demonstration, the \$72,880 in postage costs are considered a prohibited contribution to IRP.

¹² A complete set of invoices was not supplied. The amount of the possible prohibited contributions may be higher.

¹³ IRP reported receiving \$112,000 from the Joe Walsh for Congress Committee along with \$50,000 from the Plummer for Congress Committee.

Finding 5. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that IRP failed to report debts and obligations to 14 vendors totaling \$294,117¹⁴ on Schedule D (Debts and Obligations). In response to the Interim Audit Report recommendation, IRP amended its disclosure reports to materially correct the disclosure of debts and obligations to these vendors.

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 and to the committee 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 as of the time payment is made or not later 60 days after such obligation is incurred, whichever comes first.
- 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).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed IRP disbursement records and disclosure reports for proper reporting of debts and obligations.¹⁵ The review identified debts and obligations to 14 vendors totaling \$294,117¹⁶ not reported on Schedule D (Debts and Obligations). Of these debts, \$173,348¹⁷ was incurred during the audit period and \$120,769 was incurred prior to the audit period and remained outstanding as of the beginning of the audit period. Based on the records, these vendors provided mainly legal services, accounting services, telemarketing and mail services.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the reporting of debts and obligations with IRP's representatives at the exit conference and provided work papers detailing the unreported debts. Representatives said they would research this matter and provide additional documentation. IRP representatives stated that they would amend their reports.

¹⁴ Additional records were requested at the exit conference relating to possible debt amounts that IRP disclosed on a separate filing prior to fieldwork. Those records were not provided to the Audit staff. This amount is update to \$257,396.

¹⁵ IRP provided the Audit staff with 177 invoices for 724 disbursements.

¹⁶ Each debt in this amount was counted once even if it requires disclosure over multiple periods. This amount has been updated to \$257,396.

¹⁷ This amount has been updated to \$136,627.

The Interim Audit Report recommended that IRP amend its disclosure reports to disclose these debts.

C. Committee Response to Interim Audit Response

In response to the Interim Audit Report recommendation, IRP amended its disclosure reports to materially correct the disclosure of debts and obligations to these vendors. In addition, IRP acknowledged that the items identified in the Interim Audit Report "...arguably should have been reported as debt on Schedule D during the relevant reporting period."

Finding 6. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that IRP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to IRP employees totaling \$558,089¹⁸ for which IRP did not maintain monthly payroll logs. This consisted of \$542,812 for which payroll was allocated with federal and non-federal funds, and \$15,277 for which payroll was exclusively non-federal. In response to the Interim Audit Report recommendation, IRP acknowledged that it does not possess any monthly payroll logs for employees for the 2011 – 2012 time period. IRP stated that it did maintain these logs during the 2014 election cycle and going forward, they will continue to maintain monthly payroll logs. As such, IRP has complied with the Interim Audit Report recommendation by providing details of its plan to maintain monthly payroll logs in the future.

Legal Standard

Maintenance of Monthly Logs. Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election. Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or be allocated as administrative costs;
- employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and,
- employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with state law. 11 CFR §106.7(d)(1).

Facts and Analysis

A. Facts

Prior to audit fieldwork, the Audit staff was informed by IRP that it did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in

¹⁸ IRP did not have employees paid with a mixture of federal and non-federal funds and exclusively non-federal funds during the same month.

connection with a federal election. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2011 and 2012, IRP did not maintain monthly logs for \$558,089¹⁹ in payroll disbursements. This amount includes payroll paid as follows to IRP employees.

- Employees reported on Schedule H4 and paid with federal and non-federal funds during the same month (totaling \$542,812) and;
- Employees paid exclusively with non-federal funds in a given month (totaling \$15,277).

B. Interim Audit Report & Audit Division Recommendation

Prior to audit fieldwork and at the exit conference, the Audit staff discussed the payroll recordkeeping matter with IRP's representative and counsel. IRP counsel noted that IRP did not maintain payrolls during the 2011-2012 election cycle, however, currently does maintain the payroll logs.

The Interim Audit Report recommended that IRP provide evidence that it maintained monthly time logs to document the percentage of time an employee spent in connection with federal election; or implement a plan to maintain monthly payroll logs in the future.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, IRP acknowledged that it did not possess any monthly payroll logs for employees for the 2011 – 2012 time period. IRP stated that it maintained these logs during the 2014 election and going forward, IRP will require all of its employees who are paid by both federal and non-federal funds to maintain monthly logs of the time each spends on federal and non-federal activities. As such, IRP has complied with the Interim Audit Report recommendation by providing details of its plan to maintain monthly payroll logs in the future.

¹⁹ This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question, Page 1). Payroll amounts are stated net of taxes and fringe benefits.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JAN 31 2017

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas E. Hintermister
Assistant Staff Director
Audit Division

FROM: Adav Noti *AN*
Associate General Counsel
Policy Division

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Margaret J. Forman *MJF*
Attorney

SUBJECT: Draft Final Audit Report on the Illinois Republican Party (LRA 1006)

I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Draft Final Audit Report (“proposed DFAR”) on the Illinois Republican Party (“IRP”). The proposed DFAR contains six findings: Misstatement of Financial Activity (Finding 1), Reporting of Apparent Independent Expenditures (Finding 2), Recordkeeping for Communications (Finding 3), Receipt of Apparent Prohibited In-Kind Contributions (Finding 4), Reporting of Debts and Obligations (Finding 5), and Recordkeeping for Employees (Finding 6). We concur with the findings, and comment on Finding 2. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

II. AUDIT DIVISION CONCLUDES EXPENDITURES FOR MAILERS ARE REPORTABLE AS INDEPENDENT EXPENDITURES

A. Background

The IRP made 16 media-related expenditures, or mailers, totaling \$273,126 that it reported as Federal Election Activity (FEA). The IRP also made an unknown amount of expenditures for 27 mailers that the Audit Division could not associate with any invoices. Both the 16 media-related expenditures and the 27 additional mailers¹ appear to constitute independent expenditures according to the Audit staff. The proposed DFAR, therefore, concludes that all 43 (16+27) mailers should have been disclosed either on 24 hour or 48 hour reports as independent expenditures.

The IRP does not challenge the Audit Division's classifications of the mailers on the basis of whether they constitute express advocacy. *See* 11 C.F.R. §§ 100.16, 100.22 (independent expenditures defined in part as communications that expressly advocate, a term defined in section 100.22). Rather, the IRP argues that the mailers are not properly regarded as independent expenditures because they were distributed by volunteers, invoking the "volunteer materials exemption" ("VME") to the definition of "expenditure."² *See* 52 U.S.C. § 30101(9)(B)(viii); 11 C.F.R. § 100.147. The IRP submitted some documents in support of this assertion: 24 pictures of individuals sorting, bundling and placing the direct mailers into mail bags, four sign in sheets to document the use of volunteers in the mail program, and three affidavits attesting to the use of volunteers for all 43 mailers. According to the proposed DFAR, many of these documents can only be connected to a few specific mailings on which the volunteers may have worked.

The Audit Division concludes that the documentation provided by the Committee is insufficient to support its assertion that the VME applies. The proposed DFAR concludes that as a result of the absence of sufficient documentation, the Audit staff considers the communications to be independent expenditures.

¹ These 27 mailers are referred to in the proposed DFAR as "direct mail." As we understand it, the term is not being used here in its technical sense to mean mail distributed by a commercial firm or from a commercial list. *See* 11 C.F.R. § 100.147. The "volunteer materials exemption," with which this portion of our comments is concerned, does not apply to direct mail in this sense. *Id.*; 52 U.S.C. § 30101(9)(B)(viii)(1); *but see* Audit of the Tennessee Republican Party, Office of the General Counsel's legal comments on the Interim Audit Report of the Tennessee Republican Party (LRA 745) at 3-4 (Aug. 13, 2008), *discussing* Missouri Democratic State Committee (MUR 5837) Statement of Reasons of Commissioners Lenhard, Mason, von Spakovsky and Weintraub, Dec. 20, 2007 at 4 (Commission has interpreted mailings to qualify for the VME if there was sufficient volunteer involvement even if there was some involvement by a commercial vendor). We recommend revising the proposed DFAR to refer to "mailers" or "mailings" rather than to "direct mail" in order to avoid potential confusion.

² The IRP also states that it did not intend for the mailers to be independent expenditures, but the regulation defining express advocacy does not permit an examination of the speaker's intent. *FEC v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 466-472 (2007) (subjective intent is irrelevant); *see* Audit of The National Campaign Fund and Audit of the Legacy Committee Political Action Committee (communications intended as fundraising letters not exempt from independent expenditures).

We believe that the 43 mailers can be divided up into two categories: 1) mailers for which IRP offered documentation to show volunteer involvement that can be directly connected to the individual mailers, and 2) mailers for which IRP offered only affidavits to show volunteer involvement. We analyze and make recommendations on each category in turn.

B. Mailers for which IRP offered documentation, which can be linked to specific mailers, to show volunteer involvement

Of the 16 media-related expenditures totaling \$273,126 that the Audit Division could connect with an invoice, \$33,972 of these expenditures could be matched to four mailers for which the IRP provided photographs showing volunteer involvement in the distribution of the mailers.³ Because the expenditures can be directly connected to the documentation provided in support of the VME, we conclude that the proposed DFAR should not conclude that this \$33,972 in expenditures are independent expenditures that required reporting as such. While we acknowledge there is a lack of clarity with respect to the information that is necessary to show VME, the Commission has not found mailings to be attributable to the coordinated party limit where committees have provided photographs showing volunteers participating in activities relating to the mailings on behalf of a specific candidate identified in the mailer. *See* Audit of the Arizona Republican Party, Amended Commission Certification for Audit Division Recommendation Memorandum (Aug. 22, 2013), Final Audit Report at 13, 17 (approved Nov. 14, 2013), Office of the General Counsel's legal comments to the Draft Final Audit Report at 5 (Apr. 8, 2013); *see also* 11 C.F.R. § 100.147. We, therefore, recommend that the proposed DFAR not consider the \$33,972 in expenditures for the four mailers for which the IRP provided photographs documenting volunteer involvement in the distribution of those mailers to be reportable as independent expenditures.

C. Mailers for which IRP offered only affidavits to show volunteer involvement

With regard to the remaining \$239,154 (\$273,126 - \$33,972) in media-related expenditures that could be connected with an invoice, and 27 mailers that the Audit Division was unable to connect with any invoice,⁴ the only information that IRP has offered to show that volunteers were used to distribute the mailers is three affidavits.⁵

As to these expenditures, the proposed DFAR correctly observes that a lack of clarity exists, in the context of the mailings, regarding how to apply the VME and what quantum and

³ Additionally, two volunteer sign in sheets could be matched to these photographs and invoices, and one additional sign in sheet could be matched to a mailer. It is unclear from the proposed DFAR if this additional sign in sheet was matched to one of the mailers for which the IRP was unable to provide invoices.

⁴ Because the Audit Division is unable to connect these 27 mailers with any invoice, we cannot determine the amount of the expenditures associated with those mailers.

⁵ According to the Audit Division, the IRP provided 10 additional photographs and a fourth sign in sheet that the Audit Division cannot connect to any mailer. Because these documents cannot be connected to any mailer, we are not attributing these documents to any mailer in support of the VME.

type(s) of documentation are necessary to substantiate a claim that the VME applies. *See, e.g.*, OGC Comments on Draft Final Audit Report - Arizona Republican Party (LRA 889), at 4-5 (Apr. 8, 2013). In recent audits addressing this issue, the Commission has approved findings that reported expenditures should not be attributed to a committee's coordinated expenditure limit where there was sufficient evidence of volunteer activity.⁶

The facts in this case are distinguishable from those of the Arizona Republican Party audit, due to the production of these affidavits. The Commission deadlocked in the Arizona Republican Party audit on whether to apply the VME on the basis of unsworn written assertions regarding volunteer activity. *See* Final Audit Report of the Commission on the Arizona Republican Party, at 16-17. In the Arizona Republican Party audit, the Commission could not agree on whether a written description of volunteer involvement was, by itself, sufficient to qualify the associated expenses for the VME. While some Commissioners approved the recommended finding, "other Commissioners determined that unsworn written assertions absent any documentation of the nature and extent of the volunteer involvement would not be sufficient." *Id.* at 17. Here, the IRP has provided sworn affidavits that could potentially be viewed as having more evidentiary value than unsworn statements. Two of the affidavits provided by IRP are sworn by individuals who appear to be in a position to have direct knowledge of the volunteer activities,⁷ state that every mail piece sent by IRP on behalf of federal candidates was processed by volunteers, and delineate nine steps taken by the volunteers to process and distribute the mailers.⁸

Given the Commission's split on unsworn statements provided in the Arizona audit, and the lack clarity in the application of the VME in general, we do not know if sworn affidavits such as these are sufficient documentation for the purposes of the VME. We, therefore, recommend

⁶ *See, e.g.*, Final Audit Report of the Commission on the Arizona Republican Party, at 13, 17 (approved Nov. 14, 2013) (Commission did not count mailings supporting candidate David Schweikert against committee's coordinated expenditure limit where committee provided written description of process and photographs of volunteers working on mailers to support claim of VME, but did not approve recommendation by four votes to find similarly regarding mailings on behalf of two other candidates, where committee provided only written description of process); Final Audit Report of the Commission on the Nebraska Democratic Party, at 16-17, 19-20 (approved Oct. 23, 2014) (Commission does not count cost of mailings against coordinated expenditure limit where committee provided vendor statements and invoices along with photographs of volunteers participating in various duties, but did not approve recommendation to find similarly, by four votes, where committee submitted unsworn written assertions without documentation of nature and extent of volunteer involvement); Final Audit Report of the Commission on the South Dakota Democratic Party, at 14-15 (approved Apr. 17, 2015) (Commission does not count cost of mailings against coordinated expenditure limit where committee provided photographs of volunteers working on mailers and signed declaration that that type of mailing generally performed by volunteers).

⁷ One affiant was a volunteer during the entire audit period, and was promoted to volunteer coordinator. This individual worked directly on all but three or four of the mailers. *See* Affidavit of Andrew Heffernan. Another affiant oversaw the volunteer component of the IRP's volunteer mail program. *See* Affidavit of Jon Callaway.

⁸ Two of the three affidavits provided a detailed list of the volunteers' role in processing the mailers, similar to the procedures of the volunteers in the Tennessee Republican Party audit. *See* Audit of the Tennessee Republican Party, Office of the General Counsel's legal comments on the Final Audit Report at 2 (Jun. 15, 2009) (comparing facts of volunteer activity in the Tennessee Republican Party audit to the volunteer activity for the Utah Republican Party, MUR 5598).

that the Audit Division raise this issue in the cover memorandum accompanying the transmission of the DFAR to the Commission.



April 17, 2017

By email and via U.S. Mail

Mr. Robert Morcomb, CFE
Federal Election Commission
Auditor, Audit Division
Office of Compliance
Washington, DC 20463

Re: Illinois Republican Party C00005926

Dear Mr. Morcomb:

This letter is in response to the Draft Final Audit Report (“DFAR”) submitted to the Illinois Republican Party (“IRP”) by your agency on March 29, 2017. The DFAR has made six (6) Findings and Recommendations. The IRP will address each here. In addition, the IRP hereby requests a hearing with respect to the DFAR. At a hearing, we wish to expressly address the DFAR’s Finding #2, #3 and #4. The IRP submits that a hearing on the conclusions reached by the Audit Division on each of these points is essential in helping the Commission get a full assessment of the facts and circumstances of the subject matter on which each Finding is based. While the IRP will address each Finding here, the IRP has provided sufficient additional factual material that necessitates a hearing. In addition, as noted by the Office of General Counsel, given the uncertainty that exists around the level of specificity necessary to satisfy the volunteer exemption for non-allocable communications, a hearing is warranted.

Finding #1 addresses discrepancies between the IRP’s bank account records and receipts and disbursements reported to your agency in 2011 and 2012. As noted in the DFAR, the IRP has hired compliance professionals specifically to amend its disclosure reports from 2011 and 2012 (and all subsequent reports) to materially correct any prior misstatements. The IRP again thanks you for this opportunity to provide accurate disclosures from this period. We wish to reiterate that any incorrect reporting of receipts or disbursements was inadvertent and without any intention to circumvent reporting requirements. As well, we are hopeful that the IRP’s investment in compliance professionals both after the 2011-2012 time period and in order to accomplish the recommendations made in the IAR demonstrates the IRP’s good faith in this process.

Finding #2 addresses the IRP’s supposed failure to disclose 27 direct mail communications as independent expenditures. The IRP takes issue with the conclusion that these communications are independent expenditures. As the IRP has maintained throughout this audit process, these

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communications were not independent expenditures on behalf of federal candidates, but rather were non-allocable election communications on behalf of federal candidates.

The quantum of evidence produced here supports the conclusion that these expenditures were for non-allocable (and not independent) expenditures. The IRP has submitted photographic records for communications it mailed in support of Rodney Davis and for Judy Biggert, two congressional candidates during the 2012 general election cycle. As well, the IRP has submitted the affidavits of two individuals (Jon Calloway and Andrew Heffernan) who were heavily involved in and responsible for the volunteer component of the IRP's non-allocable mail program. Both affidavits describe the process by which the IRP volunteers regularly processed all of the IRP's non-allocable mail. Both affidavits detail how this process was, at the time, documented with photographs of volunteers working, and of volunteer signatures on sign-in sheets, exactly as was produced for the Davis and Biggert communications.

Calloway, who was the IRP's Deputy Director during the relevant time period, further averred that none of the mail pieces the IRP sent on behalf of federal Republican candidates were independent expenditures. Rather, all mail pieces were processed and sent as non-allocable mail.

The IRP additionally submitted the affidavit of Joe Weiss, who was its Deputy Executive Director during the relevant time period. Weiss, like Calloway, averred that all of the IRP's communications supporting federal candidates were processed as non-allocable mail, and were not independent expenditures.

As has been noted throughout the audit process, the IRP has searched diligently and feverishly, but does not possess any additional invoices or information regarding the direct mail communications referenced in the DFAR. As well, the IRP does not have any additional volunteer timesheets or photographs to document additional volunteer processing of non-allocable direct mail. As has been noted throughout the audit process, the executive leadership of the IRP changed soon after the 2012 General Election, and records were not properly preserved. The IRP sincerely regrets this circumstance, from which it is currently suffering.

Nonetheless, there is absolutely no evidence that supports the conclusion that the communications in question were independent expenditures. Further, as noted in the Weiss affidavit, given the level of coordination between the IRP and Republican federal candidates, making independent expenditures on behalf of these candidates would be nearly impossible, and impractical in any event. The IRP contends that the agency's finding is incorrect, and not supported by the evidence. As such, the IRP similarly contends that no 24-hour or 48-hour reports needed to be filed in conjunction with these communications.

Finding #3 addresses expenditures disclosed by the IRP as "FEA Volunteer Mail, Advocacy calls for Federal candidates, Direct Mail Services, equipment and phone minutes for Federal candidates and Auto-Dialer for Federal candidates." This finding contends that the IRP has not produced records to sufficiently record these disbursements as "FEA Volunteer Mail, Advocacy calls for Federal candidates, Direct Mail Services, equipment and phone minutes for Federal candidates and Auto-Dialer for Federal candidates" and has requested the IRP provide copies of communications, invoices and scripts that would substantiate these disclosures. Again,

the IRP has searched its records, and unfortunately has no additional documents that would further substantiate these disclosures.

Finding #4 addresses alleged prohibited contributions in the amount of \$72,880. This amount is derived from invoices provided by the IRP in connection with communications supporting Joe Walsh for Congress (“Walsh”) and Plummer for Congress (“Plummer”). These invoices noted that the cost of postage for the communication had been paid directly by the mailhouse. While neither the IRP nor your agency were able to locate records matching these payments for postage directly to the mailhouse, the IRP contends that such amounts were permissibly spent by the IRP on behalf of the Walsh and Plummer campaigns for non-allocable mail, through the Revolvis mailhouse. The IRP further contends that all funds it paid to Revolvis for direct mail to support federal candidates were raised in accord with federal limits and source prohibitions. The IRP continues to search for records to further support this contention, to the extent that it is not supported by the records that have been produced thus far in this audit.

Finding #5 addresses items that the agency contends should have been reported as debt on Schedule D during the relevant reporting period. The IRP has reviewed the items identified in the IAR and has amended its reports from this period to more accurately reflect amounts that should have been considered debt, in conjunction with its response to Finding #1. Again, the IRP appreciates the opportunity to more accurately disclose its financial activity from this period, and again reiterates that any incorrect reporting of debt was inadvertent and without any intention to circumvent reporting requirements.

Finding #6 addresses record keeping for field employees. As noted in its response to the IAR, the IRP regrettably does not possess any monthly payroll logs for employees for the 2011-2012 time period, to the extent that such records were kept. As has been related during the fieldwork portion of this audit, a change in senior staff following the 2012 election cycle has frustrated the ability of current IRP leadership to produce records from 2011 and 2012. Regardless, as has been the case since the beginning of the 2014 election cycle, and as is the case currently, the IRP requires all of its employees who are paid by both federal and state funds to maintain monthly logs of the time each spends on federal and state activities. Going forward, the IRP will continue to require such employees to maintain monthly payroll logs.

Thank you for this opportunity to respond to this DFAR. We look forward to the opportunity to further present our contentions at a hearing before the Commission.

Respectfully,

/s/ *John G. Fogarty, Jr.* /s/

John G. Fogarty, Jr.
General Counsel
Illinois Republican Party

cc: Nick Klitzing, Executive Director

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