



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 16, 2012

MEMORANDUM

TO: Patricia Carmona
Chief Compliance Officer

Thomas Hintermister
Assistant Staff Director
Audit Division

FROM: Lawrence L. Calvert, Jr.
Associate General Counsel

A handwritten signature in black ink, appearing to be "L. Calvert, Jr.", written over the printed name.

Lorenzo Holloway
Assistant General Counsel
For Public Finance and Audit Advice

Handwritten initials "LH" in black ink, positioned to the right of the printed name Lorenzo Holloway.

Delanie DeWitt Painter
Attorney

Handwritten initials "DDP" in black ink, positioned to the right of the printed name Delanie DeWitt Painter.

SUBJECT: Proposed Interim Audit Report on Mississippi Democratic Party Political Action Committee (LRA 906)

The Office of the General Counsel has reviewed the proposed Interim Audit Report ("IAR") for the Mississippi Democratic Party Political Action Committee. We concur with the findings in the proposed IAR and have no comments.¹ If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this audit.

cc: Christopher Hughey, Deputy General Counsel

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).



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 1, 2012

MEMORANDUM

TO: Patricia Carmona
Chief Compliance Officer

Thomas Hintermister
Assistant Staff Director
Audit Division

FROM: Lisa J. Stevenson
Special Counsel to
the General Counsel

Lawrence L. Calvert, Jr.
Associate General Counsel

Lorenzo Holloway
Assistant General Counsel
For Public Finance and Audit Advice

Delanie DeWitt Painter
Attorney

SUBJECT: Proposed Interim Audit Report on Mississippi Democratic Party Political Action Committee (LRA 906)

I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Interim Audit Report (“IAR”) for the Mississippi Democratic Party Political Action Committee (“the Committee”). We commented on a previous draft of the IAR on May 16, 2012, and concurred with the findings in that draft.¹ Subsequently, the auditors added another finding to the draft IAR: Finding 4. Recordkeeping for Payroll, and requested our review of that finding. Our comments focus on an issue related to that finding of the recordkeeping requirements for employees who are paid and reported as solely 100% federal funds. If you have any questions, please contact Delanie DeWitt Painter, 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. RECORDKEEPING FOR PAYROLL (Finding 4.)

The auditors found that the Committee did not maintain a monthly log or any supporting documentation stating the percentage of time that each employee spent on activities in connection with a federal election. The Committee paid a total of \$227,888 for payroll from its federal account in 2009 and 2010. The payroll paid from the Committee's federal account included: \$39,970 for 11 employees reported as federal election activity ("FEA") on Schedule B, line 30b, \$49,177 for 4 employees reported as other federal operating expenditures on Schedule B, line 21b, and \$138,741 for 6 employees reported as shared federal/non-federal activity on Schedule H-4, Line 21a. According to the auditors, all payroll was paid from the federal account, including both the federal and non-federal portions of amounts reported as shared activity; thus, no payroll was paid from a non-federal account. The draft IAR states that there were 17 paid employees, and some employees were reported on more than one line. Based on information provided by the Audit staff, it appears that 11 of the Committee's employees may have spent 100% of their time on activities in connection with a federal election and were paid with 100% federal funds. The Committee informed the auditors that it has not located any payroll logs or other payroll documentation. The proposed IAR recommends that, unless the Committee provides any monthly logs, the Committee should provide and implement a plan to maintain monthly payroll logs to track the percentage of time that each employee spends on activities in connection with a federal election.

This proposed finding raises the issue of whether state party committees must maintain a monthly log under 11 C.F.R. § 106.7(d)(1) for employees who are paid from and reported as solely 100% federal funds. We reiterate the informal advice on this issue that we provided in the context of another audit.

A state party committee "must keep a monthly log of the percentage of time *each employee* spends in connection with a Federal election." 11 C.F.R. § 106.7(d)(1) (emphasis added). To determine if a state party committee must allocate the salary, wages and benefits of its employees, it must examine the percentage of time that the employees spent on federal election activity ("FEA") or activity in connection with federal elections. Salaries and benefits for employees who spend more than 25% of their compensated time on FEA or activities in connection with a federal election in a given month must be paid only from a federal account. 11 C.F.R. § 106.7(d)(1)(ii). Employees who spend less than 25% of their time on FEA or activities in connection with a federal election may be allocated as administrative costs or paid from the federal account. 11 C.F.R. § 106.7(d)(1)(i). Employees who spend none of their compensated time on FEA or activities in connection with a federal election may be paid entirely with funds that comply with State law. 11 C.F.R. §§106.7(c)(1) and 106.7(d)(1)(iii).

We conclude that, read literally, the regulations support the conclusion that state party committees must maintain a monthly log under 11 C.F.R. § 106.7(d)(1) for employees who are paid from and reported as solely 100% federal funds. The regulations require a state party committee to keep a log of the percentages of time that each employee spends in connection with a federal election. 11 C.F.R. § 106.7(d)(1). Although 100% of the time spent on federal activity represents the whole or complete time spent on federal activity, this is still a percentage.

Whether the Audit Division should pursue findings of this nature, however, raises practical questions. Section 106.7(d) works in support of the statute's requirement that state and local party committees treat as "federal election activity," payable with 100% federal funds, the salaries and benefits of any employee who spends more than 25% of his or her compensated time during the month on activities in connection with a federal election. 2 U.S.C. §§ 431(20)(A)(iv), 441i(b)(1). Here, it appears that all of the employees were paid with 100% federal funds, so there is no concern that an inadequate share of federal funds was used. The only difference that could possibly be made by keeping the log would be to identify those employees who spent less than 25% of their compensated time during a month on activities in connection with a federal election, but whose salaries and benefits the Committee voluntarily chose to pay with 100% federal funds. Because the salaries and benefits of those employees are not "federal election activity," they would not have been reported as such on line 30(b) of the Detailed Summary Page, but could instead have been reported as federal operating expenses on line 21(b), 11 C.F.R. § 106.7(d)(1); see 11 C.F.R. §§ 104.14(b)(1) and 104.17(a)(4), or as payments for allocable operating expenses on line 21(a) and on Schedule H4.² Here, it appears that those employees are identified because the Committee reported payroll payments of \$49,177 for 4 employees as other federal operating expenditures on Schedule B, line 21b, and \$138,741 for 6 employees as shared federal/non-federal activity on Schedule H-4, Line 21a. If the Audit Division believes that logs (or the equivalent substitute) are needed to verify this reported information, then you should consider whether a recordkeeping finding or a limitation on the scope of the audit is appropriate.

We provide these comments, however, recognizing the Commission's 3-3 split on a similar issue in the Georgia Federal Elections Committee audit involving employees whom the committee asserted spent *no* time on activity in connection with federal elections. In that audit, the Commission split on the issue of whether the Commission could require a committee to keep a log for such employees, notwithstanding that zero (as well as 100) is a percentage. For those employees, presumably, there would be considerably more reason to require the log, to ensure that their salaries were properly paid with 100% non-federal funds. Nevertheless, in a motion that failed 3-3, three Commissioners asserted that "the Commission does not have jurisdiction to impose recordkeeping and documentation requirements on employee activity that a State party committee claims is solely non-Federal." See Commission Agenda Document No. 11-10-B (Motion on Audit Division Recommendation memorandum on the Georgia Federal Elections Committee, *considered in Open Session* Mar. 3, 2011). Here, unlike with the Georgia Federal Elections Committee, the Committee employees at issue undisputedly were paid with 100% federal funds and 11 of the Committee's 17 employees apparently spent 100% of their time on activities in connection with a federal election so the three Commissioners' concern regarding jurisdiction over "solely non-federal" activity may be reduced. Nevertheless, given that there is some uncertainty on a related issue, we recommend that you raise this issue in the memorandum that forwards the report to the Commission.

² According to the Reports Analysis Division ("RAD"), if a committee asked RAD how to disclose payroll that could be allocated with shared federal/non-federal funds, but was paid with 100% federal funds, RAD would advise them to disclose it on Schedule B as a 100% federal operating expense. However, if the committee opted to disclose the expense as allocated on Schedule H4, RAD would consider that acceptable. RAD explained that there is no requirement to reimburse the federal account the non-federal share and some committees that initially disclose expenses as allocated later decide they do not want to reimburse the federal account the non-federal share.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 26, 2012

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas Hintermister
Assistant Staff Director
Audit Division

FROM: Lisa J. Stevenson
Special Counsel to
the General Counsel

Lorenzo Holloway
Assistant General Counsel
For Public Finance and Audit Advice

Delanie DeWitt Painter
Attorney

SUBJECT: Proposed Interim Audit Report on Mississippi Democratic Party Political Action Committee (LRA 906)

I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Interim Audit Report ("IAR") for the Mississippi Democratic Party Political Action Committee ("the Committee"). We commented on a previous draft of the IAR on May 16, 2012, and concurred with the findings in that draft.¹ Subsequently, the auditors added another finding to the draft IAR: Finding 4. Recordkeeping for Payroll, and requested our review of that finding. Our comments focus on an issue related to that finding of the recordkeeping requirements for employees who are paid and reported as solely 100% federal funds. We initially commented on this issue on August 1, 2012. However, the Audit staff subsequently provided additional factual information that required substantive changes to our analysis. Therefore, we are withdrawing our August 1, 2012 comments and replacing them with this memorandum. If you have any questions, please contact Delanie DeWitt Painter, 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. RECORDKEEPING FOR PAYROLL (Finding 4.)

The auditors found that the Committee did not maintain a monthly log or any supporting documentation for any of its paid employees. The proposed IAR recommends that, unless the Committee provides monthly logs, the Committee should provide and implement a plan to maintain monthly payroll logs to track the percentage of time that each employee spends on activities in connection with a federal election.

The monthly logs should have stated the percentage of time that each employee spent on activities in connection with a federal election. 11 C.F.R. § 106.7(d)(1). The Committee paid a total of \$227,888 for payroll from its federal account in 2009 and 2010. Included in this amount was \$39,970 for 11 employees reported as federal election activity ("FEA") on Schedule B, line 30b, and \$49,177 for four employees reported as other federal operating expenditures on Schedule B, line 21b.²

The auditors reviewed the Committee's accounts and found that the Committee's payments to those employees that were reported as FEA or federal operating expenditures were paid with 100% federal funds. The proposed finding, therefore, raises the issue of whether state party committees must maintain a monthly log under 11 C.F.R. § 106.7(d)(1) for employees who are paid from and reported as solely 100% federal funds. We reiterate this informal advice on this issue that we provided in the context of another audit.

A state party committee "must keep a monthly log of the percentage of time *each employee* spends in connection with a Federal election." 11 C.F.R. § 106.7(d)(1) (emphasis added). To determine if a state party committee must allocate the salary, wages and benefits of its employees, it must examine the percentage of time that the employees spent on federal election activity or activity in connection with federal elections. Salaries and benefits for employees who spend more than 25% of their compensated time on FEA or activities in connection with a federal election in a given month must be paid only from a federal account. 11 C.F.R. § 106.7(u)(1)(ii). Employees who spend less than 25% of their time on FEA or activities in connection with a federal election may be allocated as administrative costs or paid from the federal account. 11 C.F.R. § 106.7(d)(1)(i). Employees who spend none of their compensated time on FEA or activities in connection with a federal election may be paid entirely with funds that comply with State law. 11 C.F.R. §§ 106.7(c)(1), 106.7(d)(1)(iii).

We conclude that, read literally, the regulations support the conclusion that state party committees must maintain a monthly log under 11 C.F.R. § 106.7(d)(1) for employees who are paid from and reported as solely 100% federal funds. The 11 employees reported as FEA may have spent as much as 100% of their time on federal activity. Although 100% of the time spent on federal activity represents the whole or complete time spent on federal activity, this is still a percentage.

² The four employees who were paid with 100% federal funds and reported as federal operating expenses for some of their work time were also paid as shared federal/nonfederal activity for the remainder of their work time.

Whether the Audit Division should pursue findings of this nature, however, raises practical questions. Section 106.7(d) works in support of the statute's requirement that state and local party committees treat as "federal election activity," payable with 100% federal funds, the salaries and benefits of any employee who spends more than 25% of his or her compensated time during the month on activities in connection with a federal election. 2 U.S.C. §§ 431(20)(A)(iv), 441i(b)(1). Since the Committee paid the employees at issue with 100% federal funds for all or a portion of their work time, there is no concern that an inadequate share of federal funds was used to pay these employees. The only difference that could possibly be made by keeping the log for these employees for the time paid with 100% federal funds would be to identify those employees who spent less than 25% of their compensated time during a month on activities in connection with a federal election, but whose salaries and benefits the Committee voluntarily chose to pay with 100% federal funds. Because the salaries and benefits of those employees are not "federal election activity," they would not have been reported as such on line 30(b) of the Detailed Summary Page, but could instead have been reported as federal operating expenses on line 21(b), 11 C.F.R. § 106.7(d)(1); see 11 C.F.R. §§ 104.14(b)(1) and 104.17(a)(4). Here, it appears that the Committee recognized this distinction because the Committee reported payroll payments of \$49,177 for four employees as other federal operating expenditures on Schedule B, line 21b.³ If the Audit Division believes that logs (or the equivalent substitute) are needed to verify this reported information, then you should consider whether a recordkeeping finding or a limitation on the scope of the audit is appropriate.

We provide these comments, however, recognizing the Commission's 3-3 split on a similar issue in the Georgia Federal Elections Committee audit involving employees whom the committee asserted spent *no* time on activity in connection with federal elections. In that audit, the Commission split on the issue of whether the Commission could require a committee to keep a log for such employees, notwithstanding that zero (as well as 100) is a percentage. For those employees, presumably, there would be considerably more reason to require the log, to ensure that their salaries were properly paid with 100% non-federal funds. Nevertheless, in a motion that failed 3-3, three Commissioners asserted that "the Commission does not have jurisdiction to impose recordkeeping and documentation requirements on employee activity that a State party committee claims is solely non-Federal." See Commission Agenda Document No. 11-10-B (Motion on Audit Division Recommendation memorandum on the Georgia Federal Elections Committee, *considered in Open Session* Mar. 3, 2011). Here, unlike with the Georgia Federal Elections Committee, the Committee paid the employees at issue with 100% federal funds for salary payments reported as FEA or federal operating expenses, so the three Commissioners' concern regarding jurisdiction over "solely non-federal" activity may be reduced. Nevertheless, given that there is some uncertainty on a related issue, we recommend that you raise this issue in the memorandum that forwards the report to the Commission.

³ A log is also required for the work performed by these four employees that was paid as shared activity.