Interim Audit Report of the Audit Division on the Hawaii Democratic 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 Hawaii Democratic Party is a state party committee headquartered in Honolulu, Hawaii. For more information, see the chart on the Committee organization, p. 2.

Financial Activity (p. 2)

• **Receipts**	
o Contributions from Individuals	$ 406,264
o Contributions from Political Committees	280,044
o Transfers from Affiliates	440,659
o Loans Received	30,000
o Transfers from Non-federal Accounts	152,404
o Other Receipts	18,034
Total Receipts	**$1,327,405**
• **Disbursements**	
o Operating Expenditures	$ 655,840
o Coordinated Party Expenditures	117,803
o Loan Repayments Made	10,000
o Refunds of Contributions	20,175
o Other Disbursements	249,293
o Federal Election Activity	247,795
Total Disbursements	**$1,300,906**

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Receipt of Contributions that Exceed Limits (Finding 2)
- Receipt of Apparent Impermissible Funds (Finding 3)
- Reporting of Debts and Obligations (Finding 4)
- Recordkeeping for Employees (Finding 5)
- Failure to File Reports and Properly Disclose Independent Expenditures (Finding 6)
- Allocation of Expenditures (Finding 7)

[1] 52 U.S.C. §30111(b).

Interim Audit Report of the Audit Division on the Hawaii Democratic Party

(January 1, 2011 - December 31, 2012)

Table of Contents

Part I
Background

Authority for Audit
This report is based on an audit of the Hawaii Democratic Party (HDP), 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 receipt of excessive contributions and loans;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of disbursements, debts and obligations;
5. the disclosure of expenses allocated between federal and non-federal accounts;
6. the consistency between reported figures and bank records;
7. the completeness of records;
8. the disclosure of independent expenditures; and
9. 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 HDP 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 HDP representatives of the payroll requirement and 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 HDP employees paid with 100 percent federal funds and reported as such.

Part II
Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	December 17, 1986
• Audit Coverage	January 1, 2011 - December 31, 2012
Headquarters	Honolulu, Hawaii
Bank Information	
• Bank Depositories	One
• Bank Accounts	Four Federal and Three Non-Federal
Treasurer	
• Treasurer When Audit Was Conducted	Yuriko J Sugimura (07/20/94 – 08/20/14); Florence Kong Kee (08/20/14 – 07/09/16); Tambry Young (07/09/16 – Present)
• Treasurer During Period Covered by Audit	Yuriko J. Sugimura
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity
(Audited Amounts)

Cash-on-hand @ January 1, 2011	**$ 8,365**
Receipts	
o Contributions from Individuals	406,264
o Contributions from Political Committees	280,044
o Transfers from Affiliates	440,659
o Loans Received	30,000
o Transfers from Non-federal Accounts	152,404
o Other Receipts	18,034
Total Receipts	**$ 1,327,405**
Disbursements	
o Operating Expenditures	655,840
o Coordinated Party Expenditures	117,803
o Loan Repayments Made	10,000
o Refunds of Contributions	20,175
o Other Disbursements	249,293
o Federal Election Activity	247,795
Total Disbursements	**$ 1,300,906**
Cash-on-hand @ December 31, 2012	**$ $34,864**

Part III
Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity
During audit fieldwork, a comparison of HDP's bank activity with its most recent amended reports filed prior to the audit revealed material misstatements in both 2011 and 2012. The Audit staff recommends that HDP amend its disclosure reports to correct the misstatements identified in 2011 and 2012.

In addition, a comparison of HDP's bank activity with its original reports filed for 2011 and 2012 also revealed a material misstatement of disbursement activity. For the misstatement of disbursements on HDP's original reports, the Audit staff recommends that HDP provide any comments it deems necessary with respect to this matter. (For more detail, see p. 5)

Finding 2. Receipt of Contributions that Exceed Limits
HDP accepted contributions from two political action committees that exceeded the limitation by $20,000. Both of the excessive contributions were untimely refunded. However, documentation was not available demonstrating that one refund totaling $5,000 had cleared the bank. The Audit staff recommends that HDP provide documentation demonstrating this excessive contribution refund had cleared the bank. Absent such documentation, HDP should resolve the excessive portion by making a refund to the contributor, or by disclosing the excessive portion on Schedule D (Debts and Obligations) until funds become available to satisfy the obligation. Additionally, the Audit staff recommends that HDP submit any written comments it considers relevant to this issue. (For more detail, see p. 8)

Finding 3. Receipt of Apparent Impermissible Funds
During audit fieldwork, the Audit staff identified 75 receipts, totaling $169,586, deposited into HDP's federal account during 2012 that appeared to be from impermissible sources. The Audit staff recommends that HDP provide documentation demonstrating that these receipts were not from prohibited sources, were refunded in a timely matter, or were timely transferred to a non-federal account. Absent such documentation, HDP should resolve the impermissible receipts by making a refund to the contributors, or by disclosing the impermissible receipts on Schedule D until funds become available to satisfy the obligation. (For more detail, see p. 9)

Finding 4. Reporting of Debts and Obligations
During audit fieldwork, the Audit staff identified debts and obligations from 17 vendors, totaling $115,967, which were not itemized or were under reported on Schedules D (Debts and Obligations). The Audit staff recommends that HDP provide additional documentation demonstrating that these transactions were not obligations which required

reporting on Schedule D. Absent such documentation, the Audit staff recommends that HDP amend its reports to correctly report and disclose these debts and obligations on Schedule D. (For more detail, see p. 13)

Finding 5. Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that HDP 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 HDP employees totaling $60,923 for which HDP did not maintain monthly payroll logs. This consisted of $48,510 for which payroll was allocated with federal and non-federal funds, and $12,413 for which payroll was exclusively paid with non-federal funds. For HDP employees paid with an allocation of federal and non-federal funds or exclusively non-federal funds, the Audit staff recommends that HDP provide monthly payroll logs that indicate the time spent in connection with a federal election. Absent the provision of monthly payroll logs, the Audit staff recommends that HDP implement a plan to maintain such monthly payroll logs in the future. (For more detail, see p. 14)

Finding 6. Failure to File Reports and Properly Disclose Independent Expenditures

During audit fieldwork, the Audit staff identified disbursements totaling $30,148, which appeared to be media related independent expenditures requiring disclosure on Schedule E, that HDP disclosed on Schedule B, Line 30b (Federal Election Activity) and Schedule F (Coordinated Party Expenditures).

Additionally, of the $30,148 disclosed as Federal Election Activity and Coordinated Party Expenditures which appeared to be independent expenditures, HDP did not file the required 24-hour reports totaling $29,725.

If HDP believes that the apparent independent expenditures totaling $30,148 did not require reporting as independent expenditures, the Audit staff recommends that HDP provide evidence to support its conclusion. Absent such evidence, the Audit staff recommends that HDP amend its reports to disclose these disbursements as independent expenditures on Schedule E (Itemized Independent Expenditures) and submit revised procedures for reporting independent expenditures. Lastly, the Audit staff recommends that HDP provide any comments it deems necessary with respect to the undisclosed 24-hour reports. (For more detail, see p. 16)

Finding 7. Allocation of Expenditures

During audit fieldwork, the review of disbursements made from the federal and non-federal accounts identified an apparent non-federal overfunding of activity in the amount of $82,722. The Audit staff recommends that HDP provide documentation demonstrating that the expenditures causing the non-federal overfunding were permissible allocable activity or were properly paid by the non-federal account. Absent such evidence, the Audit staff recommends that HDP reimburse the non-federal account $82,722 or disclose the non-federal overfunding on Schedule D as a debt until federal funds become available to satisfy the obligation. (For more detail, see p. 19)

Part IV
Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary
During audit fieldwork, a comparison of HDP's bank activity with its most recent amended reports filed prior to the audit revealed material misstatements in both 2011 and 2012. The Audit staff recommends that HDP amend its disclosure reports to correct the misstatements identified in 2011 and 2012.

In addition, a comparison of HDP's bank activity with its original reports filed for 2011 and 2012 also revealed a material misstatement of disbursement activity. For the misstatement of disbursements on HDP's original reports, the Audit staff recommends that HDP provide any comments it deems necessary with respect to this matter.

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. <u>Misstatement of Financial Activity– Most Recent Reports Filed Prior to the Audit</u>

1. **Facts**

The Audit staff reconciled HDP's reported financial activity with its bank records for calendar years 2011 and 2012. The following charts outline the discrepancies between HDP's disclosure reports and its bank records. The succeeding paragraphs explain why the discrepancies occurred.

2011 Committee Activity			
	Reported	**Bank Records**	**Discrepancy**
Beginning Cash-on-Hand @ January 1, 2011	$ 44,653	$ 8,365	$36,288 Overstated
Receipts	$282,712	$295,136	$12,424 Understated
Disbursements	$278,375	$290,981	$12,606 Understated
Ending Cash-on-Hand @ December 31, 2011	$ 48,990	$ 12,520	$36,470 Overstated

The beginning cash-on-hand was overstated by $36,288 and the discrepancy is unexplained, but likely resulted from prior period discrepancies.

The understatement of receipts resulted from the following:

• Unreported in-kind contributions[2]	$12,156
• Return deposit items reported as disbursements instead of a negative entry on Schedule A	(50)
• Unexplained difference	318
Net Understatement of Receipts	$12,424

The understatement of disbursements resulted from the following:

• Unreported in-kind contributions	$12,156
• Disbursements not reported	4,890
• Disbursements reported but not in bank activity	(4,269)
• Disbursement amounts reported incorrectly	157
• Return deposit items reported as disbursements instead of a negative entry on Schedule A	(50)
• Unexplained difference	(278)
Net Understatement of Disbursements	$12,606

The overstatement of $36,470 of the ending cash-on-hand was a result of the reporting discrepancies described above.

2012 Committee Activity			
	Reported	**Bank Records**	**Discrepancy**
Beginning Cash-on-Hand @ January 1, 2012	$ 48,990	$ 12,520	$ 36,470 Overstated
Receipts	$875,660	$1,032,269	$156,609 Understated
Disbursements	$895,253	$1,009,925	$114,672 Understated
Ending Cash-on-Hand @ December 31, 2012	$ 29,397	$ 34,864	$ 5,467 Understated

The overstatement of $36,470 of the beginning cash-on-hand was a result of the reporting discrepancies noted in 2011.

The understatement of receipts resulted from the following:

• Unreported in-kind contributions	$ 16,208
• Receipts over-reported	(25,937)

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[2] All unreported in-kind contribution discrepancies during calendar years 2011 and 2012 were for disbursements paid by the Democratic National Committee (DNC) on behalf of HDP for voter file updates and maintenance. The DNC reported these transactions as in-kind contributions made to HDP. To help assure the correct cash balance is reported, these amounts should be disclosed as in-kind contributions.

• Receipts under-reported	179;118
• Over-reported unitemized receipts	(21,774)
• Return deposit items reported as disbursements instead of a negative entry on Schedule A	(1,665)
• Unexplained difference	10,659
Net Understatement of Receipts	**$156,609**

The understatement of disbursements resulted from the following:

• Unreported in-kind contributions	$ 16,208
• Disbursements not reported	101,152
• Disbursements reported but not in bank activity	(2,497)
• Disbursement reported as memo entry clearing bank	5,000
• Inter-account transfer reported	(4,205)
• Disbursement amounts reported incorrectly	679
• Return deposit items reported as disbursements instead of a negative entry on Schedule A	(1,665)
Net Understatement of Disbursements	**$114,672**

The $5,467 understatement of the ending cash-on-hand was a result of the 2012 reporting discrepancies noted above.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of the misstated amounts. HDP representatives said they would amend their reports in response to the Interim Audit Report..

The Audit staff recommends that, within 30 calendar days of service of this report, HDP amend its disclosure reports to correct the misstatements and reconcile the cash balance on its most recent report to identify any subsequent discrepancies that could affect the recommended adjustments. The Audit staff further recommends that HDP adjust the cash-on-hand as necessary on its most recent report, noting that the adjustment is the result of prior period audit adjustments.

B. Misstatement of Financial Activity – Original Reports Filed

1. Facts

During audit fieldwork, in addition to examining HDP's most recent reports filed prior to the audit notification, the Audit staff compared HDP's originally filed reports with its bank records. The purpose of this additional reconciliation was to identify the degree to which HDP had misstated its original filings.

The Audit staff calculated that HDP understated disbursements on the original reports filed by $358,942 over the two-year period (2011-2012). This figure includes the $12,606 and $114,672 understatement of disbursements from 2011 and 2012 discussed in Section A above (Misstatement of Financial Activity – Most Recent Reports Filed Prior to the Audit).

2. Interim Audit Report & Audit Division Recommendation
The Audit staff discussed the understatement of disbursements on its original reports during the exit conference and provided HDP representatives a copy of the relevant schedule. HDP representatives had no specific comments at the time.

The Audit staff recommends that, within 30 calendar days of service of this report, HDP provide any additional comments it deems necessary with respect to this matter.

Finding 2. Receipt of Contributions that Exceed Limits

Summary
HDP accepted contributions from two political action committees that exceeded the limitation by $20,000. Both of the excessive contributions were untimely refunded. However, documentation was not available demonstrating that one refund totaling $5,000 had cleared the bank. The Audit staff recommends that HDP provide documentation demonstrating this excessive contribution refund had cleared the bank. Absent such documentation, HDP should resolve the excessive portion by making a refund to the contributor, or by disclosing the excessive portion on Schedule D (Debts and Obligations) until funds become available to satisfy the obligation. Additionally, the Audit staff recommends that HDP submit any written comments it considers relevant to this issue.

Legal Standard
A. **Party Committee Limits.** A state, district or local committee of a political party may not receive more than a total of $5,000 per calendar year from a multicandidate political committee. 52 U.S.C. §30116(a)(2)(C) and 11 CFR §110.2(d).

   A state, district or local committee of a political party may not receive more than a total of $10,000 per calendar year from a non-multicandidate political committee. 52 U.S.C. §30116(a)(1)(D) and 11 CFR §110.1(c)(5).

B. **Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
   - Return the questionable check to the donor; or
   - Deposit the check into its federal account and:
     - Keep enough money in the account to cover all potential refunds;
     - Keep a written record explaining why the contribution may be illegal;
     - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
     - Seek a reattribution or redesignation of the excessive portion, following the instructions provided in the Commission regulations; and
     - If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §103.3(b)(3), (4) and (5).

Facts and Analysis

A. Facts
HDP accepted contributions from two political action committees that exceeded the limitation by $20,000. One contribution from a non-multicandidate political action committee was received on March 15, 2012 for $25,000, resulting in an excessive contribution of $15,000. HDP untimely refunded the excessive portion on September 28, 2012 (197 days later).

The second contribution from a multicandidate political action committee was received on October 19, 2012 for $10,000, resulting in an excessive contribution of $5,000. HDP reported an untimely refund of the excessive portion on June 19, 2013 (243 days later); however, documentation was not available demonstrating the refund check had cleared the bank.

B. Interim Audit Report & Audit Division Recommendation
The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of the apparent excessive contributions. HDP representatives had no specific comments at the time.

The Audit staff recommends that, within 30 calendar days of service of this report, HDP provide documentation demonstrating that the refund, totaling $5,000, reported on June 19, 2013, had cleared the bank. Absent this documentation, the Audit staff recommends that HDP:

- Void the original refund check and issue another refund for the excessive portion ($5,000) and provide evidence the check has cleared the bank; or,
- If funds are not available to make the necessary refund, disclose the excessive portion on Schedule D until funds become available to satisfy the obligation.

Finding 3. Receipt of Apparent Impermissible Funds

Summary
During audit fieldwork, the Audit staff identified 75 receipts, totaling $169,586, deposited into HDP's federal account during 2012 that appeared to be from impermissible sources. The Audit staff recommends that HDP provide documentation demonstrating that these receipts were not from prohibited sources, were refunded in a timely matter, or were timely transferred to a non-federal account. Absent such documentation, HDP should resolve the impermissible receipts by making a refund to the contributors, or by disclosing the impermissible receipts on Schedule D until funds become available to satisfy the obligation.

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) from the following prohibited sources:
   - Corporations organized by authority of any law of Congress;

- Labor Organizations;
- National Banks (except a loan made in accordance with the applicable banking laws and regulations and in the ordinary course of business);
- Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government);
- 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); and
- In the name of another. 52 U.S.C. §§30118, 30119, 30121, and 30122.

B. **Definition of Limited Liability Company.** A limited liability company (LLC) is a business entity recognized as an LLC under the laws of the State in which it was established. 11 CFR §110.1(g)(1).

C. **Application of Limits and Prohibition to LLC Contributions.** A contribution from an LLC is subject to contribution limits and prohibitions, depending on several factors, as explained below:
   1. LLC as Partnership. The contribution is considered a contribution from a partnership if the LLC chooses to be treated as a partnership under Internal Revenue Service (IRS) tax rules, or if it makes no choice at all about its tax status. A contribution by partnership is attributed to each partner by his or her share of the partnership profits. 11 CFR §110.1 (e)(1) and (g)(2).
   2. LLC as Corporation. The contribution is considered a corporate contribution-and is barred under the Act-if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are traded publicly. 11 CFR § 110.1(g)(3).
   3. LLC with Single Member. The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1 (g)(4).

D. **Limited Liability Company's Responsibility to Notify Recipient Committee.** At the time it makes a contribution, an LLC must notify the recipient committee:
   - That it is eligible to make the contribution; and
   - In the case of an LLC that considers itself a partnership (for tax purposes), how the contribution should be attributed among the LLC's members. 11 CFR §110.1(g)(5).

E. **Questionable Contributions.** If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:
   1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
      - Return the contribution to the contributor without depositing it; or
      - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
   2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient

funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3 (b)(4).

3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. If the contribution cannot be determined to be legal, the treasurer shall, within thirty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. 11 CFR §103.3(b)(1).

F. Contributions to delegate and delegate committees. Funds received for the purpose of furthering the selection of a delegate to a national nominating convention are contributions for the purpose of influencing a federal election. 11 CFR §110.14(c).

G. Federal v. Nonfederal Account. The federal account may contain only those funds that are permissible under the federal election law; the nonfederal account may contain funds that are not permitted under the federal law (but are legal under state law), such as contributions that exceed the limits of the federal law and contributions from prohibited sources, such as corporations and labor organizations. 11 CFR §102.5 (a)(1)(i) and (a)(3).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified 75 receipts totaling $169,586 deposited into HDP's federal account during 2012 that appeared to be from impermissible sources. The sources of these receipts were as follows:

Source	Number of Transactions	Total
Labor Unions	8	$6,871
Corporations	20	$141,005
Limited Liability Companies	13	$10,455
Unregistered Organizations[3]	34	$11,255
Total	**75**	**$169,586**

The purposes of these receipts were mostly for:

- Contributions[4] – 20 transactions totaling $96,420;

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[3] An unregistered organization is a political committee that has not registered with the Federal Election Commission.

[4] Three corporate contributions were erroneously disclosed as political action committees and two were erroneously disclosed as individuals.

- State party convention fees (i.e. registration fee, convention booth fee) – 49 transactions totaling $15,085; and
- Democratic National Convention Credentials – 4 transactions totaling $58,000.

Four of the receipts from corporations totaling $27,000 were untimely refunded. However, documentation was not available demonstrating the refund checks had cleared the bank. The remaining 71 receipts totaling $142,586 remain unresolved.

Hawaii state campaign finance statutes permit the receipt of funds to a party from labor unions, domestic corporations[5], and limited liability companies in an aggregate amount no greater than $25,000 in any two-year election period. However, federal regulations prohibit such contributions to be deposited into a federal account or used to influence federal elections.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of the apparent impermissible receipts. HDP representatives stated they would review the schedule.

The Audit staff recommends that, within 30 calendar days of service of this report, HDP submit documentation demonstrating that these receipts were refunded in a timely matter, were timely transferred to a non-federal account, or were not from prohibited sources:

- For corporations, documentation from the contributor verifying it is not a corporation;
- For LLC's, documentation from the contributor verifying its non corporate tax status;
- For unregistered political organizations and labor organizations, documentation from the contributor attesting to the permissibility of the receipts.

In addition, with respect to receipts received for the Hawaii state party convention, the Audit staff recommends that HDP submit documentation demonstrating that these receipts were not in connection with a nominating convention that nominated candidates for federal office.

Absent this documentation, the Audit staff recommends that HDP:

- Refund the impermissible receipts and provide evidence of the refund; or
- If funds are not available to make the necessary refunds, disclose the impermissible receipts totaling $169,586 on Schedule D until funds become available to satisfy the obligation.

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[5] Foreign corporations, including a domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where administrative control is retained by the foreign corporation are prohibited under Hawaii state campaign finance statutes.

Finding 4. Reporting of Debts and Obligations

Summary
During audit fieldwork, the Audit staff identified debts and obligations from 17 vendors, totaling $115,967, which were not itemized or were under reported on Schedules D (Debts and Obligations). The Audit staff recommends that HDP provide additional documentation demonstrating that these transactions were not obligations which required reporting on Schedule D. Absent such documentation, the Audit staff recommends that HDP amend its reports to correctly report and disclose these debts and obligations on Schedule D.

Legal Standard

Reporting of Debts and Obligations.

A. **Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. **Separate Schedules.** A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. **Itemizing Debts and Obligations.**
- A debt of $500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding $500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

D. **Advances by Committee Staff and Other Individuals.**
1. **Scope.** This section applies to individuals who are not acting as commercial vendors. Individuals who are acting as commercial vendors shall follow the requirements of 11 CFR §§116.3 and 116.4.
2. **The treatment as contributions.** The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or political committee is a contribution unless the payment is exempted under 11 CFR 100.79, it shall be considered a contribution by the individual unless-
   a) The payment is for the individual's transportation expenses incurred while traveling on behalf of a candidate or political committee of a political party or for usual and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate or political committee of a political party; and
   b) The individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the

expenses were incurred if a personal credit card was not used. For purposes of this section, the closing date shall be the date indicated on the billing statement which serves as the cutoff date for determine which charges are included on that billing statement. In addition, "subsistence expense" includes only expenditures for personal living expenses related to a particular individual traveling on committee business, such as food or lodging. 11 CFR §116.5(b).

3. **Treatment as debts.** A political committee shall treat the obligation arising from a payment described in paragraph (b) of this section as an outstanding debt until reimbursed. 11 CFR §116.5(c).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff used available disbursement records to reconcile the accounts[6] of 17 HDP vendors. This review identified debts and obligations from these vendors, totaling $115,967 that were not itemized or under reported on Schedules D. Of this amount, $68,744 were debts not reported, and $47,223 were debts that were under reported. These vendors provided HDP with services such as office space, polling, accounting, database accounting software, website hosting, printing, insurance, telephone, copier lease, and staff reimbursements[7].

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of the debts and obligations that were not itemized or were under reported. HDP representatives stated they would review the schedule of debts and obligations.

The Audit staff recommends that, within 30 calendar days of service of this report, HDP provide additional documentation demonstrating that these transactions were not obligations which required reporting on Schedule D. Absent such documentation, the Audit staff recommends that HDP amend its reports to correctly report and disclose these debts and obligations on Schedule D.

Finding 5. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that HDP 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

[6] The reconciliation consisted of calculating invoiced and paid amounts for each reporting period in the 2011-2012 election cycle. The Audit staff then determined whether any outstanding debts were correctly disclosed on Schedule D. Each debt amount was counted once, even if it required disclosure over multiple reporting periods.

[7] Staff reimbursements consisted of three individuals with debts not reported totaling $10,768 and debts under reported totaling $1,998.

payments to HDP employees totaling $60,923 for which HDP did not maintain monthly payroll logs. This consisted of $48,510 for which payroll was allocated with federal and non-federal funds, and $12,413 for which payroll was exclusively paid with non-federal funds. For HDP employees paid with an allocation of federal and non-federal funds or exclusively non-federal funds, the Audit staff recommends that HDP provide monthly payroll logs that indicate the time spent in connection with a federal election. Absent the provision of monthly payroll logs, the Audit staff recommends that HDP implement a plan to maintain such 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

During audit fieldwork, the Audit staff reviewed disbursements for payroll. HDP did not maintain any monthly payroll logs or equivalent records to document the percentage of time each employee spent in 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, HDP did not maintain monthly logs for $60,923 in payroll.[8] This amount includes payroll paid as follows to HDP employees.

1. Employees reported on Schedule H4 (Shared Federal/Non-Federal Activity) and paid with a mixture of federal and non-federal funds during the same month (totaling $48,510); and
2. Employees paid exclusively with non-federal funds in a given month and not reported by HDP (totaling $12,413).

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of the disbursements for payroll lacking monthly payroll logs. HDP representatives had no specific comments at the time.

The Audit staff recommends that, within 30 calendar days of service of this report, HDP:

[8] 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 do not include fringe benefits.

- Provide evidence that it maintained monthly time logs to document the percentage of time an employee spent in connection with a federal election; or
- Implement a plan to maintain monthly payroll logs in the future.

Finding 6. Failure to File Reports and Properly Disclose Independent Expenditures

Summary

During audit fieldwork, the Audit staff identified disbursements totaling $30,148, which appeared to be media related independent expenditures requiring disclosure on Schedule E, that HDP disclosed on Schedule B, Line 30b (Federal Election Activity) and Schedule F (Coordinated Party Expenditures).

Additionally, of the $30,148 disclosed as Federal Election Activity and Coordinated Party Expenditures which appeared to be independent expenditures, HDP did not file the required 24-hour reports totaling $29,725.

If HDP believes that the apparent independent expenditures totaling $30,148 did not require reporting as independent expenditures, the Audit staff recommends that HDP provide evidence to support its conclusion. Absent such evidence, the Audit staff recommends that HDP amend its reports to disclose these disbursements as independent expenditures on Schedule E (Itemized Independent Expenditures) and submit revised procedures for reporting independent expenditures. Lastly, the Audit staff recommends that HDP provide any comments it deems necessary with respect to the undisclosed 24-hour reports.

Legal Standard

A. **Definition of Independent Expenditures.** An independent expenditure is an expenditure made for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents.

   A clearly identified candidate is one whose name, nickname, photograph or drawing appears, or whose identity is apparent through unambiguous reference, such as "your Congressman," or through an unambiguous reference to his or her status as a candidate, such as "the Democratic presidential nominee" or "Republican candidate for Senate in this state."

   Expressly advocating means any communication that:

   - Uses phrases such as "vote for the President" or "re-elect your Congressman" or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge election or defeat of one or more clearly identified candidates; or
   - When taken as a whole and with limited references to external events, such as proximity to the election, could be interpreted by a reasonable person only as

advocating the election or defeat of one or more clearly identified candidates. 11 CFR §§100.16(a), 100.17 and 100.22.

B. **Disclosure Requirements – General Guidelines.** An independent expenditure shall be reported on Schedule E 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.

C. **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 24-hour report must be filed on a Schedule E. 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).

D. **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 filed with the Commission within 48 hours after the expenditure is made. 11 CFR §§104.4(f) and 104.5(g)(1).

E. **Requirements for Maintaining Records.** Reporting committees are required to maintain records which provide, in sufficient detail, the information from which the filed reports may be verified. 11 CFR §104.14(b)(1).

Facts and Analysis

A. Reporting of Independent Expenditures

1. Facts

During audit fieldwork, the Audit staff reviewed disbursements to ensure the reporting completeness and accuracy of independent expenditures. The Audit staff noted that HDP made media-related expenditures totaling $30,148 and disclosed them as Federal Election Activity or Coordinated Party Expenditures that may be considered independent expenditures. A breakdown of the analysis for these expenditures is as follows:

Apparent Independent Expenditures Reported as Coordinated Party Expenditures and Federal Election Activity (Copy of Communication Made Available)

HDP made 18 apparent independent expenditures totaling $30,148 for which it provided supporting documentation such as invoices, scripts, ads, etc.

i) For apparent independent expenditures totaling $18,226, the communications contained language expressly advocating the election or defeat of a clearly identified candidate as defined under 11 CFR §100.22(a). This amount consisted of costs associated with 16 radio advertisements and one newspaper advertisement containing express advocacy.[9] The radio advertisements included the statement: "And on November 6th, let's furlough Linda Lingle!", and included the disclaimer, "Paid for by the Democratic Party of Hawaii, which is responsible for the content of this advertising".

   The 16 radio advertisements were disclosed on Schedule F as Coordinated Party Expenditures. Aside from being reported as Coordinated Party Expenditures, no documentation was available demonstrating coordination. Also, Counsel for HDP believed these expenditures were not coordinated. Given these reasons, the Audit staff believes the communications should be reported as Independent Expenditures. However, should HDP continue to maintain that these radio advertisements were not coordinated, the committee would have exceeded its spending limit by $15,203.

   The newspaper advertisement included the statement: "Vote Democrat in the General Election" with pictures below of Barack Obama, Joe Biden, Mazie Hirono, and Tulsi Gabbard. The advertisement included the disclaimer "Paid for by the Democratic Party of Hawaii, Not authorized by any candidate or candidate committee". Given the content and the disclaimer, the Audit staff believes the communication should be reported as an Independent Expenditure.

ii) For an apparent independent expenditure totaling $11,922, the production and design costs associated with a television advertisement were paid by HDP. The television advertisement depicted the Hawaii Senatorial candidate, Linda Lingle, making a speech at the 2008 Republican National convention. While this depiction continued, the narrator stated the Candidate, "Linda Lingle, was wrong then, about a lot of things, and she's wrong for Hawaii now." The Audit staff believes the phrase, "she's wrong for Hawaii" was express advocacy because it had the same meaning as "defeat" and therefore could have no other meaning than to urge the defeat of the Candidate. The television advertisement was disclosed on Schedule B, Line 30(b) as Federal Election Activity and included the disclaimer, "Paid for by Vote Hawaii 2012, Not authorized by

[9] The newspaper ad was not itemized on the FEC report (cost, $423).

any candidate or candidate's committee". Given the content and the disclaimer, the Audit staff believes the cost associated with the communication should be reported as an Independent Expenditure.

2. Interim Audit Report & Audit Division Recommendation
The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of disclosure errors for independent expenditures. HDP representatives stated they would review the schedule.

The Audit staff recommends that, within 30 calendar days of service of this report, HDP provide documentation and evidence that apparent independent expenditures totaling $30,148 did not require reporting as independent expenditures. Absent such evidence, the Audit staff recommends that HDP amend its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures.

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

1. Facts
The Audit staff reviewed the apparent independent expenditures noted above to determine whether additional reporting of a 24/48-hour report was required.[10] The Audit staff determined that HDP did not file 24-hour reports, as required, totaling $29,725. No 48-hour reports were required for these expenditures.

2. Interim Audit Report & Audit Division Recommendation
The Audit staff discussed this matter at the exit conference and provided HDP representatives a schedule of 24-hour reports that were not filed. HDP representatives stated they would review the schedule.

Absent documentation and evidence that apparent independent expenditures totaling $30,148, did not require reporting as independent expenditures (per Part A above), the Audit staff recommends that, within 30 calendar days of service of this report, HDP provide any comments it deems necessary with respect to the 24-hour reports that were not filed.

Finding 7. Allocation of Expenditures

Summary
During audit fieldwork, the review of disbursements made from the federal and non-federal accounts identified an apparent non-federal overfunding of activity in the amount of $82,722. The Audit staff recommends that HDP provide documentation demonstrating that the expenditures causing the non-federal overfunding were

[10] The date the expenditure is publicly distributed serves as the date that the independent expenditure is made for purposes of the additional 24/48-hour report filing requirement. In the absence of a known date for public dissemination, the Audit staff used the invoice date or date of incurrence to determine if a 24/48-hour report was required.

permissible allocable activity or were properly paid by the non-federal account. Absent such evidence, the Audit staff recommends that HDP reimburse the non-federal account $82,722 or disclose the non-federal overfunding on Schedule D as a debt until federal funds become available to satisfy the obligation.

Legal Standard

A. **Paying for Allocable Expenses.** The Commission regulations offer party committees two ways to pay for allocable, shared federal/non-federal expenses.

- they may pay the entire amount of the shared expense from the federal account and transfer funds from the non-federal account to the federal account to cover the non-federal share of that expenses; or
- They may establish a separate, federal allocation account into which the committee deposits funds from both its federal and non-federal accounts solely for the purpose of paying the allocable expenses. 11 CFR §106.7(b).

B. **Transfers.** Generally, a political committee may not transfer funds from its non-federal account to its federal account, except when the committee follows specific rules for paying for shared federal/non-federal election activity. 11 CFR §§102.5(a(1)(i) and 106.7(f).

C. **Reporting Allocable Expenses.** A political committee that allocates federal/nonfederal expenses must report each disbursement it makes from its federal account (or separate allocation account) to pay for a shared federal/non-federal expense. Committees report these kinds of disbursements on Schedule H4 (Joint Federal/Non-federal Activity Schedule). 11 CFR §104.17(b)(3).

D. **Allocation Ratio for Administrative & Generic Voter Drive Costs.** State and local party committees must allocate their administrative expenses and generic voter drive costs dependent upon which federal offices appear on the ballot for the election year. The minimum percentage of federal funds would be at least:

- 36 percent if both a Presidential candidate and a Senate candidate appear on the ballot;
- 28 percent if a Presidential candidate but not a Senate candidate appears on the ballot;
- 21 percent if a Senate candidate, but not a Presidential candidate, appears on the ballot; and,
- 15 percent if neither a Presidential nor a Senate candidate appears on the ballot. 11 CFR §106.7(d)(2) and (3).

E. **Definition of Federal Election Activity.** Federal election activity (FEA) is a specifically defined term of art for activity by state, district or local party committees that triggers special payment and reporting requirements. As a general rule, FEA must be paid for with federal funds. No non-federal funds may be used for FEA. There are four types of FEA:

- Voter registration activity during the period 120 days before a regularly scheduled federal election including the election day itself;

- Voter identification, get-out-the-vote and generic campaign activity conducted in connection with an election in which a candidate for federal office appears on the ballot;
- A public communication that refers to a clearly identified candidate for federal office and that promotes, attacks, supports or opposes (PASOs) a candidate for that office. The communication need not expressly advocate the election or defeat of the federal candidate to qualify as FEA; and
- Services provided during any given calendar month by an employee of a state, district or local party committee who spends more than 25 percent of his or her compensated time during that month in activities in connection with a federal election, including FEA mentioned above. 11 CFR §100.24(b).

F. **Salaries and Wages.** Committees must keep a monthly log of the percentage of time each employee spends in connection with a Federal election. Employees who spend 25 percent or less of their compensated time in a given month on Federal election activity or on activities in connection with a Federal election must either be paid only from the Federal account or have their salaries allocated as an administrative cost. 11 CFR §106.7(d)(1).

Facts and Analysis

A. Facts

During audit fieldwork, the review of disbursements made from the federal and non-federal accounts identified an apparent non-federal overfunding of activity in the amount of $82,722.

1. **Expenses reported as allocated on Schedules H4.** The Audit staff calculated the non-federal share of expenditures required to be disclosed on Schedules H4 and compared that to the amount transferred from the non-federal account for the period between 2011 and 2012. The non-federal portion of shared activity for this period was $110,092. However, the non-federal account transferred a net amount of $160,083, resulting in an overfunding of allocable expenses totaling $49,991.

   a) Below is a breakdown of the Audit staff's calculation of overfunding of allocable expenses totaling $49,991. The following expenses were disclosed on Schedule H4 but, based on available documentation, were not allocable and should have been paid with 100 percent federal funds:

      i) Payroll and Associated Costs: HDP paid expenses from a federal account but disclosed these as allocable administrative expenses on Schedule H4. HDP did not provide monthly logs, timesheets, or affidavits demonstrating that these costs were solely non-federal or allocable expenses (see Finding 5).

      ii) Generic Voter Drive (GVD) Expenses. HDP paid expenses from a federal account that appeared to be GOTV activity during the FEA time period, but disclosed these as allocable expenses on Schedule H4. A portion of these expenses were disclosed as allocable Generic Voter Drive expenses on Schedule H4. The remaining were disclosed as shared administrative expenses on Schedule H4. Based upon the dates and purpose of the disbursements and the limited documentation provided, it appears these disbursements should have been paid with 100 percent federal funds and not disclosed as shared expenses on Schedules H4[11].

iii) Miscellaneous Expenses. HDP disclosed expenses on Schedule H4 that were not sufficiently documented to allow the Audit staff to determine whether they could be shared. Included in this total were disbursements for rent and utilities. The documentation to support these disbursements was insufficient to determine if these expenses were made to support the headquarters' office or temporary campaign office locations.

2. **Expenses paid from the non-federal account.** HDP paid certain expenses directly from the non-federal account that appeared to represent 100 percent federal activity or allocable activity that should have been disclosed on Schedules H4, resulting in an overfunding of expenses totaling $32,731.

   a) Below is a breakdown of the Audit staff's calculation of overfunding of expenses paid from the non-federal account totaling $32,731. Based on available documentation, these expenses should have been paid with 100 percent federal funds or allocated on Schedules H4:

      i) Federal Election Activity Expenses. HDP paid expenses totaling $30,576 from its non-federal account that appeared to be FEA Type II (GOTV) activity that should have been paid with 100% federal funds. Based on available documentation, it appeared these expenses pertained to various GOTV rallies. These costs included consulting services, facility and equipment rentals, food and beverages, entertainment and transportation expenses.

      ii) Miscellaneous Administrative Expenses. HDP paid expenses from its non-federal account that, based on available documentation, appeared to be expenses that should have been allocated between the federal and non-federal accounts. The federal share of these expenses totaled $2,155. These expenses pertained to office rent, bank fees, office vehicle repairs and accounting services.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided HDP representatives schedules identifying the transactions causing the non-federal overfunding. HDP representatives stated they were working on getting three former staff

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[11] For the 2012 election cycle, a candidate for federal office appeared on the ballot in the state of Hawaii. For HDP, the FEA Voter ID, Generic Campaign Activity and GOTV period was June 5, 2012 through November 6, 2012. Further, the FEA voter registration period was November 8, 2011 through March 13, 2012 and April 13, 2012 through November 6, 2012.

to sign payroll affidavits for disbursements disclosed as allocable administrative expenses on Schedule H4.

The Audit staff recommends that, within 30 calendar days of service of this report, HDP provide documentation demonstrating that the expenditures above did not cause an over-funding from the non-federal account of $82,722 ($49,991 + $32,731). Absent such evidence, the Audit staff recommends that HDP reimburse the non-federal account $82,722 or disclose the non-federal overfunding on Schedule D as a debt until funds become available to satisfy the obligation.