



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUN 06 2016

**MEMORANDUM**

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

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

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**SUBJECT:** Draft Final Audit Report on the Utah Republican Party (LRA 1000)

**I. INTRODUCTION**

The Office of the General Counsel has reviewed the proposed Draft Final Audit Report ("proposed DFAR") on the Utah Republican Party ("URP"). The proposed DFAR contains six findings: Receipt of Prohibited Contributions (Finding 1), Receipt of Contributions that Exceed Limits (Finding 2), Misstatement of Financial Activity (Finding 3), Recordkeeping for Employees (Finding 4), Reporting of Debts and Obligations (Finding 5), and Apparent Excessive Contribution – Staff Advance (Finding 6). We concur with the findings, and comment on Findings 5 and 6. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

## **II. AUDIT METHODOLOGY ON STAFF ADVANCES SHOULD CONSIDER AVAILABLE INFORMATION TO INFER CLOSING STATEMENT DATE**

Findings 5 and 6 of the proposed IAR note that a URP staff member received \$197,850 in reimbursements from URP during the audit cycle for expenditures mostly paid for with the URP staff member's credit card. Of those reimbursements, \$46,904 occurred more than 60 days from the date of the incurrence of the expense, as detailed on the URP staff member's reimbursement form. The URP provided the Audit Division with reimbursement forms, but only one credit card statement showed the closing date on the billing statement.

The closing date on the billing statement is important because it is used as the trigger date to determine if the expenses initially paid for by the staff member will result in a contribution to URP. Specifically, the Commission's regulations require payments by a committee staff member to be treated as contributions, unless the payments are exempt from the definition of contribution as unreimbursed transportation and subsistence expenses under 11 C.F.R. § 100.79. 11 C.F.R. § 116.5(b). If the payments are not exempt, they are contribution unless (1) the payments are for a staff member's travel expenses or subsistence expenses incurred while traveling on behalf of the committee, and (2) the committee reimburses the staff member within 60 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." 11 C.F.R. § 116.5(b)(1) &(2).

URP had the opportunity, in response to the Interim Audit Report, to provide the closing date on the billing statements, but URP did not provide the information. Instead, the URP states that it was not aware of the URP staff member's expenses until well after the staff member incurred these expenses, due to the URP staff member's delay in providing receipts or expense reports to URP.<sup>1</sup> URP added that it issued reimbursements within a calendar week of receipt of the expense reimbursement form.<sup>2</sup>

Since the Audit Division did not have the closing date of the billing statement for all but one of the billing months, the Audit Division used the date that the expenses were incurred, for those expenses not supported by a closing date on the billing statement, to determine if the staff member's expenses became contributions to URP. This raises the question of how the Audit Division should determine whether the expenditures incurred by the staff member result in contributions under section 116.5(b) given that the URP is unwilling or unable to provide its staff member's billing statements.

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<sup>1</sup> Although the Committee claims that it was not aware of the staff member's expenditures, the staff member was an employee of URP. This employment relationship suggests that URP should have had some knowledge of the expenses – at least enough knowledge to know of the existence of the expenditures, and to request that the staff member submit a request for reimbursement by a time and in a form that would allow URP to substantiate its argument that the staff member's expenditures were not contributions.

<sup>2</sup> URP, however, did not provide any documentation demonstrating the date it received the expense reimbursement forms from the staff member, and the reimbursement forms themselves were not dated.

We agree with the Audit Division's methodology and its conclusion that the expenses the URP reimbursed more than 60 days after the staff member incurred them were contributions. For each expense that the staff member paid on behalf of the URP, the URP is required to report this expense as a contribution to the URP "unless ... [t]he individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear" on the credit card statement. 11 C.F.R. § 116.5(b). In promulgating this provision, the Commission noted that it "sets out a limited exception for an individual's personal and transportation expenses, and for usual and normal subsistence expenses of an individual who is not a volunteer, where such expenses are incurred while the individual is traveling on behalf of a candidate or party committee. These exemptions only apply, however, if the individual's transportation and subsistence expenses are reimbursed within sixty days for credit card transactions." *Explanation and Justification for Section 116.5, Advances by Committee Staff and Other Individuals*, 55 Fed. Reg. 26378, 26382 (Jun. 27, 1989). In other words, the "limited exception" to the rule that these types of expenses are contributions applies only where the committee reimburses the individual within the specified time.

As with all reported transactions, if the URP reports the reimbursements at issue as falling within the exception of section 116.5(b), the URP must maintain records "which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified." 11 C.F.R. § 104.14(b)(1).<sup>3</sup> Without the necessary information, here credit card billing statements, the Audit Division cannot verify that the individual was reimbursed within sixty days of the closing statement, and therefore cannot verify that the exemption applies.

In the absence of information about the closing date on the billing statement, the Audit Division used the information available; *i.e.*, the reimbursement forms provided by the URP staff member, to determine which of the staff member's expenditures constituted contributions. These forms included the date of incurrence of the expenses themselves. Since the date of incurrence can be the same as the closing date of the credit card billing statement, and because the URP has provided no records from which the Audit Division could verify that the closing date was later than the date of the spending, it is reasonable for the Audit Division to calculate the amount of the expenditures as those that were not reimbursed within 60 days of incurrence.<sup>4</sup>

As an alternative method for calculating the closing date, the Audit Division might consider inferring the closing date based on the one credit card statement that is available with a closing date. The Audit Division has one credit card statement for a full billing month, and that one credit card statement includes a closing date. Given that most credit card statements are 30 days or one month in length, it may be possible to infer the closing date for other billing cycles — albeit only if the same credit card was used for all of the relevant transactions. To be clear, inferring the closing date is not as precise as using the actual billing statements to determine the closing date. Yet, inferring the closing date for the other billing cycles would be a reasonable way

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<sup>3</sup> URP disclosed the reimbursements on its disclosure reports, but did not disclose the transactions as debts, as it also was required to do. 11 C.F.R. 116.5(c) (political committee shall treat the obligation arising from a payment described in paragraph (b) of this section as an outstanding debt until reimbursed).

<sup>4</sup> Given that credit card billing statements are generally issued every 30 days, any expenditures that were reimbursed after 90 days would be contributions. 11 C.F.R. 116.5(b).

**for the Audit Division to apply the transportation and subsistence expense exemption in 11 C.F.R. § 116.5(b) given the URP's inability to provide conclusive documentation.**