



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

May 4, 2016

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SUBJECT: Interim Audit Report on McSally for Congress (LRA #1047)

I. INTRODUCTION

The Office of the General Counsel has reviewed the Interim Audit Report ("IAR") on McSally for Congress ("Committee"). The IAR contains five findings: Failure to File Contributions from Political Committees (Finding 5); Failure to File 48-Hour Notices (Finding 4); Receipt of Contributions in Excess of the Limit (Finding 3); Disclosure of Occupation/Name of Employer (Finding 2); and Misstatement of Financial Activity (Finding 1). Our comments in this memorandum address Finding 1, Misstatement of Financial Activity. If you have any questions, please contact Jennifer Waldman, the attorney assigned to this audit.

II. MISSTATEMENT OF FINANCIAL ACTIVITY (FINDING 1)

The IAR finds that the Committee misstated its receipts and disbursements for 2013 and 2014 and lists the various reporting discrepancies that resulted in the misstatements. One discrepancy involves how the Committee reported transactions related to contributions made by credit card. The Committee received certain contributions via credit cards, but the payments to the Committee were rejected because they were not supported by sufficient funds and credit limits to pay the charges. The Federal Election Commission Campaign Guide for Congressional Candidates and Committees, June 2014 (“Campaign Guide”) recommends that when a contribution is rejected, a committee report it as a negative entry on Schedule A so as to, in effect, zero out the previously reported contribution that never materialized. Federal Election Commission Campaign Guide for Congressional Candidates and Committees, June 2014, p 113. Instead, the Committee reported the rejected charge as a receipt and then as a corresponding refund. The Committee, however, never actually refunded these contributions because the funds were never received. The Committee, therefore, inflated its receipts (reporting a contribution that never materialized), and it inflated its disbursement (reporting a refund) totals.

A second discrepancy relates to how the Committee reported its voided payments to vendors (such as media firms) for future services. The Committee initially reported the payments to the vendor on Schedule B as a disbursement. When the Committee decided not to use that service (or not to air a commercial) they were then required to report the fact that these previously reported disbursements never occurred since the money never left the Committee’s account. The Campaign Guide recommends that the cancelled payment previously reported be amended as a negative amount on Schedule B – showing that the funds were never spent. *Id.* Instead, the Committee reported the voided payment as an offset to operating expenditures on Schedule A (receipts). This inflated Schedule A (receipts) because it had the same effect as if the Committee had received a refund from the vendor, which it did not. In addition, Schedule B (disbursements) was inflated because the report still showed that the Committee had spent the funds.

The Federal Election Campaign Act of 1971, as amended, (“FECA”) states that a committee must report the total amounts of receipts and disbursements in various categories, including refunds and rebates. But, the FECA and its regulations do not directly address how a committee should report rejected credit card charges and voided payments. *See* 52 U.S.C. § 30104(b)(2)(i) and (4); 11 C.F.R. §§ 104.3(a)(3), (ix)(A) and (B), (b)(2)(v)(A) and (B), (4)(v). As noted, the Campaign Guide does provide further instruction on how to address these two scenarios.

The IAR notes that while there is agreement in the ending cash-on-hand balance, the corresponding receipts and disbursements are inflated. The Committee argues that it believes that its decision to report subsequently voided payments as offsets was consistent with the Commission’s regulations because the cash-on-hand was correct. However, this is insufficient because the Act and Commission regulations require that the Committee accurately report receipts and disbursements, not just the ultimate cash on hand balance. 11 C.F.R. § 104.14(d); *see* Final Audit Report on Democratic Party of Wisconsin, at 9 (approved Mar. 25, 2015) (Committee had reporting errors that resulted in inflated disbursements and receipts and argued

that disclosure was sufficient, the Commission disagreed); Final Audit Report on TeaPartyExpress.Org PAC at 9 (approved Jan. 6, 2017) (finding of misstatement of financial activity due to improperly reported and inflated disbursement totals) (approved by the Commission without discussion). By improperly reporting the incomplete credit card transactions and the voided payments, the Committee disclosed inflated receipt and disbursement totals creating an inaccurate picture of the Committee's finances.

Regardless of whether the cash-on-hand numbers were ultimately accurate, the way in which the Committee made these disclosures created inaccuracies in both the receipts and disbursements totals as the IAR outlines. Accuracy is one of the core principles of disclosure.¹ The Commission's regulations, therefore, require that a committee file timely and accurate reports, and the treasurer must certify that the provided information is accurate. See 11 C.F.R. § 104.3, 104.4, 104.5, 104.6, 104.7, 104.8, 104.9, 104.18(g), and 104.20.

While the IAR raises the Committee's argument and reasoning for the differing cash-on-hand, we recommend that the Audit Division revise the IAR to include the legal basis supporting its conclusion that the Committee's interpretation is incorrect, i.e., that merely reporting an accurate cash-on-hand balance is insufficient and that the regulations require accurate disclosure of receipts and disbursements.

¹ In the context of reporting refunds, the Commission noted that to create an accurate picture, refunds must be reported but not "as memo entries, since *they will affect the committee's total disbursements and cash on hand*" (emphasis added). Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760 (Jan. 9, 1987).