



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

July 11, 2019

**MEMORANDUM**

To: The Commission

Through: Alec Palmer  
Staff Director

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Chief Compliance Officer

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Audit Division

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Subject: Audit Division Recommendation Memorandum on the Ambulatory  
Surgery Center Association PAC (ASCAPAC) (A17-08)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to the Ambulatory Surgery Center Association PAC (ASCAPAC) on April 15, 2019 (see attachment). ASCAPAC did not request an audit hearing.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR.

ASCAPAC provided additional information in response to the DFAR, as discussed below.

**Finding 1. Misstatement of Financial Activity**

In response to the DFAR, ASCAPAC filed amended disclosure reports that corrected the public record.

The Audit staff recommends that the Commission find that ASCAPAC misstated \$16,834 in receipts for calendar year 2015.

### **Finding 2. Receipt of Prohibited Contributions**

In response to the DFAR, ASCAPAC submitted the following additional documentation:

#### **Prohibited Contributions Untimely Resolved (\$48,904)**

- 62 contributions totaling \$48,904<sup>1</sup>, were untimely refunded by ASCAPAC.

#### **Prohibited Contributions Not Resolved (\$31,124)**

ASCAPAC submitted documentation for contributions totaling \$31,124 from LLCs that it stated “did not elect to file federal tax returns as a corporation.” Based on the submitted documentation, the Audit staff determined that these contributions remain impermissible for the following reasons:

- Documentation was not submitted showing the contributions had been attributed to the non-corporate partner(s) of the incorporated LLC for 23 contributions totaling \$22,574.
- Documentation was not submitted showing whether the LLC elected to file with the IRS as a corporation or a partnership for four contributions totaling \$2,550.
- Documentation submitted showed the LLC elected to file with the IRS as a corporation for three contributions totaling \$3,500.
- Documentation submitted does not support ASCAPAC’s assertion that four contributions totaling \$2,500 were made only from the non-corporate partners.

#### **Contributions Where Permissibility Was Demonstrated (\$12,995)**

- Documentation was submitted showing that the LLC elected to file with the IRS as a partnership for three contributions totaling \$8,575 in response to the Interim Audit Report.
- Documentation was submitted showing the LLC elected to file with the IRS as a partnership for three contributions totaling \$4,420<sup>2</sup> in response to the DFAR.

Thus, the amount of contributions that were from prohibited sources was reduced to \$80,028<sup>3</sup>.

The Audit staff recommends that the Commission find that ASCAPAC received contributions totaling \$80,028 from prohibited sources.

### **Finding 3. Recordkeeping for Receipts**

In response to the DFAR, ASCAPAC stated that it updated its policies and procedures, created new compliance and information-sharing systems, engaged an internal review of 2017 and 2018 contributions and contracted with an outside

<sup>1</sup> ASCAPAC submitted copies of the issued checks and agreed to provide the copies of the processed checks or bank statement(s) when they become available. To date, the Audit staff has verified refunds totaling \$34,693 with bank records.

<sup>2</sup> Amount also includes a \$120 difference where the Audit staff inadvertently recorded the incorrect amount for two checks due to illegible copies.

<sup>3</sup> \$80,028 = \$93,023 (see DFAR, page 3) - \$8,575 - \$4,420. The deductions are the amounts ASCAPAC was able to demonstrate were from permissible sources.

vendor to ensure compliance with FEC regulations. ASCAPAC also submitted missing documentation for receipts totaling \$11,175.

As a result of ASCAPAC issuing refunds for prohibited contributions (see Finding 2 above), attribution records are not required for contributions totaling \$18,534. Thus, the amount of contributions that did not meet the recordkeeping requirements of 11 CFR §§102.9 and 104.14(b)(1) was reduced to \$48,574<sup>4</sup>.

The Audit staff recommends that the Commission find that ASCAPAC failed to maintain records to support contributions totaling \$48,574.

**Finding 4. Disclosure of Receipts**

In response to the DFAR, ASCAPAC stated that it has updated its policies and procedures, created new compliance and information-sharing systems, engaged in an internal review of 2017 and 2018 contributions and contracted with an outside vendor to ensure compliance with FEC regulations.

Additionally, ASCAPAC submitted documentation to support that contributions, totaling \$1,000, disclosed on the audited disclosure reports were correctly reported, and filed amendments that corrected the disclosure for contributions totaling \$67,508. However, ASCAPAC did not comply with the recommendation to amend its disclosure reports to correctly disclose \$120,115 of the contributions.

Thus, the amount that did not meet the disclosure requirements of 11 CFR §§100.12 and 104.3(a)(4) was reduced to \$187,623<sup>5</sup>.

The Audit staff recommends that the Commission find that ASCAPAC failed to correctly disclose contributions totaling \$187,623.

**Finding 5. Untimely Deposit of Receipts**

In response to the DFAR, ASCAPAC stated that it has updated its policies and procedures, created new compliance and information-sharing systems, engaged in an internal review of 2017 and 2018 contributions and contracted with an outside vendor to ensure compliance with FEC regulations.

The Audit staff recommends that the Commission find that ASCAPAC untimely deposited contributions totaling \$84,333.

The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

**In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.**

<sup>4</sup> \$48,574 = \$67,108 (see DFAR, page 3) - \$18,534

<sup>5</sup> \$187,623 = \$193,623 (see DFAR, page 3-4) - \$1,000- \$5,000 (resolved in response to the IAR).

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Camilla Reminsky or Zuzana Pacious at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on the Ambulatory Surgery Center Association PAC (ASCAPAC)

cc: Office of General Counsel



# Draft Final Audit Report of the Audit Division on the Ambulatory Surgery Center Association PAC (ASCAPAC) (January 1, 2015 – December 31, 2016)

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## 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.<sup>1</sup> 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 Ambulatory Surgery Center Association PAC (ASCAPAC) is a separated segregated fund- trade association. It qualified for multi-candidate status and is headquartered in Alexandria, Virginia. For more information, see the chart on the Committee Organization, p. 2.

## Financial Activity (p. 2)

### Receipts

|  |            |
|--|------------|
| ○ Contributions from Individuals                   | \$ 361,090 |
| ○ Contributions from Other Political Committees    | 11,322     |
| ○ Offsets to Operating Expenditures                | 1,481      |
| ○ Refund of Contribution Made to Federal Candidate | 1,000      |

**Total Receipts** **\$ 374,893**

### Disbursements

|  |            |
|--|------------|
| ○ Contributions to Federal Candidates/Committees | \$ 269,000 |
| ○ Transfers to Affiliated Committees             | 14,872     |
| ○ Operating Expenditures                         | 6,618      |
| ○ Refunds of Contributions to Individuals        | 1,850      |

**Total Disbursements** **\$ 292,340**

## Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Receipt of Prohibited Contributions (Finding 2)
- Recordkeeping for Receipts (Finding 3)
- Disclosure of Receipts (Finding 4)
- Untimely Deposit of Receipts (Finding 5)

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<sup>1</sup> 52 U.S.C. §30111(b).



**Draft Final Audit Report of the  
Audit Division on the Ambulatory  
Surgery Center Association PAC  
(ASCAPAC)**

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(January 1, 2015 – December 31, 2016)

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# Part I

## Background

### Authority for Audit

This report is based on an audit of the Ambulatory Surgery Center Association PAC (ASCAPAC), 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;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the disclosure of contributions to candidate committees;
6. the consistency between reported figures and bank records;
7. the completeness of records; and
8. other committee operations necessary to the review.

### Limitations

ASCAPAC did not comply with the recordkeeping requirements, 11 CFR §§102.9 and 104.14(b)(1), which require committees to maintain a copy of contributor checks in excess of \$50 and to keep an account of all contributions received by or on behalf of the political committee. Under the dual attribution rule for partnerships, the contribution is attributable to the partnership, and to each individual partner as specified by the contributing partnership (11 CFR §110.1(e)). The lack of contributor checks and the attribution information for each partner for contributions from partnerships, limited the Audit staff's testing of all contributions received via credit card or check that may have exceeded the limits. Likewise, the Audit staff was not able to verify the accuracy of disclosure information for and the permissibility of contributions received via check or credit card due to the lack of the aforementioned records. (See Findings 3 and 4).



## Part II

### Overview of Committee

#### Committee Organization

|  |                                     |
|--|-------------------------------------|
| <b>Important Dates</b>                           |                                     |
| • Date of Registration                           | May 25, 2006                        |
| • Audit Coverage                                 | January 1, 2015 – December 31, 2016 |
| <b>Headquarters</b>                              | Alexandria, VA                      |
| <b>Bank Information</b>                          |                                     |
| • Bank Depositories                              | Two                                 |
| • Bank Accounts                                  | Two checking                        |
| <b>Treasurer</b>                                 |                                     |
| • Treasurer When Audit Was Conducted             | John Greenwich                      |
| • Treasurer During Period Covered by Audit       | John Greenwich (10/1/13 – Present)  |
| <b>Management Information</b>                    |                                     |
| • Attended FEC Campaign Finance Seminar          | Yes                                 |
| • Who Handled Accounting and Recordkeeping Tasks | Paid Staff                          |

#### Overview of Financial Activity (Audited Amounts)

|   |                   |
|---|-------------------|
| <b>Cash-on-hand @ January 1, 2015</b>               | <b>\$ 118,102</b> |
| <b>Receipts</b>                                     |                   |
| ○ Contributions from Individuals                    | 361,090           |
| ○ Contributions from Other Political Committees     | 11,322            |
| ○ Offsets to Operating Expenditures                 | 1,481             |
| ○ Refund of Contribution Made to Federal Candidates | 1,000             |
| <b>Total Receipts</b>                               | <b>\$ 374,893</b> |
| <b>Disbursements</b>                                |                   |
| ○ Contributions to Federal Candidates/Committees    | 269,000           |
| ○ Transfers to Affiliated Committees                | 14,872            |
| ○ Operating Expenditures                            | 6,618             |
| ○ Refunds of Contributions to Individuals           | 1,850             |
| <b>Total Disbursements</b>                          | <b>\$ 292,340</b> |
| <b>Cash-on-hand @ December 31, 2016</b>             | <b>\$ 200,655</b> |

## Part III

# Summaries

### Findings and Recommendations

#### **Finding 1. Misstatement of Financial Activity**

During audit fieldwork, a comparison of ASCAPAC's reported activity with its bank records revealed a misstatement of receipts for calendar year 2015. Specifically, ASCAPAC understated its receipts by \$16,834. In response to the Interim Audit Report recommendation, ASCAPAC stated that some receipts were inadvertently deposited into the wrong bank account and agreed to file amended disclosure reports. (For more detail, see p. 5.)

#### **Finding 2. Receipt of Prohibited Contributions**

During audit fieldwork, a review of contributions from individuals revealed that ASCAPAC received 102 contributions, totaling \$93,023, from apparent prohibited sources. In response to the Interim Audit Report recommendation, ASCAPAC submitted documentation for contributions totaling \$43,121 and stated contributions totaling \$35,271 would be refunded or given to an eligible charity. Furthermore, for the remaining contributions totaling \$14,631, ASCAPAC stated that it had not yet received all the contributor responses attesting to tax status, but reasonably expected that half of the contributions would be deemed permissible.

Based on the documentation submitted, the Audit staff agreed with ASCAPAC that contributions totaling \$8,575, were not from prohibited sources. Thus, the outstanding contributions, totaling \$84,448, remain from prohibited sources. (For more detail, see p. 7.)

#### **Finding 3. Recordkeeping for Receipts**

During audit fieldwork, the Audit staff reviewed documentation provided by ASCAPAC and determined that it did not maintain adequate documentation for receipts totaling \$67,108. In response to the Interim Audit Report recommendation, ASCAPAC stated that it conducted an "exhaustive effort" to collect the missing documentation and updated its procedures and policies to ensure proper recordkeeping. ASCAPAC submitted adequate documentation for receipts totaling \$9,199. However, receipts totaling \$57,909, still lack documentation to support its disclosure reports. (For more detail, see p. 12.)

#### **Finding 4. Disclosure of Receipts**

During audit fieldwork, the Audit staff identified 124 contributions totaling \$193,623<sup>2</sup> that were incorrectly disclosed or missing the required disclosure information. In

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<sup>2</sup> After reviewing the response to the Interim Audit Report, the Audit staff removed 30 contributions totaling \$3,948 from the finding. These contributions were not required to be itemized and therefore not subject to proper disclosure requirements. The finding has been updated to reflect this decrease.

response to the Interim Audit Report recommendation, ASCAPAC stated that it has conducted an “exhaustive effort” to collect the information required and submitted documentation to support its original disclosure reports. ASCAPAC also stated that it would file amendments to correct the outstanding disclosure errors. Based on the documentation submitted, the Audit staff agrees with ASCAPAC that two contributions totaling \$5,000 were correctly disclosed. However, contributions totaling \$188,623 remain either incorrectly disclosed or missing. (For more detail, see p. 14.)

**Finding 5. Untimely Deposit of Receipts**

During audit fieldwork, the Audit staff determined that ASCAPAC did not deposit 106 contributions totaling \$84,333 within 10 days of receipt. In response to the Interim Audit Report recommendation, ASCAPAC stated that its policy is to deposit all checks within 10 days of receipt, and that it has worked with its credit card vendor to ensure the timely transfer of contributions. ASCAPAC also stated it has implemented a procedure that all checks will be date stamped upon receipt to ensure a record is maintained. (For more detail, see p. 17.)

## Part IV

# Findings and Recommendations

### Finding 1. Misstatement of Financial Activity

#### Summary

During audit fieldwork, a comparison of ASCAPAC's reported activity with its bank records revealed a misstatement of receipts for calendar year 2015. Specifically, ASCAPAC understated its receipts by \$16,834. In response to the Interim Audit Report recommendation, ASCAPAC stated that some receipts were inadvertently deposited into the wrong bank account and agreed to file amended disclosure reports.

#### Legal Standard

**Contents of (Federal) 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 (7).

#### Facts and Analysis

##### A. Facts

During audit fieldwork, the Audit staff reconciled ASCAPAC's reported financial activity with its bank records for calendar years 2015 and 2016. The reconciliation identified that ASCAPAC misstated its receipts in 2015. The following chart details the discrepancies between ASCAPAC's disclosure reports and bank activity. The succeeding paragraphs explain why the discrepancies occurred.

| <b>2015 Committee Activity</b>              |                 |                     |                           |
|---|-----------------|---------------------|---------------------------|
|   | <b>Reported</b> | <b>Bank Records</b> | <b>Discrepancy</b>        |
| Beginning Cash on Hand @<br>January 1, 2015 | \$ 121,494      | \$ 118,102          | \$3,392<br>Overstated     |
| Receipts                                    | \$ 176,749      | \$ 193,583          | (\$16,834)<br>Understated |
| Disbursements                               | \$ 124,490      | \$ 133,412          | (\$8,922)<br>Understated  |
| Ending Cash on Hand @<br>December 31, 2015  | \$ 173,753      | \$ 178,273          | (\$4,520)<br>Understated  |

The beginning cash on hand was overstated by \$3,392. The Audit staff identified a discrepancy of \$2,500 due to a disbursement check that cleared the bank in 2014, but was

not reported until 2015. The remaining \$892 is the result of prior period reporting discrepancies.

The net understatement of receipts resulted from the following:

|  |   |                         |
|--|---|-------------------------|
| • Trade Association funds erroneously deposited in the Federal account, not reported (See explanation below) | + | 11,560                  |
| • Contributions from individuals, not reported   | + | 5,000                   |
| • Contributions from individuals reported, not supported by bank deposits                                    | - | 500                     |
| • Offset to operating disbursements not reported   | + | 95                      |
| • Unexplained difference   | + | 679                     |
| <b>Net Understatement of Receipts</b>  |   | <b><u>\$ 16,834</u></b> |

The \$4,520 understatement of the ending cash on hand was a result of the reporting discrepancies described above, as well as disbursement reporting discrepancies.

ASCAPAC deposited checks from individuals and offsets to operating expenditures totaling \$11,560<sup>3</sup> that were either dues or offsets to the Ambulatory Surgery Association, or donations to their advocacy fund. These erroneously deposited checks were not reported, as well as the transfers to accounts not related to ASCAPAC. 52 U.S.C. §30104(b) requires that all receipts and disbursements be reported and as such, both the receipt of these funds and the subsequent transfers are required to be reported.

#### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the misstatement of the 2015 receipts at the exit conference and provided ASCAPAC representatives with schedules detailing the misstated activity. In response to the exit conference, ASCAPAC representatives stated that the unreported activity consisted of receipts that were deposited to the ASCAPAC account in error and were later transferred out. ASCAPAC representatives further stated that they would amend the disclosure reports to include this activity.

The Interim Audit Report recommended that ASCAPAC amend its disclosure reports to correct the misstatements noted above. In addition, the Interim Audit Report recommended that ASCAPAC reconcile the cash on hand on its most recently filed disclosure report to account for the recommended adjustments and identify any subsequent discrepancies, as necessary.

<sup>3</sup> ASCAPAC transferred \$9,060 of these contributions to a non-ASCAPAC bank account in 2015 and stated that the remaining \$2,500, intended for an advocacy fund, will also be transferred to a non-ASCAPAC bank account. To date, ASCAPAC has not provided documentation to verify the remaining transfer.

### C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, ASCAPAC submitted a reconciliation of receipts. The reconciliation indicated that receipts totaling \$11,734<sup>4</sup> were inadvertently deposited into the wrong bank account, and were then transferred to the correct account. ASCAPAC stated it would file amended disclosure reports to correct the misstatement.<sup>5</sup>

## Finding 2. Receipt of Prohibited Contributions

### Summary

During audit fieldwork, a review of contributions from individuals revealed that ASCAPAC received 102 contributions, totaling \$93,023, from apparent prohibited sources. In response to the Interim Audit Report recommendation, ASCAPAC submitted documentation for contributions totaling \$43,121 and stated contributions totaling \$35,271 would be refunded or given to an eligible charity. Furthermore, for the remaining contributions totaling \$14,631, ASCAPAC stated that it had not yet received all the contributor responses attesting to tax status, but reasonably expected that half of the contributions would be deemed permissible.

Based on the documentation submitted, the Audit staff agreed with ASCAPAC that contributions totaling \$8,575, were not from prohibited sources. Thus, the outstanding contributions, totaling \$84,448, remain from prohibited sources.

### Legal Standard

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

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
  - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
3. Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and
4. Foreign Nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence; foreign governments and foreign political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b). 52 U.S.C. §§30118, 30119, 30121, and 30122.

<sup>4</sup> These receipts included \$11,560 identified in Section A as “Trade Association funds erroneously deposited in the Federal account;” and \$174 identified as “Unexplained differences.” See also footnote 3.

<sup>5</sup> ASCAPAC filed amended disclosure reports on March 29, 2019, after the Interim Audit Report response period. The Audit staff is reviewing these amendments and will address them in the subsequent Audit Division Recommendation Memorandum and the Final Audit Report of the Commission.

- B. Receipt of Prohibited Corporate Contributions.** Political committees may not accept contributions from the general treasury funds of corporations. This prohibition applies to any type of corporation including a non-stock corporation, as incorporated membership organization, and an incorporated cooperative. 52 U.S.C. §30118.
- C. 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).
- D. 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).
- E. 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).
- F. Questionable Contributions.** It is the Treasurer's responsibility to ensure that all contributions are lawful. 11 CFR §103.3(b). 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. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
  - Confirm the legality of the contribution; or
  - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

## Facts and Analysis

### A. Facts

During audit fieldwork, the Audit staff identified contributions that appeared to be from prohibited sources. The following chart details the source of these receipts.

| <b>Apparent Prohibited Contributions</b>                           |                    |
|--|--------------------|
| Type of Review   | 100%               |
| Contributions from Limited Liability Companies (LLC)               | \$75,462           |
| Contributions from Corporations                                    | \$16,412           |
| Contributions from Professional Limited Liability Companies (PLLC) | \$649              |
| Contributions from Limited Liability Partnerships (LLP)            | \$500 <sup>6</sup> |
| <b>Total of Prohibited Contributions</b>                           | <b>\$93,023</b>    |

### B. Additional Information:

For contributions from corporations, the Audit staff verified the corporate status of the entities, as of the date of the contribution, with the applicable Secretary of State offices. For contributions from Limited Liability Companies (LLC) and Limited Liability Partnerships (LLP), ASCAPAC provided documentation for \$44,194 stating that the partnership elected to be treated as a corporation for tax purposes, or that they had a corporate partner. For the remaining \$31,768 from LLCs and LLPs, ASCAPAC did not provide documentation.

The Audit staff verified the corporate status with the appropriate Secretaries of State for contributions from corporations totaling \$16,412 to ASCAPAC.

<sup>6</sup> This was a single contribution from a partnership where both partners were incorporated entities.



ASCAPAC did not maintain a separate account for questionable contributions. However, there was a sufficient balance in its bank account to make refunds of the apparent prohibited contributions.

The contributions originated primarily from surgery centers that were members of the Ambulatory Surgery Center Association.

### **C. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with ASCAPAC representatives during the exit conference and provided a schedule of the apparent prohibited contributions. ASCAPAC representatives stated that the committee “continues to conduct an extensive, multimodal effort to collect documentation of the tax filing status...” and have provided additional information regarding the eligibility of the contributions to the Audit staff. In addition, they stated that ASCAPAC is in the process of issuing refunds and will provide details once the refund process is completed.

ASCAPAC representatives further stated: “...the Committee accepted contributions from LLCs based on the understanding of the following points:

1. An ASC [Ambulatory Surgery Center], by definition, is owned wholly or in part by a single physician or partnership of physicians, and as such represents an inherently permissible donor under FEC rules and regulations.
2. FEC guidance consistently informs Committees that the contributing LLC is the party affirmatively responsible for notifying the Committee of donor eligibility status. The Committee objects to any assertion by the Audit staff that this affirmative duty somehow rests with it as the recipient PAC. Likewise, the Committee rejects any allegation by the Audit staff that the PAC's staff did anything other than seek full compliance with the "best efforts" obligations set forth in FEC rules and regulations, the Campaign Guide for Corporate and Labor Organizations, and other applicable Commission guidance.”

The Audit staff noted that although the contributor is responsible for providing eligibility of its contribution, 11 CFR §103.3(b) states that it is the treasurer’s responsibility to ensure that all contributions are lawful and to maintain a record of documentation to that effect. According to the best efforts provisions in 11 CFR §103.3(b), ASCAPAC did not demonstrate best efforts because it did not provide statements from the business entities attesting to the legality of their contributions or refund the potentially prohibited contributions.

The Interim Audit Report recommended that ASCAPAC:

- Provide documentation demonstrating that the apparent prohibited contributions totaling \$93,023 were made with permissible funds or were timely resolved. This documentation should include records that were not made available to the Audit staff during the audit, including tax status information provided by the

contributors, or timely refunds (copies of the front and back of negotiated refund checks).

- Absent documentation that the funds were permissible or were timely resolved, ASCAPAC must refund these apparent prohibited contributions to the contributors or disgorge them to a governmental entity or to a qualified charitable organization.<sup>7</sup> ASCAPAC should provide proof of any refunds and/or disgorgement by providing the front and back of the negotiated refund checks.
- If funds are not available to make the necessary refunds or disgorgement, ASCAPAC should disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make such refunds.

#### **D. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, ASCAPAC stated that it has undergone an “exhaustive effort” to determine the corporate status of all the contributors in question, and submitted supporting documentation.

ASCAPAC addressed prohibited contributions in the following three categories, however, the Audit staff could not associate the documentation submitted to the total amounts addressed in the narrative portion of the response:

##### **Contributions categorized as permissible (\$43,121)**

ASCAPAC stated that contributions totaling \$43,121 were permissible. Of these, contributions totaling **\$37,621** were from “eligible” LLCs with a corporate partner, which is allowable as long as no part of the contribution is attributed to the corporation. Additionally, ASCAPAC stated contributions totaling **\$5,500** were received from LLC partnerships with no corporate partner.

Based on documentation submitted, the Audit staff determined that contributions totaling **\$26,649** were from LLCs and LLPs that elected to be taxed as partnerships by the IRS. Of this amount, contributions totaling:

- **\$16,074** were from LLCs owned by another LLC and/or a corporate partner. Since documentation was not submitted showing tax status of the LLC partner, nor that the contribution was made entirely from the non-corporate partner(s)’ share of the profits, these contributions remain impermissible.
- **\$500** was from an LLP owned by two corporate partners. As this contribution is entirely from corporate entities, the contribution is impermissible.
- **\$1,500** were from an LLC that elected to be taxed as a partnership by the IRS, but since the documentation provided stated that the partners were unaware that a contribution had been made, these contributions remain impermissible.
- **\$8,575** were from LLCs/LLPs that were not owned by another LLC and/or corporate partner. The Audit staff agrees with ASCAPAC that these are contributions from permissible sources.

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<sup>7</sup> See 26 U.S.C §170(c).

**Contributions categorized as prohibited (\$35,271)**

ASCAPAC stated that contributions totaling \$35,271 were received from corporations or partnerships that elected to be treated as corporations for tax purposes, and agreed to issue refunds. Based on the documentation submitted, the Audit staff verified contributions totaling \$19,124 were from LLCs that elected to be treated as a corporations for tax purposes, and \$7,115 were from corporations, and thus remain impermissible.

**Contributions without donor response (\$14,631)**

ASCAPAC stated they did not receive responses from contributors attesting to tax status for contributions totaling \$14,631, despite multiple attempts. However, based on the number of responses already received, ASCAPAC reasonably expects that 55%, or \$8,047 will be deemed permissible. Therefore, ASCAPAC estimated that it would refund or disgorge to an eligible charity the remainder of the contributions. ASCAPAC would adjust the actual refund amount based on responses from its contributors.

The Audit staff maintains that unless ASCAPAC submits documentation to demonstrate these contributions were received from permissible sources, they must still be refunded.

| <b>Corrective Action Taken in Response to the Interim Audit Report</b>              |                 |
|---|-----------------|
| Total Apparent Prohibited Contributions as of Interim Audit Report                  | \$93,023        |
| Contributions from Partnerships<br>(Supporting documentation provided by committee) | \$8,575         |
| Contributions Refunded  | \$0             |
| <b>Prohibited Contributions – <i>Not Resolved</i></b>                               | <b>\$84,448</b> |

In summary, the remaining apparent prohibited contributions not resolved or refunded total \$84,448 (\$93,023 - \$8,575). As such, ASCAPAC should either issue a refund to the contributors, disgorge the funds to a governmental entity or to a qualified charitable organization, or report them as debts on Schedule D until paid.

**Finding 3. Recordkeeping for Receipts****Summary**

During audit fieldwork, the Audit staff reviewed documentation provided by ASCAPAC and determined that it did not maintain adequate documentation for receipts totaling \$67,108. In response to the Interim Audit Report recommendation, ASCAPAC stated that it conducted an “exhaustive effort” to collect the missing documentation and updated its procedures and policies to ensure proper recordkeeping. ASCAPAC submitted

adequate documentation for receipts totaling \$9,199. However, receipts totaling \$57,909, still lack documentation to support its disclosure reports.

### **Legal Standard**

**A. Recordkeeping.** Political committees must keep records of:

- All contributions received by or on behalf of the committee;
- The name and address of any person who makes a contribution in excess of \$50, together with the date and amount of the contribution; and
- The occupation and name of employer of any individual whose contributions aggregate more than \$200 during a calendar year, together with the date and amount of any such contributions. 52 U.S.C. §30102(c) and 11 CFR §102.9(a).

**B. Retention of Check Copies.** For contributions in excess of \$50, committees must maintain a photocopy or digital image of the check or written instrument. 11 CFR §102.9(a)(4).

**C. Maintaining Records.** Committees must maintain records that provide in sufficient detail the necessary information and data from which filed reports may be verified and checked for accuracy and completeness. 11 CFR §104.14(b)(1).

**D. Preserving Records and Copies of Reports.** Committees must preserve these records for 3 years after a report is filed. 52 U.S.C. §30102(d).

**E. Dual Attribution Rule for Partnerships.** Contributions from business entities should provide information pertaining to the proportion of the contribution attributable to each partner. Contributions from partnerships are both attributable to the partnership, and to each individual partner as specified by the contributing partnership. 11 CFR §110.1(e) and 52 Fed. Reg. 760, 764-765 (Jan. 9, 1987).

### **Facts and Analysis**

#### **A. Facts**

The Audit staff's review of contribution records indicated that ASCAPAC failed to maintain copies of contribution checks or other written instruments for contributions over \$50, totaling \$6,378. Furthermore, contributions from business entities, totaling \$60,730, were not annotated with the attribution information for each partner. The total missing contribution checks and attributions totaled \$67,108 and represented 19% of the total contributions received from individuals that required record retention. By not retaining the required checks and attributions, ASCAPAC did not comply with recordkeeping requirements.

When the Audit staff requested the missing records, ASCAPAC representatives stated that they did not maintain these records.<sup>8</sup> However, during audit fieldwork, ASCAPAC

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<sup>8</sup> ASCAPAC did maintain a database with the attribution information for each partner, however, a review of subsequent responses from contributing entities indicated that the information recorded in the database often was incorrect, and could not be relied upon.

representatives reached out to the contributing entities and requested the attribution information.

As a result of the missing records, the Audit staff was unable to verify the attribution to each partner from partnerships. (See Limitations, p. 1.)

### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the missing records and provided schedules to ASCAPAC representatives at the exit conference. ASCAPAC representatives stated that they did not maintain original records documenting partnership attributions, however, after the beginning of fieldwork, partnership attributions were requested from all of the business entities that made contributions. ASCAPAC provided the Audit staff with attribution records after the exit conference,<sup>9</sup> and stated that it would amend its disclosure reports to reflect the updated information.

The Interim Audit Report recommended that ASCAPAC:

- Provide the requested attribution records;
- Develop and implement a plan to obtain and maintain records as the law requires, for the partners to whom a partnership's contribution was attributed; and
- Submit any comments it deemed relevant to this matter.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, ASCAPAC stated that it has conducted an “exhaustive effort” to collect and provide the requested documentation. Additionally, ASCAPAC stated that it has updated its policies and procedures to ensure proper recordkeeping.

Based on the documentation provided, Audit staff determined that ASCAPAC submitted adequate attribution records from business entities for contributions totaling \$9,199. However, receipts totaling \$57,909, still lack documentation to support the disclosure reports.

## **Finding 4. Disclosure of Receipts**

### **Summary**

During audit fieldwork, the Audit staff identified 124 contributions totaling \$193,623<sup>10</sup> that were incorrectly disclosed or missing the required disclosure information. In response to the Interim Audit Report recommendation, ASCAPAC stated that it has conducted an “exhaustive effort” to collect the information required and submitted documentation to support its original disclosure reports. ASCAPAC also stated that it would file amendments to correct the outstanding disclosure errors. Based on the documentation submitted, the Audit staff agrees with ASCAPAC that two contributions

<sup>9</sup> Totals in the Facts section reflect the records received.

<sup>10</sup> See footnote 2.

totaling \$5,000 were correctly disclosed. However, contributions totaling \$188,623 remain either incorrectly disclosed or missing the required disclosure information.

## **Legal Standard**

**Required Information for Contributions.** For each itemized contribution, the committee must provide the following information:

- The contributor's full name and address (including zip code);
- The contributor's occupation and the name of his or her employer (for individual contributors);
- The date of receipt (the date the committee received the contribution);
- The amount of the contribution; and
- The calendar year-to-date total of all contributions from the same individual. 11 CFR §§100.12 and 104.3(a)(4) and 52 U.S.C. §30104(b)(3)(A).

## **Facts and Analysis**

### **A. Facts**

During audit fieldwork, the Audit staff identified 124 contributions reported on Schedule A totaling \$193,623<sup>11</sup> that were incorrectly disclosed or missing the required disclosure information. These reporting errors consisted of the following:<sup>12</sup>

- 58 contributions from individuals and business entities totaling \$79,728 that incorrectly disclosed the contributors' name;
- 42 contributions from individuals and business entities totaling \$52,195 that incorrectly disclosed the contribution dates; and
- 53 contributions from partnerships totaling \$109,532 that incorrectly disclosed the partnership attribution for the contributions.

The Audit staff was not able to verify disclosure information for 89 contributions totaling \$60,730 from business partnerships due to the lack of records showing each partner's attribution.<sup>13</sup>

### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the disclosure items at the exit conference and provided schedules of contributions disclosed incorrectly. ASCAPAC representatives stated that they would amend the required disclosure reports to reflect information received from donors.

The Interim Audit Report recommended that ASCAPAC amend its disclosure reports to correctly disclose these contributions on Schedule A, and provide any other comments it deemed necessary.

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<sup>11</sup> See footnote 2.

<sup>12</sup> These three groups of errors and their respective dollar value exceed the amount of total errors of 124 totaling \$193,623 because 29 contributions totaling \$47,832 had multiple disclosure errors. Each contribution was counted once toward the total errors, even if there were multiple errors.

<sup>13</sup> See Limitations, p. 1.

### C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, ASCAPAC stated that it conducted an “exhaustive effort” to collect the records, and submitted documentation to support its original disclosure reports. ASCAPAC also stated it would file amendments to correct the outstanding disclosure issues. The Audit staff reviewed the documentation and agrees that for two contributions, totaling \$5,000, ASCAPAC correctly disclosed the required information.

ASCAPAC addressed 38 of the contributions that incorrectly disclosed the contributors’ name in the following three categories:

- ASCAPAC stated that 16 credit card contributions from individuals that were reported as received from business entities and cited for being incorrectly reported were, in fact, correctly reported. The credit card submission forms only transmitted the name of the individual cardholder, not the company. ASCAPAC explained that the additional documentation submitted contained written confirmation that the reported business entity names accurately reflect the donors.

The Audit staff does not agree with the explanation provided by ASCAPAC. The Audit staff reviewed the submitted documentation and determined that it did not state that the credit card contributions were from the business entity. For these credit card contributions, the Audit staff recommends ASCAPAC submit confirmation that the contributions originated from the business entity and not the individual named on the card.

- ASCAPAC stated that 13 contributions were prohibited and will be refunded or disgorged to an eligible charity.

The Audit staff agrees with ASCAPAC, but maintains that, regardless of the permissibility of a contribution, certain information such as the name, address, date and amount of contribution, and the aggregate total for the contributor, must be disclosed correctly.

- ASCAPAC stated that nine contributions were disclosed with a name other than that on the check, and it would amend its disclosure reports to show the correct name.

The Audit staff agrees with ASCAPAC, and its stated resolution would correct the public record.

As a result, contributions totaling \$188,623 (\$193,623 - \$5,000) remain either incorrectly disclosed or missing information and amended disclosure reports are still required.<sup>14</sup>

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<sup>14</sup> See footnote 5.

## **Finding 5. Untimely Deposit of Receipts**

### **Summary**

During audit fieldwork, the Audit staff determined that ASCAPAC did not deposit 106 contributions totaling \$84,333 within 10 days of receipt. In response to the Interim Audit Report recommendation, ASCAPAC stated that its policy is to deposit all checks within 10 days of receipt, and that it has worked with its credit card vendor to ensure the timely transfer of contributions. ASCAPAC also stated it has implemented a procedure that all checks will be date stamped upon receipt to ensure a record is maintained.

### **Legal Standard**

- A. Deposit of Receipts.** The treasurer of a political committee must deposit contributions (or return them to the contributors without being deposited) within 10 days of the treasurer's receipt of the contribution. 11 CFR §103.3(a).
- B. Receipt of Contributions.** Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receipt, forward such contribution to the treasurer. If the amount of the contribution is in excess of \$50, such person shall also forward to the treasurer the name and address of the contributor and the date of receipt of the contribution. If the amount of the contribution is in excess of \$200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR §100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution. 52 U.S.C. §30102(b)(2) and 11 CFR §102.8(b).

### **Facts and Analysis**

#### **A. Facts**

During audit fieldwork, the Audit staff reviewed available contribution records and identified 106 contributions totaling \$84,333 which ASCAPAC did not deposit within 10 days. This amount represents 23% of the total contributions from individuals.

The Audit staff compared the reported receipt dates<sup>15</sup> to the deposit dates and determined that it took ASCAPAC, on average, 22 days to deposit these contributions. The untimely deposit of contributions ranged from a minimum of 14 days to a maximum of 74 days.<sup>16</sup>

#### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with ASCAPAC representatives during the exit conference and provided schedules detailing the untimely deposited contributions. ASCAPAC representatives did not provide any comments related to this matter at that time.

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<sup>15</sup> The Audit staff verified the date reported on the disclosure reports was the date received stamped in the contributor records. The Audit staff used the date of the check or the credit card merchant received date to determine timeliness for contributions with no date stamp.

<sup>16</sup> Of these untimely deposited contributions, 70 contributions totaling \$55,993 were not disclosed with the correct date on the disclosure reports. See Finding 4, p. 14.



In response to the exit conference, ASCAPAC representatives stated that ASCAPAC's policy was to deposit all checks within 10 days of receipt. The representatives stated that two items on the list were erroneous deposits and therefore were not subject to the 10 day deposit regulation. The Audit staff noted that all deposits must be made within 10 days of ASCAPAC's receipt, according to 11 CFR § 103.3(a), regardless of whether or not they were made in error.

In addition, other contributions were received by its compliance consultant and were deposited to a credit card holding account. ASCAPAC classified that account, "as a cash account on the Committee's ledger and the funds were received on the date that the donor initiated the credit card charge." ASCAPAC further stated that those funds were subsequently credited to its checking account and should not be considered untimely deposited. The Audit staff noted that the funds in the credit card holding account were not accessible by ASCAPAC staff until they were deposited to its checking account. Therefore, the Audit staff considered these credit card contributions not deposited timely.

ASCAPAC representatives stated that they do not consider the remaining items on the list to be deposited untimely, however, they do not have documentation of the receipt date. However, to comply with the 10 day deposit regulation in the future, ASCAPAC has implemented a procedure where all contributions are date stamped upon receipt in order to ensure that the date of receipt is documented.

In accordance with 11 CFR § 102.8(a), such a procedure should help ensure that the date of receipt is documented and is the date ASCAPAC obtains possession of the contribution. ASCAPAC should then ensure that its deposit is made within 10 days of receiving a contribution to comply with 11 CFR § 103.3(a). Finally, ASCAPAC should ensure that the recorded receipt day is accurately reflected on its disclosure reports.

The Interim Audit Report recommended that ASCAPAC:

- Provide documentation demonstrating that the contributions in question were deposited timely;
- Clarify whether the credit card holding account was its own depository; and
- Submit any comments it deemed relevant to this matter.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, ASCAPAC stated that its policy is to deposit all checks within 10 days of receipt, and that it has worked with its credit card vendor to ensure the timely transfer of contributions. ASCAPAC also stated it has implemented a procedure that all checks will be date stamped upon receipt to ensure a record is maintained.