



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 10, 2019

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

FROM: Neven F. Stipanovic *NFS*
Acting Associate General Counsel
Policy Division

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Assistant General Counsel
Compliance Advice

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Attorney

SUBJECT: Draft Final Audit Report on Ambulatory Surgery Center Association PAC (LRA 1072)

I. INTRODUCTION

The Office of the General Counsel has reviewed the Draft Final Audit Report (“proposed DFAR”) on Ambulatory Surgery Center Association PAC (“ASCAPAC”). The proposed DFAR contains five findings: (1) Misstatement of Financial Activity, (2) Receipt of Prohibited Contributions, (3) Recordkeeping for Receipts, (4) Disclosure of Receipts, and (5) Untimely Deposit of Receipts. We generally concur with the findings and comment on finding 2. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

II. FINDING 2 – EACH CONTRIBUTION MUST BE EXAMINED FOR LEGALITY

The proposed DFAR states that ASCAPAC received 102 contributions, totaling \$93,023, from apparent prohibited sources. Proposed DFAR at 12. The Audit Division maintains that ASCAPAC still has not resolved or refunded a total of \$84,448 in prohibited contributions, and that the Committee should issue a refund, disgorge the funds to a governmental entity or to a qualified charitable organization, or report them as debts on Schedule D until paid. *See id.*

ASCAPAC states that it has not received a response from donors accounting for \$14,631 in contributions. ASCAPAC estimates that, based on the number of responses received from other donors, fifty-five percent of these contributions will be deemed permissible because ASCAPAC “reasonably expects the ratio of eligible to ineligible contributions to hold true for [these] non-responsive contributors.” *Id.* ASCAPAC says, therefore, that it “will refund these contributions or administer the funds to an eligible charity.” *Id.* ASCAPAC stated that the “refundable number would be adjusted based on additional responses.” Email from John Greenwich, Chief Financial Officer, ASCA, to Camilla Reminsky, Audit Division, FEC (Mar. 8, 2019).

It is unclear whether ASCAPAC plans to refund or disgorge contributions from non-responsive donors according to its own estimate (i.e., 45%), or if ASCAPAC is merely providing a helpful ballpark figure to the Audit Division of what the likely refund or disgorgement ultimately may be after the follow-up with these contributors. If ASCAPAC intends to refund or disgorge only an estimate of non-responsive contributions, we disagree with ASCAPAC’s position. A committee’s treasurer is responsible for verifying the legality of every contribution. Commission regulations require a committee treasurer to exercise best efforts to examine *all* contributions received, and to determine the legality of each contribution received. 11 C.F.R. § 103.3(b)(1). If the legality cannot be determined, the treasurer must refund the contribution to the contributor within 30 days of receipt. 11 C.F.R. § 103.3(b)(1). Here, while ASCAPAC attempted to ascertain the legality of the contributions, it ultimately was unable to do so. ASCAPAC, therefore, was required to refund the contributions within 30 days of receipt. 11 C.F.R. § 103.3(b)(1).