



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 13, 2019

**MEMORANDUM**

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

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

Lorenzo Holloway *LH*  
Assistant General Counsel  
Compliance Advice

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Attorney

**SUBJECT:** Audit Division Recommendation Memorandum on Jill Stein for President  
(LRA # 1021)

**I. INTRODUCTION**

The Office of the General Counsel has reviewed the proposed Audit Division Recommendation Memorandum ("ADRM") on Jill Stein for President ("Committee"). The ADRM makes recommendations on the four findings set forth in the Draft Final Audit Report ("DFAR"). Those findings are: Finding 1 - Net Outstanding Campaign Obligations – Surplus; Finding 2 – Matching Funds Received in Excess of Entitlement; Finding 3 – Misstatement of Financial Activity; and Finding 4 - Disclosure of Debts and Obligations. We concur with these findings. We comment, however, on a proposal presented by the Committee in response to the DFAR to delay the Commission's repayment determination. We recommend that the Committee's proposal be rejected in light of the Committee's repeated failure to timely engage with and respond to the Audit Division's requests for documents and information. If you have any questions, please contact Danita Alberico or Joshua Blume, the attorneys assigned to this audit.

## **II. THE COMMISSION SHOULD CONSIDER AND DENY THE COMMITTEE'S PROPOSAL TO DELAY THE REPAYMENT DETERMINATION**

In response to DFAR Finding 1 (Net Outstanding Campaign Obligations (“NOCO”)), the Committee contends that the NOCO statement is incorrect and wrongly results in a repayment obligation. The Committee requests that the Commission delay making a repayment determination to give it an opportunity to work with Audit staff to resolve discrepancies it purports exist in the NOCO statement. In exchange for the Commission delay in making a repayment determination, the Committee proposes to: (1) waive its right to have the audit concluded by September 2019; (2) comply with any repayment determinations identified by December 31, 2019; (3) make a repayment within 60 days of a repayment determination or December 31, 2019, whichever comes first; and, (4) make a good faith initial pro rata repayment of \$40,372.

We advise that you present the Committee's proposal to the Commission for consideration, as ultimately it is up to the Commission to decide whether to accept the proposal. The Audit Division could do so by revising the ADRM to include the Committee's proposal. We also advise that you include a recommendation as to whether the Commission should accept the Committee's proposal.

In our view, the Committee's proposal should be rejected. The Committee seeks additional time to work with the Audit staff on purported issues in the NOCO statement, yet throughout this entire audit process the Committee was uncooperative. The Committee has ignored scheduled conferences, repeatedly missed deadlines, and failed to respond to the Audit Division's numerous requests for supporting documentation that would have helped the auditors verify the NOCO statement. For example, the audit entrance conference and audit fieldwork were significantly delayed because it took the Committee more than six months to provide the auditors the required preliminary pre-audit materials as set forth in the audit notification letter. The notification letter had given the Committee 44 days within which to submit the required materials.

The Committee failed to attend, or even notify the auditors as a courtesy that it would not attend, the November 30, 2017 telephonic exit conference. Notably, prior to that scheduled exit conference, the auditors had emailed the Committee detailed schedules supporting each potential finding, including the audited NOCO statement and associated winding down expenses, placing the Committee on notice of its potential repayment obligations more than a year ago.

The exit conference was rescheduled for December 6, 2017, and the auditors again notified the Committee of its potential findings, including the audited NOCO statement and winding down expenses. During the rescheduled exit conference the auditors requested that the Committee submit additional bank statements and an updated disbursement database to support the actual winding down expenses that were paid after the auditors left the audit site. The Committee did not provide these materials in response to the exit conference. The Committee, however, did eventually provide the documents, on September 26, 2018, in response to the Preliminary Audit Report (“PAR”).

On July 11, 2018, the auditors sent the Committee the PAR and detailed schedules including the updated NOCO statement and associated winding down expenses. Although the Committee was repeatedly reminded of the deadline to respond to the PAR, the Committee waited until the September 11, 2018 due date to request an extension to respond. The Committee was granted a 15-day extension to respond after signing a tolling agreement.

On September 26, 2018, the Committee responded to the PAR and submitted some bank statements as supporting documentation. The Committee, however, did not provide an updated list of actual winding down expenses. Because of incomplete documentation, the auditors could not verify all winding down expenses in the Committee's NOCO statement.

On November 19, 2018, the auditors sent the DFAR to the Committee and again included detailed schedules to support Audit's updated NOCO statement and the associated winding down expenses. The Committee submitted a narrative statement in response to the DFAR, noting additional expenses. The Committee, however, did not provide any additional bank statements or other documentation, nor did the Committee provide a list of the additional winding down costs to support the expenses noted in its narrative response.

The Commission must notify the candidate of any repayment determination as soon as possible, but not later than three years after the close of the matching payment period, or August 21, 2019, here. 26 U.S.C. § 9038(c). The Commission's issuance of the final audit report to the candidate under 11 C.F.R. § 9038.1(d) constitutes notification for repayment purposes. 11 C.F.R. § 9038.2(a)(2). In light of the Commission's statutory obligation to timely make a repayment determination and given the Committee's repeated failure to timely engage with and respond to the Audit Division's requests for documents and information, the Committee's proposal to delay the repayment determination should be rejected. Once the Commission notifies the Committee of the repayment determination, the Committee will have 60 days to dispute the repayment determination and resolve any purported NOCO statement discrepancy in an administrative review.<sup>1</sup> 11 C.F.R. § 9038.2(c)(2).

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<sup>1</sup> The Committee may also request an oral hearing before the Commission to dispute the repayment determination. 11 C.F.R. § 9038.2(c)(2)(ii).