



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 29, 2018

**MEMORANDUM**

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

Thomas E. Hintermister  
Assistant Staff Director  
Audit Division

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

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Assistant General Counsel  
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Attorney

**SUBJECT:** Proposed Interim Audit Report on the Tennessee Democratic Party (LRA 1073)

**I. INTRODUCTION**

The Office of the General Counsel has reviewed the proposed Interim Audit Report (“proposed IAR”) on the Tennessee Democratic Party (“the Committee” or “TDP”). The proposed IAR contains five findings: (1) Misstatement of Financial Activity, (2) Receipt of Contributions in Excess of the Limit, (3) Disclosure of Joint Fundraising Transfers, (4) Recordkeeping for Employees, and (5) Reporting of Debts and Obligations.<sup>1</sup> We concur with

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<sup>1</sup> We recommend that the Commission consider this document in Executive Session because the Commission may eventually decide to pursue an investigation of matters contained in the proposed IAR. 11 C.F.R. §§ 2.4(a) and (b)(6).

the findings, except as to Finding 2, addressed below. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

**II. THE STATUTE AND REGULATIONS DO NOT PROVIDE A LEGAL BASIS FOR TREATING AS EXCESSIVE CONTRIBUTIONS FUNDS TRANSFERRED FROM THE FEDERAL ACCOUNT TO THE NON-FEDERAL ACCOUNT WITHOUT PROOF OF NOTICE TO THE CONTRIBUTORS (Finding 2)**

The proposed IAR finds that the Committee received \$201,274 in apparent excessive contributions. Of this amount, the proposed IAR identifies \$151,200 as excessive because the Committee failed to notify contributors that it transferred the excessive portions of the contributions into the nonfederal account. The Committee did not provide the Audit Division with solicitations or designations, or any other documentation pertaining to these apparent excessive contributions, which would show that the Committee informed the contributors that any excessive portion of the contribution would be transferred to the nonfederal account, or refunded. Additionally, the proposed IAR states that the Committee did not appear to maintain sufficient funds in its federal account to make refunds of the remaining excessive contributions that had not previously been transferred to the nonfederal account. This finding, therefore, is based on the lack of documentation, such as a solicitation, to contributors providing notice that any excessive portion of a contribution would be transferred to the nonfederal account.

Commission regulations require that excessive contributions deposited into a party committee account be refunded or, with the contributor's permission, reattributed.<sup>2</sup> See 11 C.F.R. §§ 103.3(b)(3),(4), 110.1(k)(3). While Commission regulations generally prohibit party committees from transferring funds from their nonfederal to federal accounts, see 11 C.F.R. § 300.30(b)(3)(v), nothing in the Federal Election Campaign Act of 1971, as amended ("the Act"), or Commission regulations prohibits transfers from federal accounts to nonfederal accounts. Furthermore, the Commission has permitted party committees to transfer amounts that do not comply with the federal source and amount restrictions into a nonfederal account. See, e.g., Final Audit Report on the Utah Republican Party, at 12 (Jan. 6, 2017). Neither the Act nor Commission regulations require a committee to provide written notice of the option to request a refund in such circumstances. We, therefore, recommend that the Audit Division raise this issue in its cover memorandum to the Commission.

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<sup>2</sup> Contributions to state party committees such as TDP are not eligible for redesignation, which is available only to candidates and authorized committees. See 11 C.F.R. § 110.1(b)(5).