AGENDA DOCUMENT NO. 11-03

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 23, 2010

AGENDA ITEM
For the Meeting of 2-3-11

MEMORANDUM

To: The Commission

Through: Alec Palmer
Acting Staff Director

From: Patricia Carmona
Chief Compliance Officer

Joseph F. Stoltz
Assistant Staff Director
Audit Division

Martin L. Favin
Audit Manager

By: Terrence J. O'Brien TJO by MLF
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the Georgia Federal Elections Committee (A07-14)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), this Audit Division Recommendation Memorandum on the Georgia Federal Elections Committee (GFEC) presents the Audit Division's recommendations to the Commission as a result of the June 16, 2010 audit hearing on GFEC's Draft Final Audit Report (DFAR) – see attached.

The issue presented by GFEC representatives at the audit hearing related to Finding 1 – Misstatement of Financial Activity, and more specifically with the component of that finding dealing with GFEC not reporting activity from a bank account used to make payroll disbursements that contained both federal and non-federal funds. The Audit Division and Office of General Counsel (OGC) agree that no new legal issues or significant factual issues were raised during the audit hearing. GFEC set up a payroll account and made several transfers into it from both its federal and non-federal accounts. Then GFEC paid both its federal and non-federal employees from this account. This account, which GFEC counsel stated was used like an escrow account, was setup to accommodate its payroll vendor who refused to process payroll from multiple accounts. The audit report concludes that this account served as an allocation account and thus required that all disbursements from the account should be reported.

As OGC points out in its memorandum on the audit hearing (see attached), GFEC cited 11 CFR 106.7(f) in its presentation and stated that the payroll account was not the functional equivalent of an allocation account because allocation accounts are available "solely" for the payment of allocable expenses. OGC explains that the word "solely" in the regulation indicates that party committees may only mix federal and non-federal in the limited circumstances and for the limited purposes provided in the regulations. The only types of accounts allowed are federal, non-federal, Levin, and allocation.

The Commission has approved two audit reports South Dakota Republican Party ('03-'04 cycle) and Dallas County Republican Party ('05-'06 cycle) which contained findings with situations where federal and non-federal funds had been mixed in the same account for purposes other than the payment of allocable expenses. In both cases the committees were required to disclose all activity from the account. In the South Dakota case, the committee made a variety of non-federal payments from a federal account because they did not maintain a non-federal checking account. In the Dallas County case, funds were transferred from the non-federal account to the federal account to pay for non-federal mailings. Although neither of these matters related to payroll expenses, the same regulations applied to the GFEC issue.

The Audit Division notes that the GFEC audit verified that non-federal funds were not used to subsidize federal payroll and that allocable payroll was disclosed correctly on Schedules H4. Significantly, subsequent to the interim audit report GFEC changed vendors to one that can draw funds from multiple accounts. As a result, federal and non-federal funds are no longer commingled in one bank account. Thus in the future GFEC will be able to comply with the regulations.

Recommendation

Given that GFEC has obtained a payroll service that will withdraw the appropriate amounts from the federal and non-federal accounts going forward, the Audit staff recommends that the Commission determine that although the system in place during the audited period did not comply with the regulations, the filing of amended reports at this time is unnecessary.

Should an objection be received, Directive No. 70 directs the report be placed on the next regularly scheduled open session agenda. After approval of the recommendation, the Proposed Final Audit Report will be prepared reflecting the Commission's determination and circulated for 72-Hour no objection consideration.

Documents related to this audit report can also be viewed on Voting Ballot Matters. Should you have any questions, contact Terry O'Brien or Marty Favin at x1200.

Attachments:
- Draft Final Audit Report on the Georgia Federal Elections Committee
- Memorandum from OGC Re: Audit Hearing on the Georgia Federal Elections Committee (dated July 1, 2010)

cc: Office of General Counsel

Report of the Audit Division on the Georgia Federal Elections Committee

January 1, 2005 - December 31, 2006

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.[1] 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 Georgia Federal Elections Committee is a state party committee of the Georgia Democratic Party headquartered in Atlanta, GA. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 3)

Receipts	
o Contributions from Individuals	$ 831,598
o Contributions from Other Political Committees	349,991
o Transfers from Affiliated Party Committees	776,863
o Offsets to Operating Expenditures	13,928
o Transfers from Non-Federal Accounts	1,193,210
o Other Federal Receipts	1,800
Total Receipts	**$ 3,167,390**
Disbursements	
o Operating Expenditures	$1,815,099
o Contributions to Federal Candidates	12,322
o Coordinated Party Expenditures	142,208
o Contribution Refunds	5,800
o Federal Election Activity	701,728
o Transfers to Non-Federal Accounts	460,783
o Other Disbursements	2,047
Total Disbursements	**$3,139,987**

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Payment of Federal Activity with Non-Federal Funds (Finding 2)
- Disclosure of Occupation/Name of Employer (Finding 3)

[1] 2 U.S.C. §438(b).

Report of the Audit Division on the Georgia Federal Elections Committee

January 1, 2005 – December 31, 2006

Table of Contents

Part I
Background

Authority for Audit

This report is based on an audit of the Georgia Federal Elections Committee (GFEC), 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 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. 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. 2 U.S.C. §438(b).

Scope of Audit

Following Commission approved procedures, the Audit staff evaluated various factors and as a result, this audit examined:

1. The disclosure of individual contributors' occupation and name of employer;
2. The disclosure of disbursements, debts and obligations;
3. The disclosure of expenses allocated between federal, non-federal, and Levin accounts;
4. The consistency between reported figures and bank records;
5. The completeness of records; and,
6. Other committee operations necessary to the review.

Changes to the Law

On December 1, 2005, the Commission voted to amend its rules to require state, district and local party committees to pay as administrative expenses the salaries, wages and fringe benefits of employees who spend 25 percent or less of their compensated time in a month on federal election activity (FEA) or activity in connection with a federal election ("covered employees"). The previous regulation that allowed party committees to use non-federal funds for salaries and wages for covered employees was struck down by the Supreme Court in Shays v. FEC. The revised rule became effective on January 19, 2006. (See Finding 2, Payment of Federal Activity with Non-Federal Funds).

Part II
Overview of Committee
Committee Organization

Important Dates	Georgia Federal Elections Committee
• Date of Registration	June 14, 1976
• Audit Coverage	January 1, 2005 - December 31, 2006
Headquarters	Atlanta, GA
Bank Information	
• Bank Depositories	1
• Bank Accounts	6 Federal, 6 non-Federal, 1 Levin
Treasurer	
• Treasurer When Audit Was Conducted	Rex Templeton
• Treasurer During Period Covered by Audit	Jeffrey J. DiSantis
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity
(Audited Amounts)

Federal Cash on hand @ January 1, 2005	**$17,342**
o Contributions from Individuals	$831,598
o Contributions from Other Political Committees	349,991
o Transfers from Affiliated Party Committees	776,863
o Offsets to Operating Expenditures	13,928
o Transfers from Non-Federal Accounts	1,193,210
o Other Federal Receipts	1,800
Total Federal Receipts	**$3,167,390**
o Operating Expenditures	$1,815,099
o Contributions to Federal Candidates	12,322
o Coordinated Party Expenditures	142,208
o Contribution Refunds	5,800
o Federal Election Activity	701,728
o Transfers to Non-Federal accounts	460,783
o Other Federal Disbursements	2,047
Total Federal Disbursements	**$3,139,987**
Federal Cash on hand @ December 31, 2006	**$44,745**
Levin Cash on hand @ January 1, 2005	**$6,886**
Total Levin Receipts	**750**
Total Levin Disbursements	**7,210**
Levin Cash on hand @ December 31, 2006	**$426**

Part III
Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

A comparison of GFEC's reported financial activity to bank records revealed a misstatement of receipts and disbursements in both 2005 and 2006; and an understatement of cash at December 31, 2006. In 2005, GFEC under reported receipts and disbursements by $523,109 and $523,965 respectively, and in 2006 GFEC under reported receipts by $126,313 and disbursements by $100,422. GFEC's reported cash balance at December 31, 2006 was understated by $26,261. The Audit staff recommended that GFEC file amended disclosure reports to correct the misstatements. In response, GFEC followed the Audit staff's recommendation by amending its reports for all of the discrepancies with the exception of the activity related to its payroll account. GFEC did not make adjustments for its payroll account contending that it is not a federal account, but one which was created to facilitate its payroll processing. GFEC contends that the non-federal funds paid through this account are not reportable to the Commission. (For more detail, see p. 6)

Finding 2. Payment of Federal Activity with Non-Federal Funds

Disclosure of Salaries and Related Expenses

GFEC failed to provide supporting documentation detailing the time spent on federal activities for employees whose earnings and related payroll expenses were allocated on Schedules H4. GFEC reported salaries and related expenses on Schedules H4 totaling $231,366. Absent the supporting documentation, GFEC should have disclosed these payments on Schedules B. The Audit staff recommended that GFEC either provide the supporting documentation mentioned above or amend its reports to correctly itemize its salaries and related expenses as 100% federal activity on Schedules B. In response, GFEC provided declarations from its employees whose salary payments were originally allocated on Schedules H4 that show these payments were allocable and therefore correctly reported.

Funding by the Non-Federal Account for Possible Federal Activity

GFEC made 68 transfers totaling $628,254 from its non-federal accounts into a federal account it used to make payroll disbursements. Without supporting documentation to show otherwise, the Audit staff considered all of the disbursements made from GFEC's payroll account to be 100% federal activity reportable on Schedules B. The Audit staff recommended that GFEC demonstrate that its disbursements for salaries and related expenses are allocable to its non-federal account. Absent such a demonstration, the interim audit report noted that GFEC would be required to transfer $478,715[2] from its federal account to its non-federal account as payment for its share of federal expenses. In response, GFEC provided declarations from several employees attesting that they spent little or no time working on federal activities during the months in which all or a portion

[2] See Facts and Analysis section for calculation.

of their payroll was paid with non-federal funds. As a result no transfer to the non-federal accounts is needed. (For more detail, see p. 9)

Finding 3. Disclosure of Occupation/Name of Employer

A review of contributions from individuals revealed that 71 contributions totaling $170,474 lacked, or did not adequately disclose, the contributor's occupation and/or name of employer. Furthermore, no evidence was provided that "best efforts" was made to obtain, maintain, and submit the information. The Audit staff recommended that GFEC provide evidence that it exercised best efforts or contact each contributor lacking this information, submit evidence of such contact, and disclose any information received on Schedules A. In response, GFEC filed amended reports disclosing the information it had acquired as a result of its contact with the contributors.
(For more detail, see p. 13)

Part IV
Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

A comparison of GFEC's reported financial activity to bank records revealed a misstatement of receipts and disbursements in both 2005 and 2006; and an understatement of cash at December 31, 2006. In 2005, GFEC under reported receipts and disbursements by $523,109 and $523,965 respectively, and in 2006 GFEC under reported receipts by $126,313 and disbursements by $100,422. GFEC's reported cash balance at December 31, 2006 was understated by $26,261. The Audit staff recommended that GFEC file amended disclosure reports to correct the misstatements. In response, GFEC followed the Audit staff's recommendation by amending its reports for all of the discrepancies with the exception of the activity related to its payroll account. GFEC did not make adjustments for its payroll account contending that it is not a federal account, but one which was created to facilitate its payroll processing. GFEC contends that the non-federal funds paid through this account are not reportable to the Commission.

Legal Standard

Contents of 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; and
- The total amount of disbursements for the reporting period and for the calendar year;
- Certain transactions that require itemization on Schedules A (Itemized Receipts), Schedules B (Itemized Disbursements), Schedules H3 (Transfers from Nonfederal Accounts for Allocated Federal/Nonfederal Activity), or Schedules H4 (Disbursements for Allocated Federal/Nonfederal Activity). 2 U.S.C. §434(b)(1), (2), (3), (4), and (5) and §434(e)(2), (3), and (4).

Facts and Analysis

The Audit staff reconciled GFEC's reported financial activity to its bank records for 2005 and 2006. Below are charts that outline the discrepancies in both years followed by explanations of the misstatements, if known.

2005 Activity			
	Reported	**Bank Records**	**Discrepancy**
Opening Cash Balance @ January 1, 2005	$16,116	$17,342	$1,226 Understated
Receipts	$414,202	$937,311	$523,109 Understated
Disbursements	$418,781	$942,746	$523,965 Understated
Ending Cash Balance @ December 31, 2005	$11,537	$11,907	$370 Understated

Beginning Cash on Hand as of January 1, 2005:
The $1,226 understatement of beginning cash on hand was due to prior period errors.

The understatement of receipts resulted from the following:

• Unreported transfers: non-federal accounts to payroll account[3]	+	$505,984
• Unreported contributions from political committees	+	17,000
• Unexplained difference	+	125
Understatement of Receipts		$523,109

The net understatement of disbursements resulted from the following:

• Unreported disbursements made from payroll account	+	$500,014
• Unreported transfers: federal accounts to non-federal accounts	+	34,018
• Inter-account transfers from federal accounts to payroll account erroneously reported	-	2,895
• Unexplained difference	-	7,172
Net Understatement of Disbursements		$523,965

2006 Activity			
	Reported	**Bank Records**	**Discrepancy**
Opening Cash Balance @ January 1, 2006	$11,537	$11,907	$370 Understated
Receipts	$2,103,766	$2,230,079	$126,313 Understated
Disbursements	$2,096,820	$2,197,242	$100,422 Understated
Ending Cash Balance @ December 31, 2006	$18,483	$44,744	$26,261 Understated

The net understatement of receipts resulted from the following:

• Unreported transfers: non-federal accounts to payroll account	+	$122,391
• Transfer from political committee not reported	+	5,000
• Unexplained difference	-	1,078
Net Understatement of Receipts		$126,313

The net understatement of disbursements resulted from the following:

• Unreported disbursements made from payroll account	+	$122,391
• Reported transfers from federal account to non-federal account not traced to bank	-	27,550
• Unreported transfers: federal account to non-federal account	+	258
• Unexplained difference	+	5,323
Net Understatement of Disbursements		$100,422

[3] GFEC paid both federal and non-federal staff from this account but did not report the majority of the account activity to the Commission. Since payments for federal payroll were made from this account, the Audit staff considered it a federal account.

On December 31, 2006, the cash balance was understated by $26,261 as a result of the errors described above.

In both 2005 and 2006 the primary reason for the understatement of receipts and disbursements was GFEC's failure to properly report activity to and from its payroll account. GFEC, which did not consider this account to be a federal account, made several transfers into this account from both its non-federal and federal accounts and paid both its federal and non-federal employees from the account. It should be noted that only 33% of the payroll account's activity was reported on GFEC's disclosure reports to the Commission.[4]

The Audit staff presented this matter at the exit conference. GFEC representatives disagreed that the payroll account was a federal account and explained that the payroll account was used like an "escrow account." They stated that this account was created to accommodate GFEC's payroll processing vendor, Paychex, which would not draw funds to process payroll from multiple accounts. GFEC representatives opined that this account was not a federal account and its non-federal activity was not reportable to the Commission.

It is the opinion of the Audit staff that since GFEC made disbursements from the payroll account for both federal and non-federal payroll, the account functioned as an allocation account and all activity to and from this account was reportable to the Commission on Schedules A, B, H3, and/or H4. In Finding 2 of the interim audit report, Payment of Federal Activity with Non-Federal Funds, the Audit staff stated that since GFEC did not maintain monthly logs, time sheets or affidavits for its employees, it was not possible to determine whether payroll should have been paid wholly from the federal account, the non-federal account, or allocated between the two accounts as administrative expenses. Therefore, it was stated that GFEC should report these disbursements on Schedules B until it demonstrated what percentage of its employees' time was spent working on federal election activity.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that, within 30 days of service of this report, GFEC:

- Amend its 2005 and 2006 reports to correct the misstatements noted above, including appropriate Schedules A, B, H3, and H4.
- Report non-federal payroll disbursements on Schedules B as "Other Disbursements," line 29 of the detailed summary page and report the corresponding transfers from the non-federal account on Schedules A as "Other Federal Receipts," line 17.
- Include a memo text with each amended item stating that "the transactions are being disclosed as a result of the 2005–2006 cycle FEC audit."
- Amend the cash balance on its most recently filed report with an explanation that it resulted from audit adjustments from a prior period. It was further recommended that

[4] In 2005 only 2% of GFEC's salaries or related expenses were for employees who spent more than 25% of their time on FEA activities or activities in connection with a federal election. In 2006, 70% of GFEC's salaries or related expenses were for this type of activity.

GFEC reconcile the cash balance on its most recent report to identify any subsequent discrepancies that may impact adjustments recommended by the Audit staff.

In response, GFEC filed amendments correcting the errors detailed above not related to its payroll account. With regard to the unreported payroll account transactions, GFEC argues that this account is a "pass through escrow" account, not a federal account, and GFEC does not intend, at this time, to report the non-federal portion of the payroll account's activities to the Commission.

GFEC reasons that the enactment of the Bipartisan Campaign Reform Act of 2002 (BCRA) altered the process of paying payroll expenses by state party committees by creating two distinct challenges. First, the committee would have to estimate each employee's activities so that appropriate federal or non-federal funds were used to pay them. Second, GFEC's payroll company encountered problems with the arrangement of debiting two different bank accounts for payroll.

Based upon the above, GFEC believes that the payroll account was a transmittal account for both federal and non-federal funds, rather than a federal account. GFEC believes that the disclosure of the non-federal portion of this account would be incorrect and unnecessary. GFEC will, however, amend its reports if the Commission concludes it is necessary. To avoid possible confusion by any readers of GFEC's reports, the Audit staff further recommends that GFEC should include memo text entries with any non-federal activity it may disclose, stating that the transactions are for non-allocable non-federal activity.

Although the enactment of the BCRA did change the way payroll is allocated, it did not create for the first time the need to allocate payroll. That requirement had been in place for a number of years. The Audit staff believes the payroll account served as an allocation account used to make both federal and non-federal disbursements using both federal and non-federal funds. Allocation accounts are federal accounts from which committees must report all federal and non-federal activity.

Finding 2. Payment of Federal Activity with Non-Federal Funds

Summary

Disclosure of Salaries and Related Expenses

GFEC failed to provide supporting documentation detailing the time spent on federal activities for employees whose earnings and related payroll expenses were allocated on Schedules H4. GFEC reported salaries and related expenses on Schedules H4 totaling $231,366. Absent the supporting documentation, GFEC should have disclosed these payments on Schedules B. The Audit staff recommended that GFEC either provide the supporting documentation mentioned above or amend its reports to correctly itemize its salaries and related expenses as 100% federal activity on Schedules B. In response, GFEC provided declarations from its employees whose salary payments were originally allocated on Schedules H4 that show these payments were allocable and therefore correctly reported.

Funding by the Non-Federal Account for Possible Federal Activity
GFEC made 68 transfers totaling $628,254 from its non-federal accounts into a federal account it used to make payroll disbursements. Without supporting documentation to show otherwise, the Audit staff considered all of the disbursements made from GFEC's payroll account to be 100% federal activity reportable on Schedules B. The Audit staff recommended that GFEC demonstrate that its disbursements for salaries and related expenses are allocable to its non-federal account. Absent such a demonstration, the interim audit report noted that GFEC would be required to transfer $478,715[5] from its federal account to its non-federal account as payment for its share of federal expenses. In response, GFEC provided declarations from several employees attesting that they spent little or no time working on federal activities during the months in which all or a portion of their payroll was paid with non-federal funds. As a result no transfer to the non-federal accounts is needed.

Legal Standard

A. Accounts for Federal and Non-federal Activity. A party committee that finances political activity in connection with both federal and non-federal elections shall establish two accounts (federal and non-federal) and allocate shared expenses, those that simultaneously support federal and non-federal election activity between the two accounts. Alternatively, the committee may conduct both federal and non-federal activity from one bank account, considered a federal account. 11 CFR §102.5(a)(1)(i).

B. Paying for Allocable Expenses. Commission regulations offer party committees two ways to pay for allocable shared federal/non-federal expenses.

- They may pay the entire amount of the shared expense from the federal account and transfer funds from the non-federal account to the federal account to cover the non-federal share of that expense; or
- They may establish a separate, federal allocation account into which the committee deposits funds from both its federal and non-federal accounts solely for the purpose of paying the allocable expenses of shared federal/non-federal activities. 11 CFR §106.5(g)(1)(i) and (ii)(A).

C. Reporting Allocable Expenses. A political committee that allocates federal/non-federal expenses must report each disbursement it makes from its federal account (or separate allocation account) to pay for a shared federal/non-federal expense. Committees report these kinds of disbursements on Schedules H4. 11 CFR §104.10(b)(4).

D. Costs allocable by State party committees between Federal and Non-federal accounts (Effective prior to January 19, 2006). State party committees must pay salaries and wages from funds that comply with State law for employees who spend 25% or less of their time in any given month on federal election activity. 11 CFR §106.7(c)(1).

[5] See Facts and Analysis section for calculation.

E. Costs allocable by State party committees between Federal and Non-federal accounts (Effective on January 19, 2006). State party committees must either pay salaries, wages, and fringe benefits for employees who spend 25% or less of their time in a given month on federal election activity with funds from their federal account, or with a combination of funds from their federal and non-federal accounts. 11 CFR §106.7(c)(1), as amended January 19, 2006.

F. Recordkeeping: Salaries and Wages. Committees must keep a monthly log of the percentage of time each employee spends in connection with a Federal election. Salaries and wages for employees who spend more than 25% of their compensated time in a given month on Federal election activity or activities in connection with a Federal election must be paid only from a Federal account. 11 CFR §106.7(d)(1)(ii).

Facts and Analysis

Disclosure of Salaries and Related Expenses

The Audit staff's review of payroll expenses indicated that GFEC did not maintain monthly logs, time sheets or affidavits for its employees to establish how much time was devoted by each employee to Federal and non-federal activities. Therefore, based on the regulatory change effective January 19, 2006 (See page 1, Changes to the Law), the Audit staff applied the following to assess salary expenditures:

1. For salary and payroll tax payments made before January 19, 2006:
   If there is monthly log, time sheet or affidavit which states that:
   - the time spent on federal activity is less than or equal to 25%; the payment can be made from the non-federal account and it requires nothing further of the federal committee; or
   - the time spent on federal activity exceeds 25%, or for which there is no documentation indicating a lesser percentage, the federal committee must disclose these payments on Schedules B, Line 30b, as non-allocable federal election activity (FEA).

2. For salary and payroll tax payments made on or after January 19, 2006[7]:
   If there is monthly log, time sheet or affidavit which states that:
   - the time spent on federal activity each month is none, or 0%; this may be paid by the non-federal account and requires nothing further of the federal committee; or
   - the time spent on federal activity is less than or equal to 25%; this payment must be made from the federal account and disclosed by the federal committee on Schedules H4 as allocable administrative activity, for which reimbursement may be sought from the non-federal account at the administrative ratio; or
   - the time spent on federal activity exceeds 25%, or for which there is no documentation indicating a lesser percentage, the federal committee must disclose these payments on Schedules B, Line 30b, as non-allocable FEA.

[7] GFEC did not allocate any salary or wage payments on Schedules H4 before the regulations changed on January 19, 2006.

The Audit staff's review revealed that GFEC failed to maintain supporting documentation detailing the time spent on federal activities for employees whose salaries and related expenses, reported on Schedules H4, totaled $231,366. Absent the supporting documentation, GFEC should have disclosed these salary and related expenses as non-allocable FEA on Schedules B, Line 30b of the detailed summary page.

The Audit staff discussed this matter with GFEC's representatives during the audit and requested monthly logs, timesheets and affidavits. GFEC representatives were unable to locate any of the items requested.

Funding by the Non-Federal Account for Possible Federal Activity

GFEC made 68 transfers totaling $628,254 from its non-federal accounts into a federal account it used to make payroll disbursements. Without supporting documentation, the Audit staff considered all of the disbursements made from GFEC's payroll account to be non-allocable FEA, reportable on Schedules B, Line 30b of the detailed summary page.

The Audit staff's analysis indicated that during the period covered by the audit, excluding payroll, GFEC transferred $149,539 less than it could have from non-federal to federal accounts for allocable expenses. A similar analysis of GFEC's payroll account for the same period showed that GFEC transferred $628,254 more than it should have from non-federal accounts into its payroll account if all payroll was considered 100% Federal. This resulted in GFEC's non-federal accounts overfunding its federal/payroll accounts by $478,715 ($628,254 - $149,539).

During audit fieldwork the Audit staff made several requests for GFEC to provide monthly logs, time sheets or notarized affidavits for its employees that would demonstrate its non-federal account was not financing federal activity. GFEC did not provide any of the requested items. At the exit conference, GFEC representatives stated that they did not believe any of the unreported activity from the payroll account was for federal election activity. They further stated that the account used to pay these employees was not a federal account. The account was set up to accommodate GFEC's payroll processing company who would only process GFEC's payroll from a single bank account. Therefore, GFEC believes the non-federal activity related to this account is not reportable to the Commission.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that, within 30 calendar days of service of this report, GFEC:

- Provide monthly logs or time sheets attesting to the time spent by employees for the period employed by GFEC, or affidavits stating that these employees did not spend more that 25% of their time on Federal election activities or activities in connection with a Federal election, and amend its disclosure reports accordingly.
- Report any disbursements that GFEC can show are solely non-federal on Schedules B, line 29 of the detailed summary page as "Other Disbursements."
- Report any disbursements that GFEC cannot show are allocable or solely non-federal on Schedules B, line 30b of the detailed summary page, as FEA.

- If no additional documentation was provided, GFEC was to reimburse the non-federal account $478,715.
- Include a memo text with each amended item stating that "the transactions are being disclosed as a result of the 2005–2006 cycle FEC audit."

In response, GFEC provided declarations from several of its employees attesting that during relevant months in which the employees' payroll was funded entirely, or partially, by non-federal funds; that they worked less than 25%, or no time at all, on activities in connection with a federal election. GFEC also noted that the Commission's regulations regarding payment of payroll for those employees who did not meet the 25% threshold changed in January 2006 and that GFEC correctly amended its payroll procedures to comply with these new requirements.

Finding 3. Disclosure of Occupation/Name of Employer

Summary

A review of contributions from individuals revealed that 71 contributions totaling $170,474 lacked, or did not adequately disclose, the contributor's occupation and/or name of employer. Furthermore, no evidence was provided that "best efforts" was made to obtain, maintain, and submit the information. The Audit staff recommended that GFEC provide evidence that it exercised best efforts or contact each contributor lacking this information, submit evidence of such contact, and disclose any information received on Schedules A. In response, GFEC filed amended reports disclosing the information it had acquired as a result of its contact with the contributors.

Legal Standard

A. Itemization Required for Contributions from Individuals. A political committee other than an authorized committee must itemize any contribution from an individual if it exceeds $200 per calendar year, either by itself or when combined with other contributions from the same contributor. 2 U.S.C. §434(b)(3)(A).

B. Required Information for Contributions from Individuals. For each itemized contribution from an individual, 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;
- 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 2 U.S.C. §434(b)(3)(A).

C. Best Efforts Ensures Compliance. When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 2 U.S.C. §432(h)(2)(i).

D. Definition of Best Efforts. The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
  - A clear request for the contributor's full name, mailing address, occupation, and name of employer; and
  - The statement that such reporting is required by federal law.
- Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

A review of contributions from individuals revealed that 71 contributions totaling $170,474 lacked, or did not adequately disclose, the contributor's occupation and/or name of employer. This represents 23% of the dollar value of individual contributions itemized by GFEC. Most of these contributions were disclosed with a notation of "information requested."

The Audit staff asked a GFEC representative to provide documentation in support of their best efforts procedures. In response, the GFEC representative explained that the original solicitations and follow-up letters to the contributors contained a request for the occupation and name of employer information and that any information received would be provided to the auditors for review. To date, no such information has been provided.

The Audit staff discussed this matter with GFEC representatives at the exit conference and provided a list of the itemized contributions that lacked, or did not adequately disclose, the required occupation and/or a name of employer information.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that, within 30 days of receipt of this report, GFEC take the following action:

- Provide documentation that it exercised best efforts to obtain, maintain and submit the required contributor information; or
- Make an effort to contact those individuals for whom the required information was not in GFEC files and provide documentation of such efforts (such as copies of letters/email to the contributors and/or phone logs); and,
- File amended reports to disclose any information in GFEC's possession as well as information obtained in response to this recommendation.

In its response, GFEC filed amended reports disclosing the occupations and names of employers it had obtained in accordance with the interim audit report recommendation. A description of GFEC's attempts to gather information was submitted for the

contributors GFEC was unable to contact that documents GFEC's best efforts to acquire the information.

GFEC further stated that it has undertaken procedural changes to its operations to ensure ongoing compliance with best efforts regulations.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 1, 2010

MEMORANDUM

TO: Joseph F. Stoltz
Assistant Staff Director
Audit Division

THROUGH: Alec Palmer
Acting Staff Director

FROM: Christopher Hughey
Deputy General Counsel

Lawrence L. Calvert, Jr.
Associate General Counsel
General Law and Advice

Lorenzo Holloway
Assistant General Counsel
Public Finance and Audit Advice

Allison T. Steinle
Attorney

SUBJECT: Audit Hearing on the Georgia Federal Elections Committee (LRA 793)

I. INTRODUCTION

The purpose of this memorandum is to address in more detail some of the specific issues that were raised during the audit hearing in the above referenced matter, which was held on June 16, 2010. The audit hearing generally addressed the Commission's treatment of a payroll account established by the Georgia Federal Elections Committee ("GFEC") to accommodate its payroll vendor, which would not draw GFEC's payroll from both its federal and non-federal operating accounts. As a result of this restriction, GFEC elected to set up a separate payroll account from which it made 100 percent federal, allocable, and 100 percent non-federal disbursements. The Draft Final Audit Report ("DFAR") and our legal comments concluded that GFEC could use such an account to make its payroll disbursements, but should have reported any non-federal activity that passed through the account because it was the functional equivalent of an allocation account, from which all activity must be reported. This memorandum reaches

the same conclusion. If you have any questions, please contact Allison T. Steinle, the attorney assigned to this audit.

II. RESPONSE TO ISSUES RAISED IN THE AUDIT HEARING

As an initial matter, we wish to emphasize a point that was in our previous comments. As a legal matter, we believe that GFEC's entire course of conduct here—not just its failure to disclose its 100 percent non-federal payroll disbursements—violated the Commission's regulations. GFEC, citing 11 C.F.R. § 106.7(f), stressed in its presentation at the hearing that the payroll account it established was not the functional equivalent of an allocation account, because allocation accounts are available "solely" for the payment of allocable expenses. We agree that allocation accounts are available solely for the payment of allocable expenses. In our view, however, the import of the word "solely" in section 106.7(f), and in the similar provisions in Part 300 regarding Levin funds, is that it indicates that state and local party committees may only mix federal and non-federal funds in the limited circumstances and for the limited purposes provided in the regulations.

GFEC's characterization of the payroll account was not as a federal account, a non-federal account, or an allocation account, but as a sort of "other" account not provided for in the Commission's regulations. The Commission's regulations, however, explicitly set forth "the types of accounts" that are available to, and in some cases must be established by, a state, district, or local party committee. *See* 11 C.F.R. § 300.30. Those types are: non-federal, Levin, federal, and allocation. 11 C.F.R. § 300.30(b). The comprehensive regulatory scheme does not provide for any other type of account.

Our analysis did not state that the GFEC's actions were consistent with the Commission's regulations. Rather, our analysis stated that the Commission could, essentially as an act of discretion, determine that GFEC's specific actions here were reasonable given the Catch-22 caused by Paychex's inability to draw payroll from separate bank accounts. This recommendation was consistent with the Commission's action in an undisclosed RAD referral several years ago. There, the Commission declined to open a MUR regarding a committee that faced the same problem with the same payroll vendor.

Indeed, citing section 106.7(f), we reiterated "that the transfer and reimbursement rules ordinarily prohibit state party committees from transferring funds from a non-federal account to reimburse a federal account for non-allocable, non-federal activity," and pointed out that "to ensure complete compliance with the law in the future, the Committee will have to choose a payroll vendor that will draw its payroll from its federal and non-federal operating accounts in compliance with the regulations." As GFEC pointed out at the hearing, it has since changed vendors to one that does have that capability, and GFEC is now in compliance with the law on this point.

The rest of our comments, and the principal point of contention at the hearing, concerned whether, if GFEC's establishment and use of the payroll account was reasonable under the circumstances, it should be required to report all activity from that account. Our comments and

the DFAR concluded that the activity should be reported. Analogizing to the regulations regarding allocable activity at section 106.7(f) and the reporting thereof at 104.17(b), we noted that in the circumstances where the Commission has permitted the mixing of federal and non-federal money in the same account, committees have been required to disclose all of the activity in that account, including the non-federal portion. *See* 11 C.F.R. § 104.17(b); *see also* Audit Report on the South Dakota Republican Party (July 20, 2009) (requiring disclosure of 100 percent non-federal funds paid out of an allocation account); Audit Report on the Dallas County Republican Party (Dec. 1, 2008) (requiring disclosure of Levin funds). In our view, these interests exist whenever federal funds are mixed with non-federal funds in an account under a committee's control. The purpose of these disclosure requirements is to "allow the Commission to track the flow of non-federal funds into federal accounts," and "ensure that the use of such funds is strictly limited to payment for the non-federal share of allocable activities." Explanation and Justification for Methods of Allocation between Federal and Non-Federal Accounts, 55 Fed. Reg. 26,058, 26,065-66 (June 26, 1990).

In this particular matter, the audit itself has accounted for all of the funds, federal and non-federal, that flowed into and out of the payroll account, and the Audit Division has verified that GFEC did not, in fact, use non-federal funds to subsidize federal salaries. Indeed, with respect to its truly allocable payroll disbursements, GFEC transferred non-federal funds to its federal operating account pursuant to section 106.7(f) and reported those allocations on Schedule H4 before it transferred funds from the federal account to the payroll account (for federal and allocated payroll) and from the non-federal account to the payroll account (for non-federal payroll). Moreover, as noted above, GFEC is no longer engaging in this activity since it has since changed its payroll vendor to one that can draw payroll from multiple accounts. Thus, the Commission may conclude that no purpose would be served in this case by recommending that GFEC amend its reports to reflect the payroll account's 100 percent non-federal activity.

Regardless of what the Commission concludes in this particular matter, however, we continue to be of the view that state, district, or local party committees should use vendors that can draw payroll from multiple accounts in compliance with the Commission's regulations. We also believe that as a general matter, whenever the Commission permits the mixing of federal and non-federal money in an account under a committee's control, it should require disclosure of the receipt and disbursement of all funds, federal and non-federal, entering and leaving the account. As the Commission noted in 1990, disclosure in these circumstances assists in determining whether non-federal funds were used to subsidize federal expenses. It may also deter such subsidization. *See* 55 Fed. Reg. at 26,065-66.

CASE INDEX FORM

CASE NO. & NAME:	**Georgia Federal Elections Committee (GFEC)**
STAFF ASSIGNED:	**Marty Favin, Audit Manager** **Terry O'Brien, Lead Auditor**
TELEPHONE:	**Audit - 202-694-1200**

DATE	DOCUMENT
September 14, 2007	**Audit Referral from RAD**
March 19, 2008	**Audit Scope Determination**
April 30, 2009	**GFEC Response to Payroll Issue**
- *June 2006*	*Progressive Majority First GC Report (similar Payroll Issue)*
August 27, 2009	**IAR Legal Analysis**
September 30, 2009	**IAR to Commission**
January 14, 2010	**GFEC Response to IAR**
March 8, 2010	**Draft Final Audit Report (DFAR) Legal Analysis**
March 22, 2010	**DFAR Package to GFEC with Audit Hearing Offer**
April 8, 2010	**GFEC Response to DFAR and Request for Hearing**
June 9, 2010	**DFAR Hearing Package to Commission**
June 16, 2010	**GFEC Supplemental Submission for Audit Hearing**
July 1, 2010	**OGC Memorandum on Audit Hearing**
July 23, 2010	**Audit Division Recommendation Memorandum**

The above documents can be found at the following server location:
\\Ntsrv1\Voting Ballot Matters\Audit\Georgia Federal Elections Committee

If you have any questions, please contact Marty Favin at 694-1200