

FEDERAL ELECTION COMMISSION  
SECRETARIAT



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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June 9, 2010

**MEMORANDUM**

**AGENDA ITEM**

To: The Commission

For Meeting of 06-16-10

Through: Alec Palmer *AP*  
Acting Staff Director

From: Patricia Carmona *PC*  
Chief Compliance Officer

Joseph F. Stoltz *JFS*  
Assistant Staff Director  
Audit Division

Martin L. Favin *MLF*  
Audit Manager

By: Terrence J. O'Brien *TJB*  
Lead Auditor

Subject: Audit Hearing for the Georgia Federal Elections Committee (GFEC)

As provided for in the Procedural Rules for an Audit Hearing, a copy of the subject draft final audit report and the legal analysis was sent to the GFEC and its Counsel on March 22, 2010. Counsel for the GFEC requested a hearing on April 8, 2010.

In response, Counsel for the GFEC stated he would like to discuss Finding 1- Misstatement of Financial Activity. Specifically, Counsel wishes to address the conclusion in the audit report that the non-federal activity that passed through the payroll "escrow" account must be disclosed to the Commission.

The Audit staff and the Commission's Office of General Counsel agree that the payroll escrow account served as the functional equivalent of an allocation account. Allocation accounts permit state party committees to mix funds from a committee's federal and non-federal operating accounts to pay allocable expenses, but are considered federal accounts from which that committee must report all activity, including the non-federal portion of activity. Requiring the GFEC to report 100% non-federal disbursements from its escrow account allows the Commission to verify that the proper amount of funds were transferred to pay for non-allocable non-federal activities.

Committee accounts are either entirely non-federal used only for transactions that are solely non-federal and to reimburse the federal account for the non-federal share of allocable expenditures; or, are federal accounts used to pay federal expenses and allocable expenses. Allocable expenses are paid first from a federal account. One type of federal account that may be used for paying allocable expenses is the allocation account. It is an account reserved for that purpose and has funds transferred from both non-federal accounts and other federal accounts to fund allocable expenditures.

GFEC used a dedicated account for payroll; federal, non-federal, and allocable. This was to accommodate its payroll service which would not withdraw funds from more than one account for funding salary payments. As a result the payroll account functioned as an allocation account and should have been reported in its entirety. Unlike other allocation accounts, solely non-federal expenditures were also paid from the account. The report recommends that those expenses be reported as Other Disbursements.

The GFEC disagrees with the conclusions of both the Audit Division and the Office of General Counsel that the "escrow" account served as the functional equivalent of an allocation account. The GFEC's counsel states that the "escrow" account is unlike an allocation account because not all of the expenses paid from this account contained a federal component. The GFEC does not agree that the Commission has an interest in tracking and disclosing these 100% non-federal disbursements.

In its response to the draft final audit report, the GFEC explains that it has chosen to change payroll companies to one that can process payroll separately from federal and non-federal accounts. The GFEC states that it believes that it properly handled the disclosure of payroll expenses, but made this change due to the time, expense, and uncertainty created by disputing the issue. Thus, going forward the issue raised in the audit report should be resolved.

Other documents related to the draft final audit report and audit hearing are located in Ntsrv1\Voting Ballot Matters\Audit\Georgia Federal Elections Committee\Audit Hearing. Should you have any questions, please contact Terry O'Brien or Marty Favin.

Attachments:

- Draft Final Audit Report on the Georgia Federal Elections Committee
- OGC Legal Analysis on the Draft Final Audit Report (#LRA 793)
- Georgia Federal Elections Committee Request for Hearing dated April 8, 2010



# Report of the Audit Division on the Georgia Federal Elections Committee

January 1, 2005 – December 31, 2006

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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 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)

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

## 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)

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<sup>1</sup> 2 U.S.C. §438(b).

# **Report of the Audit Division on the Georgia Federal Elections Committee**

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January 1, 2005 – December 31, 2006



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# **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

<b>Important Dates</b>	<b>Georgia Federal Elections Committee</b>
• Date of Registration	June 14, 1976
• Audit Coverage	January 1, 2005 - December 31, 2006
<b>Headquarters</b>	Atlanta, GA
<b>Bank Information</b>	
• Bank Depositories	1
• Bank Accounts	6 Federal, 6 non-Federal, 1 Levin
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Rex Templeton
• Treasurer During Period Covered by Audit	Jeffrey J. DiSantis
<b>Management Information</b>	
• 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)

<b>Federal Cash on hand @ January 1, 2005</b>	<b>\$17,342</b>
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
<b>Total Federal Receipts</b>	<b>\$3,167,390</b>
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
<b>Total Federal Disbursements</b>	<b>\$3,139,987</b>
<b>Federal Cash on hand @ December 31, 2006</b>	<b>\$44,745</b>
<b>Levin Cash on hand @ January 1, 2005</b>	<b>\$6,886</b>
<b>Total Levin Receipts</b>	<b>750</b>
<b>Total Levin Disbursements</b>	<b>7,210</b>
<b>Levin Cash on hand @ December 31, 2006</b>	<b>\$426</b>



## **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<sup>2</sup> 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

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<sup>2</sup> 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 <sup>3</sup>	+	\$505,984
• Unreported contributions from political committees	+	17,000
• Unexplained difference	+	125
<b>Understatement of Receipts</b>		<b>\$523,109</b>

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
<b>Net Understatement of Disbursements</b>		<b>\$523,965</b>

<b>2006 Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
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
<b>Net Understatement of Receipts</b>		<b>\$126,313</b>

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
<b>Net Understatement of Disbursements</b>		<b>\$100,422</b>

<sup>3</sup> 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.<sup>4</sup>

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

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<sup>4</sup> 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<sup>5</sup> 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).

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<sup>5</sup> 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<sup>6</sup>:  
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.

<sup>6</sup> 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 than 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.
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- 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 signed declarations from several employees attesting that for 2005-2006 election cycle salaries, funded entirely or partially by non-federal funds, that they worked no more than 25% 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

March 8, 2010

**MEMORANDUM**

**TO:** Joseph F. Stoltz  
Assistant Staff Director  
Audit Division

**THROUGH:** Alec Palmer *AP*  
Acting Staff Director

**FROM:** Christopher Hughey *pch*  
Deputy General Counsel

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

Lorenzo Holloway *LH*  
Assistant General Counsel  
Public Finance and Audit Advice

Allison T. Steinle *ATS*  
Attorney

**SUBJECT:** Proposed Final Audit Report on the Georgia Federal Elections Committee  
(LRA 793)

**I. INTRODUCTION**

The Office of General Counsel has reviewed the proposed Final Audit Report ("FAR") on the Georgia Federal Elections Committee ("the Committee"). Our comments address Findings 1 and 2. We concur with any findings not specifically discussed in this memorandum. If you have any questions, please contact Allison T. Steinle, the attorney assigned to this audit.

Both Findings 1 and 2 involve the Committee's payroll account. We believe the two findings are interrelated. Specifically, our ultimate analysis of Finding 1 depends on the documentation the Committee has provided in response to Finding 2. Therefore, we address Finding 2 first.

As background, we understand that the Committee established the payroll account in question to accommodate the restrictions imposed by its payroll vendor, Paychex, which would not draw the Committee's payroll from both its federal and non-federal operating accounts. Accordingly, the Committee elected to set up a separate account from which it makes its federal and non-federal payroll disbursements. The Committee states that this payroll account functions as an "escrow account" or "transmittal account" because it is used exclusively to pay salaries and payroll taxes. The Committee states that it calculates the appropriate amount of federal and non-federal funds for each payroll period and transfers these funds from the federal and non-federal operating accounts to the payroll account, from which it pays all its federal, non-federal, and allocable employees. The Committee states it reports the federal and allocable payroll disbursements from this account on Schedule B or Schedule H4 as appropriate. However, the Committee claims that this payroll account is neither a federal account nor an allocation account, and therefore it is not required to report entirely non-federal activity to the Commission.

## II. FINDING 2 – PAYMENT OF FEDERAL ACTIVITY WITH NON-FEDERAL FUNDS

Finding 2 addresses the Committee's failure to maintain a monthly log detailing the time spent on federal activities for employees whose salaries and related expenses were paid from the payroll account. State party committees must keep a monthly log documenting the percentage of time each employee spends in connection with a federal election. 11 C.F.R. § 106.7(d)(1). If employees spend more than 25 percent of their time on federal election activity ("FEA") or in connection with a federal election, their salaries and related expenses must be paid only from a federal account. 11 C.F.R. § 106.7(d)(1)(ii). Prior to January 19, 2006, if employees spent less than 25 percent of their time on FEA or in connection with a federal election, their salaries and related expenses could be paid entirely with non-federal funds. However, under the new salary allocation rules that became effective January 19, 2006, if employees spend 25 percent or less of their time on FEA or activities in connection with a federal election, they may be paid either entirely with federal funds or at the same allocation rate as the committee's administrative expenses. 11 C.F.R. § 106.7(d)(1)(i). Only if employees spend all of their time on entirely non-federal activity may they may be paid entirely with non-federal funds. 11 C.F.R. § 106.7(d)(1)(iii).

In this case, the Committee claims that a portion of the payroll account—perhaps as much as two thirds of the funds that passed through the account—was used to pay salaries and payroll taxes for employees who were engaged in exclusively non-federal activity.<sup>1</sup> However, the Committee has not provided the monthly logs required by 11 C.F.R. § 106.7(d)(1). Instead, in response to the Interim Audit Report ("IAR"), the Committee has provided six affidavits from the employees in question stating that, prior to when the new salary rules became effective, they did not spend more than 25 percent of their time on FEA or activities in connection with a federal election, and that they did not spend any time on FEA or activities in connection with a

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<sup>1</sup> The Audit Division has stated that 33 percent of the account's activity was reported on the Committee's disclosure reports to the Commission. It is our understanding that this means the Committee is claiming that only 33 percent of its salaries or related expenses were for employees who spent time on FEA or activities in connection with a federal election.

federal election after the new salary rules became effective. The proposed FAR concludes that the affidavits are sufficient to establish that the Committee properly allocated the salaries of the six employees.

In recent audits of state party committees, the Commission has permitted committees to use similar affidavits as supporting documentation, despite the fact that they had not maintained the monthly logs required under 11 C.F.R. § 106.7(d)(1). See FAR on the Missouri Democratic Party (Feb. 3, 2009). Therefore, consistent with the Commission's practices in these audits, we agree with the Audit Division that the Committee has provided sufficient alternate documentation to establish that the Committee did not improperly pay for federal activity using non-federal funds.

### III. FINDING 1 – MISSTATEMENT OF FINANCIAL ACTIVITY

While Finding 2 concludes that a large proportion of funds in the payroll account were for non-federal salaries or related expenses, Finding 1 addresses the Committee's failure to report that activity. The Committee states that it should not be required to report the payroll account's non-federal activity to the Commission because the payroll account is neither a federal account nor an allocation account. The Committee argues that the disclosure of non-federal activity "would result in an artificial increase in the disclosure of its federal activity, which it believes would be burdensome for the Committee and confusing to readers of [the Committee's] reports." Committee Response at 2. However, the proposed FAR concludes that the payroll account functioned as an allocation account, from which all activity, including non-federal activity, was reportable to the Commission. To assist the Commission in resolving this issue, we address the Commission's options for how to treat a committee whose payroll vendor will not draw payroll from multiple federal and non-federal operating accounts.<sup>2</sup>

As an initial matter, we believe the Commission could determine that the Committee's establishment and use of the payroll account was reasonable under the circumstances. In the past, the Commission has been sympathetic to committees whose payroll vendors limit their ability to draw payroll from multiple federal and non-federal operating accounts. See *supra* n.2. Here, the Committee faced a Catch-22 created by the current salary allocation rules and the limitations of its payroll vendor. The Committee was prohibited from transferring funds from its non-federal account to reimburse its federal account for non-allocable non-federal activity, so if it used its federal account to make its payroll disbursements it could not have recouped the

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<sup>2</sup> The question of whether a committee could set up a single payroll account to pay both federal and non-federal salaries and related expenses was raised by a commenter during the 2005 salary allocation rulemaking. See Explanation and Justification for State, District, and Local Party Committee Payment of Certain Salaries and Wages, 70 Fed. Reg. 75,379, 75,383 (Dec. 20, 2005). However, the Commission concluded that it was beyond the scope of the rulemaking and has not to our knowledge directly revisited the question. *Id.* In a subsequent Reports Analysis Division referral to the Office of General Counsel, which was not made public because the Commission declined to open a MUR, the Commission determined not to seek enforcement action against a committee faced with the same problem caused by the same payroll vendor. The committee in question there, however, had elected to pay its non-federal payroll from its federal operating account and transfer in non-federal funds to reimburse those payments rather than set up a separate payroll account.

portion of that “hard money” it used for non-federal salaries and related expenses. 11 C.F.R. § 106.7(f)(1). However, the Committee could not use the non-federal account to make all of its payroll disbursements, because the Committee was prohibited from making disbursements from its non-federal account for allocable or federal purposes. 11 C.F.R. §§ 102.5(a). The Committee attempted to comply with the law by creating a separate payroll account from which it could make 100 percent non-federal disbursements, as well as federal and allocable disbursements.

However, the Committee did not report any of the payroll account’s non-federal activity to the Commission. Therefore, the question becomes whether, as the Committee claims, the Committee could treat its payroll account as a kind of “escrow account” or “transmittal account” that is neither federal nor non-federal, and from which the Committee would only be required to report its federal and allocable activity, but not its non-federal activity. This appears to be a question of first impression because neither the statute nor the regulations contemplate the existence of such an account, and therefore do not provide any guidance on the treatment of the account for disclosure purposes.

On the one hand, the Committee is correct that the payroll account at issue here was unlike an ordinary allocation account in that it contained non-federal funds to be used for the payment of non-allocable, 100 percent non-federal expenses. See 11 C.F.R. § 104.17(b). Commission regulations specify that allocation accounts may be used “solely for the purpose of paying the *allocable* expenses of *joint* federal and non-federal activities.” 11 C.F.R. § 106.7(f)(1) (emphasis added). Here, requiring the Committee to disclose all activity in the payroll account would result in the Committee disclosing payroll information for some exclusively non-federal employees paid with exclusively non-federal funds for a particular pay period.

On the other hand, however, we agree with the Audit Division that the payroll account served as the functional equivalent of an allocation account, in that it allowed the Committee to make both federal and non-federal disbursements with funds originating from both its federal and non-federal operating accounts. See 11 C.F.R. §§ 102.5(a), 106.7(f)(1). The transfer and reimbursement rules ordinarily prohibit state party committees from transferring non-federal funds to an account containing federal funds to reimburse that account for 100 percent non-federal activity. 11 C.F.R. § 106.7(f). Allocation accounts permit state party committees to mix funds from a committee’s federal and non-federal operating accounts to pay allocable expenses, but are considered federal accounts from which that committee must report all activity, including the non-federal portion of activity. See 11 C.F.R. §§ 104.17, 106.7(f); Explanation and Justification for Methods of Allocation between Federal and Non-Federal Accounts, 55 Fed. Reg. 26,058, 26,065-66 (June 26, 1990). Just as this reporting requirement allows the Commission to verify that committees are transferring and using the proper amount of non-federal funds to pay for allocable activities, requiring the Committee to report 100 percent non-federal disbursements here allows the Commission to verify that the Committee used and transferred the proper amount of non-federal funds to pay for non-allocable non-federal activities, and did not use non-federal funds to subsidize federal activities. See 55 Fed. Reg. at 26,066 (noting that a reporting requirement “allow[s] the Commission to track the flow of non-

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federal funds into federal accounts, and [] ensure[s] that the use of such funds is strictly limited to payment for the non-federal share of allocable activities”). While the Committee claims that the disclosure of its non-allocable non-federal activity would be burdensome, it has already stated that it calculates the appropriate amount of federal and non-federal funds for each payroll period in order to transfer the proper amounts from the federal and non-federal operating accounts to the payroll account. The Audit Division’s proposed treatment of the payroll account would only require the Committee to disclose the financial information it has already calculated. Moreover, the Committee’s concern that such a reporting requirement would result in an artificial increase in federal activity and confusion by readers is addressed by the Audit Division’s recommendation that the Committee only report the non-federal activity as “Other Disbursements” on Schedule B, Line 29.<sup>3</sup> Accordingly, because we are of the view that committees should be required to report non-federal funds if they mix those funds with federal funds in a single account, *see* 55 Fed. Reg. at 26,066, and the payroll account at issue here functions as a federal allocation account in that it mixes non-federal and federal funds, we conclude that the Committee should be required to report all of the payroll account’s activity, including the transfer in and disbursement of non-federal funds to pay salaries and related expenses that are 100 percent non-federal.

We reiterate 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. 11 C.F.R. § 106.7(f)(1). We note that in order 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.

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<sup>3</sup> Currently, the proposed FAR instructs the Committee to report the non-federal activity on Schedule B, Line 29, with a memo entry indicating that the transactions are being disclosed as a result of the FEC audit. However, to avoid confusion by readers, we recommend that the FAR instruct the Committee to also include memo entries for these transactions that specifically indicate that they are for non-allocable non-federal activity.

# SANDLER, REIFF & YOUNG, P.C.

April 8, 2010

Mr. Terry O'Brien  
Audit Division  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Mr. O'Brien:

This letter will serve as the response of the Georgia Federal Elections Committee ("GFEC") to the Draft Final Audit Report ("Audit Report") of the Federal Election Commission's Audit Division ("the Audit Division") for the period covering the GDP's financial activities for 2005 and 2006.

In accordance with Commission procedures, the committee would like to request an oral hearing to discuss an issue raised in the draft report. Specifically, the GFEC would like to address the Draft opinion's conclusion in Finding 1 that the non-federal activity that passed through a payroll escrow account must be disclosed on the committee's federal report

By way of background, subsequent to the passage of the Bipartisan Campaign Reform Act and the passage of Commission regulations regarding the payment of payroll expenses, the GFEC, like many other party committees were required to comply with new and onerous requirements regarding payroll expenses. One of many new requirements required state committees to pay payroll expenses either 100% directly from a federal account or 100% directly from a non-federal account depending on the federal campaign activity of each employee. At the time of passage of the BCRA, the GFEC approached its payroll company, Paychex, to determine the best way to comply with the new Commission regulations. During this process, the GFEC was informed by Paychex that they could not debit multiple bank accounts in connection with collecting payroll from the GFEC. Similar to all other professional payroll companies, Paychex automatically deducts payroll from its client's bank accounts and does not accept checks from its clients to process payroll. Since the new BCRA regulations required the GFEC to make payroll payments from both its federal and non-federal accounts, it was required to establish a separate escrow account in which it combined its federal and non-federal payments to Paychex.<sup>1</sup>

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<sup>1</sup> During the 2005-2006 election cycle, the Commission amended its regulations to add a third category of employees who were allocable between federal and non-federal accounts in accordance with 11 C.F.R. § 106.7.

During the exit conference and Interim Audit Report, the Audit Division informed the GFEC, amongst other issues, that it believed that the escrow account was, in fact, a federal account and required full disclosure of its activities. Although the GFEC did not object to, and complied with all other aspects of the Interim Audit Report, it objected to, and continues to object to this conclusion. Our response to the Interim Audit Report is attached to this response and clearly sets forth our position on this issue.

The GFEC strongly disagrees with both the Audit Division and General Counsel's Office memorandum that concludes that this account served as the "functional equivalent" of an allocation account. To be sure, an allocation account is an account established pursuant to FEC regulation to combine the federal and non-federal share of allocable expenses to be disbursed by party committees in connection with expenses that are split between federal and non-federal funds pursuant to the formulas set forth in 11 C.F.R. § 106.7. Although it has been our experience that few committees choose this option, the allocation account permits a committee to pass through the non-federal share of allocable expenses through this federal account instead of a mere reimbursement of a federal account for the non-federal share of allocable expenses. During the enactment of the allocation regulations in 1990, the Commission determined that the entire share of an allocable expense must be disclosed, including the non-federal share of each expense. Of course, these expenses include a federal and non-federal component for each expense.

Unlike the allocation process, the GFEC's payroll account merely remitted payroll expenses that were either federal, allocable or purely non-federal directly to one vendor, its payroll company. The first two categories of expenses that passed through the payroll transmittal account were fully disclosed and the allocable share of payroll was transmitted and reported in accordance with federal regulations regarding allocable expenses. The GFEC does not agree with OGC's conclusions that the FEC has an interest in tracking and disclosing these 100% non-federal transactions. The OGC memorandum even acknowledges that it would not be permissible for the GFEC to transfer a 100% non-federal expense to a federal or allocation account. Of course, nothing in the Commission's Audit suggests that the GFEC abused or otherwise mishandled the remittal of non-federal funds during the payroll process through this escrow account.

It should be noted that, due to the time, expense and uncertainty created by disputing this issue, the GFEC has chosen to change payroll companies to one that can accommodate the transmittal of payroll separately from federal and non-federal accounts. This decision was not made lightly based upon the long and trusted relationship between GFEC and Paychex for several years. Nevertheless, the GFEC believes that it properly handled disclosure of the remittal of payroll expenses and that the Commission should not require the GFEC to amend its reports to include the payment of 100% non-federal payroll expenses on its federal report.

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If you require any further information, or have any other questions, please call me at (202) 479-1111.

Sincerely,

A handwritten signature in black ink, appearing to read 'NRM', written in a cursive style.

Neil Reiff  
Counsel to the Georgia Federal Elections  
Committee

# SANDLER, REIFF & YOUNG, P.C.

January 14, 2010

Mr. Joseph F. Stoltz  
Assistant Staff Director  
Audit Division  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Mr. Stoltz:

This letter, and attached exhibits will serve as the response of the Georgia Federal Elections Committee ("GFEC") to the Interim Audit Report ("Audit Report") of the Federal Election Commission's Audit Division ("the Audit Division") for the period covering the GFEC's financial activities for 2005 and 2006.

The response to each of the Audit Division's three findings is as follows:

## Finding #1

The Commission's first finding involves the correction of the disclosure of financial activities for the committee's reports for calendar years 2005 and 2006. The finding stems from two types of issues. First, the Audit Report requests correction of a small number of items and cash on hand amounts due to errors made in committee reports during the 2006 election cycle. The committee has filed amendments to correct these errors.

The other portion of the Audit Reports finding involves the Audit Division's view that the GFEC's use of an escrow account to transmit payroll from both its federal and non-federal accounts should be fully disclosed on the committee's federal reports. For the reasons stated below, the GFEC does not believe that the escrow account is a federal account and does not intend, at this time, to amend its reports to reflect the non-federal portion of the escrow account's activities on its federal report.

With the enactment of the Bipartisan Campaign Reform Act of 2002, the process of paying payroll expenses by state party committees was significantly altered. Many state parties struggled to work with their payroll companies to accommodate the needs of the payroll company and the new requirements placed upon the committees by new FEC regulations. In 2002, the FEC promulgated regulations that required committees to either pay employees entirely with federal funds, or entirely with non-federal funds. This determination was based upon new 2 U.S.C. § 431(20)(A)(iv) which requires that any employee who spend in excess of 25% of any given month

on activities in connection with a federal election be paid exclusively with federal funds. In promulgating regulations to comply with this provision, the Commission provided that those employees who did not meet this 25% threshold should be paid exclusively with non-federal funds. Former 11 C.F.R. § 300.33(c)(2) (The committee modified these requirements to provide for allocation of most such employees in late 2005).

Many state parties encountered difficulty in creating systems to comply with this new requirement. The requirement created two distinct challenges for the GFEC. First, the committee would be required to estimate each employee's activities in the given month so that their payroll would be drawn from the appropriate funds for payroll. Second, the GFEC encountered problems with their existing payroll company, Paychex, with respect to the arrangement of debiting two different bank accounts for payroll. It was not feasible for GFEC to create two distinct companies for payroll since it expected employees to bounce back and forth between the 25% threshold. Furthermore, the GFEC did not believe it feasible, nor did it desire, to switch payroll companies in order to search for one who could accommodate the debiting of two separate accounts.

In order to solve these dilemmas, the GFEC established a pass through escrow account for the sole purpose of transmitting federal and non-federal funds to Paychex from one account per Paychex's requirements. The account was intended to be a zero balance account for which the only cash that would remain in the account would be un-cashed payroll expenses. Under this arrangement, the federal account reported all funds transmitted into the escrow account as payments directly to the employees and appropriate tax authorities in the same way that other committees that use payroll companies report such activities.

The GFEC did not, and does not believe that is required, under these circumstances, to report the transmittal of the non-federal amounts paid to Paychex through this transmittal account. In short, the GFEC did not intend, nor does it believe, that this transmittal account is a federal account of the committee. To require disclosure of these amounts would result in an artificial increase in the disclosure of its federal activity, which it believes would be burdensome for the committee and confusing to the readers of the GFEC's reports. To be sure, these funds are derived solely from non-federal accounts, represent exclusively non-federal activity and were never commingled with other federal accounts of the GFEC.

Furthermore, it should be noted that this account was not intended to be an allocation account in accordance with 11 C.F.R. § 106.7(f)(1)(ii). Of course, until the Commission's changes to section 300.33 in 2005, none of the expenses that passed through the account were allocable in nature.

Based upon the above, the GFEC believes that the payroll escrow account was not a federal account but rather a transmittal account for both federal and non-federal funds that were established for the sole purpose of transmitting funds to Paychex from one source account per the company's requirements. Therefore, the GFEC believes that the disclosure of the non-federal portion of funds transmitted through the account, including the activity and cash-on-hand of the account is incorrect and unnecessary. The GFEC will only amend the reports, if necessary, based upon the Commission's conclusions in the final audit report.

It should be noted that the amendments that have been filed, including all financial activity and cash on hand fully comply with all other recommendations in Finding #1.

Finding #2

In this finding, the Audit Division has requested documentation regarding six employees with respect to whether less than 25% or no time had been spent on activities in connection with a federal election or federal election activities.

Attached, please find sworn declarations by those six employees that attest, as appropriate, that those employees spent either less than or no time on those activities, as appropriate, in the relevant months in which all or a portion of their payroll was paid with non-federal funds.

It should be noted, as it is pointed out in the Audit Report, that the Commission's regulations regarding payment of payroll for those employees did not meet the 25% threshold changed in January 2006. The committee correctly amended its payroll procedures to comply with these new requirements.

Finding #3

With respect to Finding #3, the GFEC has been unable to locate any documentation as to whether it had exercised best efforts at the time that the contributions were received.

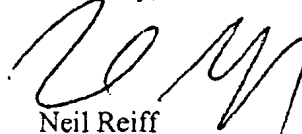
In response to the Audit Report, the GFEC has contacted those individuals for whom it did not have occupation and employer and has filed amended reports for those donors that it has obtained this information with respect to 2005 and 2006. For those donors for whom the committee has been unable to obtain this information, the committee has attached documentation to demonstrate that it has made attempts to contact those donors to obtain this information.

The GFEC has now obtained most of the requested information and believes that it is now in material compliance with the requirements outlined in this Finding.

It should be further noted that the GFEC has undertaken procedural changes to its operations to ensure ongoing compliance with the Commission's Best Efforts regulations.

If you require any further information, or have any other questions, please call me at (202) 479-1111.

Sincerely,



Neil Reiff  
Counsel to the Georgia Federal Elections  
Committee

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