



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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**MEMORANDUM**

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

**I. INTRODUCTION**

The Office of the General Counsel has reviewed the proposed Interim Audit Report ("IAR") 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. While the cover memorandum to the proposed IAR only requests a legal analysis for Finding 2, we also are providing a legal analysis for Finding 1 because we believe the two findings are interrelated. Specifically, our ultimate analysis of Finding 1 will depend on the documentation, if any, that the Committee can provide 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 "eserow 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 supporting documentation 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). 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). If employees spend all of their time on entirely non-federal activity, 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 98 percent 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,

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<sup>1</sup> The proposed IAR states that "[the Committee], which did not consider [the payroll] 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. However, very little of this activity (less than 2%) was reported on [the Committee's] disclosure reports to the Commission." It is our understanding that this means the Committee is claiming that less than two percent of its salaries or related expenses were for employees who spent time on FEA or activities in connection with a federal election. However, we recommend that the Audit Division clarify this point.

the Committee has not provided the monthly logs required by 11 C.F.R. § 106.7(d)(1) or any other documentation supporting this assertion. In the absence of this documentation, the proposed IAR concludes that all of the activity in the payroll account must be treated as 100 percent federal activity, as much as 98 percent of which was impermissibly paid with non-federal funds.

In two recent audits of state party committees, the Commission has permitted committees to use 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 Tennessee Republican Party IAR; Missouri State Democratic Committee Final Audit Report ("FAR"). To be consistent with these two audits, we recommend that the Audit Division expand its recommendation to provide more guidance to the Committee regarding what alternate documentation the Commission may accept.

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

Assuming that the Committee establishes that at least some of the 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 it did not report the payroll account's non-federal activity to the Commission because it did not believe the payroll account was either a federal account or an allocation account. The proposed IAR 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

[REDACTED] its options for how to treat this Committee.



[REDACTED]

[REDACTED] the Committee has asserted, but has not yet established, that the funds in the payroll account were for non-federal salaries or related expenses. [REDACTED]

[REDACTED] the Committee is a state political party that is subject to the stricter FEA salary allocation requirements. *See* 2 U.S.C. § 441i(b); 11 C.F.R. § 106.7(d)(1). If the Committee is unable to establish that salaries paid from its payroll account were for staff who worked on non-federal programs, those salaries should be treated as non-allocable FEA payable with 100 percent federal funds. *See* 11 C.F.R. § 106.7(d)(1). If all the Committee's salaries and related expenses are treated as non-allocable FEA, then the issue of how to treat a committee whose payroll vendor will not draw payroll from multiple federal and non-federal operating accounts is moot. In that case, the IAR should simply conclude that the Committee should have made the disbursements from its federal account using only federal funds, and should have reported them as federal disbursements on Schedule B.

[REDACTED] even assuming the Committee is able to establish that at least some of the funds in the payroll account were non-federal, the Committee did not report any of the payroll account's non-federal activity to the Commission. [REDACTED]

[REDACTED] the question becomes whether, as the Committee claims, the Committee could treat its payroll account as a kind of "escrow 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.

We concur with the Audit Division that the Committee should be required to report its non-federal activity from its payroll account. Because (again assuming the Committee can document its assertions) the Committee used the payroll account to make both federal and non-federal disbursements using funds from both its federal and non-federal operating accounts, the payroll account served as the functional equivalent of an allocation account. Allocation accounts are federal accounts from which committees must report all activity, including their non-federal activity. *See* 11 C.F.R. §§ 104.17, 106.7(f). Accordingly, we are of the view that the payroll account here is a federal account, and the Committee is required to report its non-federal activity. *See id.*

Provided the Committee is required to report its non-federal activity, we also concur with the Audit Division that the Committee should be permitted to establish a separate account from which it may make its federal and non-federal payroll disbursements. [REDACTED]

[REDACTED] the Committee could not use its federal account to make its payroll disbursements because it was prohibited from transferring funds from its non-federal account to reimburse the federal account for non-allocable non-federal activity, but it could not use the non-federal account to make its payroll disbursements because it was prohibited from allocating federal disbursements and from transferring funds from its federal account to reimburse those disbursements. See 11 C.F.R. §§ 102.5(a), 106.7(f)(1).

[REDACTED] the Committee attempted to comply with the law by creating a separate "escrow account" from which it could make 100 percent non-federal disbursements. Therefore, the Commission could reasonably determine that the Committee's use of the payroll account was permissible, provided that it amend its reports to disclose the non-federal activity that was not reported.

While we are of the view that the Committee should be permitted to establish a separate payroll account in light of the restriction it faced, this issue may come up again given that Paychex is a commonly used payroll vendor. On their face, the Commission's regulations prohibit committees from transferring funds from a non-federal account to reimburse a federal account for non-allocable activity, and permit committees to use allocation accounts "solely for the purpose of paying the allocable expenses of joint federal and non-federal activities." See 11 C.F.R. § 106.7(f)(1). Therefore, looking forward, we note that the only way committees could ensure that they were in compliance with the law would be to ensure that they choose a payroll vendor that will draw their payroll from their federal and non-federal operating accounts in compliance with the regulations.