



Final Audit Report of the Commission on the Democratic Executive Committee of Florida

January 1, 2007 - December 31, 2008

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 Democratic Executive Committee of Florida is a state party committee headquartered in Tallahassee, Florida. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

| | |
|---|----------------------|
| • Receipts | |
| ○ Contributions from Individuals | \$ 1,381,039 |
| ○ From Other Political Committees | 379,860 |
| ○ From Affiliated/Other Party Committees | 20,465,884 |
| ○ Transfers from Non-federal Account | 2,037,583 |
| ○ All Other Receipts | 516,180 |
| Total Receipts | \$ 24,780,546 |
| • Disbursements | |
| ○ Operating Expenditures | \$ 12,999,529 |
| ○ Federal Election Activity | 11,409,932 |
| ○ Other Disbursements | 288,438 |
| Total Disbursements | \$ 24,697,899 |

Commission Findings (p. 3)

- Excessive Coordinated Party Expenditures (Finding 1)
- Failure to Itemize Coordinated Party Expenditures (Finding 2)
- Allocation of Expenditures (Finding 3)
- Misstatement of Financial Activity – Levin Fund (Finding 4)
- Disclosure of Disbursements (Finding 5)

Additional Issue (p. 5)

- Allocation of Rent Paid for Committee Headquarters

¹ 2 U.S.C. §438(b).

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January 1, 2007 - December 31, 2008



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Part I

Background

Authority for Audit

This report is based on an audit of the Democratic Executive Committee of Florida (DECF), 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 whether 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 risk factors and as a result, this audit examined:

1. the receipt of excessive contributions and loans;
2. the receipt of contributions from prohibited sources;
3. the disclosure of individual contributors' occupation and name of employer;
4. the disclosure of disbursements, debts and obligations;
5. the disclosure of expenses allocated between federal and non-federal accounts;
6. the consistency between reported figures and bank records;
7. the completeness of records; and
8. other committee operations necessary to the review.

Audit Hearing

DECF declined the opportunity for an audit hearing before the Commission.

Part II

Overview of Committee

Committee Organization

| | |
|--|-------------------------------------|
| Important Dates | |
| • Date of Registration | April 19, 1972 |
| • Audit Coverage | January 1, 2007 - December 31, 2008 |
| Headquarters | |
| | Tallahassee, Florida |
| Bank Information | |
| • Bank Depositories | Two |
| • Bank Accounts | Six Federal and Two Non-federal |
| Treasurer | |
| • Treasurer When Audit Was Conducted | Alma Gonzalez |
| • Treasurer During Period Covered by Audit | Rudy Parker |
| Management Information | |
| • Attended Commission Campaign Finance Seminar | Yes |
| • Who Handled Accounting and Recordkeeping Tasks | Paid Staff |

Overview of Financial Activity (Audited Amounts)

| | |
|--|----------------------|
| Cash-on-hand @ January 1, 2007 | \$ 203,156 |
| o Contributions from Individuals | 1,381,039 |
| o From Other Political Committees | 379,860 |
| o From Affiliated/Other Party Committees | 20,465,884 |
| o Transfers from Non-federal Account | 2,037,583 |
| o All Other Receipts | 516,180 |
| Total Receipts | \$ 24,780,546 |
| o Operating Expenditures | 12,999,529 |
| o Federal Election Activity | 11,409,932 |
| o Other Disbursements | 288,438 |
| Total Disbursements | \$ 24,697,899 |
| Cash-on-hand @ December 31, 2008 | \$ 285,803 |

Part III

Summaries

Commission Findings

Finding 1. Excessive Coordinated Party Expenditures

During fieldwork, the Audit staff calculated that DECF appeared to have exceeded the 2008 coordinated party expenditures limit on behalf of a House candidate (\$60,000) by \$35,108. Our review identified two media ads (\$82,400) and two direct mail pieces (\$12,708) that appeared to represent coordinated party expenditures.

In response to the Interim Audit Report recommendation, DECF provided statements and documents to support its contention that the expenditures should not be considered excessive coordinated party expenditures. DECF submitted documentation for the direct mail pieces to support its claim that sufficient volunteer activity occurred, and that the expenses qualified for the volunteer materials exemption and were not coordinated party expenditures. In light of the lack of clarity in recent audits regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, the Audit staff did not count the expenses toward the coordinated party expenditure limit. Regarding the two media ads (\$82,400), however, DECF did not demonstrate that it was granted additional spending authority beyond \$60,000. As a result, DECF exceeded its coordinated party expenditures limitation by \$22,400 (\$82,400 - \$60,000).

The Commission approved a finding that DECF exceeded its coordinated party expenditure limitation by \$22,400. In reaching its conclusion, the Commission noted that, based on the reports filed by the Democratic Congressional Candidate Committee (DCCC), the combined coordinated expenditure limit of \$84,200 was not exceeded on behalf of the House candidate. (For more detail, see p. 6.)

Finding 2. Failure to Itemize Coordinated Party Expenditures

During fieldwork, the Audit staff identified 64 expenditures, totaling \$207,665, which DECF did not itemize on Schedule F (Itemized Coordinated Party Expenditures). DECF made the expenditures on behalf of six congressional candidates. Subsequent to the start of audit fieldwork, DECF filed amended reports that substantially disclosed the expenditures in question as coordinated party expenditures on Schedule F.

In response to the Interim Audit Report recommendation, DECF made no additional comments on this matter. DECF has corrected the public record with respect to these transactions.

The Commission approved a finding that DECF failed to itemize coordinated party expenditures of \$194,957. (For more detail, see p. 10.)

Finding 3. Allocation of Expenditures

During fieldwork, the Audit staff's review of disbursements made from the federal and non-federal accounts identified an apparent non-federal overfunding of allocable activity by \$107,536.

DECF materially complied with the Interim Audit Report recommendation. DECF either accepted the Audit staff's position or provided documentation demonstrating that all non-federal expenditures in question required less allocation. DECF's response reduced the non-federal overfunding of allocable activity to \$84,364.

After considering this finding, the Commission did not interpret the use of Creole translators as get-out-the-vote activity. Rather, the Commission agreed with DECF that it was an allocable expense to be paid on the administrative ratio. This further reduced the non-federal overfunding of allocable activity by \$12,413, to \$71,951. In addition, the Commission could not reach a consensus on whether DECF had properly allocated rent payments for its headquarters (the non-federal overfunding for rent was calculated as \$28,482) between DECF and state caucus committees. Thus, the amount of non-federal overfunding of allocable activity on which the Commission could agree was \$43,469 (\$84,364 - \$12,413 - \$28,482), for which DECF transferred funds from its federal account to its non-federal account to correct the overfunding.

The Commission approved a finding that DECF's non-federal accounts overfunded its share of allocable activity by \$43,469. (For more detail, see p. 11.)

Finding 4. Misstatement of Financial Activity -- Levin Fund

Throughout the audit period, DECF disclosed \$6,438 as cash-on-hand for the Levin fund account. However, DECF's Levin fund account closed in November 2006. In response to the Interim Audit Report recommendation, DECF filed an amended report that corrected the overstatement of cash-on-hand.

The Commission approved a finding that DECF misstated its Levin fund financial activity for 2007 and 2008. (For more detail, see p. 17.)

Finding 5. Disclosure of Disbursements

During audit fieldwork, the Audit staff calculated that disbursement entries, totaling \$9,554,713, contained inadequate or incorrect disclosure information. In response to the Interim Audit Report recommendation, DECF filed amended reports that materially corrected the disclosure errors.

The Commission approved a finding that DECF did not properly disclose disbursements of \$9,554,713. (For more detail, see p. 18.)

Additional Issue

Allocation of Rent Paid for Committee Headquarters

During audit fieldwork, the Audit staff reviewed disbursements made from the federal and non-federal accounts and identified a non-federal overfunding of \$28,482 related to the overpayment of rent at DECF's headquarters. DECF disagreed with the Audit staff and maintained that it had properly allocated the rent between federal and state offices.

The Commission could not reach a consensus on whether DECF had properly allocated its rental payments between DECF and state caucus committees. The Commission did not approve the Audit staff's recommended finding by the required four votes.

Pursuant to Commission Directive 70², this matter is discussed in the "Additional Issue" section. (For more detail, see p. 20.)

² Available at http://www.fec.gov/directives/directive_70.pdf.

Part IV

Commission Findings

Finding 1. Excessive Coordinated Party Expenditures

Summary

During fieldwork, the Audit staff calculated that DECF appears to have exceeded the 2008 coordinated party expenditures limit on behalf of a House candidate (\$60,000) by \$35,108. Our review identified two media ads (\$82,400) and two direct mail pieces (\$12,708) that appeared to represent coordinated party expenditures.

In response to the Interim Audit Report recommendation, DECF provided statements and documents to support its contention that the expenditures should not be considered excessive coordinated party expenditures. DECF submitted documentation for the direct mail pieces to support its claim that sufficient volunteer activity occurred, and that the expenses qualified for the volunteer materials exemption and were not coordinated party expenditures. In light of the lack of clarity in recent audits regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, the Audit staff did not count the expenses toward the coordinated party expenditure limit. Regarding the two media ads (\$82,400), however, DECF did not demonstrate that it was granted additional spending authority beyond \$60,000. As a result, DECF exceeded its coordinated party expenditures limitation by \$22,400 (\$82,400 - \$60,000).

The Commission approved a finding that DECF exceeded its coordinated party expenditure limitation by \$22,400. In reaching its conclusion, the Commission noted that, based on the reports filed by the Democratic Congressional Candidate Committee (DCCC), the combined coordinated expenditure limit of \$84,200 was not exceeded on behalf of the House candidate.

Legal Standard

A. Coordinated Party Expenditures. National party committees and state party committees are permitted to purchase goods and services on behalf of candidates in the general election—over and above the contributions that are subject to contribution limits. Such purchases are termed “coordinated party expenditures.” They are subject to the following rules:

- The amount spent on “coordinated party expenditures” is limited by statutory formulas that are based on the Cost of Living Adjustment (COLA) and the voting-age population.
- Party committees are permitted to coordinate the spending with the candidate committees.
- The parties may make these expenditures only in connection with the general election.
- The party committees—not the candidates—are responsible for reporting these expenditures.

- If the party committee exceeds the limits on coordinated party expenditures, the excess amount is considered an in-kind contribution, subject to the contribution limits. 2 U.S.C. §441a(d) and 11 CFR §§109.30 and 109.32.

B. Assignment of Coordinated Party Expenditure Limit. A political party may assign its authority to make coordinated party expenditures to another political party committee. Such an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment. The political party committee that is assigned authority to make coordinated party expenditures must maintain the written assignment for at least three years. 11 CFR §§104.14 and 109.33(a) and (c).

C. Volunteer Activity. The payment by a state committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a contribution, provided that the following conditions are met:

1. Such payment is not for cost incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public communication or political advertising. The term direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.
2. The portion of the cost of such materials allocable to Federal candidates must be paid from contributions subject to the limitations and prohibitions of the Act.
3. Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate for federal office.
4. Such materials are distributed by volunteers and not by commercial or for-profit operations.
5. If made by a political committee such payments shall be reported by the political committee as a disbursement in accordance with 11 CFR §104.3 but need not be allocated to specific candidates in committee reports.
6. The exemption is not applicable to campaign materials purchased by the national party committees. 11 CFR §100.87 (a), (b), (c), (d), (e) and (g) and 11 CFR §100.147 (a), (b), (c), (d), (e) and (g).

Facts and Analysis

A. Facts

The coordinated expenditure limit for the 2008 election cycle for a U.S. House of Representatives candidate in the state of Florida was \$42,100. DECF provided documentation from the DCCC showing that it authorized DECF to spend \$17,900 of its limit on behalf of Annette Taddeo, a candidate for the U.S. House of Representatives. Therefore, DECF's coordinated spending limit for this candidate was \$60,000.

The Audit staff identified four disbursements, totaling \$95,108, on behalf of Annette Taddeo. Two disbursements (\$82,400) were for media ads. The remaining two

disbursements (\$12,708) were for direct mail pieces. DECF disclosed the cost of one ad and both mail pieces as federal election activity on Line 30b of its disclosure reports. The cost of the remaining ad was disclosed as an operating expenditure on Line 21b.

One of the two ads discussed the candidate's position on health care. The other ad discussed the opponent's voting record on health care and taxes. The disclaimer for each ad stated, "Paid for by the Florida Democratic Party and Taddeo for Congress, Approved by Annette Taddeo."

Regarding the direct mail pieces, a vendor located in Virginia processed and mailed the two direct mail pieces (one in English, the other in Spanish). The file for this vendor included an email communication from a vendor representative to a representative of DECF requesting approval of the direct mail piece. The vendor also copied the Taddeo campaign on the email.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided DECF representatives with a schedule of the apparent excessive coordinated expenditures. In response, DECF stated its belief that it was authorized to spend an additional \$22,400 because the DCCC had reported spending only \$1,754 in coordinated campaign expenditures on behalf of candidate Taddeo. DECF also stated that the combined total spent on Taddeo was less than the \$84,200 available³. DECF contends that the DCCC and DECF coordinated to achieve this and that the remaining authority would have been transferred to DECF. DECF also stated that the Taddeo mail pieces represented exempt activity.

The Interim Audit Report recommended that DECF demonstrate that it did not exceed its coordinated spending limit by providing evidence that:

- It received additional spending authority from the DCCC prior to spending in excess of its \$60,000 limitation; and
- There was volunteer involvement with respect to the direct mail pieces.

Absent such evidence, the Interim Audit Report recommended that DECF obtain a refund of \$35,108 (\$95,108 - \$60,000) from Taddeo for Congress and provide evidence of the refund received.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, DECF stated that the audit report correctly states that DECF reported coordinated expenditures of \$95,108 on behalf of Annette Taddeo.⁴ DECF acknowledged that DECF paid for two media ads, totaling \$82,400, on behalf of the candidate and that prior to making these expenditures; the DCCC assigned \$17,900 of its coordinated expenditure limit to DECF. DECF also submitted a letter, dated September 22, 2011, from the DCCC to explain the coordinated expenditure authority.

³ DECF had a coordinated expenditure spending limit of \$42,100 and the National Party Committee also had a coordinated expenditure spending limit of \$42,100.

⁴ Disclosure reports subject to this audit did not disclose any coordinated expenditures for Annette Taddeo. (See Finding 2.)

The letter stated, “[t]he DCCC’s current records show a transfer (of) \$17,900 in coordinated expenditure authority in connection with this election to the Florida Democratic Party on October 29, 2008. While we can locate no further records of other transfers of authority to your committee in connection with this election, we did support Ms. Taddeo’s candidacy – both before and after the date of the above transfer – and we know of no reason why any requested or needed transfer of authority would have been withheld at the time.”

Regarding the two mail pieces, DECF stated that the mail pieces were actually prepared with substantial volunteer participation and, therefore, met the volunteer materials exemption and should not be considered coordinated party expenditures. DECF also provided a copy of a photo that it believed demonstrated volunteer participation. In light of the lack of clarity in recent audits regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, the Audit staff did not count the expenses toward the coordinated party expenditure limit.

In response to the Interim Audit Report, neither DECF nor the DCCC could locate a record authorizing additional spending authority. As noted in the legal standards above, 11 CFR §109.33(a) requires that an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment. In similar cases, the Commission has rejected assignments of spending authority after the fact.⁵ Absent evidence of additional spending authority from the DCCC, DECF’s coordinated spending limit was \$60,000 and DECF exceeded its coordinated expenditure limitation by \$22,400 (\$82,400 [media ad expenditures] - \$60,000 [DECF’s coordinated spending limit]).

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff noted that DECF had not demonstrated, in writing, that it was granted additional spending authority beyond \$60,000. As a result, the Audit staff concluded that DECF exceeded its coordinated party expenditure limitation by \$22,400 (\$82,400 - \$60,000).

E. Committee Response to the Draft Final Audit Report

DECF contended that the Final Audit Report should note that the combined coordinated expenditure limit of \$84,200 was not exceeded for Annette Taddeo. DECF further added that “although there may have been a paperwork error with respect to the transfer of this unused authority, the authority held by the DCCC was in fact, unused. Therefore, as a practical matter, the combined 441a(d), in total, had not been exceeded and thus, no unfair advantage had been conferred upon the DECF or the Taddeo campaign.”

Commission Conclusion

On June 7, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DECF exceeded its coordinated party expenditure limitation by \$22,400.

⁵ Final Audit Report on Missouri Democratic State Committee, MUR 5274. Final Audit Report on the California Republican State Committee, MUR 5246.

The Commission approved the Audit staff's recommendation. In reaching its conclusion, the Commission noted that, based on the reports filed by the Democratic Congressional Candidate Committee, the combined coordinated expenditure limit of \$84,200 was not exceeded on behalf of the House candidate.

Finding 2. Failure to Itemize Coordinated Party Expenditures

Summary

During fieldwork, the Audit staff identified 64 expenditures, totaling \$207,665, which DECF did not itemize on Schedule F (Itemized Coordinated Party Expenditures). DECF made the expenditures on behalf of six congressional candidates. Subsequent to the start of audit fieldwork, DECF filed amended reports that substantially disclosed the expenditures in question as coordinated party expenditures on Schedule F.

In response to the Interim Audit Report recommendation, DECF made no additional comments on this matter. DECF has corrected the public record with respect to these transactions.

The Commission approved a finding that DECF failed to itemize coordinated party expenditures of \$194,957.

Legal Standard

Reporting Coordinated Party Expenditures. Each political committee shall report the full name of each person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under 11 CFR Part 109, Subpart D (2 U.S.C. §441a(d)), together with the date, amount and purpose of any such expenditure as well as the name of, and office sought by the candidate on whose behalf the expenditure is made. 11 CFR §104.3 (b)(1)(viii).

Facts and Analysis

A. Facts

The Audit staff identified 64 expenditures, totaling \$207,665, that DECF did not itemize on Schedule F as coordinated party expenditures. The expenditures were made on behalf of six congressional candidates and included payments for staff salaries, direct mail, cell phones and media ads. Subsequent to the start of audit fieldwork, DECF filed amended reports that substantially disclosed the expenditures in question as coordinated party expenditures on Schedule F.

B. Interim Audit Report & Audit Division Recommendation

This matter was presented at the exit conference. In response, DECF stated that it believes two of the disbursements, totaling \$12,708, were volunteer mailings (Taddeo mail pieces discussed in Finding 1) and thus would not need to be reported on Schedule F. The Interim

Audit Report recommended that DECF provide any additional information or comments it considered relevant to this matter.

C. Committee Response to Interim Audit Report

In response, DECF did not have any additional comments on this matter. As explained in Finding 1, there is a lack of clarity regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption. As a result, expenses for two direct mail pieces totaling \$12,708 were not classified as coordinated party expenditures. Therefore, the amount of expenditures not previously itemized on Schedule F is \$194,957 (\$207,665 - \$12,708). DECF has corrected the public record with respect to these transactions.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that DECF has corrected the public record with respect to the transactions identified. DECF's response to the Draft Final Audit Report did not address this matter.

Commission Conclusion

On June 7, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DECF did not itemize coordinated party expenditures of \$194,957 on Schedule F.

The Commission approved the Audit staff's recommendation.

Finding 3. Allocation of Expenditures

Summary

During fieldwork, the Audit staff's review of disbursements made from the federal and non-federal accounts identified an apparent non-federal overfunding of allocable activity by \$107,536.

DECF materially complied with the Interim Audit Report recommendation. DECF either accepted the Audit staff's position or provided documentation demonstrating that all non-federal expenditures in question required less allocation. DECF's response reduced the non-federal overfunding of allocable activity to \$84,364.

After considering this finding, the Commission did not interpret the use of Creole translators as get-out-the-vote activity. Rather, the Commission agreed with DECF that it was an allocable expense to be paid on the administrative ratio. This further reduced the non-federal overfunding of allocable activity by \$12,413, to \$71,951. In addition, the Commission could not reach a consensus on whether DECF had properly allocated rent payments for its headquarters (the non-federal overfunding for rent was calculated as \$28,482) between DECF and state caucus committees. Thus, the amount of non-federal overfunding of allocable activity on which the Commission could agree was \$43,469 (\$84,364 - \$12,413 - \$28,482), for which DECF transferred funds from its federal account to its non-federal account to correct the overfunding.

The Commission approved a finding that DECF's non-federal accounts overfunded its share of allocable activity by \$43,469.

Legal Standard

A. Paying for Allocable Expenses. The 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. 11 CFR §106.7(b).

B. Transfers. Generally, a political committee may not transfer funds from its non-federal account to its federal account, except when the committee follows specific rules for paying for shared federal/non-federal election activity. 11 CFR §§102.5(a)(1)(i) and 106.7(f).

C. Reporting Allocable Expenses. A state, district or local 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 Schedule H4 (Disbursements for Allocated Federal/Non-federal Activity). 11 CFR §104.17(b)(3).

D. Allocation Required for Generic Voter Drives. State and local party committees must allocate all of their costs for generic voter drives. A generic voter drive is an activity that urges the general public:

- to register to vote;
- to vote; or
- to support candidates of a particular party or candidates who are associated with a particular issue, without mentioning a specific candidate. 11 CFR §106.7(c)(5).

E. Allocation Ratio for Administrative & Generic Voter Drive Costs. State and local party committees must allocate their administrative expenses and generic voter drive costs depending on which federal offices appear on the ballot for the election year. The minimum percentage of federal funds would be at least:

- 36 percent if both a Presidential candidate and a Senate candidate appear on the ballot;
- 28 percent if a Presidential candidate but not a Senate candidate appears on the ballot;
- 21 percent if a Senate candidate but no Presidential candidate appears on the ballot; and,
- 15 percent if neither a Presidential nor a Senate candidate appears on the ballot. 11 CFR §106.7(d)(2) and (3).

F. Allocation of Costs of Federal Election Activity. Expenditures for public communications as defined in 11 CFR 100.26 by state party committees that refer to a clearly identified candidate for federal office and that promote, support, attack, or oppose any such candidate for federal office must not be allocated. Only federal funds may be used. 11 CFR §300.33(c).

G. Allocation Ratio for Shared Fundraising Expenses. If a committee raises both federal and non-federal funds through the same fundraising program or event, it must allocate the direct cost of the fundraising event based upon the ratio of funds received by the federal account to the total amount raised for the event. 11 CFR §106.7(c)(4).

H. Salaries and Wages. Committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election. Employees who spend 25 percent or less of their compensated time in a given month on federal election activity or on activities in connection with a federal election must either be paid only from the Federal account or have their salaries allocated as an administrative cost. 11 CFR §106.7(d)(1).

Facts and Analysis

A. Facts

The Audit staff calculated the non-federal share of expenditures required to be disclosed on Schedule H4 and compared that to the amount transferred from the non-federal account. It calculated that the non-federal portion of shared activity was \$2,222,695. However, the non-federal account transferred \$2,242,955, resulting in an overfunding of \$20,260.

In addition to the above, the following expenditures were paid directly from the non-federal account but appear to represent 100 percent federal activity or allocable activity.

- An absentee chase ballot (\$3,745) that included a picture of President Bush and Vice President Cheney with a red line through the pictures and a caption stating, "We Can't Afford More Of The Same." The back side of the mailer stated, "Send the Republicans a Message - You can Make the Difference Vote Democratic" followed by a sample ballot listing the Democratic nominee for President and Vice President, Congressional Districts 2 and 4, State Senator District 3, State Representative Districts 8 and 9, County Commissioner, City Commissioner and District Supervisor. Further, an email between the Leon County Chair and DECF makes clear that the DECF expenditure was in connection with a federal election. Based on the above, the sample ballot should have been paid with federal funds. As a result, the non-federal account overpaid \$3,745.
- An invoice for \$17,240, with the description, "Consulting Fee for Creole Translators/Haitian American G.O.T.V." Support for this disbursement was not available for review. However, if the activity represents a public communication that named a clearly identified federal candidate, the cost would have to be paid

with 100 percent federal funds. If the cost represented get-out-the-vote activity, it could have been paid with a combination of federal and Levin funds. However, DECF did not maintain a Levin fund; therefore, only federal funds could be used. The only way that the cost could have been permissibly paid with 100 percent non-federal funds was if the activity had named only non-federal candidates and did not represent a get-out-the-vote effort.

The Audit staff could not determine whether this payment was wholly non-federal, allocable or wholly federal. Until DECF provided more information, the Audit staff assumed that DECF should have paid the cost entirely from the federal account. As a result, the Audit staff calculated that the non-federal account may have overpaid its share by as much as \$17,240.

- The total amount of rent paid for DECF's headquarters during the audit period was \$212,313. According to DECF, the building is occupied by DECF, the State House Caucus and the State Senate Caucus (Caucus). With the exception of one month (January 2007), DECF paid half of the monthly rent directly from the non-federal account and half from the federal account. Rent payments from the federal account were disclosed on Schedules H4 and allocated 28 percent federal and 72 percent non-federal. Thus, the non-federal account paid 86 percent of the rent for DECF headquarters. As a result, the Audit staff calculated that the non-federal account overpaid its share of rent by \$28,482 (\$181,347 – \$152,865).
- DECF was not able to produce monthly time logs for six employees documenting their time spent on federal and non-federal activities. In addition, the records supplied by three individuals did not attest to working 25 percent or less of their time on federal activity for all the pay periods in which their salaries were allocated between federal and non-federal activity. Absent records to document the activity engaged in by the employees in question, the Audit staff considered \$23,172 to be a potentially non-allocable expense that should have been paid entirely by the federal account.
- The Audit staff reviewed 10 fundraising programs and events for the proper allocation of expenses between federal and non-federal accounts. DECF allocated the cost of each fundraising program or event in which DECF collected both federal and non-federal funds based on the funds received method. One event, the 2008 Jefferson Jackson Dinner, accounted for the amount of overfunding identified. The proportion of federal funds received to non-federal funds received as calculated by DECF was 8 percent federal to 92 percent non-federal. Per the Audit staff's calculation, the amount of funds received was 16 percent federal and 84 percent non-federal. The review indicated that the non-federal account overpaid its share of the fundraising cost by \$14,637.

In summary, the Audit staff calculated that the non-federal account potentially overfunded its share of expenditures by \$107,536 (\$20,260 + \$3,745 + \$17,240 + \$28,482 + \$23,172 + \$14,637).

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference. In response, DECF stated that the cost of the absentee chase ballot (\$3,745) and the consulting fee for Creole Translators/Haitian American G.O.T.V. (\$17,240) represent non-federal activity. DECF did not provide any documentation supporting its position.

With respect to the rent allocation and the Caucus, DECF stated that the Caucus is “considered an autonomous project of the state party ... they do not have a separate legal entity. Therefore, they did not sign the lease.” DECF further stated that the Caucus employees are on the payroll of the state party, so they would technically qualify as employees of the party.

The exit conference response did not address the lack of time records and allocation of fundraising expenses.

The Audit staff has reviewed DECF’s response and offers the following:

Absentee Chase Ballot – DECF did not provide any documentation supporting its position that the mailer represented 100 percent non-federal activity. The mailer clearly identified a candidate for federal office. The email between the Leon County Chair and DECF makes clear that the DECF expenditure was in connection with a federal election. Therefore, DECF should have paid the cost of the absentee chase ballot with federal funds.

Consulting Fee for Creole Translators/Haitian American G.O.T.V. – DECF did not provide any documentation supporting its position that the activity was 100 percent, non-federal. As previously stated, until more information was provided, Audit staff assumed that DECF should have paid the cost entirely from the federal account.

Rent Payments – A state party committee may either pay administrative costs, including rent, from its federal account, or allocate such expenses between its federal and non-federal accounts, (11 CFR §106.7(c)(2)). In the Explanation and Justification for section 106.7(c), the Commission recognizes that state party committees engage in multiple non-federal activities, but the Commission determined that the administrative costs underlying a state party committee’s activities should be allocated. Therefore, the rent payments in question should have been allocated on a 28 percent federal and 72 percent non-federal basis.

The Interim Audit Report recommended that DECF either (1) provide documentation that clarified and supported the non-federal nature of the noted expenditures or (2) reimburse the non-federal account \$107,536.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, DECF conceded that its non-federal account overfunded its shared activity by \$43,469 (\$20,260 [Initial Overfunding] + \$3,745

[Absentee Chase Ballot] + \$4,827 [Consulting Fee for Creole Translators/Haitian American G.O.T.V. – 28 percent] + \$14,637 [Fundraising]). DECF stated that the federal account reimbursed the non-federal account accordingly.⁶

DECF's position was that the documentation provided verified that the consulting fee paid for the Creole Translators/Haitian American G.O.T.V. represented a shared activity that should have been allocated based on the administrative ratio of 28 percent federal and 72 percent non-federal.

DECF also provided documentation demonstrating that the salary payments in question were for employees that did not spend in excess of 25 percent of their time either on federal election activity or on activities in connection with a federal election in a given month.

DECF disagreed that a portion of the headquarters rent requires allocation. DECF stated that the Florida State Caucus and Senate Committees serve as the campaign arm of the Democratic legislators for both the Florida State House and Senate. DECF contended that due to state law, the state party was required to serve as fiscal agent for both the House and Senate Democratic Caucus Committees. Each Caucus Committee is responsible for raising its own funds and administering its own budget, established in consultation with DECF, which can only be utilized for state elections to the Florida House and Florida Senate. Although each staff member for each Caucus Committee is an employee of DECF, they are employed in consultation with leaders of each respective Caucus.

DECF further stated that, as a matter of law, the FECA and Commission regulations do not consider a caucus committee as a party committee. Furthermore, Congress, during its 2002 amendments, amended the FECA to specifically cover caucus committees separately in certain circumstances. In addition, DECF stated that none of the provisions added to the FECA or the Commission's regulations cover the ordinary administrative expenses of a caucus committee.

After reviewing DECF's response to the Interim Audit Report, the Audit Staff concluded the expenditure for the Creole Translators/Haitian American G.O.T.V was a GOTV expense under the definition of GOTV applicable at the time of the expense. The Creole Translators activity qualified as "contacting" registered voters and "assisting" them in the act of voting. Therefore, the Audit staff concluded that the expenditure was for GOTV activity and should have been paid with 100 percent federal funds. It is also maintained that the rent payments for the DECF headquarters are part of administrative costs that require allocation per 11 CFR §106.7(c).

Based on DECF's response, the Audit staff recalculated the apparent non-federal overfunding of allocable activity as \$84,364. DECF's response materially complies with the Interim Audit Report recommendation.

⁶ DECF's September 2011 bank statement verified the transfer of \$43,469 from the federal account to the non-federal account.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff maintained that the expenditure for translators was for GOTV activity, that DECF should have paid it with 100 percent federal funds and that DECF's apparent non-federal overfunding of allocable activity was \$84,364.

E. Committee Response to the Draft Final Audit Report

In its response to the Draft Final Audit Report, DECF objected to the Office of General Counsel's interpretation of the use of Creole translators as GOTV activity. DECF stated that the translators merely provided translation services to any voter who was already at the polling place and desired to speak with an election official or required other translation services.

Commission Conclusion

On June 7, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DECF's non-federal account overfunded its share of allocable activity by \$84,364. In reaching its conclusion, the Commission did not interpret the use of Creole translators as get-out-the-vote activity. Rather, the Commission agreed with DECF that it was an allocable expense to be paid on the administrative ratio. This further reduced the non-federal overfunding of allocable activity by \$12,413, to \$71,951. In addition, the Commission could not reach a consensus on whether DECF had properly allocated rent payments for its headquarters (\$28,482) between DECF and state caucus committees. Thus, the amount of non-federal overfunding of allocable activity on which the Commission could agree was \$43,469 (\$84,364 - \$12,413 - \$28,482), for which DECF transferred funds from its federal account to its non-federal account to correct the overfunding.

The Commission approved a finding that DECF overfunded its allocable activity by \$43,469.

Finding 4. Misstatement of Financial Activity – Levin Fund

Summary

Throughout the audit period, DECF disclosed \$6,438 as cash-on-hand for the Levin fund account. However, DECF's Levin fund account closed in November 2006. In response to the Interim Audit Report recommendation, DECF filed an amended report that corrected the overstatement of cash-on-hand.

The Commission approved a finding that DECF misstated its Levin fund financial activity for 2007 and 2008.

Legal Standard

Contents of Levin Reports. Each report must disclose:

- The amount of cash-on-hand for Levin funds at the beginning and end of the reporting period;
- The total amount of Levin fund receipts and disbursements (including allocation transfers) for the reporting period and for the calendar year; and
- Certain transactions that require itemization on Schedule L-A (Itemized Receipts of Levin Funds) or Schedule L-B (Itemized Disbursements of Levin Funds).
11 CFR §300.36 (b)(2)(B).

Facts and Analysis

A. Facts

Disclosure reports filed by DECF indicated a cash balance in the Levin fund account of \$6,438. DECF disclosed this cash balance throughout the audit period. However, Levin fund bank records indicated that the account was closed on November 16, 2006. Other than the cash-on-hand balance, DECF did not disclose any Levin fund receipts or disbursements.

B. Interim Audit Report & Audit Division Recommendation

This matter was discussed with DECF representatives at the exit conference. DECF representatives made no comment on this matter. In the Interim Audit Report, the Audit staff recommended that DECF amend its most recent report to correct the overstatement of Levin fund cash-on-hand.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, DECF filed an amended report that corrected the overstatement of cash-on-hand.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that DECF amended its reports that corrected the overstatement of cash-on-hand. DECF's response to the Draft Final Audit Report did not address this matter.

Commission Conclusion

On June 7, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DECF misstated its Levin fund financial activity for 2007 and 2008.

The Commission approved the Audit staff's recommendation.

Finding 5. Disclosure of Disbursements

Summary

During audit fieldwork, the Audit staff calculated that disbursement entries, totaling \$9,554,713, contained inadequate or incorrect disclosure information. In response to the

Interim Audit Report recommendation, DECF filed amended reports that materially corrected the disclosure errors.

The Commission approved a finding that DECF did not properly disclose disbursements of \$9,554,713.

Legal Standard

A. Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 in a calendar year, the committee must report the:

- amount;
- date when the expenditures were made;
- name and address of the payee; and
- purpose (a brief description of why the disbursement was made—see below).
2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(3)(i).

B. Examples of Purpose. Adequate Descriptions. Examples of adequate descriptions of “purpose” include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, catering costs, loan repayment, or contribution refund. 11 CFR §104.3(b)(3)(i)(B).

Inadequate Descriptions. The following descriptions do not meet the requirement for reporting “purpose”: advance, election-day expenses, other expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3(b)(3)(i)(B) and Commission Policy Statement at www.fec.gov/law/policy/purposeofdisbursement/inadequate_purpose_list_3507.

Facts and Analysis

A. Facts

The reported purpose of the disbursement, when considered with the identity of the disbursement recipient, must clearly specify why the disbursement was made. The Audit staff reviewed disbursements itemized by DECF for proper disclosure on both a sample and 100 percent basis. These reviews resulted in errors totaling \$9,554,713. This amount comprises projected errors totaling \$1,708,395 from the sample review and \$7,846,318 in errors from the separate review conducted on a 100 percent basis.⁷ The disclosure errors identified in each review were similar.

From the 100 percent review, more than \$7,300,000 of the disclosure errors was for campaign materials that, for the most part, (1) described then-Senator Obama’s position on issues, (2) compared then-Senator Obama and Senator McCain’s position on issues or (3) were for get-out-the-vote telephone calls authorized by Obama for America. The majority of errors in the review were for inadequate or incorrect purposes disclosed.

⁷ The error amount was projected using a Monetary Unit Sample with a 95 percent confidence level plus the results of a 100 percent review of items not in the sample population. The sample estimate could be as low as \$1,350,377 or as high as \$2,066,413.

Examples of incorrect purposes included the following:

- Three mail pieces that described Senator McCain's position on an issue were disclosed as either "Absentee/Early Vote Mail" or "Direct Mail/Early Vote." The mail pieces did not discuss obtaining an absentee ballot or voting early.
- A mail piece that stated vote Obama and provided polling locations, voting and ride information was disclosed as "Generic Literature."

Examples of inadequate purposes included the following:

- Payments for automated phone banks by or on behalf of then-Senator Obama that asked for your vote or provided information on polling locations were disclosed as "Telephone Calls" or "Generic Telephone Calls."
- Payments for mail pieces that described then-Senator Obama's position on issues, Senator McCain's position on issues or the positions of both candidates were disclosed as Literature, Generic Mail, or Direct Mail.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference. In response, DECF representatives stated they would review this issue. The Interim Audit Report recommended that DECF amend its reports to correct the disclosure errors.

C. Committee Response to Interim Audit Report

In response, DECF filed amended reports that materially corrected the inadequate and/or incorrect disclosure information.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that DECF had amended its reports to materially correct the inadequate and/or incorrect disclosure information. DECF's response to the Draft Final Audit Report did not address this matter.

Commission Conclusion

On June 7, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DECF did not properly disclose disbursements totaling \$9,554,713.

The Commission approved the Audit staff's recommendation.

Part V Additional Issue

Allocation of Rent Paid for Committee Headquarters

Summary

During audit fieldwork, the Audit staff reviewed disbursements made from the federal and non-federal accounts and identified a non-federal overfunding of \$28,482 related to

the overpayment of rent at DECF's headquarters. DECF disagreed with the Audit staff and maintained that it had properly allocated the rent between federal and state offices.

The Commission could not reach a consensus on whether DECF had properly allocated its rental payments between DECF and state caucus committees. The Commission did not approve the Audit staff's recommended finding by the required four votes.

Pursuant to Commission Directive 70, this matter is discussed in the "Additional Issue" section.

Legal Standard

A. Paying for Allocable Expenses. The 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. 11 CFR §106.7(b).

B. Reporting Allocable Expenses. A state, district or local 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 Schedule H4 (Disbursements for Allocated Federal/Non-federal Activity). 11 CFR §104.17(b)(3).

Facts and Analysis

A. Facts

During fieldwork, the Audit staff reviewed disbursements made from the federal and non-federal accounts and determined that the total rental payment for DECF's headquarters during the audit period was \$212,313. According to DECF, the building is occupied by DECF, the State House Caucus and the State Senate Caucus (Caucus). With the exception of one month (January 2007), DECF paid half of the monthly rent directly from the non-federal account and half from the federal account. Rent payments from the federal account were disclosed on Schedule H4 and allocated 28 percent federal and 72 percent non-federal. Thus, the non-federal account paid 86 percent of the rent for DECF headquarters.⁸ As a result, the non-federal account overpaid its share of rent by \$28,482.

⁸ For example, using DECF's payment methodology, a rental payment of \$1,000 would be split in half (\$500 to federal/\$500 to non-federal). Then, the federal portion (\$500) would be further allocated using the administrative ratio (28% federal/72% non-federal). As such, the total non-federal portion of the rental payment would be \$860 or 86% [\$500 non-federal portion after 50/50 split + \$360 (\$500 federal portion after 50/50 split X 72% non-federal administrative ratio)].

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference. With respect to the rent allocation and the Caucus, DECF stated that the Caucus is "considered an autonomous project of the state party ... they do not have a separate legal entity. Therefore, they did not sign the lease." DECF further stated that the Caucus employees are on the payroll of the state party, so technically they would qualify as employees of the party.

The Audit staff reviewed DECF's response and offered the following:

Rent Payments – A state party committee may either pay administrative costs, including rent, from its federal account, or allocate such expenses between its federal and non-federal accounts, (11 CFR §106.7(c)(2)). In the Explanation and Justification for section 106.7(c), the Commission recognizes that state party committees engage in multiple non-federal activities, but the Commission determined that the administrative costs underlying a state party committee's activities should be allocated. Therefore, the rent payments in question should have been allocated on a 28 percent federal and 72 percent non-federal basis.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, DECF disagreed that a portion of the headquarters rent requires allocation. DECF stated that the Florida State Caucus and Senate Committees serve as the campaign arm of the Democratic legislators for both the Florida State House and Senate. DECF contended that due to state law, the state party was required to serve as fiscal agent for both the House and Senate Democratic Caucus Committees. Each caucus committee is responsible for raising its own funds and administering its own budget, established in consultation with DECF, which can be used only for state elections to the Florida House and Florida Senate. Although every caucus committee staff member is an employee of DECF, all are employed in consultation with leaders of each respective Caucus.

DECF further stated that, as a matter of law, the FECA and Commission regulations do not consider a caucus committee as a party committee. Furthermore, Congress, during its 2002 amendments, amended the FECA to specifically cover caucus committees separately in certain circumstances. In addition, DECF stated that none of the provisions added to the FECA or the Commission's regulations cover the ordinary administrative expenses of a caucus committee.

After reviewing DECF's response to the Interim Audit Report, the Audit staff maintained that the rental payments for the DECF headquarters are part of administrative costs that require allocation per 11 CFR §106.7(c).

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff maintained that the rent payments for the DECF headquarters are part of administrative costs that require allocation per 11 CFR §106.7(e).

E. Committee Response to the Draft Final Audit Report

In response to the DFAR, DECF contended that the space was used by an autonomous arm of the DECF that worked exclusively in connection with state legislative elections. DECF stated, "Parties do indeed have discreet projects that are exclusively related to non-federal elections and the Commission, in previous audits and in previous practice, has acknowledged this fact. There is no logical reason to prohibit a party committee from paying the office rent paid of a discreet, autonomous non-federal project of the party with 100% non-federal funds."

Commission Conclusion

On June 7, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DECF's non-federal account overfunded its share of allowable activity by \$28,482.

The Commission did not approve the Audit staff's recommended finding by the required four votes. The Commission could not reach a consensus on whether DECF had properly allocated its rental payments between DECF and state caucus committees.

Pursuant to Commission Directive 70, this matter is discussed in the "Additional Issue" section.