



FEDERAL ELECTION COMMISSION
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April 25, 2012

MEMORANDUM

AGENDA ITEM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

From: Patricia Carmona *PC*
Chief Compliance Officer

Tom Hintermister *TH*
Assistant Staff Director
Audit Division

Kendrick Smith *KS*
Audit Manager

By: Robert Morcomb *RM*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the Democratic
Executive Committee of Florida (DECF) (A08-03)

For Meeting of 6-7-12

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff's recommendations are presented below and the findings are discussed in the attached Draft Final Audit Report (DFAR). The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

Finding 1. Excessive Coordinated Party Expenditures

In response to the DFAR, DECF contends that the Final Audit Report should note that the combined coordinated expenditure limit of \$82,400 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."

The Audit staff offers the following concerning DECF's response to the DFAR. DECF could not demonstrate, in writing, that it was granted additional spending authority beyond \$60,000. As a result, DECF exceeded its coordinated party expenditure limitation by \$22,400 (\$82,400 - \$60,000).

The Audit staff recommends that the Commission find that DECF exceeded its coordinated party expenditure limitation by \$22,400.

Finding 2. Failure to Itemize Coordinated Party Expenditures

DECF did not mention this matter in its response to the DFAR. The Audit staff recommends that the Commission find that DECF did not itemize coordinated party expenditures of \$194,957 on Schedule F (Itemized Coordinated Party Expenditures).

Finding 3. Allocation of Expenditures

In response to the DFAR, DECF objected to two portions of this finding:

A. Rent Paid Directly by the Non-Federal Account

DECF objected to the characterization of rent paid on behalf of its legislative caucus activities as 100% non-federal. DECF contends 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.”

B. Get-Out-the-Vote

DECF objected to the characterization of translators as get-out-the-vote activities. They believe the expenditure for language translation as defined by the Office of General Counsel is completely contradictory of what was intended by Congress and the Commission. DECF stated “national and state party committees engage in all types of protect the vote activities at polling places, which include information regarding voter identification and other information regarding voters rights, and to our knowledge, none of these activities are generally classified as get-out-the-vote by those committees.” DECF further added “the get-out-the-vote regulation that was in effect in 2008 was designed to cover those activities that turned out voters by either 1) providing information, through targeted communications on when and where to vote or 2) by transporting those voters to the polls or by engaging in absentee ballot or vote by mail activities. The translators did neither. They merely provided translation services to any voter that was already at the polling place that desired to speak with an election official or otherwise required translation services.”

DECF’s response to the DFAR also contends the Audit staff did not take a position with respect to the merits of their objections to Finding 3 provided in their response to the Interim Audit Report. It is noted that the DFAR briefly states the Audit staff’s position on these issues on page 14 of the report. After review of the DECF’s response to the DFAR, the Audit staff maintains the rent payments (Finding 3 Part A) for the DECF headquarters are part of administrative costs that require allocation per 11 CFR §106.7(c). The expenditure for translators (Finding 3 Part B) was for GOTV activity and should have been paid with 100% Federal funds. The Audit staff recommends that the Commission find that DECF’s non-federal account overfunded its share of allocable activity by \$84,364.

Finding 4. Misstatement of Financial Activity – Levin Fund

DECF did not mention this matter in its response to the DFAR. The Audit staff recommends that the Commission find that DECF misstated its Levin financial activity for 2009 and 2010.

Finding 5. Disclosure of Disbursements

DECF did not mention this matter in its response to the DFAR. The Audit staff recommends that the Commission find that DECF did not properly disclose disbursements totaling \$9,554,713.

The Committee did not request an audit hearing.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

Should an objection be received, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Robert Morcomb or Kendrick Smith at 694-1200.

Attachments:

- Draft Final Audit Report of the Audit Division on the Democratic Executive Committee of Florida
- Office of General Counsel Analysis of ADRM received on April 24, 2012

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division 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

Findings and Recommendations (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)

¹ 2 U.S.C. §438(b).

Draft Final Audit Report of the Audit Division on the Democratic Executive Committee of Florida

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 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 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.

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 FEC 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
○ 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
○ Operating Expenditures	12,999,529
○ Federal Election Activity	11,409,932
○ Other Disbursements	288,438
Total Disbursements	\$ 24,697,899
Cash-on-hand @ December 31, 2008	\$ 285,803

Part III

Summaries

Findings and Recommendations

Finding 1. Excessive Coordinated Party Expenditures

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 appear to represent coordinated party expenditures.

In response to the Interim Audit Report recommendation, DECF provided statements and documents to demonstrate why 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 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 expenses were not counted towards the coordinated party expenditure limit. Regarding the two media ads (\$82,400), DECF did not demonstrate that they were granted additional spending authority beyond \$60,000. As a result, DECF exceeded its coordinated party expenditures limitation by \$22,400 (\$82,400 - \$60,000). (For more detail, see p. 5)

Finding 2. Failure to Itemize Coordinated Party Expenditures

During fieldwork, the Audit staff identified 64 expenditures, totaling \$207,665, that were not itemized on Schedules F (Itemized Coordinated Party Expenditures). The expenditures were made 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 Schedules 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. (For more detail, see p. 8)

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 in the amount of \$107,536.

DECF materially complied with the Interim Audit Report recommendation. DECF either accepted the Audit staff's position or provided documentation demonstrating that lesser

allocation was required for all non-federal expenditures in question, except for rent payments. DECF's response reduced the potential non-federal overfunding of allocable activity to \$84,364. (For more detail, see p. 9)

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. (For more detail, see p. 14)

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. (For more detail, see p. 15)

Part IV

Findings and Recommendations

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. A review identified two media ads (\$82,400) and two direct mail pieces (\$12,708) that appear to represent coordinated party expenditures.

In response to the Interim Audit Report recommendation, DECF provided statements and documents to demonstrate why 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 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 expenses were not counted towards the coordinated party expenditure limit. Regarding the two media ads (\$82,400), DECF did not demonstrate that they were granted additional spending authority beyond \$60,000. As a result, DECF exceeded its coordinated party expenditures limitation by \$22,400 (\$82,400 - \$60,000).

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 media ad and both mail pieces as federal election activity on line 30b of its disclosure reports. The cost of the remaining media ad was disclosed as an operating expenditure on line 21b.

One of the two media 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 email also copied the Taddeo campaign.

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 they believed they were 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 available². They believe 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 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.³ 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. The letter states, "[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

² 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.

³ Disclosure reports subject to this audit did not disclose any coordinated expenditures for Annette Taddeo. (See Finding 2)

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, meet the volunteer materials exemption and should not be considered coordinated party expenditures. DECF also provided a copy of a photo which it believes demonstrates 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 expenses were not counted towards 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.⁴ 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]).

Finding 2. Failure to Itemize Coordinated Party Expenditures

Summary

During fieldwork, the Audit staff identified 64 expenditures, totaling \$207,665, that were not itemized on Schedules F (Itemized Coordinated Party Expenditures). The expenditures were made 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 Schedules 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.

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 USC 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).

⁴ Final Audit Report on Missouri Democratic State Committee, MUR 5274. Final Audit Report on the California Republican State Committee, MUR 5246.

Facts and Analysis

A. Facts

The Audit staff identified 64 expenditures, totaling \$207,665, that were not itemized on Schedules 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 Schedules F. The Interim Audit Report recommended DECF provide any additional information or comments that it considers 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 Schedules F is \$194,957 (\$207,665 - \$12,708). DECF has corrected the public record with respect to these transactions.

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 in the amount of \$107,536.

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

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 dependent upon 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 Schedules 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 named only non-federal candidates and did not represent a get-out-the-vote effort.

The Audit staff could not determine if this payment was wholly non-federal, allocable or wholly federal. Until more information is provided, it is assumed that the cost potentially should have been paid entirely by the federal account. As a

result, 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 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 demonstrate the activity engaged in by the employees in question, \$23,172 was considered to potentially be a non-allocable expense that should have been paid entirely by the federal account.
- Ten fundraising programs and events were reviewed for the proper allocation of expenses between federal and non-federal accounts. The cost of each fundraising program or event in which DECF collected both federal and non-federal funds was allocated 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

This matter was discussed 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, the cost of the absentee chase ballot should have been paid 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 is provided, it is presumed that the cost should have been paid entirely by 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 provide documentation that clarified and supported the non-federal nature of the noted expenditures or reimburse the non-federal account \$107,536.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, DECF conceded that DECF's non-federal account overfunded its shared activity in the amount of \$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%] + \$14,637 [Fundraising]). DECF states that the federal account reimbursed the non-federal account accordingly⁵.

DECF's position demonstrates 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% federal and 72% non-federal.

⁵ DECF's September 2011 bank statement verified the transfer of \$43,469 from the federal account to the non-federal account.

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 on Federal election activity or on activities in connection with a Federal election in a given month.

DECF disagrees that a portion of the headquarters rent requires allocation. DECF states 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 contends 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 states 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 states 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 expenditure for the Creole Translators/Haitian American G.O.T.V was considered a GOTV expense under the definition of GOTV applicable at the time of the expense. The Creole Translators activity qualifies as "contacting" registered voters and "assisting" them in the act of voting. Therefore, the expenditure was for GOTV activity and should have been paid with 100% 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.

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.

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 indicate 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.

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.

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 is comprised of 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.⁶ 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 Senator Obama’s position on issues, (2) compared 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.

Examples of incorrect purposes included:

- 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:

- Payments for automated phone banks by Senator Obama or on behalf of Senator Obama that asked for your vote or provided information on polling locations were disclosed as “Telephone Calls” or “Generic Telephone Calls.”

⁶ 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.

- Payments for mail pieces that described 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

This matter was discussed 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.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 24, 2012

MEMORANDUM

TO: Patricia Carmona
Chief Compliance Officer

Tom Hintermister
Assistant Staff Director
Audit Division

FROM: Christopher Hughey *pch*
Deputy General Counsel

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

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

Danita C. Lee *DL*
Attorney

SUBJECT: Audit Division Recommendation Memorandum on the Democratic
Executive Committee of Florida (LRA 805)

I. INTRODUCTION

The Audit Division submitted for review the Audit Division Recommendation Memorandum ("ADRM") on the Democratic Executive Committee of Florida ("Committee"). We also reviewed the Committee's response to the Draft Final Audit Report ("DFAR Response"). We concur with the ADRM. In this memorandum, we address the Committee's objection to our legal analysis of apparent get-out-the-vote ("GOTV") expenditures (Finding 3: Allocation of Expenditures). If you have any questions, please contact Danita C. Lee, the attorney assigned to this audit.

II. COMMITTEE'S ARGUMENT ABOUT GOTV IS UNAVAILABLE

The Committee objects to our conclusion that its expenditures for translation services constituted GOTV activity that should have been paid with 100% federal funds. The Committee said that it provided translation services "on a non-partisan basis to any voter, already at their polling place, who requested language translation assistance." The Committee asserts that the GOTV regulations "were designed to urge, transport or facilitate voters to *get* to the polls" and, in essence, that they were not intended to reach activities that provided assistance to voters who were *already at* the polls. It appears that the Committee is relying on the "*get out*" portion of the phrase "get-out-the-vote" to support its interpretation that GOTV is limited solely to activities involving *getting* voters to the polls. We acknowledge that there is surface appeal to this position. Nevertheless, as we pointed out in our comments on the DFAR, nothing in the regulatory history suggests the Commission intended to limit the regulations in effect in 2008 to the act of getting voters to the polls. Rather, the three elements of GOTV at the time were: (1) contact, that was (2) individualized, and (3) for the purpose of assisting individuals in the act of voting. 11 C.F.R. § 100.24(a)(3)(2008). The translators obviously assisted individuals in the act of voting. Moreover, as we noted in the DFAR, the translators presumably would have had to engage in some type of individualized contact with voters in order to let them know that translation services were available in the first place, and the Committee's response does not dispute that point.