



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR 14 2010

April 14, 2010

AGENDA ITEM

MEMORANDUM

For Meeting of 05-27-10

TO: The Commission

THROUGH: Alec Palmer *AP*
Acting Staff Director

FROM: Patricia Carmona *PC*
Chief Compliance Officer

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

Tom Hintermister *TH*
Audit Manager

BY: Bill Antosz *BA*
Lead Auditor

SUBJECT: Report of the Audit Division on the AFL-CIO COPE PCC (A07-37)

Attached is the subject report and legal analysis provided by the Office of General Counsel. The report incorporates the outcome of discussion from the audit hearing held on March 4, 2010.

Recommendation

The Audit staff recommends that the report be approved.

This report is being circulated on a tally vote basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session.

Should you have any questions, please contact Bill Antosz or Tom Hintermister at 694-1200.

Attachment as stated:
Report of the Audit Division on AFL-CIO COPE PCC
Legal Analysis dated October 15, 2009
Legal Analysis dated February 24, 2010



Report of the Audit Division on the AFL-CIO COPE Political Contributions Committee

January 1, 2005 – December 31, 2006

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 2)

AFL-CIO COPE Political Contributions Committee is a separate segregated fund of AFL-CIO and is headquartered in Washington, DC. For more information, see the chart on the Committee Organization, p.3.

Financial Activity (p. 2)

- **Receipts**
 - From Individuals \$ 193,546
 - From Other Political Committees 48,250
 - Transfers from Affiliated Committees 1,168,138
 - Other Receipts 8,004
 - **Total Receipts** \$ 1,417,938
- **Disbursements**
 - Contributions to Candidates/Committees \$ 1,304,452
 - Other Disbursements 166,520
 - **Total Disbursements** \$ 1,470,972

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Transfers Received from Separate Segregated Funds (Finding 2)

¹ 2 U.S.C. §438(b).

**Report of the Audit Division
on the
AFL-CIO COPE Political
Contributions Committee**

January 1, 2005 – December 31, 2006



Table of Contents

	Page
Part I. Background	
Authority for Audit	1
Scope of Audit	1
Part II. Overview of Committee	
Committee Organization	2
Overview of Financial Activity	2
Part III. Summaries	
Findings and Recommendations	3
Part IV. Findings and Recommendations	
Finding 1. Misstatement of Financial Activity	4
Finding 2. Transfers Received from Separate Segregated Funds	6

Part I

Background

Authority for Audit

This report is based on an audit of the AFL-CIO COPE Political Contributions Committee (AFL-CIO COPE), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

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

1. The consistency between reported figures and bank records.
2. The disclosure of individual contributors' occupation and name of employer.
3. The receipt of transfers received from other separate segregated funds.

Part II

Overview of Committee

Committee Organization

Important Dates	AFL-CIO COPE
• Date of Registration	March 13, 1975
• Audit Coverage	January 1, 2005 – December 31, 2006
Headquarters	Washington, DC
Bank Information	
• Bank Depositories	1
• Bank Accounts	2 (1 Business Account and 1 Business Money Market Account)
Treasurer	
• Treasurer When Audit Was Conducted	Richard L. Trumka
• Treasurer During Period Covered by Audit	Richard L. Trumka
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2005	\$ 122,740
○ From Individuals	193,546
○ From Other Political Committees	48,250
○ Transfers from Affiliated Committees	1,168,138
○ Other Receipts	8,004
Total Receipts	\$ 1,417,938
○ Contributions to Candidates/Committees	1,304,452
○ Other Disbursements	166,520
Total Disbursements	\$ 1,470,972
Cash on hand @ December 31, 2006	\$ 69,706

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

A comparison of AFL-CIO COPE's reported activity to bank records revealed a misstatement of cash on hand and disbursements in years 2005 and 2006. It was recommended that AFL-CIO COPE file amended reports to correct the misstatement. In response to the interim audit report, AFL-CIO COPE filed amended reports to correct the misstatements. AFL-CIO COPE also corrected its cash balance on its September 2009 monthly report. (For more detail, see p. 4)

Finding 2. Transfers Received from Separate Segregated Funds

During the audit period, AFL-CIO COPE received transfers totaling \$1,100,000 from two separate segregated funds. The interim audit report questioned whether AFL-CIO COPE and the two separate segregated funds, CWA COPE Political Contributions Committee (CWA COPE) and American Federation of Teachers AFL-CIO Committee on Political Education (AFT AFL-CIO), were required to meet the transmittal and recordkeeping requirements for collecting agents. In conjunction with a hearing before the Commission, counsel for AFL-CIO COPE submitted a 1979 Report of the Audit Division on the AFL-CIO COPE which included recommendations that are consistent with AFL-CIO COPE's longstanding reporting practices for the transfers. Since the Commission has a means of assuring itself that the contributions received under this practice do not exceed the limits prescribed by the Act and considering the history of AFL-CIO's past practice and the approval of this arrangement in the 1979 audit report, the Audit staff accepts AFL-CIO COPE's current reporting practice. (For more detail, see p. 6)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

A comparison of AFL-CIO COPE's reported activity to bank records revealed a misstatement of cash on hand and disbursements in years 2005 and 2006. It was recommended that AFL-CIO COPE file amended reports to correct the misstatement. In response to the interim audit report, AFL-CIO COPE filed amended reports to correct the misstatements. AFL-CIO COPE also corrected its cash balance on its September 2009 monthly report.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year; and
- The total amount of disbursements for the reporting period and for the calendar year;
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements).. 2 U.S.C. §434(b)(1), (2) and (4).

Facts and Analysis

The Audit staff reconciled the reported financial activity to the bank records for 2005 and 2006. It was determined there AFL-CIO COPE misstated cash on hand and disbursements for both years. The following charts outline the discrepancies for both years and provide explanations for the misstated activity.

2005 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance	\$105,571	\$122,740	\$17,169 Understated
Receipts	\$481,104	\$480,675	\$429 Overstated
Disbursements	\$513,314	\$530,093	\$16,779 Understated
Ending Cash Balance	\$70,861	\$73,322	\$2,461 Understated

The net understatement of disbursements was the result of the following:

• Disbursements not reported	+ \$15,294
• Reported disbursements that did not clear bank	+ 1,500
• Disbursements reported with incorrect amounts	- 15
• Net Understatement of Disbursements	\$16,779

2006 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance	\$70,861	\$73,322	\$2,461 Understated
Receipts	\$931,728	\$937,263	\$5,535 Understated
Disbursements	\$912,308	\$940,879	\$28,572 Understated
Ending Cash Balance	\$90,282	\$69,706	\$20,576 Overstated

The net understatement of disbursements was the result of the following:

• Disbursements reported incorrectly	+ \$27,500
• Disbursements reported with incorrect amounts	+ 1,051
• Unexplained differences	+ 21
• Net Understatement of Disbursements	\$28,572

Cash Balances:

AFL-CIO COPE misstated the cash balances throughout 2005 and 2006 due to the errors outlined above and unknown adjustments from prior reporting periods. On December 31, 2006, the cash balance was overstated by \$20,576.

This matter was presented to the representatives for AFL-CIO COPE during the exit conference. The representatives did not provide any comments to explain the misstatements but later indicated that they would file amended reports to correct these errors.

Interim Audit Report Recommendation and Committee's Response

The Audit staff recommended that AFL-CIO COPE file amended reports to correct the misstatements noted above. It was also recommended that, AFL-CIO COPE amend the cash balance of its most recent report with an explanation that it resulted from audit adjustments from a prior period. In response to the interim audit report, AFL-CIO COPE stated that it concurred that its reported figures for calendar years 2005 and 2006 were inaccurate, and filed amended reports to correct the misstatements. AFL-CIO COPE also corrected its cash balance on an amended September 2009 monthly report.

Finding 2. Transfers Received from Separate Segregated Funds

Summary

During the audit period, AFL-CIO COPE received transfers totaling \$1,100,000 from two separate segregated funds. The interim audit report questioned whether AFL-CIO COPE and the two separate segregated funds, CWA COPE Political Contributions Committee (CWA COPE) and American Federation of Teachers AFL-CIO Committee on Political Education (AFT AFL-CIO), were required to meet the transmittal and recordkeeping requirements for collecting agents. In conjunction with a hearing before the Commission, counsel for AFL-CIO COPE submitted a 1979 Report of the Audit Division on the AFL-CIO COPE which included recommendations that are consistent with AFL-CIO COPE's longstanding reporting practices for the transfers. Since the Commission has a means of assuring itself that the contributions received under this practice do not exceed the limits prescribed by the Act and considering the history of AFL-CIO's past practice and the approval of this arrangement in the 1979 audit report, the Audit staff accepts AFL-CIO COPE's current reporting practice.

Legal Standard

A. Affiliated Definition. Established, financed, maintained or controlled by the same organization. Affiliated political committees are considered one political committee for purposes of contribution limits. Committees presumed to be affiliated include those established, financed, maintained or controlled by a single national or international union and/or its local unions or other subordinate organizations. Also, committees established by an organization of national or international unions and/or all its State or local central bodies are presumed to be affiliated. Affiliation is not presumed between unions and organizations of national or international unions. 11 CFR §§100.5(g) and 110.3(a).

B. Collecting Agent Definition. A collecting agent is an organization or committee that collects and transmits contributions to one or more separate segregated funds to which the collecting agent is related. A collecting agent may be the separate segregated fund's connected organization or an organization or committee affiliated with the SSF, or a local, national, or international union collecting contributions on behalf of the separate segregated fund of any federation with which the local, national, or international union is affiliated. 11 CFR §102.6(b)(1).

C. Requirements for Collecting Agents. The separate segregated fund (SSF) is responsible for ensuring that the recordkeeping, reporting, and transmittal requirements are met.

1. Collecting agent may solicit only those individuals who are eligible for solicitation under the law, and pay the expenses of soliciting.
2. Collecting agent may include a solicitation for contributions to an SSF in a bill for another payment.
3. Collecting agent may establish a separate transmittal account solely for the SSF's contributions or use its own account for the temporary deposit and transmittal of

contributions to the SSF. The agent must keep separate records of all receipts and deposits that represent contributions to the SSF.

4. Collecting agent must transfer the funds within 10 days for all contributions over \$50 and within 30 days for contributions \$50 or less.
5. Collecting agent must forward the required recordkeeping information to the SSF along with the collected contributions, and maintain records of SSF contribution deposits and transmittals for three years.
6. The SSF receiving contributions collected by a collecting agent shall report the full amount of each contribution received as a contribution from the original contributor to the extent required by 11 CFR §104.3(a), 11 CFR §§102.6(c) and 102.8(b).

Facts and Analysis

During the audit period, AFL-CIO COPE received four transfers from AFT AFL-CIO totaling \$800,000 and four transfers from CWA COPE totaling \$300,000. These transfers were reported by AFL-CIO COPE on Line 12 (Transfers from Affiliated/Other Party Committees) and described as joint fundraising transfers or as payroll deductions on its Schedules A (Itemized Receipts).

CWA COPE is the separate segregated fund of the international union Communications Workers of America (CWA). AFT AFL-CIO is the separate segregated fund of the international union American Federation of Teachers (AFT). Both CWA and AFT are members of the federation of unions AFL-CIO and, as such, may serve as collecting agents for AFL-CIO COPE. The separate segregated funds of these unions (CWA COPE, AFT AFL-CIO and AFL-CIO COPE) are not considered "affiliated" within the meaning of 11 CFR §110.3 and, therefore, are subject to separate contribution limitations and must independently report individual contributions to their respective organizations.

CWA COPE and AFT AFL-CIO initially receive and report contributions for their respective committees as well as AFL-CIO COPE. These contributions are often received from individuals who sign voluntary payroll deduction authorization cards. The authorization cards contain a statement that the contributions will be used in a "joint fundraising" effort and that a portion of their contributions would go to AFL-CIO COPE. The contributors do not designate specific or separate contribution amounts for AFL-CIO COPE. Likewise, the timing and amounts transferred to AFL-CIO COPE were based on periodic discussions with officers of CWA COPE and AFT AFL-CIO.

At the audit exit conference and in the interim audit report, the Audit staff questioned whether the AFL-CIO COPE had a collecting agent relationship with CWA COPE and AFT AFL-CIO and was thus required to follow the reporting and recordkeeping procedures.

In response to the interim audit report, counsel for AFL-CIO COPE stated that it concurs that both AFT AFL-CIO and CWA COPE may act as collecting agents for AFL-CIO COPE and that the transfers made complied with the timing requirements of 11 CFR §102.6(c)(4), although it disagrees that this regulation is applicable to its situation.

Further, counsel disagrees that the separate segregated funds must establish separate transmittal accounts solely for AFL-CIO COPE contributions, or must maintain contribution records of the contributions that comprise the transfers. Also, counsel disagrees that the separate segregated funds are required to forward all recordkeeping information to AFL-CIO COPE, and having AFL-CIO COPE report the incoming transfers on Line 11 (Receipts from Individuals/Persons), itemizing individual contributions that exceed \$200. Counsel explains that the joint fundraising nature makes the individual attribution to, and reporting by AFL-CIO COPE unnecessary. It states that the transfers themselves provide the necessary information because individual CWA/AFL-CIO members authorize all of their contributions to be remitted to CWA COPE and then delegate to the two separate segregated funds the authority to apportion the total receipts between them.

Counsel states that the arrangement at issue has been in place for at least 25 years and has been regularly reported by all participating separate segregated funds. It submits that, absent a change in the governing regulations, they should be entitled to continue under the current arrangement and it is manifestly unfair to impose new requirements now.

The Audit staff prepared a Draft Final Audit Report and forwarded that report and accompanying legal analysis to AFL-CIO COPE with an offer of a hearing before the Commission.

Audit Hearing

AFL-CIO COPE requested a hearing before the Commission. The request was granted and the hearing was held on March 4, 2010. At the hearing, counsel for AFL-CIO COPE argued that AFL-CIO COPE has been reporting transfers from separate segregated funds in the manner in which it was directed from the Commission based upon a previous audit report approved by the Commission on June 7, 1979.

The reporting practices that AFL-CIO COPE has undertaken during the audit period, as well as those undertaken before the audit period, are consistent with the reporting recommendations from the 1979 audit report. Because AFT AFL-CIO and CWA COPE are reporting committees in their own right, contributions received under this practice are reported to the Commission, and the Commission has a means of assuring itself that the contributions do not exceed the limits prescribed by the Act. Moreover, due consideration must be given to the approval of this arrangement in the 1979 audit report and AFL-CIO's longstanding past practice. Under these circumstances, the Audit staff accepts AFL-CIO COPE's current reporting practice.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 24, 2010

MEMORANDUM

TO: Joseph F. Stoltz
Assistant Staff Director

FROM: Christopher Hughey *pdh*
Deputy General Counsel

Lawrence L. Calvert, Jr. *LLC*
Associate General Counsel

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

Albert Veldhuyzen *AV*
Attorney

SUBJECT: Draft Final Audit Report on AFL-CIO Committee on Political Education/Political Contributions Committee (LRA # 761).

I. INTRODUCTION

The Office of General Counsel has reviewed the Draft Final Audit Report ("Report") on the AFL-CIO Committee on Political Education/Political Contributions Committee ("AFL PCC") and the responses provided by the AFL PCC. This memorandum reflects our analysis of the AFL PCC response of January 15, 2010 that it submitted in anticipation of the audit hearing. In this response, AFL PCC claims that an audit report that it received in 1979 settles the main issue of the audit hearing. The Commission, however, instituted a rulemaking in 1983 on collecting agents and joint fundraising that may have an impact on the Commission's decision from the 1979 audit. In the remainder of this memorandum, we address the impact of this rulemaking on the Commission's decision in the 1979 audit report. If you have any questions, please contact Albert R. Veldhuyzen, the attorney assigned to this audit.

The Commission will hold an audit hearing on March 4, 2010 on the Report for AFL PCC. The main issue at the hearing is the manner in which AFL PCC received and reported funds from other union separate segregated funds ("SSFs"). The draft Final Audit Report concludes that the other union SSFs acted as collecting agents for AFL PCC. Under 11 C.F.R.

§ 102.6, the collecting agent must transmit to the recipient committee the full amount of each contribution collected within 10 days after receipt of contributions of more than \$50 or 30 days for contributions of \$50 or less. The collecting agent must also transmit, along with the contributions, the name and address of the contributors and the date of receipt for each contribution between \$51 and \$200, and the name, address, occupation, and name of employer of the contributors for each contribution in excess of \$200. 11 C.F.R. §§ 102.6(c)(5), 102.8. In addition, the collecting agent must retain all records of contribution deposits and transmittals for three years for Commission inspection. 11 C.F.R. § 102.6(c)(6). However, it is the receiving SSF that must report the full amount of each contribution received as a contribution from the original contributor. 11 C.F.R. § 102.6(c)(7). The receiving SSF is also responsible for ensuring that transferor SSFs meet the recordkeeping, reporting, and transmittal requirements of the collecting agent rules. 11 C.F.R. § 102.6(c)(1).

The facts show that the SSFs transmitted an agreed portion of the collections in a lump sum to AFL PCC. On the receiving end, AFL PCC reported this lump sum transmittal as a transfer from an affiliated committee. The audit found that: 1) The transmitting SSFs did not maintain separate transmittal accounts solely for AFL PCC or keep separate records of all such receipts and deposits; 2) The transmitting SSFs did not forward the individual (payroll contributor) contribution amounts and contributor information (about the payroll contributor) to AFL PCC or maintain those records of deposits and transmittals for three years; 3) AFL PCC did not report the full amount of each contribution received from the original contributor when required; and 4) AFL PCC failed to ensure that transferor SSFs met these recordkeeping, reporting, and transmittal requirements found in the collecting agent rules at 11 C.F.R. § 102.6(c).

AFL PCC Counsel asserted that, because the SSFs and AFL PCC had the dual capacity and ability to receive contributions for themselves and to transfer contributions to AFL PCC, the collecting agent rules of 11 C.F.R. § 102.6 should not apply to these transactions. *See* Letter from Lawrence Gold to Tom Hintermister, at 7 (July 8, 2008). However, in a letter dated January 15, 2010, AFL PCC Counsel supplemented its response to the Report. As a result of the 1979 audit report of the AFL PCC, Counsel now argues that the Commission specifically blessed the arrangement that the SSFs and AFL PCC have been using over the years.

In the 1979 AFL PCC Audit Report, the Commission outlined how funds could be transferred to AFL PCC in the context of "joint fundraising" with a member union. To constitute a joint fundraising effort: 1) the collecting organization would have to inform the contributor at the time of the solicitation that a portion of the funds will be sent to the AFL PCC; 2) the committee collecting the funds would report them as itemized or unitemized when received and would report the transfer out of the funds; and 3) AFL PCC as the receiving committee would report the transfers in on the next report and label them as "joint fundraising efforts." *See* Report of the Audit Division on the AFL-CIO COPE PCC, at 4 (June 8, 1979). AFL PCC Counsel states that this is exactly what AFL PCC and its sister union SSFs have been doing since that audit. AFL PCC further contends that "the Commission's adoption of its joint fundraising rules for persons other than SSFs and its collecting agent rules entailed no changes

that undermined the arrangements and relationships endorsed by the Commission in its 1979 audit of AFL-CIO PCC.” Letter from Laurence E. Gold to Joseph F. Stoltz, at 7 (Jan. 15, 2010).

II. THE 1983 RULEMAKING MAY HAVE CHANGED THE PROCEDURES FOR AFL PCC

The impact of the 1983 collecting agent and joint fundraising rulemaking on the procedures approved in the 1979 AFL-CIO COPE audit is unclear. On the one hand, an examination of the comments submitted by the AFL-CIO during the 1981-83 rulemaking, and the Commission’s apparent response to those comments, would seem to support the position taken by the Audit Division in the current report. On the other hand, the Commission’s response to the AFL-CIO’s comments was implicit, rather than explicit, and there is no evidence from the immediate aftermath of the rulemaking of any effort by the Commission specifically to inform the AFL-CIO that it needed to change its practices.

As noted, in the 1979 audit report the Commission characterized practices essentially identical to those at issue in this audit as “joint fundraising.” In a Notice of Proposed Rulemaking published in the *Federal Register* on September 30, 1981, the Commission proposed new rules intended to make a clearer distinction between what the NPRM referred to as “true joint fundraising” and the activities of collecting agents.¹ The proposed new joint fundraising regulation provided that “[p]olitical committees may engage in joint fundraising with other political committees or with unregistered committees or organizations,” proposed 11 C.F.R. § 102.7(a)(1), and that “[t]he procedures in [this regulation] will govern all joint fundraising activity conducted under this section,” proposed 11 C.F.R. § 102.7(a)(3). The proposed rules distinguished between situations in which two political committees raised funds together, which would be joint fundraising, and situations in which unregistered organizations – such as a corporation or a union local – collected funds on behalf of political committees to which they were related, as in the relationship of a separate segregated fund to its connected organization. *See generally* 46 Fed. Reg. 48074. The implication was that the regulation would cover *all* forms of joint fundraising.

The AFL-CIO opposed the joint fundraising regulation in its proposed form, citing a number of reasons why in its view the proposed rule would be impractical for groups of two or more separate segregated funds engaged in joint fundraising. Among these were that a

¹ According to the NPRM,

The draft regulations provide separate procedures for these two forms of fundraising. To emphasize the distinction between true joint fundraising and the collecting agent situation, the proposed regulations would change the title of 11 C.F.R. 102.6 from “Transfers of Funds; Joint Fundraising” to “Transfers of Funds; Collecting Agents.” In addition, a new section entitled “Joint Fundraising” would be added at 11 C.F.R. 102.7, thus necessitating a renumbering of subsequent sections of 11 CFR Part 102.

requirement to allocate fundraising expenses made no sense for SSFs, the fundraising expenses of which may be paid by their connected organizations, and that several of the procedural requirements would be onerous and burdensome for labor organizations. AFL-CIO Letter from J. Albert Woll, *et al.* to Susan Propper, Regarding Proposed Regulations 102.6 & 102.7 (“AFL-CIO Comments”), at 5-7 (Oct. 30, 1981). Consequently, the AFL-CIO suggested, proposed 11 C.F.R. § 102.7(a)(3) could be revised to read “The procedures in this section do not apply to instances in which all the parties engaged in joint fundraising are organizations whose activities are governed by 2 U.S.C. § 441b.” *Id.* at 1-2.

However, the Commission did not adopt the AFL-CIO’s suggestion in full. It did amend the title of the final joint fundraising regulation, which it determined to codify at 11 C.F.R. § 102.17, to read “Joint fundraising by committees other than separate segregated funds.” But rather than adopt verbatim the AFL-CIO’s proposed regulatory text, it adopted text that is still the law today: “If a separate segregated fund or an unregistered organization qualifies and acts as a collecting agent under 11 CFR 102.6(b), the provisions of 11 CFR 102.17 will not apply to that fundraising activity.” 11 C.F.R. § 102.17(a)(3). Similarly, in the Explanation and Justification of the new rule, the Commission stated that “Subsection (a)(3) . . . clarifies that the provisions of this section are inapplicable to a separate segregated fund or an unregistered organization operating as a collecting agent under § 102.6(b).” Interestingly, and perhaps significantly, this is the only part of either Section 102.6 or Section 102.17 that refers specifically to a separate segregated fund acting as a collecting agent, rather than being the recipient of contributions collected by a collecting agent.

A similar sequence is apparent with respect to the provisions of 11 C.F.R. § 102.6 regarding the reporting of contributions received through a collecting agent. The proposed rule stated, “A separate segregated fund receiving contributions collected by a collecting agent shall report the total amount received as a transfer-in from the collecting agent. The recipient shall also file a memo Schedule A itemizing the total receipts as contributions from the original contributors to the extent required by 11 CFR 104.3(a).” Notice of Proposed Rulemaking 1981-9, *Transfers of Funds; Collecting Agents, Joint Fundraising*, 46 Fed. Reg. 48074 (Sep. 30, 1981). The AFL-CIO commented that “Proposed 102.6(c)(7) should be revised by deletion of the requirement for separate itemization of transfers-in from collecting agents. Itemization of transfers from an affiliated organization which is not a political committee is not contemplated by 2 U.S.C. § 434b and there is no justification in the purposes or policies of the Act for the imposition of this onerous requirement.” AFL-CIO Comments at 4. The AFL-CIO may have been trying to say that itemization of individual contributions, once received from a collecting agent, should not be required. But the Commission appears to have read the comments as objecting to the reporting of the transfer-in; the final and current rule states, “A separate segregated fund receiving contributions collected by a collecting agent shall report the full amount of each contribution received as a contribution from the original contributor to the extent required by 11 C.F.R. § 104.3(a).” 11 C.F.R. § 102.6(c)(7).

From this history, one might infer that the Commission responded to the AFL-CIO’s comments by clarifying that when one SSF collects contributions on behalf of another, as the AFL-CIO member unions’ SSFs sometimes do on behalf of AFL PCC, the relationship is a

collecting agent relationship, not a joint fundraising relationship; and by deciding that contributions received through a collecting agent need only be reported as contributions received from the original contributor, with itemization of the contributions required or not depending on whether the contributor's contributions exceed the itemization threshold.

On the other hand, the Commission does not appear explicitly to have characterized these changes between the proposed and final rules as having been made in response to the AFL-CIO's comments. Nowhere in the Commission's Explanation and Justification of the final collecting agent and joint fundraising regulations is there any discussion of the AFL-CIO's comments, much less an acknowledgement that the Commission was addressing them in any particular fashion. While the Commission's Explanations and Justifications of final rules from that era generally did not address specific comments in the detail that "E&Js" of more recent vintage do, a third AFL-CIO comment – dealing with an issue regarding employee benefit plan administrators acting as collecting agents – *was* specifically addressed in the E&J. Moreover, inasmuch as the AFL PCC and the SSFs of AFL-CIO member unions have continued to the present day the practice described in the 1979 audit report, it appears that no one at the Commission informed the AFL-CIO in the wake of the 1983 rulemaking that it needed to change its practices. But we have been able to find no documents, and no institutional memory, that would explain whether this was a deliberate decision reflecting an understanding that the new regulations would have no impact on the AFL-CIO, or whether it was simply a matter of no one noticing at the time or for a long time afterwards.

Accordingly, we believe the Commission might find it helpful to hear argument from AFL PCC's counsel regarding whether the collecting agent and joint fundraising rules adopted in 1983 changed in any way the appropriate analysis of the practice approved in the 1979 audit report; if so, how; and if not, why not.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 15, 2009

MEMORANDUM

TO: John D. Gibson
Chief Compliance Officer

Joseph F. Stoltz
Assistant Staff Director

FROM: Christopher Hughey *pch*
Deputy General Counsel

Lawrence L. Calvert, Jr. *LLC*
Associate General Counsel

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

Albert Veldhuyzen *AV*
Attorney

SUBJECT: Draft Final Audit Report on Communications Workers of America Committee on Political Education Political Contributions Committee (LRA # 760) and AFL-CIO Committee on Political Education/Political Contributions Committee (LRA # 761).

I. INTRODUCTION

The Office of General Counsel has reviewed the Draft Final Audit Report ("Proposed Report") on Communications Workers of America Committee on Political Education Political Contributions Committee ("CWA PCC") and the Draft Final Audit Report on AFL-CIO Committee on Political Education/Political Contributions Committee ("AFL PCC"). This memorandum reflects our comments on both audit reports. In these comments, we address: 1) Whether CWA PCC can legally serve as a collecting agent for AFL-PCC; 2) Whether CWA PCC complied with the collecting agent requirements; 3) How should CWA PCC and AFL PCC

report past and future contributions that were and will be transmitted to AFL PCC. If you have any questions, please contact Albert R. Veldhuyzen, the attorney assigned to this audit.

II. BACKGROUND

CWA PCC, the separate segregated fund (“SSF”) of an international union, the Communications Workers of America (“CWA”), receives and reports contributions from individuals who sign payroll authorization cards. The authorization cards contain a statement that the contributions will be used in a “joint fundraising” effort and that CWA PCC and AFL PCC are authorized to use the contributions “on behalf of candidates for federal, state, and local offices and [for] addressing political issues of public importance.” Thus, contributors do not designate specific and separate amounts for CWA PCC and AFL PCC; rather, their undifferentiated contributions are received by CWA PCC and deposited into its account.

At various intervals, CWA PCC transmits an agreed portion of the collections in a lump sum to AFL PCC, the SSF of an organization of national and international unions (“AFL”) of which CWA is a member.¹ AFL PCC reports this lump sum transmittal as a transfer from an affiliated committee. The audit confirmed that: 1) CWA PCC does not maintain a separate transmittal account solely for AFL PCC or keep separate records of all such receipts and deposits; 2) CWA PCC does not forward the individual (payroll contributor) contribution amounts and contributor information (about the payroll contributor) to AFL PCC or maintain those records of deposits and transmittals for three years; 3) AFL PCC does not report the full amount of each contribution received from the original contributor when required. *See* 11 C.F.R. §§ 102.6(c)(4), 102.6(c)(5), 102.6(c)(6), 102.6(c)(7), 102.8.

Prior to examining the mechanics of the transfers from CWA PCC to AFL PCC, it is important to discuss the legal status of each of the parties and their concomitant rights and responsibilities. Specifically, we seek to establish whether CWA PCC is a collecting agent of AFL PCC governed by the Commission’s regulations. If CWA PCC is a collecting agent, it must abide by the regulations governing collecting agents. Alternatively, if the SSFs are affiliated, they may transfer unlimited funds to each other. If CWA PCC cannot be a collecting agent and the SSFs are unaffiliated, CWA PCC made excessive contributions to AFL PCC. The answer to these questions will help determine the transfer, reporting, and recordkeeping responsibilities of the parties.

III. AS A COLLECTING AGENT FOR AFL PCC, CWA PCC MUST MEET THE REGULATORY REQUIREMENTS FOR COLLECTING AGENT AND AFL PCC MUST ENSURE REQUIREMENTS ARE MET.

The Federal Election Campaign Act (“the Act”) limits the amount of funds that one committee may contribute to another non-affiliated committee. *See* 2 U.S.C. § 441a(a)(2)(C). A

¹ During the audit period, AFL PCC received four transfers from CWA PCC: 1) \$100,000 (July 29, 2005); 2) \$100,000 (July 26, 2006); 3) \$50,000 (June 27, 2006); 4) \$50,000 (July 20, 2006). This Office is unaware of the rationale for the timing and amounts of the transfers, and we understand that Audit is unaware as well.

committee may not make a contribution greater than \$5,000 to another non-affiliated committee. 2 U.S.C. § 441a(a)(2)(C). By contrast, affiliated committees share a single limit on contributions made and a single limit on contributions received, but can transfer unlimited funds to each other. 11 C.F.R. §§ 100.5(g)(3), 110.3(c)(1), 104.3(a)(2)(v). The affiliation regulation specifies that all committees controlled by a single national or international union are affiliated and share a single contribution limit. 11 C.F.R. § 100.5(g)(3)(ii).

CWA PCC is a committee of a single international union. By contrast, AFL PCC is a committee of an organization of national and international unions. 11 C.F.R. § 100.5(g)(3)(iii). Although all of the committees established by an international union and its locals and other subordinate organizations are affiliated, 11 C.F.R. § 100.5(g)(3)(ii), and all of the committees established by an organization of national or international unions and that organization's state or local central bodies are affiliated, 11 C.F.R. § 100.5(g)(3)(iii), committees established by a single union are not affiliated with the committees established by an organization of unions. Even though the single union is a part of an organization of unions, its committees are not affiliated with the organization of unions (nor with its subordinate bodies) if they are not controlled by the latter. 11 C.F.R. § 100.5(g)(2). As applied here, this means that CWA PCC and AFL PCC are not affiliated, and they do not claim to be.² Consequently, they may not contribute more than \$5,000 to each other. Moreover, each SSF must report its own contributions received.

Another possibility is the collecting agent relationship. The transactions between CWA PCC and AFL PCC suggest there is a collecting agent relationship between the committees. In a collecting agent relationship, the collecting agent can transfer contributions collected for the benefit of the other SSF. This raises the question of whether CWA PCC can legally serve as a collecting agent for another unaffiliated SSF.

A collecting agent relationship allows an organization to collect and transmit contributions to one or more separate segregated funds to which it is related. 11 C.F.R. § 102.6(b)(1). If it were a collecting agent, CWA PCC could transfer to AFL PCC unlimited sums of contributions that were in fact made to AFL PCC. The regulations outline four circumstances when an entity may serve as a collecting agent for another organization. 11 C.F.R. § 102.6(b)(1). One of those circumstances is when an international union collects contributions on behalf of a separate segregated fund of a federation of which the international union is a member. 11 C.F.R. § 102.6(b)(1)(iv). Although the international union (in this case, CWA), the connected organization, is clearly permitted to collect on behalf of AFL PCC, the regulations do not specify that its separate segregated fund (CWA PCC) may collect on behalf of a separate segregated fund of the federation (AFL PCC). However, the Commission, in Advisory Opinion 2000-03, has allowed an SSF to step into the shoes of its connected organization, albeit in the context of funding a candidate appearance before the restricted class. There is nothing in AO 2000-03 that suggests that this principle must be limited to funding a candidate's appearance before a restricted class. Therefore, as a legal matter, we conclude that

² The current practice of having CWA PCC report all contributions, regardless of whether it keeps them or transmits them to AFL PCC, would be permissible if both organizations were "affiliated," sharing a single contribution limitation. See 2 U.S.C. § 441a(a)(1)(C); 11 C.F.R. §§ 100.5(g)(3), 110.3(a).

CWA PCC can function as a collecting agent for AFL PCC. However, it would need to abide by the rules governing collecting agents at 11 C.F.R. § 102.6(c).³

Under that section, the collecting agent must transmit to the recipient committee the full amount of each contribution collected within 10 days after receipt for contributions more than \$50 or 30 days for contributions of \$50 or less. As relevant to these facts, the collecting agent must do one of the following three things:

- 1) Establish a transmittal account to be used solely for the deposit and transmittal of funds collected on behalf of the SSF. 11 C.F.R. § 107.6(c)(4)(i).
- 2) Deposit the contributions collected into its own treasury account, keeping separate records of all receipts and deposits that represent contributions to the committee for which the agent is acting. 11 C.F.R. § 102.6(c)(4)(ii).
- 3) Deposit the contributions collected for the SSF into an account otherwise established as a non-Federal account, keeping separate records of all receipts and deposits that represent contributions to the committee for which the agent is acting. 11 C.F.R. § 102.6(c)(4)(iii).

As relevant here, the collecting agent must also transmit, along with the contributions, the name and address of the contributor and the date of receipt for each contribution between \$51 and \$200, and the name, address, occupation and name of employer of the contributor for each contribution in excess of \$200. 11 C.F.R. §§ 102.6(c)(5), 102.8. In addition, the collecting agent must retain all records of contribution deposits and transmittals for three years for Commission inspection. 11 C.F.R. § 102.6(c)(6). However, it is the receiving SSF that must report the full amount of each contribution received as a contribution from the original contributor. 11 C.F.R. § 102.6(c)(7).

The audit revealed that CWA PCC does not have a separate transmittal account or keep separate records of all receipts and deposits that represent contributions to AFL PCC. CWA PCC does not have separate records of individual contributions because it did not consider itself bound by the collecting agent regulations. Consequently, such records were not retained for three years for Commission inspection. 11 C.F.R. §§ 102.6(c)(4), 102.6(c)(5), 102.6(c)(6), 102.6(c)(7), 102.8. Fundamentally, CWA PCC did not keep separate records of receipts and deposits, segregate those portions intended for AFL PCC, or distinguish contributions at the individual level. 11 C.F.R. § 102.6(c)(4)(ii)(B). Having failed to distinguish between contributions intended for CWA PCC and AFL PCC, they could not comply with the requirement to keep separate records of contributions. Given that these separate records were not kept, the arrangement violated the Commission's collecting agent regulations.

CWA PCC and AFL PCC assert that their relationship has aspects of joint fundraising, and aspects of a collecting agent relationship, but acknowledge that the transactions here do not

³ It is also essential that checks provided to unions representing a combined payment of union dues, other employee deductions, and voluntary contributions to an SSF be properly disaggregated. 11 C.F.R. § 102.6(c)(3). In our situation, it is assumed that the funds have already been disaggregated so that funds received by CWA PCC are permissible federal contributions and intended to be so by the original contributors.

fit precisely into either regulatory category. The result, they assert, is that neither the joint fundraising regulations of 11 C.F.R. § 102.17 nor the collecting agent regulations of 11 C.F.R. § 102.6 apply here, because “the Commission has never addressed the relative obligations of two SSFs undertaking such an arrangement.” Letter from Lawrence Gold to Tom Hintermister, at 7 (July 8, 2008). The committees’ assertions, however, ignore this key point: the Act and regulations create a system in which the \$5,000 limit on contributions between committees is a default rule, and the various statutory and regulatory provisions about transfers between committees provide, in essence, very specific and limited exceptions to that default rule. There are a number of these exceptions. First, as noted, affiliated committees may transfer unlimited amounts to each other. 2 U.S.C. § 441a(a)(5); 11 C.F.R. § 110.3(c)(1). Second, the authorized committee of a candidate may transfer excess campaign funds to political party organizations—including Federal party committees—without limit. 2 U.S.C. § 439a. Third, national, district, state, and local committees of the same political party may transfer unlimited amounts between each other. 2 U.S.C. § 441a(a)(4). Fourth, under certain circumstances, an authorized committee of a candidate for a Federal office may transfer an unlimited amount to a general election (of unused primary funds); to a future election cycle; or to the authorized committee of the same candidate for a different Federal office. 2 U.S.C. § 441a(a)(5)(C); 11 C.F.R. § 110.3(c). Fifth, joint fundraising representatives of committees other than SSFs engaged in joint fundraising under 11 C.F.R. § 102.17 may, without limit, transfer to each participating committee its proper share of the joint fundraising proceeds. 11 C.F.R. § 102.17. Finally, a committee acting as a “collecting agent” for another committee pursuant to 11 C.F.R. § 102.6 may transfer the full amount of contributions received *on the other committee’s behalf* to the other committee.

Thus, the fact that the committees use the label of “joint fundraising” and term their arrangement “unique” does not mean that they get to create their own exception and make their own rules.⁴ Either they fit into one of the specifically described exceptions, or their transactions with each other are subject to contribution limits. The facts show that CWA PCC was, if not using these words, purporting to act as AFL PCC’s collecting agent. Accordingly, they were required to structure that arrangement in conformity with the collecting agent regulations.

The major flaw in CWA PCC and AFL PCC’s arrangement occurred when, having determined to deposit all contributions into its own account, CWA PCC failed to keep separate

⁴ The SSFs contend that the unlimited transfers are permissible because the committees are engaging in joint fundraising. However, if this rationale is accepted, any two committees who share contributors would be able to claim that they too are doing joint fundraising. Allowing this would tend to undermine the transfer rules, which permit transfers from one committee to another only in limited circumstances. See 11 C.F.R. § 110.3(c). Those limited circumstances include the transfer of funds between affiliated committees and between collecting agents and SSFs. 11 C.F.R. § 110.3(c)(1). Another circumstance where unlimited transfers are allowed concerns the transfer of joint fundraising proceeds, “provided that no participating committee or organization governed by 11 C.F.R. § 102.17 received more than its allocated share of the funds raised.” 11 C.F.R. § 110.3(c)(2). However, since section 102.17 is specifically limited to committees other than SSFs, this provision allowing unlimited transfers specifically does not apply to CWA PCC or AFL PCC. Both committees specifically acknowledge that they are not conducting joint fundraising as described in 11 C.F.R. § 102.17, and have not followed the procedures in that regulation.

records of all receipts and deposits that represented contributions to AFL PCC. In the absence of such records, it is simply impossible to determine which contributions were made to CWA PCC and which to AFL PCC. As a result, it is also impossible to tell which contributions to AFL PCC were in amounts less than \$50, and which more; which were transferred within ten days of receipt, which within thirty days, and which longer; and for which ones CWA PCC was required to forward contributor information to AFL PCC, and for which ones it was not. The practical effect appears to have been that AFL PCC could simply have as much money as it wanted out of CWA PCC's account (or at least as much as CWA PCC was willing to send it), whenever it needed it, without regard to any facts pertaining to the actual contributors. In effect, CWA PCC and AFL PCC operated, for purposes of these funds transfers, as if they were affiliated committees. Because they are not affiliated committees, they could not operate as if they were.

In conclusion, CWA PCC and AFL PCC are not affiliated entities sharing one contribution limit. As such, they cannot transfer unlimited funds to each other. 11 C.F.R. § 110.3(c). CWA PCC qualifies as a collecting agent, which allows it to transmit to AFL PCC all contributions received on behalf of AFL PCC. As a collecting agent, however, CWA PCC must comply with certain collecting agent rules. These include the transmittal of contributions exceeding \$50 within 10 days and of all other contributions within 30 days, and the transmission of contributor information for contributions exceeding \$50. CWA PCC is also required to keep separate records of the contributions collected and transmitted and AFL PCC must report contributions received to the Commission. CWA PCC did not comply with these rules. This Office, therefore, recommends that the Proposed Report on CWA PCC include a finding that CWA PCC did not comply with the collecting agent rules. Since AFL PCC was responsible for ensuring that CWA PCC would comply with the collecting agent rules, *see* 11 C.F.R. § 102.6(c)(1), we also recommend that the Proposed Report on AFL PCC include a finding that AFL PCC failed to do so.

The SSFs have specific transfer, recordkeeping, and reporting responsibilities, the mechanics of which are discussed below.

IV. CWA PCC AND AFL PCC FAILED TO PROPERLY REPORT THEIR ACTIVITIES AND NEED TO CORRECT THEIR PROCEDURES & PAST REPORTS.

CWA PCC reported the questionable transfers to AFL PCC as "transfers to Affiliated/Other Party Committees." FEC Form 3X, Line 22. In turn, AFL PCC reported the transfers as "Transfers From Affiliated/Other Party Committees." FEC Form 3X, Line 12. As previously discussed, CWA PCC and AFL PCC are not affiliated committees and therefore, the transfers should not have been reported as transfers to/from affiliated committees. Rather, the SSFs should follow these procedures in the future, for contributions transmitted to AFL PCC.

At the outset, the Act requires that CWA PCC and AFL PCC retain all records of deposits and transmittals for three years and make the records available to the Commission upon request. 11 C.F.R. § 102.6(c)(6). AFL PCC is responsible for ensuring that the record-keeping, disclosure, and transmittal requirements set forth in the Commission's regulations for collecting agent accounts are met by CWA PCC. 11 C.F.R. § 102.6(c)(1).

We note that in its response to the IAR, CWA PCC indicates that it has no current plans to make any future transfers of this nature to AFL PCC. However, should it ever in the future engage in identical transactions, the reporting would have to proceed in the following manner. CWA PCC would need to report the aggregate amount of contributions received for itself on line 11(a), reporting the aggregate amount of unitemized contributions on line 11(a)(ii), itemizing itemizable contributions on Schedule A, and reporting the aggregate amount of itemized contributions on line 11(a)(i). It would also need to report the aggregate amount of contributions received for AFL PCC on line 17 as "other Federal receipts" and it would need to report its transfers of those contributions to AFL PCC on line 29 as other disbursements, itemizing the transfer on Schedule B as a transfer of funds received on behalf of AFL PCC in its role as a collecting agent. CWA PCC, of course, would need to transmit to AFL PCC any contributor and date of receipt information required by 11 C.F.R. §§ 102.6(c)(5) and 102.8.

AFL PCC would need to include the aggregate amount of contributions received from CWA PCC in the aggregate amount of its contributions received as reported on line 11(a), include the aggregate amount of unitemized contributions received in a transfer in the total amount of its unitemized contributions reported on line 11(a)(ii), and itemizing itemizable contributions as necessary on Schedule A and including those contributions in its aggregate amount of itemized contributions.

For past CWA PCC and AFL PCC reports, it may be impossible for the SSFs to fully correct their reports because of the long-standing failure to keep separate records for AFL PCC contributions. Accordingly, it may be impossible to recreate past reports correctly. However, the SSFs should correct their past reports covered by the audit to the following extent: 1) CWA PCC should list all amounts previously forwarded to AFL PCC on line 29 (other disbursements) rather than on line 22 (transfers to affiliated committees); and 2) AFL PCC should list all amounts previously received from CWA PCC as contributions and itemize those contributions to the extent possible, rather than reporting the transmitted amount on line 12 (transfers from affiliated committees). The itemized contributions should be reflected on Schedule A, and not as memo entries. 11 C.F.R. § 102.6(c)(7). Given that these contributions are from individuals through a collecting agent, they should be reflected as individual contributions on Schedule A. 11 C.F.R. § 102.6(c)(7).

CASE INDEX FORM

CASE NO. & NAME: AFL-CIO COPE Political Contributions Committee (A07-39)

STAFF ASSIGNED: Tom Hintermister, Audit Manager
Bill Antosz, Auditor

TELEPHONE: Audit - 202-694-1200

<u>DATE</u>	<u>DOCUMENT</u>
September 14, 2007	Doc 1 - RAD Referral A07-39
March 7, 2008	Doc 2 - Audit Scope Determination
October 26, 2005	Doc 3 - Informal OGC Advice to RAD #1
March 23, 2006	Doc 4 - Informal OGC Advice to RAD #2
May 21, 2008	Doc 5 - Cmte 10-Day Response Narrative
March 11, 2009	Doc 6 - Legal Analysis on Interim Audit Report
July 21, 2009	Doc 7 - Interim Audit Report
August 24, 2009	Doc 8 - Cmte Response to Interim Audit Report
October 28, 2009	Doc 9 - Draft Final Audit Report
October 15, 2009	Doc 10 - Legal Analysis on Draft Final Audit Report
February 24, 2010	Doc 11- Legal Analysis on Cmte Audit Hearing Submission

The above documents can be found at the following server location:
\\Ntsrv1\ voting ballot matters\Audit\AFL-CIO

For more information or to request any of the documents listed above, contact Tom Hintermister at 694-1200.