



FEDERAL ELECTION COMMISSION  
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2010 APR 14 P 3:26

April 14, 2010

**MEMORANDUM**

**AGENDA ITEM**

To: The Commission

Through: Alec Palmer  
Acting Staff Director *AP*

From: Patricia Carmona *PC*  
Chief Compliance Officer

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

Tom Hintermister *TH*  
Audit Manager

By: Rickida Morcomb *RM*  
Lead Auditor

Subject: Report of the Audit Division on CWA-COPE (A07-38)

**For Meeting of 05-27-10**

Attached for your approval is the subject report. The subject report was originally circulated on November 23, 2009 but was later withdrawn in consideration of discussion at the audit hearing of March 4, 2010. As necessary, the subject report has been revised to incorporate the outcome of that discussion.

**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. If you have any questions, please contact Rickida Morcomb or Tom Hintermister at 694-1200.

**Attachments:**

Report of the Audit Division on CWA-COPE  
Legal Analysis, dated October 15, 2009  
Response to Draft Final Audit Report, dated November 16, 2009



# Report of the Audit Division on Communications Workers of America - COPE PCC

January 1, 2005 – December 31, 2006

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## Why the Audit Was Done

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

## Future Action

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

## About the Committee (p. 2)

Communications Workers of America - COPE Political Contributions Committee is a separate segregated fund headquartered in Washington, DC. For more information, see chart on the Committee Organization, p. 2.

## Financial Activity (p. 2)

- **Receipts**
  - From Individuals \$ 6,720,647
  - Refunds from Federal Candidates & Other Political Committees 69,225
  - Other Receipts 4,014
  - **Total Receipts** \$ 6,793,886
- **Disbursements**
  - Contributions to Federal & Non-Federal Candidates and Committees \$ 5,654,187
  - Operating Expenditures 1,029,491
  - Transfers to Affiliated Committee: 300,000
  - Other Disbursements 15,800
  - **Total Disbursements** \$ 6,999,478

## Findings and Recommendations (p. 3)

- Transfers Made to AFL-CIO COPE PCC (Finding1)

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<sup>1</sup> 2 U.S.C. §438(b).

# **Report of the Audit Division on Communications Workers of America - COPE PCC**

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January 1, 2005 – December 31, 2006



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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of Communications Workers of America - COPE Political Contributions Committee (CWA-COPE PCC), 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, the scope of this audit was limited to the following:

1. The receipt and transfer of certain contributions.
2. The disclosure of certain disbursements, debts and obligations.
3. The consistency between reported figures and bank records.
4. The completeness of records.
5. Other committee operations necessary to the review.

## Part II

### Overview of Committee

#### Committee Organization

<b>Important Dates</b>	<b>Communications Workers of America - COPE PCC</b>
• Date of Registration	March 20, 1975
• Audit Coverage	January 1, 2005 – December 31, 2006
<b>Headquarters</b>	Washington, DC
<b>Bank Information</b>	
• Bank Depositories	One
• Bank Accounts	One Checking
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Barbara J. Easterling
• Treasurer During Period Covered by Audit	Barbara J. Easterling
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash on hand @ January 1, 2005</b>	<b>\$ 1,555,818</b>
○ From Individuals	6,720,647
○ Refunds from Candidates & Political Committees	69,225
○ Other Receipts	4,014
<b>Total Receipts</b>	<b>\$ 6,793,886</b>
○ Contributions to Federal & Non-Federal Candidates and Committees	5,654,187
○ Operating Expenditures	1,029,491
○ Transfers to Affiliated	300,000
○ Other Disbursements	15,800
<b>Total Disbursements</b>	<b>\$ 6,999,478</b>
<b>Cash on hand @ December 31, 2006</b>	<b>\$ 1,350,226</b>

## **Part III**

### **Summary**

#### **Finding and Recommendation**

##### **Finding 1. Transfers Made to AFL-CIO COPE PCC**

CWA-COPE PCC made transfers totaling \$300,000 to AFL-CIO COPE PCC in 2005 and 2006. The interim audit report questioned whether CWA-COPE PCC was required to meet the transmittal and recordkeeping requirements of a collecting agent for these transfers. In conjunction with a hearing before the Commission requested by AFL-CIO COPE PCC, a 1979 Report of the Audit Division on AFL-CIO COPE PCC was submitted which included recommendations that were consistent with the longstanding reporting practices for the transfers. Because CWA-COPE PCC and AFL-CIO COPE PCC are both 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 CWA-COPE PCC's longstanding history of this practice. Under these circumstances, the Audit staff accepts CWA-COPE PCC's current reporting practice. (For more detail, see p. 4)

## Part IV

# Finding and Recommendation

### Finding 1. Transfers Made to AFL-CIO COPE PCC

#### Summary

CWA-COPE PCC made transfers totaling \$300,000 to AFL-CIO COPE PCC in 2005 and 2006. The interim audit report questioned whether CWA-COPE PCC was required to meet the transmittal and recordkeeping requirements of a collecting agent for these transfers. In conjunction with a hearing before the Commission requested by AFL-CIO COPE PCC, a 1979 Report of the Audit Division on AFL-CIO COPE PCC was submitted which included recommendations that were consistent with the longstanding reporting practices for the transfers. Because CWA-COPE PCC and AFL-CIO COPE PCC are both 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 CWA-COPE PCC's longstanding history of this practice. Under these circumstances, the Audit staff accepts CWA-COPE PCC'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, 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 of Collecting Agent.** The separate segregated fund 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 is responsible for reporting the contributions collected through the collecting agent as contributions from the original donors rather than as a transfer from the collecting agent. 11 CFR §§102.6(c) and 102.8(b).

**D. When to Itemize.** Political committees other than authorized candidate committees must itemize:

- Any contribution from an individual if it exceeds \$200 per calendar year, either by itself or when aggregated with other contributions from the same contributor; and
- Every contribution from any political committee, regardless of the amount.
- Every transfer from another political party committee, regardless of whether the committees are affiliated. 2 U.S.C. §434(b)(3)(A), (B) and (D).

**E. Definition of Itemization.** Itemization of contributions received means that the recipient committee discloses, on a separate schedule, the following information:

- The amount of the contribution;
- The date of receipt (the date the committee received the contribution);
- The full name and address of the contributor;
- In the case of contributions from individual contributors, the contributor's occupation and the name of his or her employer; and
- The calendar year-to-date total of all contributions from the same contributor. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A) and (B).

### **Facts and Analysis**

CWA-COPE PCC is the separate segregated fund of the international union Communications Workers of America (CWA). CWA is a collecting agent for CWA-COPE PCC and for AFL-CIO COPE PCC, the separate segregated fund of the federation of unions AFL-CIO. CWA-COPE PCC and AFL-CIO COPE PCC are not considered "affiliated" within the meaning of 11 CFR §110.3 and, therefore, are subject to separate contribution limitations and reporting.

CWA-COPE PCC received and deposited contributions for both organizations via contributor checks and payroll deduction authorizations. Based on available solicitation material, contributors were informed that an unspecified portion of their contribution would go to AFL-CIO COPE PCC. CWA-COPE PCC reported the receipt of the contributions primarily as unitemized contributions. CWA-COPE PCC and AFL-CIO COPE PCC periodically agreed on an amount to be transferred to AFL-CIO COPE PCC.

AFL-CIO COPE PCC reported this lump sum transfer without information regarding the individuals contributing the funds.

During the period covered by the audit, CWA-COPE PCC made four transfers to AFL-CIO COPE PCC totaling \$300,000 (\$100,000 in 2005 and \$200,000 in 2006).

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

In response to recommendations in the interim audit report, CWA-COPE PCC amended reports for the period covered by the audit to include all amounts that have been forwarded to AFL-CIO COPE on Line 29, (Other Disbursements) instead of on Line 22 (Transfers to Affiliated/Other Party Committees). CWA-COPE PCC also argued that 11 C.F.R. §§102.6(c)(4) and 102.8(b) are not applicable to funds transferred to AFL-CIO COPE PCC. CWA-COPE PCC believed the procedures “utilized for many years in both undertaking its joint fundraising program with AFL-CIO COPE PCC and in reporting the associated transactions to the Commission” complies fully with the Federal Election Campaign Act and the Commission’s regulations.

On March 4, 2010, these transfers were discussed at an open Commission hearing requested by counsel for the AFL-CIO COPE PCC. In conjunction with the hearing, a 1979 Report of the Audit Division on AFL-CIO COPE PCC was submitted which included recommendations that were consistent with the longstanding reporting practices for the transfers. Because CWA-COPE PCC and AFL-CIO COPE PCC are both 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 CWA-COPE PCC’s longstanding history of this practice. Under these circumstances, the Audit staff accepts CWA-COPE PCC’s current reporting practice.



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. *LJC*  
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.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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).<sup>3</sup>

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

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

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<sup>4</sup> 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).

Communications  
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AFL-CIO, CLC

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Jeff Rechenbach  
Secretary-Treasurer

November 16, 2009

Joseph F. Stoltz, Assistant Staff Director  
Audit Division  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: Draft Final Audit Report  
CWA COPE PCC

Dear Mr. Stoltz:

I am writing in response to your October 28 letter and the draft final report of the Audit Division ("Draft Report") regarding CWA COPE PCC for the 2005-06 period.

As the Draft Report acknowledges, CWA COPE PCC accepted the recommendations of the Interim Audit Report to amend reports applicable to that period in order to reflect the transfers to AFL-CIO COPE PCC on Form 3X, Line 29 rather than on Line 22. CWA has no current plans to make further transfers of joint fundraising contributions to AFL-CIO COPE PCC and has made no decision regarding the alternative procedures described in the recommendation entitled "Future Reports." We understand that because CWA COPE PCC has followed the only recommendation with respect to "correct[ing]" its prior conduct and reports, and it is entirely speculative whether or not CWA COPE PCC again will transfer jointly fundraised contributions to AFL-CIO COPE PCC, there is no basis for the Commission to consider an enforcement action against CWA COPE PCC regarding this matter. Accordingly, CWA COPE PCC does not request a hearing before the Commission with respect to the Draft Report.

For the record, in complying with the only recommendation that would require action now by CWA COPE PCC, we do not concur with Finding 1 in the Draft Report or the accompanying October 15, 2009 memorandum from the Office of General Counsel to the Audit Division insofar as they explain and conclude that CWA COPE PCC's arrangement with AFL-CIO COPE PCC is subject to 11 C.F.R. §§ 102.6(c)(4) and 102.8(b) irrespective of its nature as a joint fundraising arrangement. We do agree with those analyses insofar as they explain and conclude that CWA COPE PCC can lawfully function as a collecting agent for AFL-CIO PCC and that, assuming that the timeliness provisions of 11 C.F.R. § 102.6(c)(4) apply, CWA COPE PCC complied with them with respect to its transfers to AFL-CIO COPE PCC in 2005 and 2006."

It remains the position of CWA COPE PCC that, as explained in our previous correspondence to the Audit Division, the procedures that CWA COPE PCC has utilized for many years in both undertaking its joint fundraising program with AFL-CIO COPE PCC and in reporting the associated transactions to the Commission, CWA COPE PCC has complied fully with the Federal Election Campaign Act and the Commission's regulations.

Thank you for your consideration.

Sincerely,

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

Jeffrey A. Rechenbach  
Treasurer  
CWA COPE PCC

cc: Larry Cohen  
Annie Hill  
Yvette Herrera  
Mary O'Melveny  
Alfonso Pollard  
Laura Archer  
Krystal Dehaba  
Laurence Gold, CWA COPE PCC Counsel

## CASE INDEX FORM

**CASE NO. & NAME:** Communications Workers of America COPE PCC (A07-38)

**STAFF ASSIGNED:** Tom Hintermister, Audit Manager  
Rickida Morcomb, Auditor

**TELEPHONE:** Audit - 202-694-1200

<u>DATE</u>	<u>DOCUMENT</u>
September 14, 2007	Doc 1 - RAD Referral A07-38
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 14, 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
November 16, 2009	Doc 11- Cmte Response to Draft Final Audit Report

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

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