



AGENDA DOCUMENT NO. 22-48-A
AGENDA ITEM
For the meeting of September 29, 2022

September 8, 2022

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Dayna C. Brown *DCB*
Assistant Staff Director
Audit Division

Kendrick Smith *KDS*
Audit Manager

By: David P. Butler *DPB*
Lead Auditor

Subject: Proposed Final Audit Report on the Democratic Party of Arkansas
(A19-15)

Attached for your approval is the subject report. The report has been written in accordance with Directive 70. Documents related to this audit report can be viewed in the Voting Ballot Matters folder.

This report is being circulated on a 72-hour no objection 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 Kendrick Smith (x 1344) or David P. Butler at (x 1204).

Attachment:
Proposed Final Audit Report on the Democratic Party of Arkansas



Proposed Final Audit Report on the Democratic Party of Arkansas

(January 1, 2017 - December 31, 2018)

Why the Audit Was Done

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

Future Action

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

About the Committee (p. 2)

The Democratic Party of Arkansas is a state party committee headquartered in Little Rock, Arkansas. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 460,817
○ Contributions from Political Party and Other Committees	16,430
○ Transfers from Affiliated/Other Party Committees	863,936
○ Loans Received	32,500
○ Other Receipts	40,596
○ Transfers from Non-Federal Account	567,237
Total Receipts	\$ 1,981,516
• Disbursements	
○ Operating Expenditures	\$ 299,148
○ Allocated Federal/Non-Federal Expenditures	1,198,302
○ Transfers to Affiliated/Other Party Committees	33,710
○ Coordinated Party Expenditures	6,797
○ Loan Repayments	82,202
○ Other Disbursements	29,875
○ Federal Election Activity	326,518
Total Disbursements	\$ 1,976,552

Commission Findings (p. 5)

- Reporting of Debts and Obligations (Finding 1)
- Recordkeeping for Employees (Finding 2)
- Disclosure of Loans and Loan Repayments (Finding 3)

Additional Issue (p. 6)

- Reporting of Media Related Expenditures

¹ 52 U.S.C. §30111(b).



Proposed Final Audit Report on the Democratic Party of Arkansas

(January 1, 2017 - December 31, 2018)

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Part I

Background

Authority for Audit

This report is based on an audit of the Democratic Party of Arkansas (DPA), 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 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. 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. 52 U.S.C. §30111(b).

Scope of Audit

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

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

Commission Guidance

Request for Early Commission Consideration of a Legal Question

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," several state party committees unaffiliated with DPA requested early consideration of a legal question raised during audits covering the 2010 election cycle. Specifically, the Commission addressed whether monthly time logs under 11 CFR §106.7(d)(1) were required for employees paid with 100 percent federal funds.

The Commission concluded, by a vote of 5-1, that 11 CFR §106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission decided it will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. The Audit staff informed DPA representatives of the payroll requirement and the Commission's decision not to pursue recordkeeping violations for failure to keep payroll logs for salaries paid and correctly reported as 100 percent federal. This audit report does not include any findings or recommendations with respect to DPA employees paid with 100 percent federal funds and reported as such.

Audit Hearing

DPA declined the opportunity for a hearing before the Commission on the matters presented in this report.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	March 8, 1976
• Audit Coverage	January 1, 2017 – December 31, 2018
Headquarters	Little Rock, Arkansas
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Three Federal, Two Non-Federal
Treasurer	
• Treasurer When Audit Was Conducted	Philip A. Hood (6/11/2021 – Present) John Unger (1/10/2019 – 6/10/2021)
• Treasurer During Period Covered by Audit	Dawne Vandiver (10/27/2017 – 1/9/2019) Tyler Clark (3/17/2014 – 10/26/2017)
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2017	\$ (2,431)
Receipts	
○ Contributions from Individuals	460,817
○ Contributions from Political Party and Other Committees	16,430
○ Transfers from Affiliated/Other Party Committees	863,936
○ Loans Received	32,500
○ Other Receipts	40,596
○ Transfers from Non-Federal Account	567,237
Total Receipts	\$1,981,516
Disbursements	
○ Operating Expenditures	299,148
○ Allocated Federal/Non-Federal Expenditures	1,198,302
○ Transfers to Affiliated/Other Party Committees	33,710
○ Coordinated Party Expenditures	6,797
○ Loan Repayments	82,202
○ Other Disbursements	29,875
○ Federal Election Activity	326,518
Total Disbursements	\$1,976,552
Cash on hand @ December 31, 2018	\$ 1,715²

² DPA disclosed its ending cash on hand on December 31, 2018 as \$1,715, however, based on its disclosed beginning cash on hand on January 1, 2017 of negative \$2,431, plus receipts of \$1,981,516, less disbursements of \$1,976,552, the audit-calculated ending cash on hand on December 31, 2018 should be \$2,533.

Part III

Summaries

Commission Findings

Finding 1. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff noted that DPA failed to disclose debts and obligations owed to 27 vendors totaling \$351,097. In response to the Interim Audit Report recommendation, DPA corrected the public record by filing a Form 99 (Miscellaneous Electronic Submission) which correctly disclosed its debts and obligations. DPA did not comment on this finding in its formal response to the Draft Final Audit Report.

The Commission approved a finding that DPA failed to disclose debts and obligations to vendors totaling \$351,097. (For more detail, see p. 8.)

Finding 2. Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that DPA did not maintain any monthly logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2017 and 2018, the Audit staff identified payments to DPA employees totaling \$408,872 for which DPA did not maintain monthly logs. This consisted of payroll which was allocated with federal and non-federal funds and payroll paid exclusively with non-federal funds. In response to the Interim Audit Report recommendation, DPA stated it “has instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds” and “employees who are paid exclusively with non-federal funds are outside the scope of the Commission’s jurisdiction and should not have been included in the finding.” In response to the DFAR, DPA reiterated its position and added that it “plans to create a procedure for recordkeeping for employees paid exclusively with non-federal funds, pending the outcome of the Final Audit Report.” DPA also reiterated that, in its view, payroll records for the employees paid exclusively with non-federal funds should not be included in the finding.

The Commission approved a finding that DPA did not maintain monthly payroll logs or equivalent records, totaling \$408,872, to document the percentage of time each employee spent in connection with a federal election for calendar years 2017 and 2018. (For more detail, see p. 10.)

Finding 3. Disclosure of Loans and Loan Repayments

During audit fieldwork, the Audit staff determined that DPA failed to properly disclose transactions totaling \$32,500 on a line of credit, the correct terms and balances for outstanding loans totaling \$87,140, and loan repayments of \$3,563. DPA did not properly disclose the new loans and the terms and balances for outstanding loans on Schedules C (Loans) and/or C-1 (Loans and Line of Credit from Lending Institutions). In

addition, some loan repayments were reported to the incorrect payee on Schedule B, Line 26 (Loan Repayments) and others were reported with disclosure errors on Schedule C. In response to the Interim Audit Report recommendation, DPA corrected the public record by filing a Form 99 (Miscellaneous Electronic Submission) which correctly disclosed the line of credit, the new and outstanding loans, and the loan repayments. DPA did not comment on this finding in its formal response to the Draft Final Audit Report.

The Commission approved a finding that DPA failed to correctly disclose transactions totaling \$32,500 on a line of credit, the correct terms and balances for outstanding loans totaling \$87,140, and loan repayments of \$3,563. (For more detail, see p. 13.)

Additional Issue

Reporting of Media Related Expenditures

During audit fieldwork, the Audit staff reviewed expenditures totaling \$22,803, that DPA disclosed on Schedule B (Itemized Disbursements), Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds). These expenditures appeared to be independent expenditures containing express advocacy which should have been disclosed on Schedule E, Line 24 (Independent Expenditures). DPA may also have been required to file a 24-hour report for \$18,424, the amount DPA paid for direct mailers supporting a candidate for federal office.

In response to the Interim Audit Report recommendation, DPA disagreed with the characterization of these expenditures as independent expenditures and stated the expenditures were “properly made as exempt activities and were fully coordinated with the candidate.” DPA further indicated that the expenditures qualify for the volunteer materials exemption because the pledge cards and walking cards totaling \$4,379 (referred to as printed materials in DPA’s response to the Interim Audit Report), and the direct mailers, totaling \$18,424, were “distributed through the substantial use of volunteers.” A declaration from DPA’s former Director of Operations was also provided, attesting to the use of volunteers.

After consultation with our Office of General Counsel (OGC), the Audit staff concluded that the pledge cards, walking cards and direct mailers are not independent expenditures, given DPA’s assertion that the activities were fully coordinated with the candidate. As such, the filing of a 24-hour report was not required for the direct mailers. In addition, the Audit staff concluded that whereas the pledge cards and walking cards are not coordinated expenditures because they are not public communications, the direct mailers are a coordinated expenditure.

In response to the Draft Final Audit Report, DPA reiterated its position that the expenditures totaling \$22,803, “were properly made as exempt activities and were fully coordinated with the candidate.” DPA stated that the declaration from its former Director of Operations, provided in response to the Interim Audit Report, supported its contention.

Subsequent to the Draft Final Audit Report, OGC revised its conclusion regarding whether the pledge cards and walking cards are public communications, stating that door hangers that qualify as exempt under the volunteer materials exemption should be excluded from being classified as party coordinated expenditures, but door hangers that do not qualify for the volunteer materials exemption likely are public communications and, therefore, also party coordinated expenditures. In its response to OGC's revised conclusion, DPA maintained that the door hangers at issue qualify for the volunteer materials exemption, noting that "documentation beyond a sworn affidavit has never been required" to qualify for the exemption. DPA further stated that the door hangers should not be included because they are not "public communications" and therefore cannot qualify as coordinated party expenditures.

As a result of OGC's revised conclusion regarding the door hangers, the Audit staff added the \$4,379 cost of the door hangers to the \$18,424 cost of the direct mailers, for a revised coordinated party expenditure total of \$22,803. DPA provided a sworn declaration to document the volunteer materials exemption for the door hangers and direct mailers, and the Audit staff recommended the Commission determine whether the declaration sufficiently documented volunteer involvement and satisfied the exemption, given the lack of clarity regarding how the exemption should be applied.

The Commission did not approve, by the required four votes, the Audit staff's recommendation that DPA exceeded the coordinated party expenditure limit by \$15,200. Pursuant to Commission Directive 70³, this matter is discussed in the "Additional Issue" section of this report. (For more detail, see p. 16.)

³ Available at https://www.fec.gov/resources/cms-content/documents/directive_70.pdf

Part IV

Commission Findings

Finding 1. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that DPA failed to disclose debts and obligations owed to 27 vendors totaling \$351,097. In response to the Interim Audit Report recommendation, DPA corrected the public record by filing a Form 99 (Miscellaneous Electronic Submission) which correctly disclosed its debts and obligations. DPA did not comment on this finding in its formal response to the Draft Final Audit Report.

The Commission approved a finding that DPA failed to disclose debts and obligations to vendors totaling \$351,097.

Legal Standard

- A. Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).
- B. Separate Schedules.** A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).
- C. Itemizing Debts and Obligations.**
- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
 - A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date. 11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed DPA's disbursement records and disclosure reports for proper reporting of debts and obligations. This review identified debts owed to 27 vendors totaling \$351,097⁴ that DPA failed to report on Schedule D (Debts and Obligations) during the audit period. Based on a review of the records, 26 of these vendors provided printing services, event rentals, video production, consulting, IT

⁴ Each debt was counted only once, even if it was required to be disclosed over multiple periods.

work, mailings, utility service, compliance, photography, finance director retainer, legal fees, fundraising, and cleaning services. The remaining vendor was a credit card vendor that DPA did not report on Schedule D during the audit period.

DPA reported debt totaling \$32,984 on Schedule D during the audit period. The Audit staff calculated the debts owed to the vendors based on the invoice date and the subsequent payment date. Debts were outstanding for periods ranging from 15 days to 904 days.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with DPA representatives during the exit conference and provided a schedule detailing the transactions requiring disclosure on Schedule D. During the exit conference, DPA representatives questioned the inclusion of debts relating to recurring administrative expenses. The Audit staff responded that regularly recurring administrative expenses are subject to debt reporting requirements.⁵ In its response to the exit conference, DPA did not provide any further comments.

The Interim Audit Report recommended that DPA provide documentation demonstrating that the transactions totaling \$351,097 were not obligations which required reporting on Schedule D. Absent such documentation, the Interim Audit Report recommended that DPA amend its reports or file a Form 99 (Miscellaneous Electronic Submission)⁶ to correctly disclose these debts and obligations on Schedule D.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, DPA filed a Form 99 (Miscellaneous Electronic Submission) on November 2, 2021, which did not materially correct the public record. Subsequently, DPA filed another Form 99 on January 14, 2022 which corrected the public record by disclosing its debts and obligations.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that DPA filed a Form 99 which corrected the public record by disclosing its debts and obligations.

E. Committee Response to the Draft Final Audit Report

DPA did not comment on this finding in its formal response to the Draft Final Audit Report.

Commission Conclusion

On July 28, 2022, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that DPA failed to disclose debts and obligations to vendors totaling \$351,097.

The Commission approved the Audit staff's recommendation.

⁵ See 11 CFR §104.11(b).

⁶ DPA was advised by the Audit staff that if it chose to file a Form 99 instead of amending its disclosure reports, the form must contain all pertinent information that is required on each schedule.

Finding 2. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that DPA did not maintain any monthly logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2017 and 2018, the Audit staff identified payments to DPA employees totaling \$408,872 for which DPA did not maintain monthly logs. This consisted of payroll which was allocated with federal and non-federal funds and payroll paid exclusively with non-federal funds. In response to the Interim Audit Report recommendation, DPA stated it “has instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds” and “employees who are paid exclusively with non-federal funds are outside the scope of the Commission’s jurisdiction and should not have been included in the finding.” In response to the DFAR, DPA reiterated its position and added that it “plans to create a procedure for recordkeeping for employees paid exclusively with non-federal funds, pending the outcome of the Final Audit Report.” DPA also reiterated that, in its view, payroll records for the employees paid exclusively with non-federal funds should not be included in the finding.

The Commission approved a finding that DPA did not maintain monthly payroll logs or equivalent records, totaling \$408,872, to document the percentage of time each employee spent in connection with a federal election for calendar years 2017 and 2018.

Legal Standard

- A. Maintenance of Monthly Logs.** Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election. Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:
- Employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or have their pay allocated as administrative costs between the federal and non-federal accounts;
 - Employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and
 - Employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with State law. 11 CFR §106.7(d)(1).
- B. Formal Requirements Regarding Reports and Statements.** Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursements for payroll. DPA did not maintain any monthly logs or equivalent records to document the percentage of time each employee spent in connection with a federal election. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2017 and 2018, DPA did not maintain monthly logs for \$408,872 in payroll.⁷ This amount includes:

- Payroll totaling \$373,961 for employees reported on Schedule H4 (Disbursements for Allocated Federal and Non-Federal Activity) and paid with an allocation of federal and non-federal funds during the same month;
- Payroll totaling \$1,374 for employees reported on Schedule H4 and/or Schedule B (Itemized Disbursements) and also paid with 100 percent non-federal funds during the same month; and
- Payroll totaling \$33,537 for employees paid exclusively with non-federal funds in a given month.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with DPA representatives during the exit conference and provided a schedule of the payroll transactions. DPA representatives responded that DPA did not maintain monthly logs for employees during calendar years 2017 and 2018 and objected to the request for non-federal employee payroll records. The Audit staff has consistently requested these records and included these types of transactions as findings. Therefore, these transactions were included in the exit conference as a preliminary finding. In its response to the exit conference, DPA did not provide any further comments.

The Interim Audit Report recommended that DPA provide evidence that monthly logs were maintained to document the percentage of time employees spent in connection with a federal election. Absent the provision of monthly logs specific to employees paid with 100% non-federal funds, the Interim Audit Report recommended DPA provide evidence that records consistent with 11 CFR §104.14(b)(1) were maintained to document that certain employees were involved in exclusively non-federal activities. Additionally, the Interim Audit Report recommended that DPA provide and implement a plan to maintain monthly logs and other records consistent with 11 CFR §104.14(b)(1) in the future.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, DPA stated it “has instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds.” DPA further noted that the “inclusion of payroll records for those employees who are paid exclusively with non-federal funds are outside the scope of the Commission’s jurisdiction and should not have been included in the finding.”

⁷ This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, and Request for Early Commission Consideration of a Legal Question, Page 1). Payroll amounts are stated net of taxes and fringe benefits.

The Audit staff concluded that DPA did not provide monthly logs for the \$408,872 in payroll. However, DPA complied with the Interim Audit Report recommendation by implementing a plan to maintain monthly logs for all employees who are paid in part with non-federal funds in the future.

The Audit staff maintained that DPA was required to maintain monthly logs for its employees paid with exclusively non-federal funds, to verify that the employees were not engaged in federal activities. Absent the provision of monthly logs specific to employees paid with exclusively non-federal funds, DPA could have provided evidence that records consistent with 11 CFR §104.14(b)(1) were maintained to document that certain employees were involved in exclusively non-federal activities. Additionally, for employees paid with exclusively non-federal funds, DPA could have also implemented and provided a plan to maintain monthly logs or other records consistent with 11 CFR §104.14(b)(1).

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that DPA did not maintain monthly logs for 2017 and 2018 but instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds in the future.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, DPA reiterated that it “instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds and also plans to create a procedure for recordkeeping for employees paid exclusively with non-federal funds, pending the outcome of the Final Audit Report.” DPA also reiterated that, in its view, payroll records for the employees paid exclusively with non-federal funds should not be included in the finding. DPA further stated that some Commissioners previously determined, in other audits, that employees paid with exclusively non-federal funds was outside the scope of the Commission’s jurisdiction, acknowledging that those Commissioners who voted to determine that such recordkeeping is outside the scope of regulation are no longer members of the Commission. Additionally, DPA stated:

“In response to the lack of four Commissioners to determine that such recordkeeping is required, many party committees have been under the belief that such recordkeeping is not required. If the Commission decides to reverse course and determine by at least four votes that recordkeeping for non-federal payroll is, in fact, required, the DPA requests that the regulated community be given sufficient notice that there are now sufficient votes to require recordkeeping in such instances. In our view, a quiet vote to approve this finding as it is currently constituted is not sufficient notice.”

The Audit staff maintained its position that DPA was required to maintain monthly logs for its employees paid with exclusively non-federal funds, to verify that the employees were not engaged in federal activities. There have been audits in which the Commission did not have four or more affirmative votes to find that monthly payroll logs were

required for employees paid with exclusively non-federal funds. The Audit staff notes, however, that in two recent audits which included non-federal payroll, the Commission approved the recordkeeping for employees finding. The Audit staff, therefore, believes DPA's statement that the Commission has failed to notify the regulated community of its treatment of this issue is inaccurate. See Final Audit Report of the Connecticut Democratic State Central Committee (dated Feb. 23, 2022), pages 10 - 12 (approving a finding for payroll which was allocated with federal and non-federal funds and payroll paid exclusively with non-federal funds); and Final Audit Report of the Republican Party of Minnesota-Federal (dated Feb. 11, 2022), pages 8 - 10 (same).

The Commission also approved other recordkeeping for employees findings in which monthly payroll logs were not maintained for employees paid with exclusively non-federal funds; two of these audits were publicly available when DPA submitted its response to the DFAR. See Final Audit Report on Democratic Party of Hawaii (dated Feb. 16, 2018), pages 25-26 (same); and Final Audit Report on Illinois Republican Party (dated Oct. 24, 2017), pages 12-14 (same). It was in several earlier audits that the Commission did not have four or more affirmative votes to find that monthly payroll logs were required for employees who were paid exclusively with non-federal funds. See Final Audit Report on Utah Republican Party (dated Jan. 23, 2017), Final Audit Report on South Dakota Democratic Party (dated Apr. 27, 2015), Final Audit Report on Kentucky State Democratic Central Committee (dated Apr. 20, 2015), Final Audit Report on Democratic Party of Wisconsin (dated Apr. 6, 2015), Final Audit Report on Democratic Party of Illinois (dated Nov. 5, 2014), Final Audit Report on State Democratic Executive Committee of Alabama (dated May 12, 2014), and the Final Audit Report on the Republican Party of Iowa (dated Mar. 18, 2014).

Commission Conclusion

On July 28, 2022, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that DPA did not maintain monthly payroll logs or equivalent records totaling \$408,872 to document the percentage of time each employee spent in connection with a federal election for calendar years 2017 and 2018.

The Commission approved the Audit staff's recommendation.

Finding 3. Disclosure of Loans and Loan Repayments

Summary

During audit fieldwork, the Audit staff determined that DPA failed to properly disclose transactions totaling \$32,500 on a line of credit, the correct terms and balances for outstanding loans totaling \$87,140, and loan repayments of \$3,563. DPA did not properly disclose the new loans and the terms and balances for outstanding loans on Schedules C (Loans) and/or C-1 (Loans and Line of Credit from Lending Institutions). In addition, some loan repayments were reported to the incorrect payee on Schedule B, Line 26 (Loan Repayments) and others were reported with disclosure errors on Schedule C. In response to the Interim Audit Report recommendation, DPA corrected the public record by filing a Form 99 (Miscellaneous Electronic Submission) which correctly

disclosed the line of credit, the new and outstanding loans, and the loan repayments. DPA did not comment on this finding in its formal response to the Draft Final Audit Report.

The Commission approved a finding that DPA failed to correctly disclose transactions totaling \$32,500 on a line of credit, the correct terms and balances for outstanding loans totaling \$87,140, and loan repayments of \$3,563.

Legal Standard

- A. Reporting Loans.** All loans received by a committee must be itemized and continuously reported until repaid. All repayments made on a loan must also be itemized. 11 CFR §§104.3(a)(4)(iv), (b)(4)(iii) and §104.11.
- B. Schedule C.** Both the original loan and payments to reduce principal must be reported each reporting period until the loan is repaid. The committee must report the following:
- The source of the loan; and
 - The type of loan the candidate received (i.e. bank loan, brokerage account, credit card, or home equity line of credit) either in the first box for endorsers and guarantors with a notation for loan type or in the box for “Loan Source” after the candidate’s name. 11 CFR §104.3(d) and §104.11.
- C. Schedule C-1.**
1. **Loans to Committees.** When a committee obtains a loan from a bank or other permissible lending institution it must also file Schedule C-1 with the first report due after a new loan or line of credit has been established. The committee must disclose the following information on Schedule C-1:
 - The date and amount of the loan;
 - The interest rate and repayment schedule of the loan, or on each draw of line of credit;
 - The type and value of collateral or other sources of repayment that secure the loan or the line of credit, and whether that security interest was perfected; and
 - An explanation of the basis upon which the loan was made, if not made on the basis of either collateral or other sources of repayment.
 2. **Loan Agreement/Line of Credit.** The committee must also attach a copy of the loan agreement. In the case of a committee that has obtained a line of credit, a new Schedule C-1 must be filed with the next report whenever the committee draws on the line of credit. An authorized representative of the lending institution must sign the statement on Line I. 11 CFR §104.3(d)(1) and (3).
- D. Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §30104(b).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed bank loans and a line of credit from Simmons Bank and First National Bank. Based upon a detailed review, the Audit staff determined the following:

- For the line of credit received from Simmons Bank, DPA made three draws on the line of credit totaling \$32,500 but did not disclose these draws on Schedules C (Loans) and/or C-1 (Loans and Line of Credit from Lending Institutions). In addition, DPA reported incorrect payment terms (due date and interest rate) and an incorrect outstanding balance for this line of credit, which resulted in the under-reporting of its 2018 year-end line of credit balance by \$77,447.⁸
- For the loan received from First National Bank, the incorrect balance was disclosed on Schedule C throughout the audit period. The loan was paid off on March 13, 2017, but DPA continued to incorrectly disclose an outstanding balance of \$9,693 from July 1, 2017 through December 31, 2018.
- Loan repayments totaling \$1,036 to Simmons Bank were reported to the incorrect payee (“Simmons First National Bank”) on Schedule B, Line 26, of the 2017 February Monthly, March Monthly, May Monthly, and July Monthly Reports. These loan repayments were also reported on Schedule C to the incorrect payee (“First National Bank”) of the 2017 February Monthly, March Monthly, and May Monthly Reports, and were not reported on Schedule C of the 2017 July Monthly Report. In addition, loan repayments totaling \$2,527 to First National Bank were reported to the correct payee on Schedule B, Line 26, of the 2017 February Monthly and March Monthly Reports, but not reported on Schedule C.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with DPA representatives during the exit conference and provided a schedule detailing the disclosure errors. DPA representatives stated that they were aware of the disclosure problems and indicated they would amend reports to correctly disclose the loans and line of credit.

The Interim Audit Report recommended that DPA provide documentation demonstrating that the identified draws on the line of credit, as well as the terms and balances for outstanding loans, and loan repayments were correctly disclosed. Absent such demonstration, the Interim Audit Report recommended that DPA amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission)⁶ to disclose the correct information on Schedule B, Line 26 (Loan Repayments), Schedule C, and Schedule C-1.

⁸ For this line of credit, DPA carried an outstanding balance on January 1, 2017 of \$60,766. In 2017, DPA made three draws on the line of credit totaling \$32,500, plus an additional draw adding \$557 to the principal in 2018. DPA made payments of \$985 in 2017 and \$72,815 in 2018, and this resulted in an outstanding balance for the line of credit on December 31, 2018 of \$20,023. However, DPA disclosed the ending balance for this line of credit to be negative \$57,424, which resulted in the under-reporting of its 2018 year-end line of credit balance by \$77,447 (calculated as \$20,023 minus negative \$57,424).

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, DPA filed a Form 99 on November 2, 2021, which correctly disclosed the terms and transactions on a line of credit received from Simmons Bank totaling \$32,500, in addition to the correct terms and balances for outstanding loans totaling \$77,447. The Form 99 correctly disclosed the terms that appear on Schedule C and Schedule C-1, the cumulative payment and the outstanding amount at the close of the period that corrected the public record for both Schedule C and Schedule C1. DPA's Form 99 did not correct an outstanding balance discrepancy of \$9,693 for the loan received from First National Bank and did not address the loan repayments totaling \$1,036 to Simmons Bank or the loan repayments totaling \$2,527 to First National Bank. Subsequently, on January 14, 2022, DPA filed a revised Form 99 which correctly disclosed the line of credit, the new and outstanding loans, and the loan repayments.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that DPA filed a revised Form 99 on January 14, 2022, which correctly disclosed the line of credit, the new and outstanding loans, and the loan repayments.

E. Committee Response to the Draft Final Audit Report

DPA did not comment on this finding in its formal response to the Draft Final Audit Report.

Commission Conclusion

On July 28, 2022, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that DPA failed to correctly disclose transactions totaling \$32,500 on a line of credit, the correct terms and balances for outstanding loans totaling \$87,140, and loan repayments of \$3,563.

The Commission approved the Audit staff's recommendation.

Part V

Additional Issue

Reporting of Media Related Expenditures

Summary

During audit fieldwork, the Audit staff reviewed expenditures totaling \$22,803, that DPA disclosed on Schedule B (Itemized Disbursements), Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds). These expenditures appeared to be independent expenditures containing express advocacy which should have been disclosed on Schedule E, Line 24 (Independent Expenditures). DPA may also have been required to file a 24-hour report for \$18,424, the amount DPA paid for direct mailers supporting a candidate for federal office.

In response to the Interim Audit Report recommendation, DPA disagreed with the characterization of these expenditures as independent expenditures and stated the expenditures were “properly made as exempt activities and were fully coordinated with the candidate.” DPA further indicated that the expenditures qualify for the volunteer materials exemption because the pledge cards and walking cards totaling \$4,379 (referred to as printed materials in DPA’s response to the Interim Audit Report), and the direct mailers, totaling \$18,424, were “distributed through the substantial use of volunteers.” A declaration from DPA’s former Director of Operations was also provided, attesting to the use of volunteers.

After consultation with our Office of General Counsel (OGC), the Audit staff concluded that the pledge cards, walking cards and direct mailers are not independent expenditures, given DPA’s assertion that the activities were fully coordinated with the candidate. As such, the filing of a 24-hour report was not required for the direct mailers. In addition, the Audit staff concluded that whereas the pledge cards and walking cards are not coordinated expenditures because they are not public communications, the direct mailers are a coordinated expenditure.

In response to the Draft Final Audit Report, DPA reiterated its position that the expenditures totaling \$22,803, “were properly made as exempt activities and were fully coordinated with the candidate.” DPA stated that the declaration from its former Director of Operations, provided in response to the Interim Audit Report, supported its contention.

Subsequent to the Draft Final Audit Report, OGC revised its conclusion regarding whether the pledge cards and walking cards are public communications, stating that door hangers that qualify as exempt under the volunteer materials exemption should be excluded from being classified as party coordinated expenditures, but door hangers that do not qualify for the volunteer materials exemption likely are public communications and, therefore, also party coordinated expenditures. In its response to OGC’s revised conclusion, DPA maintained that the door hangers at issue qualify for the volunteer materials exemption, noting that “documentation beyond a sworn affidavit has never been required” to qualify for the exemption. DPA further stated that the door hangers should not be included because they are not “public communications” and therefore cannot qualify as coordinated party expenditures.

As a result of OGC’s revised conclusion regarding the door hangers, the Audit staff added the \$4,379 cost of the door hangers to the \$18,424 cost of the direct mailers, for a revised coordinated party expenditure total of \$22,803. DPA provided a sworn declaration to document the volunteer materials exemption for the door hangers and direct mailers, and the Audit staff recommended the Commission determine whether the declaration sufficiently documented volunteer involvement and satisfied the exemption, given the lack of clarity regarding how the exemption should be applied.

The Commission did not approve, by the required four votes, the Audit staff’s recommendation that DPA exceeded the coordinated party expenditure limit by \$15,200.

Pursuant to Commission Directive 70⁹, this matter is discussed in the “Additional Issue” section of this report.

Legal Standard

A. Definition of Independent Expenditures. An independent expenditure is an expenditure made for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or their agents, or a political party or its agents.

A clearly identified candidate is one whose name, nickname, photograph or drawing appears, or whose identity is apparent through unambiguous reference, such as “your Congressman,” or through an unambiguous reference to his or her status as a candidate, such as “the Democratic presidential nominee” or “Republican candidate for Senate in this state.”

Expressly advocating means any communication that:

- Uses phrases such as “vote for the President” or “re-elect your Congressman” or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge election or defeat of one or more clearly identified candidates; or
- When taken as a whole and with limited references to external events, such as proximity to the election, could be interpreted by a reasonable person only as advocating the election or defeat of one or more clearly identified candidates. 11 CFR §§100.16(a), 100.17 and 100.22.

B. Disclosure Requirements – General Guidelines. An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as a debt on Schedule D. Independent expenditures of \$200 or less need not be itemized, though the committee must report the total of those expenditures on Schedule E, Line (b). 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

C. Last-Minute Independent Expenditure Reports (24-Hour Reports). Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour report is required for each additional \$1,000 that aggregates. The 24-hour report must be filed on a Schedule E. The date that a communication is publicly disseminated serves as the date that the Committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

⁹ See *supra* footnote 3.

D. Formal Requirements Regarding Reports and Statements. Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).

E. Allocation of Expenses between Candidates. Expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit expected to be derived. In the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to all candidates. This method shall be used to allocate payments involving both clearly identified federal candidates and one or more clearly identified non-federal candidates. 11 CFR §106.1(a).

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

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

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

- The amount spent on “coordinated party expenditures” is limited by statutory formulas that are based on the Cost of Living Adjustment (COLA) and the voting age population;
- Party committees are permitted to coordinate the spending with the candidate committees;

- The parties may make these expenditures only in connection with the general election;
- The party committees—not the candidates—are responsible for reporting these expenditures; and
- If the party committee exceeds the limits on coordinated party expenditures, the excess amount is considered an in-kind contribution, subject to the contribution limits described above. 52 U.S.C. §30116(d) and 11 CFR §§109.30 and 109.32.

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

I. Coordinated Party Communication. A political party communication is coordinated with a candidate, a candidate’s authorized committee, or agent of any of the foregoing, when the communication satisfies the following conditions:

- (1) The communication is paid for by a political party committee or its agent.
- (2) The communication is a public communication that satisfies at least one of the following content standards.
 - Expressly advocates a candidate’s election or defeat 11 CFR §100.22(a) and (b).
 - Involves the dissemination, distribution or republication of a candidate’s campaign materials.
 - Refers to a federal candidate, is directed to the candidate’s constituents and is distributed within certain time frame before an election.
- (3) The communication satisfies at least one of the conduct standards in 11 CFR §109.21(d)(1) through (d)(6), subject to the provisions of 11 CFR §109.21(e), (g), and (h).
 - Must have been created, produced or distributed at the request of the candidate or its agent.
 - Developed with a “material involvement” of the candidate.
 - Created, produced or distributed after “substantial discussion” with the candidate or his agents.

The use of a common vendor in the creation, production or distribution of a communication. 11 CFR §109.37.

J. Reporting Coordinated Party Expenditures. Each political committee shall report the full name of each person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under 11 CFR Part 109, Subpart D (52 U.S.C. §30116(d)), together with the date, amount and purpose of any such expenditure as well as the name of, and office sought by the candidate on whose behalf the expenditure is made. 11 CFR §104.3 (b)(1)(viii).

K. Public Communication (52 U.S.C. § 30101(22)). *Public communication* means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. The term *general public political advertising* shall not include communications over the Internet, except for communications placed for a fee on another person’s Web site.

Facts and Analysis

A. Reporting of Apparent Independent Expenditures

1. Facts

During audit fieldwork, the Audit staff reviewed disbursements to ensure proper reporting. The Audit staff noted that DPA did not disclose any independent expenditures on Schedule E, however, it appeared to make apparent independent expenditures totaling \$22,803 and disclosed them on Schedule B, Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds). These expenditures were for pledge cards, walking cards, and direct mail pieces, which all contained express advocacy. A breakdown analysis for these expenditures is as follows:

Apparent Independent Expenditures Reported as Federal Election Activity (FEA) Paid Entirely with Federal Funds (Associated Mailer Provided under 11 CFR §100.22(a))

- a. DPA made one disbursement for pledge cards totaling \$1,128 for which it provided a copy of the piece and associated invoice. The pledge card, disclosed as “Volunteer Exempt/Printing of Canvass Materials – Tucker for Congress” on DPA’s disclosure reports, contained the following phrase: “Pledge to vote early for Clarke Tucker.” DPA did not provide evidence of volunteer involvement to support the volunteer materials exemption for this activity. This communication contained language expressly advocating for the election or defeat of a clearly identified candidate, as defined under 11 CFR §100.22(a).
- b. DPA made one disbursement for walking cards totaling \$3,251 for which it provided a copy of the piece and associated invoice. The walking card, disclosed as “Volunteer Exempt/Printing of Canvass Materials – Tucker for Congress” on DPA’s disclosure reports, contained the following phrase: “2 Ways to vote for Clarke Tucker.” DPA did not provide evidence of volunteer involvement to support the volunteer materials exemption for this activity. This communication contained language expressly advocating for the election or defeat of a clearly identified candidate, as defined under 11 CFR §100.22(a).
- c. DPA made one disbursement for direct mail pieces totaling \$18,424 for which it provided a copy of the pieces and associated invoice. The direct mail pieces, disclosed as “Printing & Postage/Volunteer Exempt Mailing/Clarke Tucker for Congress” on DPA’s disclosure reports, contained the following phrase: “Vote Clarke Tucker for Congress.” DPA did not provide evidence of volunteer involvement to support the volunteer materials exemption for this activity. This communication contained language expressly advocating for the election or defeat of a clearly identified candidate, as defined under 11 CFR §100.22(a).

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with DPA representatives during the exit conference and provided a schedule detailing these expenditures. DPA representatives stated that “these were not independent expenditures,” that “no state party committee has volunteer support for canvassing materials,” and that “canvassing materials don’t qualify as public communications.” DPA representatives stated they would “work on obtaining volunteer involvement support for the Resonance Campaigns expenditure [identified in 1(c) above]... but not for the Print for Progress canvassing expenditures [identified in 1(a) and 1(b) above]” because those “two items are not public communications.” In response to the exit conference, no additional supporting documentation and no further comment were provided.

The payment by a state or local party committee for the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not an expenditure provided that such materials are distributed by volunteers and not by commercial or for-profit operations. 11 CFR § 100.147(d). The Audit staff contended, therefore, that whether the volunteer materials exemption applies does not hinge on the type of campaign material a committee uses, but, instead, on how the campaign materials are distributed. In particular, the Commission draws a distinction between campaign materials distributed by volunteers, which qualify for the exemption, and those that are distributed by paid workers of commercial entities or for-profit operations, which do not qualify for the exemption. *Id.* To determine whether the volunteer materials exemption applies, the Commission must evaluate whether a committee, in fact, used volunteers to distribute campaign materials.

The Interim Audit Report recommended that DPA:

- Provide documentation that apparent independent expenditures, totaling \$22,803, did not require reporting as independent expenditures; and/or
- Provide evidence to support the volunteer materials exemption application for apparent independent expenditures, totaling \$22,803. Such evidence assists the Commission in determining if the volunteer materials exemption is applicable to these expenditures.

Absent such documentation or evidence, the Interim Audit Report recommended that DPA amend its reports to disclose these disbursements as independent expenditures on Schedule E (Itemized Independent Expenditures) and provide documentation to support the date of public dissemination for each communication to determine whether a 24-hour report was required to be filed.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, DPA objected to the characterization of these expenditures as independent expenditures. DPA stated that “[t]hese expenditures were properly made as exempt activities and were fully

coordinated with the candidate.” DPA further stated “[t]hese activities fall into two categories.” It “sent a volunteer exempt mailing through Resonance Campaigns at a cost of \$18,423.97” and “paid for printing in the amount of \$4,378.53 for printed materials that were distributed by hand by volunteers.”

Regarding DPA’s assertion that the expenditures were “fully coordinated with the candidate,” the Audit staff notes that DPA did not amend its disclosure reports to disclose these expenditures as coordinated party expenditures on Schedule F (Coordinated Party Expenditures). The expenditures remain disclosed on Schedule B, Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds).

Regarding the mailing through Resonance Campaigns of \$18,424 [identified in 1(c) above], the former Director of Operations stated in the declaration submitted in response to the Interim Audit Report recommendation, that “the production and preparation of this mailing included substantial participation by volunteers including sorting, bundling and other tasks in accordance with 11 C.F.R. §100.87 and Commission precedents related to volunteer exempt mail.” DPA also noted that the declaration “complies with the formatting requirements of 28 U.S.C. §1746” and, as such, cannot be characterized as “unsworn.”

Regarding the pledge cards and walking cards (characterized by DPA’s former Director of Operations as “door hangers” in her declaration and as “printed materials” in DPA’s Interim Audit Report response), DPA stated it was its understanding that “since these activities were not public communications, they cannot be considered coordinated communications and no further action would be necessary regarding these expenditures.” DPA further stated, “it is quite uncommon for state party committees to create and maintain documentation relating to the volunteer component of such daily canvassing activities. They are much too voluminous and difficult for a state party to document. In addition, since such activities are not public communications, and cannot be considered coordinated communications, the need to create and maintain such documentation is unnecessary.” The declaration from its former Director of Operations stated the door hangers were “distributed exclusively by volunteers.”

After consideration of DPA’s response and in consultation with OGC, the Audit staff determined that the disbursement for the pledge cards and walking cards did not meet the definition of an independent expenditure.¹⁰

¹⁰ The Audit staff previously considered the cost of the pledge cards and walking cards to be an independent expenditure. However, DPA indicated in its response to the Interim Audit Report that the expenditures were fully coordinated with the candidate and, in consultation with the Office of General Counsel, the Audit staff therefore determined that the pledge cards and walking cards could not be classified as an independent expenditure. Further, DPA asserted that the pledge cards and walking cards (characterized by DPA’s former Director of Operations as “door hangers” in her declaration and as “printed materials” in DPA’s Interim Audit Report response) were distributed by volunteers. The Office of General Counsel has concluded that, based on this method of distribution, the pledge cards and walking cards are not public communications and therefore do not meet the threshold criteria for satisfying the content prong of the coordinated expenditure standard (See LRA 1153). Because the Commission has been inconsistent on this issue, however, the Office of General Counsel recommended referral of this question to the

Regarding the direct mailers, the Audit staff agreed with DPA that these expenditures are not independent expenditures, given their coordination with the candidate. However, they are considered coordinated expenditures, as direct mailers are considered public communications. In addition, these expenditures may be subject to the volunteer materials exemption given the declaration from DPA's former Director of Operations.

Due to the lack of a clear standard for applying the volunteer materials exemption, the Audit staff was unable to determine whether the declaration submitted by DPA sufficed to document the involvement of volunteers and noted that the Commission would make a determination at the appropriate phase of the audit process.

The Audit staff noted that, if the Commission determined these expenditures to be coordinated expenditures, DPA would have exceeded its coordinated spending limit by \$10,821¹¹ for Clarke Tucker for Congress.

4. Draft Final Audit Report

The Draft Final Audit Report acknowledged that the pledge cards, walking cards and direct mailers are not independent expenditures, given DPA's assertion in its response to the Interim Audit Report that these activities were fully coordinated with the candidate. Given this assertion, the filing of a 24-hour report was not required for the direct mailers. However, the direct mailers are coordinated expenditures, as they are considered public communications. In addition, these expenditures may have been subject to the volunteer materials exemption given the declaration from DPA's former Director of Operations.

The Audit staff noted that, if the Commission determined that the declaration did not sufficiently document volunteer involvement and determined these expenditures to be coordinated expenditures, DPA would have exceeded its coordinated spending limit by \$10,821 for Clarke Tucker for Congress.

5. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, DPA reiterated its position that the expenditures totaling \$22,803, "were properly made as exempt activities and were fully coordinated with the candidate." DPA stated that the declaration from its former Director of Operations supported its contention. DPA further stated, "In the recent consideration of the Draft Final Audit Report of the Connecticut Democratic State Central Committee (Agenda Document 21-44-A for Open Meeting of December 16, 2021), the Commission found that the state party had provided sufficient documentation related to volunteer mailings based solely upon the declarations provided by the committee. It must do so here as well."

Commission. The Audit staff therefore mentioned the pledge cards and walking cards here, although their costs were not included in the total dollar amount of this finding.

¹¹ This is less DPA's allowable contribution to the candidate of \$5,000 (\$15,821 - \$5,000 = \$10,821).

The Audit staff noted that in the December 16, 2021 consideration of the Audit Division Recommendation Memorandum on the Connecticut Democratic State Central Committee, the Commission voted 5-0 to reject the Reporting of Apparent Independent Expenditures finding, for which the committee provided a sworn declaration to document the volunteer materials exemption.

In LRA 1153, dated March 30, 2022, OGC revised its conclusion regarding whether the pledge cards and walking cards (referred to as “door hangers” in the declaration provided by DPA), are public communications. OGC stated that door hangers that qualify as exempt under the volunteer materials exemption should be excluded from being classified as party coordinated expenditures, but door hangers that do not qualify for the volunteer materials exemption likely are public communications and, therefore, also party coordinated expenditures. OGC recommended that the cost of the door hangers be included in this finding as a party coordinated expenditure because if they are not within the volunteer materials exemption, the door hangers are likely public communications that otherwise meet the definition of “party coordinated communication” in 11 C.F.R. § 109.37.

In response to OGC’s LRA 1153, dated March 30, 2022, DPA maintained that the door hangers at issue qualify for the volunteer materials exemption, noting that “documentation beyond a sworn affidavit has never been required” to qualify for the exemption. DPA stated that the process of distributing door hangers is “very decentralized,” making it difficult to document such activity, in contrast to documenting the volunteer activity relative to exempt mail pieces which are generally handled in a closed environment.

DPA further stated that the door hangers should not be included in this proposed finding because they are not “public communications” and therefore cannot qualify as coordinated party expenditures. This, DPA asserted, is due to the content standard which states that a communication must be a “public communication” to meet the definition of a coordinated party expenditure.

As a result of OGC’s revised conclusion regarding the door hangers, the Audit staff added the \$4,379 cost of the door hangers to the \$18,424 cost of the direct mailers, for a revised coordinated party expenditure total of \$22,803. DPA provided a sworn declaration to document the volunteer materials exemption for the door hangers and direct mailers, and the Audit staff recommended the Commission determine whether the declaration sufficiently documented volunteer involvement and satisfied the exemption, given the lack of clarity regarding how the exemption should be applied.

In the event the Commission determined that the declaration did not sufficiently document the involvement of volunteers for the door hangers and direct mailers, and that the volunteer materials exemption did not apply to these expenditures, the Audit staff recommended that the Commission find that DPA exceeded the coordinated party expenditure limit by \$15,200.

Commission Conclusion

On July 28, 2022, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission determine whether the declaration sufficiently documented volunteer involvement and satisfied the exemption, given the lack of clarity regarding how the volunteer materials exemption should be applied. In the event the Commission determined that the declaration did not sufficiently document the involvement of volunteers for the door hangers and direct mailers, and that the volunteer materials exemption did not apply to these expenditures, the Audit staff recommended that the Commission find that DPA exceeded the coordinated party expenditure limit by \$15,200.

The Commission did not approve, by the required four votes, the Audit staff's recommendation, with a Commissioner noting that the affidavits and supporting documentation submitted by DPA was consistent with the materials the Commission has accepted as documenting volunteer activity in previous Commission matters.

Pursuant to Commission Directive 70¹², this matter is presented as an "Additional Issue."

B. Volunteer Materials Exemption

1. Facts

DPA reported three disbursements totaling \$22,803 on Schedule B as Federal Election Activity. Two of these disbursements were reported as made to "Print for Progress" and the third was reported as made to "Resonance Campaigns, LLC." DPA reported the purposes of the two disbursements made to Print for Progress as "Volunteer Exempt/Printing of Canvass Materials – Tucker for Congress," and the third disbursement made to Resonance Campaigns, LLC, as "Printing & Postage/Volunteer Exempt Mailing/Clarke Tucker for Congress." The invoices for the two disbursements made to Print for Progress were annotated as "AR-02 Pledge Cards" and "AR-02 Walk Cards," while the third invoice for the disbursement made to Resonance Campaigns, LLC, was annotated as "Production and Design DCC1815 (Qty. 60,969) 8.5x11." DPA, however, did not provide any volunteer documentation or evidence of volunteer involvement to support these disbursements.

The Commission has addressed the applicability of the volunteer materials exemption in the Final Audit Reports of the Arizona Republican Party, the Democratic Executive Committee of Florida, and the Tennessee Republican Party. In these reports, the Commission recognized a lack of clarity regarding the application of the volunteer materials exemption. The Commission had attempted to formulate a consensus policy regarding what constitutes substantial volunteer involvement for the purpose of applying the exemption¹³, but this was never achieved. Since a lack of clarity exists concerning the application of the volunteer

¹² See *supra* footnote 3.

¹³ Proposed Interim Enforcement Policy, Agenda document No. 10-16.
<https://www.fec.gov/resources/updates/agendas/2010/mtgdoc1016.pdf>

materials exemption, it follows that the type and amount of documentation needed to support volunteer involvement is also unclear.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with DPA representatives during the exit conference and provided a schedule detailing these expenditures. DPA representatives stated that “these were not independent expenditures,” that “no state party committee has volunteer support for canvassing materials,” and that “canvassing materials don’t qualify as public communications.” DPA representatives stated they would “work on obtaining volunteer involvement support for the Resonance Campaigns expenditure ... but not for the Print for Progress canvassing expenditures” because those “two items are not public communications.” In response to the exit conference, no additional supporting documentation and no further comment was provided.

As previously discussed in section A.2 above, the Audit staff contended that whether the volunteer materials exemption applies does not hinge on the type of campaign material a committee uses, but, instead, on how the campaign materials are distributed. DPA had not provided evidence of volunteer involvement for these expenditures. Prior to determining whether the volunteer materials exemption applies to the expenditures, DPA must provide evidence of volunteer involvement.

The Interim Audit Report recommended that DPA provide documentation and evidence that apparent independent expenditures totaling \$22,803 did not require reporting as independent expenditures. Such evidence includes documentation such as volunteer sign in sheets, photographs of volunteers participating in various duties such as reviewing, sorting and packing the direct mail pieces, etc., to support the involvement of volunteer processing or distributing the communication. Absent such evidence, the Interim Audit Report recommended that DPA amend its reports to disclose the disbursements as independent expenditures on Schedule E.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, DPA submitted a declaration from its former Director of Operations, as addressed in Part A above. Due to the lack of a clear standard for applying the volunteer materials exemption, the Audit staff was unable to determine whether the declaration submitted by DPA sufficed to document the involvement of volunteers for the direct mailers¹⁴, and noted that the Commission would make a determination at the appropriate phase of the audit process.

4. Draft Final Audit Report

The Draft Final Audit Report acknowledged that the pledge cards, walking cards and direct mailers are not independent expenditures, given DPA’s assertion in its

¹⁴ See footnote 10 above for discussion of the current treatment of the pledge cards and walking cards.

response to the Interim Audit Report that these activities were fully coordinated with the candidate. Given this assertion, the filing of a 24-hour report was not required for the direct mailers. However, the direct mailers are coordinated expenditures, as they are considered public communications. In addition, these expenditures may be subject to the volunteer materials exemption given the declaration from DPA's former Director of Operations.

The Audit staff noted that, at the appropriate time, the Commission would make a determination whether the declaration sufficiently documented the volunteer involvement asserted by DPA.

5. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, DPA reiterated its position that the expenditures totaling \$22,803, "were properly made as exempt activities and were fully coordinated with the candidate." DPA stated that the declaration from its former Director of Operations supported its contention. DPA further stated, "In the recent consideration of the Draft Final Audit Report of the Connecticut Democratic State Central Committee (Agenda Document 21-44-A for Open Meeting of December 16, 2021), the Commission found that the state party had provided sufficient documentation related to volunteer mailings based solely upon the declarations provided by the committee. It must do so here as well."

The Audit staff noted that in the December 16, 2021 consideration of the Audit Division Recommendation Memorandum on the Connecticut Democratic State Central Committee, the Commission voted 5-0 to reject the Reporting of Apparent Independent Expenditures finding, for which the committee provided a sworn declaration to document the volunteer materials exemption.

In LRA 1153, dated March 30, 2022, OGC revised its conclusion regarding whether the pledge cards and walking cards (referred to as "door hangers" in the declaration provided by DPA), are public communications. OGC stated that door hangers that qualify as exempt under the volunteer materials exemption should be excluded from being classified as party coordinated expenditures, but door hangers that do not qualify for the volunteer materials exemption likely are public communications and, therefore, also party coordinated expenditures. OGC recommended that the cost of the door hangers be included in this finding as a party coordinated expenditure because if they are not within the volunteer materials exemption, the door hangers are likely public communications that otherwise meet the definition of "party coordinated communication" in 11 C.F.R. § 109.37.

In response to OGC's LRA 1153, dated March 30, 2022, DPA maintained that the door hangers at issue qualify for the volunteer materials exemption, noting that "documentation beyond a sworn affidavit has never been required" to qualify for the exemption. DPA stated that the process of distributing door hangers is "very decentralized," making it difficult to document such activity, in contrast to

documenting the volunteer activity relative to exempt mail pieces which are generally handled in a closed environment.

DPA further stated that the door hangers should not be included in this proposed finding because they are not “public communications” and therefore cannot qualify as coordinated party expenditures. This, DPA asserted, is due to the content standard which states that a communication must be a “public communication” to meet the definition of a coordinated party expenditure.

As a result of OGC’s revised conclusion regarding the door hangers, the Audit staff added the \$4,379 cost of the door hangers to the \$18,424 cost of the direct mailers, for a revised coordinated party expenditure total of \$22,803. DPA provided a sworn declaration to document the volunteer materials exemption for the door hangers and direct mailers, and the Audit staff recommended the Commission determine whether the declaration sufficiently documented volunteer involvement and satisfied the exemption, given the lack of clarity regarding how the exemption should be applied.

In the event the Commission determined that the declaration did not sufficiently document the involvement of volunteers for the door hangers and direct mailers, and that the volunteer materials exemption did not apply to these expenditures, the Audit staff recommended that the Commission find that DPA exceeded the coordinated party expenditure limit by \$15,200.

Commission Conclusion

On July 28, 2022, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission determine whether the declaration sufficiently documented volunteer involvement and satisfied the exemption, given the lack of clarity regarding how the volunteer materials exemption should be applied. In the event the Commission determined that the declaration did not sufficiently document the involvement of volunteers for the door hangers and direct mailers, and that the volunteer materials exemption did not apply to these expenditures, the Audit staff recommended that the Commission find that DPA exceeded the coordinated party expenditure limit by \$15,200.

The Commission did not approve, by the required four votes, the Audit staff’s recommendation, with one Commissioner stating that the declaration provided by DPA was consistent with the kind of materials the Commission has accepted as documenting volunteer activity in previous Commission matters.

Pursuant to Commission Directive 70¹⁵, this matter is presented as an “Additional Issue.”

¹⁵ See *supra* footnote 3.

C. Failure to File 24-Hour Reports for Apparent Independent Expenditures

1. Facts

In addition to not reporting the apparent independent expenditures totaling \$22,803 identified above, DPA did not file any 24-hour reports¹⁶, which may have been required.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with DPA representatives during the exit conference and presented a schedule detailing these expenditures. DPA representatives stated that “these were not independent expenditures,” that “no state party committee has volunteer support for canvassing materials,” and that “canvassing materials don’t qualify as public communications.” DPA representatives stated they would “work on obtaining volunteer involvement support for the Resonance Campaigns expenditure ... but not for the Print for Progress canvassing expenditures” because those “two items are not public communications.” In response to the exit conference, no additional supporting documentation and no further comment was provided.

As previously discussed in section A.2 above, the Audit staff contended that whether the volunteer materials exemption applies does not hinge on the type of campaign material a committee uses, but, instead, on how the campaign materials are distributed. DPA had not provided evidence of volunteer involvement for these expenditures. Prior to determining whether the volunteer materials exemption applies to the expenditures, DPA must provide evidence of volunteer involvement.

The Interim Audit Report recommended that, absent documentation that the apparent independent expenditures, totaling \$22,803, did not require reporting as independent expenditures (per Part A above), DPA provide documentation to support the date of public dissemination for each mailer to determine whether a 24-hour report was required to be filed.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, DPA objected to the characterization of the expenditures in question as independent expenditures and stated that the expenditures were “exempt activities and were fully coordinated with the candidate,” which would negate the requirement to file 24-hour reports. DPA also submitted a declaration from its Director of Operations, as addressed in Part A above.

After reviewing DPA’s response to the Interim Audit Report recommendation, and in consultation with the Office of General Counsel, the Audit staff agreed that the

¹⁶ The date the expenditure is publicly distributed serves as the date that the independent expenditure is made for purposes of the additional 24-hour report filing requirement. In the absence of a known date for public dissemination, the Audit staff used the invoice date of incurrence to determine if a 24-hour report was required.

pledge cards, walking cards, and direct mailers are not independent expenditures. As such, DPA was not required to file 24-hour reports for these expenditures.

4. Draft Final Audit Report

The Draft Final Audit Report acknowledged that the pledge cards, walking cards and direct mailers are not independent expenditures, given DPA's assertion in its response to the Interim Audit Report that these activities were fully coordinated with the candidate. Given this assertion, the filing of a 24-hour report was not required for the direct mailers.

5. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, DPA did not address this matter as the Audit staff acknowledged in the Draft Final Audit Report that the pledge cards, walking cards and direct mailers are not independent expenditures, and as such, do not require the filing of a 24-hour report.

Commission Conclusion

On July 28, 2022, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission determine whether the declaration sufficiently documented volunteer involvement and satisfied the exemption, given the lack of clarity regarding how the volunteer materials exemption should be applied. In the event the Commission determined that the declaration did not sufficiently document the involvement of volunteers for the door hangers and direct mailers, and that the volunteer materials exemption does not apply to these expenditures, the Audit staff recommended that the Commission find that DPA exceeded the coordinated party expenditure limit by \$15,200.

The Commission did not approve, by the required four votes, the Audit staff's recommendation, with one Commissioner stating that the declaration provided by DPA was consistent with the kind of materials the Commission has accepted as documenting volunteer activity in previous Commission matters.

Pursuant to Commission Directive 70¹⁷, this matter is presented as an "Additional Issue."

¹⁷ See *supra* footnote 3.