




FEDERAL ELECTION COMMISSION  
Washington, DC 20463

November 20, 2003

MEMORANDUM

TO: RON M. HARRIS  
PRESS OFFICER  
PRESS OFFICE

FROM: JOSEPH F. STOLTZ   
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE AUDIT REPORT ON THE  
MISSOURI DEMOCRATIC STATE COMMITTEE

Attached please find a copy of the audit report and related documents on the Missouri Democratic State Committee, which was approved by the Commission on October 31, 2003.

The report may be released to the public on November 20, 2003.

Attachment as stated

cc: Office of General Counsel  
Office of Public Disclosure  
Reports Analysis Division  
FEC Library  
Web Manager



# Report of the Audit Division on the Missouri Democratic State Committee

January 1, 1999 – December 31, 2000

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## Why the Audit Was Done

Federal law permits the Commission to conduct an audit and field investigation 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)

The Missouri Democratic State Committee maintains its headquarters in Jefferson City, Missouri. For more information, see the chart on the Committee Organization, p.2.

## Financial Activity (p. 2)

• Receipts	
○ Total Contributions	1,540,791
○ Transfers from Affiliates/Other Party Committees	5,112,470
○ Transfers from Non-Federal Account	13,183,324
○ All Other Receipts	1,493,398
○ <b>Total Receipts</b>	<b>\$21,329,983</b>
• Disbursements	
○ Operating Expenditures	\$19,640,872
○ All Other Disbursements	1,655,449
○ <b>Total Disbursements</b>	<b>\$21,296,321</b>

## Findings and Recommendations (p.3)

- Misstatement of Financial Activity (Finding 1)
- Receipt of Contributions That Exceed Limits (Finding 2)
- Receipt of Prohibited Contributions (Finding 3)
- Disclosure of Outstanding Debts (Finding 4)

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<sup>1</sup> 2 U.S.C. §438(b).

**Report of the  
Audit Division on the  
Missouri Democratic State  
Committee**

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January 1, 1999 – December 31, 2000



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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of the Missouri Democratic State Committee (MDSC), 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 establish threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

### **Scope of Audit**

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

1. The 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.
8. Other committee operations necessary to the review.

### **Changes to the Law**

On March 27, 2002, President Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA contains many substantial and technical changes to the federal campaign finance law. Most of the changes became effective November 6, 2002. The period covered by this audit pre-dates these changes. Therefore, the statutory and regulatory requirements cited in this report are those that were in effect during the audit period.

## Part II

### Overview of Committee

#### Committee Organization

<b>Important Dates</b>	
• Date of Registration	September 15, 1980
• Audit Coverage	January 1, 1999 – December 31, 2000
<b>Headquarters</b>	
Jefferson City, Missouri	
<b>Bank Information</b>	
• Bank Depositories	1
• Bank Accounts	2 Federal and 3 Non-Federal Accounts
<b>Treasurers</b>	
• Treasurer When Audit Was Conducted	Michael Kelley
• Treasurer During Period Covered by Audit	Donna Knight
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

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

	Amount in \$
<b>Cash on hand at January 1, 1999</b>	<b>\$ 8,097</b>
○ Contributions	1,540,791
○ Transfers From Affiliates/Other Party Committees	5,112,470
○ Transfers From Non-Federal Account	13,183,324
○ Other Receipts	1,493,398
<b>Total Receipts</b>	<b>21,329,983</b>
○ Operating Expenditures	19,640,872
○ Other Disbursements	1,655,449
<b>Total Disbursements</b>	<b>21,296,321</b>
<b>Cash on hand at December 31, 2000</b>	<b>\$41,759</b>

## **Part III**

### **Summaries**

#### **Findings and Recommendations**

##### **Finding 1. Misstatement of Financial Activity**

A comparison of the MDSC's reported figures with its bank statements revealed that the MDSC had misstated the receipts, disbursements, and cash-on-hand balances on its FEC reports for calendar year 2000. Much of the misstatement was the result of non-federal contributions being deposited in the Federal Account and, according to the MDSC, transferred to the non-federal account, but not reported. In response to the interim audit report recommendation, the MDSC filed amended reports. However, the reports did not fully comply with the Audit staff's recommendation. (For more detail, see p. 5. See also Finding 2.)

##### **Finding 2. Receipt of Contributions That Exceed Limits**

The Audit staff identified 25 contributions from individuals and political committees that exceed the contributions limits by \$176,125. The MDSC deposited these contributions into the federal account and purportedly transferred the excessive portions into the non-federal account. Records were not provided that would allow the Audit staff to identify which contributions were transferred. In addition, the MDSC made transfers totaling \$200,500 from its federal account to its non-federal account, but failed to report them. (See Finding 1.) Presumably, these relate to the contributions discussed above. The interim report recommended that MDSC submit evidence to show that the contributions were not excessive or were timely transferred to the non-federal account and absent such evidence refund the excessive portion to the contributor. It also recommended that MDSC file amended reports to disclose the contributions and related transfers to the non-federal account. In response the MDSC provided information detailing the timely disposition of all except one of the excessive amounts. But regarding amending the reports, the MDSC maintained that it was not required to report either the contributions that exceeded limits or the transfers to a non-federal account. (For more detail, see p. 8).

##### **Finding 3. Receipt of Prohibited Contributions**

The Audit staff identified 32 contributions totaling \$189,000 from potentially prohibited sources such as limited liability companies (LLC's). The MDSC did not maintain records to verify that the contributing entities chose to be treated as partnerships for tax purposes and therefore eligible to make a contribution. The interim audit report recommended that the MDSC provide documentation to show that the contributions were either not prohibited or timely disposed of and to report the contributions and any related amounts transferred to a non-federal account. In response, the MDSC provided a schedule which detailed the transfer of the contributions to the non-federal account. However, the MDSC did not comply with the recommendation to amend its reports. (For more detail, see p. 12).

**Finding 4. Disclosure of Outstanding Debts**

The MDSC failed to itemize outstanding debts totaling \$620,575 to thirteen vendors on its disclosure reports for calendar year 2000. In its response to the interim audit report, the MDSC filed Schedules D, by reporting period, to disclose the debts. (For more detail, see p.15).



## Part IV

# Findings and Recommendations

### Finding 1. Misstatement of Financial Activity

#### Summary

A comparison of the MDSC's reported figures with its bank statements revealed that the MDSC had misstated the receipts, disbursements, and cash-on-hand balances on its FEC reports for calendar year 2000. Much of the misstatement was the result of non-federal contributions being deposited in the Federal Account and, according to the MDSC, transferred to the non-federal account, but not reported. In response to the interim audit report recommendation, the MDSC filed amended reports. However, the reports did not fully comply with the Audit staff's recommendation. (See also Finding 2.)

#### Legal Standard

##### Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year; and
- The total amount of disbursements for the reporting period and for the calendar year. 2 U.S.C. § 434(b)(1), (2) and (4).

##### Itemization of Contributions. Political committees must itemize:

- Any contribution from an individual if it exceeds \$200 per calendar year (or per election cycle in the case of authorized candidate committees) either by itself or when aggregated with other contributions from the same contributor;
- Every contribution from any political committee, regardless of the amount; and
- 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).

**Itemization of Disbursements.** Political committees that are not authorized committees must itemize each disbursement to a person that receives in excess of \$200 during the calendar year. 2 U.S.C. § 434(b)(5)(A), (C), and (D).

#### Facts and Analysis

The following chart details the discrepancies between the totals on the MDSC disclosure reports and bank records for calendar year 2000. Succeeding paragraphs explain why the discrepancies occurred, however, without records to demonstrate the derivation of the reported amounts it was not possible to explain all differences.

## Comparison of Disclosure Reports and Bank Records

<b>2000 Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
<b>Opening Cash Balance</b>	\$43,174	\$48,559	(\$5,385) Understated
<b>Receipts</b>	\$20,267,531	\$20,527,670	(\$260,139) Understated
<b>Disbursements</b>	\$20,297,473	\$20,534,470	(\$236,997) Understated
<b>Ending Cash Balance</b>	\$13,232	\$41,759	\$28,526 Understated

### Explanation of Discrepancies

#### Opening Cash on Hand – 2000

The understatement of opening cash on hand was primarily the result of an unreported contribution of \$5,000 from a Political Action Committee (PAC) in 1999.

#### Receipts – 2000

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

- Eight reported contributions not found deposited in the federal account. \$ - 7,411
- Contributions not reported. This amount represents portions of contributions that the MDSC transferred to the non-federal account. At the time the interim audit report was prepared, records necessary to associate the contributions with a particular transfer were not available. However, with the exception of four contributions, all were reported as contributions to the non-federal account on reports filed with the State of Missouri Ethics Commission. (See Finding 2.) + 330,125
- Unreported prohibited contribution. This contribution from a labor organization was also found reported as contribution to the non-federal account on reports filed with the State of Missouri Ethics Commission. (See Finding 3.) + 60,000
- Unreported PAC contribution-Non-Excessive. + 1,500

• Net Reported transfers from the non-federal account not found in federal account. This amount represents the difference between transfers from the MDSC's non-federal account detailed on the federal account bank statements and those reported on Schedule H3 (Transfers From Non-Federal Accounts).	- 142,500
• Unexplained difference	<u>+ 18,423</u>
• Net understatement	<u>\$ + 260,139</u>

#### **Disbursements – 2000**

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

• Unreported transfers to non-federal Account. These relate to the contributions discussed above that MDSC transferred to the non-federal account. Five of the transfers are annotated to indicate that they represent the non-federal share of contributions. (See Finding 2.)	\$ + 200,500
• Seven reported disbursements totaling \$31,000 not found in the federal account. These disbursements were reported as contribution refunds; four reported refunds totaling \$20,000, were to persons whose contributions were among those not reported and discussed in the receipts section above.	- 31,000
• Unexplained difference	<u>+ 67,497</u>
• Net understatement	<u>\$ + 236,997</u>

#### **Closing Cash on Hand – 2000**

The \$28,526 understatement of the closing cash on hand was the net result of the misstatements described above.

At the exit conference, the Audit staff provided the MDSC representatives with schedules explaining the misstatements. The representatives offered no response at that time.

#### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that the MDSC file amended reports, by reporting period, for calendar year 2000 to correct the misstatements noted above including amended schedules A, B and H3 (Transfers from Non-Federal Accounts) as appropriate. The interim audit report also noted that depending on MDSC's response to Findings 2 and 3, contributions that were initially deposited into the federal account and subsequently transferred to the non-federal account should be reported on memo Schedules A and B as outlined in the recommendations at those findings. To the extent that some of the

adjustments above may be made by memo entry, the correct reportable amounts for total receipts and disbursements may differ from the amounts shown under *Bank Records* in the table presented on page 6.

In response to the interim audit report, the MDSC submitted amended Summary Pages for the above noted reports. However, as discussed more fully in Finding 2, it neither reported the contributions deposited into the federal account along with the subsequent transfers to a non-federal account nor filed the memo schedules requested. Other discrepancies in reported receipts and disbursements were corrected.

## **Finding 2. Receipt of Contributions That Exceed Limits**

### **Summary**

The Audit staff identified 25 contributions from individuals and political committees that exceed the contributions limits by \$176,125. The MDSC deposited these contributions into the federal account and purportedly transferred the excessive portions into the non-federal account. Records were not provided that would allow the Audit staff to identify which contributions were transferred. In addition, the MDSC made transfers totaling \$200,500 from its federal account to its non-federal account, but failed to report them. (See Finding 1.) Presumably, these relate to the contributions discussed above. The interim report recommended that the MDSC submit evidence to show that the contributions were not excessive or were timely transferred to the non-federal account and absent such evidence refund the excessive portion to the contributor. It also recommended that MDSC file amended reports to disclose the contributions and related transfers to the non-federal account. In response the MDSC provided information detailing the timely disposition of all except one of the excessive amounts. But regarding amending the reports, the MDSC maintained that it was not required to report either the contributions that exceeded the limits or the transfers to a non-federal account.

### **Legal Standard**

**Party Committee Limits.** A party committee may not receive more than a total of \$5,000 per year from any one contributor or from any one multicandidate political committee. 2 U.S.C. §441a(a)(1)(C); 2 U.S.C. §441a(a)(2)(C); 2 U.S.C. §441a (f), 11 CFR §§110.1(a) and (d) and 110.9(a).

**Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:

1. Return the questionable check to the donor; or
2. Deposit the check into its federal account and:
  - Keep enough money in the account to cover all potential refunds;
  - Keep a written record explaining why the contribution may be illegal;
  - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
  - Seek a *retribution* of the excessive portion, following the instructions provided in FEC regulations; and

- If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor.
- 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

**Joint Contributions.** Any contribution made by more than one person (except for a contribution made by a partnership) must include the signature of each contributor on the check or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

**Reattribution of Excessive Contributions.** FEC regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to *reattribute* the excess amount to the other contributor. The committee must inform the contributor that:

1. The reattribution must be signed by both contributors;
2. The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
3. The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3). Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

**Revised Regulations Applied.** The Commission recently adopted new regulations that allow committees greater latitude to reattribute contributions to joint account holders and has decided to apply these regulations to current matters. The Audit staff has evaluated the excessive contributions discussed below using the new regulation.

### **Facts and Analysis**

A review of the MDSC's receipt records identified contributions from PAC's and individuals that appeared to exceed the contribution limits by \$176,125. Four of the excessive contributions totaling \$61,125 were from PAC's. Twenty-one excessive contributions totaling \$115,000 were from individuals.

These contributions were deposited into the federal account and, according to the MDSC representatives, the excessive portions of the contributions were subsequently transferred to the non-federal account. The MDSC did not maintain records to associate these excessive contributions with specific transfers. Therefore, at the time the Interim Audit Report was prepared, the Audit staff could not conclude that the excessive portions of the contributions mentioned above were in fact transferred to the non-federal account. However, all but 4 of the excessive contributions were reported as contributions to the non-federal account on reports filed with the State of Missouri Ethics Commission. The MDSC reported only the amount of the contributions retained in the federal account and

not the total amount of the contributions received<sup>2</sup>. The MDSC maintained sufficient balances in its bank accounts to refund the contributions.

During calendar year 2000, the MDSC made 11 transfers to the non-federal account totaling \$839,117. Annotations on various records indicate that the purpose for 7 of the disbursements was to transfer the non-federal portions of contributions. Five transfers totaling \$200,500 were not reported. (See Finding 1.) One of the unreported transfers in the amount of \$104,000 was accompanied with a list of specific contributions. These contributions were timely transferred to the non-federal account and not included in the excessive contributions noted above. However, the MDSC did not maintain similar records for all transfers and when the interim audit report was prepared it was not possible to determine if other transfers were related to the excessive contributions discussed above and, if so, they were made timely.

At the exit conference, the Audit staff gave the MDSC's representatives a schedule of excessive contributions. In response, the MDSC acknowledged the receipt of the contributions, however, it provided no evidence demonstrating that the excessive portions were refunded, transferred, or timely reattributed. MDSC representatives cited Advisory Opinion # 2001-17 (the AO) as the justification for the way they handled contributions that were intended to be split between the federal and non-federal accounts. In the AO the Commission outlined a method for reporting such contributions by a national party committee. But, the outlined method relied on the requirement to disclose contributions received by the national party's non-federal account and requires that the two portions of the contribution be cross referenced on the national party's reports. Disclosure reports filed by State party committees do not provide a similar reporting mechanism. Therefore MDSC's reliance on AO 2001-17 to justify not reporting these transactions in any form is incorrect.

### **Interim Audit Report Recommendation**

The Audit staff recommended that the MDSC:

- Provide evidence demonstrating that the contributions in question were not excessive or were refunded or transferred to the non-federal account (prior to the audit)<sup>3</sup>. If the contributions were transferred to the non-federal account, the disclosure reports should be amended to reflect the portion of the contribution so transferred and the associated transfers as memo entries;
- Provide records associating each excessive contribution deposited into the federal account with the corresponding transfer to the non-federal account. If such association can be demonstrated, amend Schedules A and B<sup>4</sup> as follows:

<sup>2</sup> These contributions are a subset of the \$330,125 of contributions not reported and discussed in Finding 1. The difference is due to the application of the revised reattribution regulations. (See Legal Standards above.)

<sup>3</sup> The MDSC received Requests for Additional Information (RFAI) from the Commission's Reports Analysis Division related to apparent excessive contributions. Although a refund of the above described excessive contributions would normally be warranted, the Commission is not requiring refunds of contributions transferred to the non-federal account because the language in the RFAI letters may not have fully clarified the requirements for transfers of excessive contributions.

<sup>4</sup> See Finding 1.

- Report the portion of the contribution to the federal account that was subsequently transferred to the non-federal account on Schedule A as a memo entry, explaining that the full contribution exceeded the limits (noting the amount) and that the excessive portion was transferred to a non-federal account.
- Report the amount transferred to the non-federal account on Schedule B as a memo entry. Both memo entries should indicate the date of the transfer and should cross reference each other;
- Absent such evidence, refund \$176,125<sup>5</sup> to the contributors and provide evidence of such refunds (copies of front and back of negotiated refund checks); and
- If funds are not available to make the necessary refunds, disclose those contributions requiring refunds on Schedules D (Debts and Obligations) until funds become available to make the refunds.

### **Committee Response to Recommendations and the Audit Staff's Assessment**

In response to the interim audit report, the MDSC provided schedules which detailed the disposition of the excessive portions of contributions from individuals and political committees. According to the schedules, the excessive portions of contributions were disposed of as follows:

- Sixteen excessive portions of contributions from individuals totaling \$75,000 and 4 from PACs totaling \$41,125 were “netted” against the reimbursements from the non-federal account for the non-federal share of allocable expenses.
- Four excessive portions of contributions from individuals and one from a PAC totaling \$56,500 were transferred from the federal account to a non-federal account by check.
- The excessive portion of a contribution in the amount of \$3,500 from one individual, which was received on 12/28/00, was electronically withdrawn from the federal account in January 2001.

The information provided was sufficient for the Audit staff to conclude that all but one \$2,500 excessive contribution was disposed of in a timely manner.

Regarding amending the reports, the MDSC maintained that it was not required to report either contributions that exceeded limits or the transfers of such amounts to a non-federal account. Citing Advisory Opinion 2001-17, the MDSC stated:

- “[T]he Commission has acknowledged that its rules do not specifically address the reporting of the receipt of contribution checks where the proceeds are intended to be split between Federal and non-Federal accounts.”
- In the AO the Commission allowed the DNC to report in the manner proposed as long as it used memo entries with explicit cross references between the disclosures for the Federal and non-Federal accounts. But the requirements for cross references need not be implemented for contributions received prior to January 1, 2002.

<sup>5</sup> This figure consists of excessive portions of contributions from PAC's (\$61,125) and individuals (\$115,000).

- That opinion came out in the middle of the *following* election cycle. So, the question is whether the Committee should be required to amend its reports extensively because it did not comply with a particular reporting practice when there had been no Commission guidance.

The Audit staff maintains that in the absence of specific guidance to the contrary, the MDSC should have complied with 2 USC §434(b) which requires committees to report the total amount of receipts and disbursements for the reporting period and the calendar year including the itemization of any contribution from an individual if it exceeds \$200 per calendar year either by itself or when aggregated with other contributions from the same individual. The Commission affirmed the requirement in MUR 4961. In that case the Commission found that during the 1996 election cycle the DNC had violated 2 U.S.C. §434(b) by failing to report contributions received and transferred to its non-federal account in the same manner proposed here by the Audit staff. AO 2001-17 did not provide new reporting requirements. Rather, it provided an exception to the existing requirements, and the exception applied only to a national party committees that when the opinion was issued, reported both federal and non-federal transactions.

### **Finding 3. Receipt of Prohibited Contributions**

#### **Summary**

The Audit staff identified 32 contributions totaling \$189,000 from potentially prohibited sources such as limited liability companies (LLC's). The MDSC did not maintain records to verify that the contributing entities chose to be treated as partnerships for tax purposes and therefore eligible to make a contribution. The interim audit report recommended that the MDSC provide documentation to show that the contributions were either not prohibited or were timely disposed of, and to report the contributions and any related amounts transferred to a non-federal account. In response, the MDSC provided a schedule which detailed the transfer of the contributions to the non-federal account. However, the MDSC did not comply with the recommendation to amend its reports.

#### **Legal Standard**

**Receipt of Prohibited Contributions – General Prohibition.** Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
  - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
  - Labor Organizations; 2 U.S.C. §441b

**Definition of Limited Liability Company.** A limited liability company (LLC) is a business entity recognized as an LLC under the laws of the state in which it was established. 11 CFR §110.1(g)(1).



**Application of Limits and Prohibitions to LLC Contributions.** A contribution from an LLC is subject to contribution limits and prohibitions, depending on several factors, as explained below.

- **LLC as Partnership.** The contribution is considered a contribution from a partnership if the LLC chooses to be treated as a partnership under Internal Revenue Service (IRS) tax rules, or if it makes no choice at all about its tax status. A contribution by a partnership is attributed to each partner in direct proportion to his or her share of the partnership profits. 11 CFR §110.1(e)(1). (See explanation of Partnership Contributions (PC) below.)
- **LLC as Corporation.** The contribution is considered a corporate contribution—and is barred under the Act—if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are traded publicly. 11 CFR §110.1(g)(3).
- **LLC with Single Member.** The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1(g)(4).

**Limited Liability Company's Responsibility to Notify Recipient Committee.** At the time it makes a contribution, an LLC must notify the recipient committee:

- That it is eligible to make the contribution; and
- In the case of an LLC that considers itself a partnership (for tax purposes), how the contribution should be attributed among the LLC's members. 11 CFR §110.1(g)(5).

**Questionable Contributions.** If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
  - Return the contribution to the contributor without depositing it; or
  - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
  - Confirm the legality of the contribution; or
  - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

## **Facts and Analysis**

A review of the MDSC's receipt records identified 32 contributions totaling \$189,000 that appeared to be from prohibited sources.

Twenty-one of these contributions totaling \$88,000 were from LLC's and 10 contributions totaling \$41,000 were from PC's. The MDSC did not maintain records to verify that the contributing LLC's chose, for IRS purposes, to be treated as corporations or partnerships. The MDSC did not represent that the contributions were transferred to the non-federal account.

In addition, the MDSC received one prohibited contribution of \$60,000 from a labor organization's treasury funds. This contribution was deposited into a federal account but was not reported to the Commission. As noted in Finding 1, the MDSC made transfers to the non-federal account, but could not, in all cases, associate the excessive or prohibited contribution with any transfer. Without such evidence it was not possible to determine if the contribution was transferred, and if so, whether the transfer was timely. However, this contribution was disclosed as a contribution to the non-federal account on reports filed with the Missouri Ethics Commission. The reporting of the contribution by the non-federal account suggests that it is among the contributions that MDSC stated were transferred.

At the exit conference, the Audit staff presented the MDSC's representatives with a schedule of contributions from prohibited sources. In their response, the representatives stated that the contribution from a labor organization's treasury funds was mistakenly deposited to the federal account. The mistake was discovered on November 2, 2000 and the contribution was transferred to a non-federal account. In addition, the representatives stated that 7 contributions from LLC's totaling \$23,000 and one contribution from a PC totaling \$5,000, were transferred to a non-federal account. However, the representatives provided no documentation demonstrating that these contributions were actually transferred to a non-federal account.

## **Interim Audit Report Recommendation**

The Audit staff recommended that the MDSC:

- Provide documentation demonstrating that the contributions in question were not prohibited, or were refunded or transferred timely to a non-federal account (See below for reporting of transferred amount.)<sup>6</sup>;
- For the LLC's, examples of documentation include but are not limited to: a signed statement from each LLC, a copy of an IRS Form 8832 (Entity Classification Election), a copy of IRS Form 1065 (Partnership Tax Return), or a copy of IRS

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<sup>6</sup> The MDSC received RFAI's from the Commission's Reports Analysis Division related to apparent prohibited contributions. Although a refund of the above described prohibited contributions would normally be warranted, the Commission is not requiring refunds of contributions transferred to the non-federal account because the language in the RFAI letters may not have fully clarified the requirements for transfers of prohibited contributions.

Form SS-4 (Application for Employer Identification Number) indicating that the entity has not elected to be treated as a corporation by the Internal Revenue Service and is therefore eligible to make such a contribution;

- Provide records to associate the prohibited contributions deposited into the federal account with the corresponding transfer to the non-federal account. If such association can be demonstrated, amend Schedules A and B as follows:
  - Report the contribution that was subsequently transferred to the non-federal account on Schedule A as a memo entry, explaining why it was transferred.
  - Report the amount transferred to the non-federal account on Schedule B as a memo entry. Both memo entries must indicate the date of the transfer and be cross referenced.
- Absent such additional documentation, refund \$189,000 to the contributors, providing evidence of such refunds (copies of the front and back of the negotiated refund checks); and
- If funds are not available to make the necessary refunds, disclose those contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make the refunds.

### **Committee Response to Recommendations and the Audit Staff's Assessment**

In response to the interim audit report, the MDSC provided a schedule which detailed the disposition of the potentially prohibited contributions. According to the schedule:

- Nine contributions totaling \$90,000 (including \$60,000 from the labor organization) were transferred to a non-federal account. One \$5,000 contribution was not transferred timely.
- One \$5,000 contribution from an LLC organized in Missouri was permissible.
- The remaining 22 contributions totaling \$94,000 were disgorged (transferred) from the federal account on September 22, 2003. A copy of a negotiated check or other evidence of the transfer was not provided. The MDSC stated that it continues to seek documentation for these contributions to establish their permissibility. It should be noted that transferring these contributions from the federal account rather than refunding them to the contributors is not an acceptable resolution since the transfer occurred well outside of the 30-day regulatory time frame for handling questionable contributions.

MDSC did not comply with the recommendation to file amended reports to include the contributions or their related transfers to the non-federal account.

## **Finding 4. Disclosure of Outstanding Debts**

### **Summary**

The MDSC failed to itemize outstanding debts totaling \$620,575 to thirteen vendors on its disclosure reports for calendar year 2000. In its response to the interim audit report, the MDSC filed Schedules D, by reporting period, to disclose the debts.

**Legal Standard**

**Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

**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. 11 CFR §104.11(b).

**Facts and Analysis**

The Audit staff reconciled the accounts<sup>7</sup> of the largest vendors and determined that the MDSC had outstanding debt balances at the end of nearly every reporting period, however, this debt was not disclosed on Schedules D.

Debts to 13 vendors totaling \$620,575 were not reported on the disclosure reports for calendar year 2000. The amount of the debts not reported ranged from \$7,888 (July 1 – July 19, 2000 reporting period) to \$398,991 (October 1 – October 18, 2000 reporting period). The major debt categories were direct mail (\$334,270); consulting (\$129,502); and, media purchase and production (\$71,292).

At the exit conference, the Audit staff provided the MDSC representatives a detailed listing of unreported debts for all reporting periods. The Audit staff inquired as to why the MDSC failed to disclose its debts, however, the representatives offered no answer.

**Interim Audit Report Recommendation and Committee Response**

In response to the recommendation in the interim audit report, the MDSC filed Schedules D, by reporting period, which materially disclosed the debts noted above.

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<sup>7</sup> The reconciliation consisted of calculating invoiced and paid amounts for individual reporting periods in the 1999 – 2000 campaign cycle. The Audit staff then determined whether any outstanding debts were correctly disclosed on Schedules D.