



Draft Final Audit Report of the Audit Division on the Colorado Republican Committee

(January 1, 2011 - December 31, 2012)

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. 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. 3)

The Colorado Republican Committee is a state party committee headquartered in Greenwood Village, Colorado. For more information, see the chart on the Committee Organization, p. 3.

Financial Activity (p. 3)

• Receipts	
○ Contributions from Individuals	\$ 1,975,834
○ Contributions from Political Committees	61,630
○ Transfers from Affiliated and Other Party Committees	8,332,317
○ Transfers from Federal Accounts	1,940
○ Other Receipts	235,765
Total Receipts	\$ 10,607,486
• Disbursements	
○ Operating Expenditures	\$ 8,863,660
○ Federal Election Activity	1,374,497
○ Refunds of Contributions	3,050
Total Disbursements	\$ 10,241,207

Findings and Recommendations (p. 4)

- Misstatement of Financial Activity (Finding 1)
- Reporting of Apparent Independent Expenditures (Finding 2)
- Recordkeeping for Communications (Finding 3)
- Failure to Itemize Debts and Obligations (Finding 4)

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Part I Background

Authority for Audit

This report is based on an audit of the Colorado Republican Committee (CRC), 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 the CRC's risk factors and as a result, this audit examined:

1. the receipt of contributions from prohibited sources;
2. the disclosure of individual contributors' occupation and name of employer;
3. the disclosure of disbursements, debts and obligations;
4. the disclosure of expenses allocated between federal and non-federal accounts;
5. the consistency of reported figures and records;
6. the completeness of records; and
7. 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," CRC requested early consideration of a legal question raised during the audit. Specifically, CRC questioned whether the requirement under 11 C.F.R. §104.3(d) to disclose outstanding debt on Schedule D (Debt and Obligations) violated attorney - client privilege when the debt related to outstanding legal representation services.

The Commission concluded, by a vote of 6-0, that the Colorado rules of confidentiality do not preclude the Commission from requiring CRC to report an outstanding debt and/or obligation owed by or to CRC from its legal counsel under 52 U.S.C. §30104(b)(8) and 11 C.F.R. §104.3(d). The Audit staff informed CRC's Counsel of the Commission's decision on CRC's request. This audit report includes findings and recommendations with respect to CRC's failure to disclose outstanding debt owed to its legal representative. (See Finding 4, p. 19.)

Limitations

CRC satisfied the minimum disbursement recordkeeping requirements of 11 CFR§102.9. However, in response to the Internal Control Questionnaire (ICQ) presented by the Audit staff at the beginning of the audit, CRC representatives identified a federal bank account titled "Federal Transfer Account" but did not provide bank statements from the audit period pertaining to that account. Without these statements, the Audit staff could not determine if federal activity related to this account was properly reported.

Part II Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	February 17, 1976
• Audit Coverage	January 1, 2011 - December 31, 2012
Headquarters	
Greenwood Village, Colorado	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	9 Federal, 8 Non-federal
Treasurer	
• Treasurer When Audit Was Conducted	Marty Neilson (11/20/2015 – present) Robert Balink (5/9/2014 – 11/19/2015) Christine Mastin (6/10/2013 – 5/8/2014)
• Treasurer During Period Covered by Audit	Richard A. Westfall (8/15/2007 – 6/9/2013)
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2011	\$ 70,571
Receipts	
o Contributions from Individuals	1,975,834
o Contributions from Political Committees	61,630
o Transfers from Affiliated and Other Party Committees	8,332,317
o Transfers from Non-Federal Accounts	1,940
o Other Receipts	235,765
Total Receipts	\$ 10,607,486
Disbursements	
o Operating Expenditures	8,863,660
o Federal Election Activity	1,374,497
o Refunds of Contributions	3,050
Total Disbursements	\$ 10,241,207
Cash-on-hand @ December 31, 2012	\$ 436,850

Part III Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

A comparison of CRC's bank activity with its most recent amended reports prior to the audit revealed material misstatements in both 2011 and 2012. In addition, a comparison of CRC's bank activity with its original reports for 2011 and 2012 also revealed material misstatements. In response to the Interim Audit Report recommendation, CRC stated that the misstatements were inadvertent and agreed to file amendments to the relevant reports. CRC subsequently amended its reports to materially correct the misstatements identified for 2011. As of the date of this report, however, CRC has not materially complied with the recommendations to correct the misstatements in 2012, nor has it made an adjustment to reconcile the cash balance on its most recent report.

During audit fieldwork, CRC also provided bank statements and other related documentation for a Republican National Convention Expense Account, an apparent federal account. CRC did not report, however, any receipt and disbursement activity pertaining to this account on its disclosure reports. In response to the Interim Audit Report recommendation pertaining to the Republican National Convention Expense Account, CRC stated it has previously provided documentation that this account was not controlled by CRC and, as such, is not an unreported federal account. Absent bank documentation that confirms CRC was not associated with the Convention Account, the Audit staff considers this issue unresolved. (For more detail, see p. 6.)

Finding 2. Reporting of Apparent Independent Expenditures

During audit fieldwork, the Audit staff reviewed operating expenditures totaling \$357,895 that CRC disclosed on Schedule B, Line 21b (Operating Expenditures) that appeared to be direct mail or media-related independent expenditures that should have been disclosed on Schedule B (Itemized Independent Expenditures).

Additionally, of the \$357,895 appeared to be independent expenditures, CRC did not provide sufficient documentation pertaining to dissemination dates to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$203,995. CRC also did not provide invoices associated with 77 direct mail communications that contained express advocacy as defined under 11 CFR 100.22 (a) or (b).

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation. CRC reiterated its belief that the communications at issue were not reportable as independent expenditures because they were subject to the volunteer

material exemption. CRC further stated it has provided all such documentation in its possession to substantiate application of the volunteer material exemption.

The Audit staff reexamined the documentation provided related to the volunteer materials exemption for specific communications totaling \$93,090 and determined the disbursements were not independent expenditures. For the remaining communications (consisting of \$110,905 and 77 mailers with no invoices) that CRC claims the volunteer materials exemption is applicable, the Audit staff again recommends that CRC provide further evidence to support the application of the volunteer materials exemption to the specific communications involved. The Audit staff considered the disbursements for radio advertisements for \$153,900 to be independent expenditures that also required filing of 24 hour reports totaling \$32,164. (For more detail, see p. 11.)

Finding 3. Recordkeeping for Communications

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. CRC reported 28 expenditures totaling \$5,812,448 on Schedule B, Line 21b (Operating Expenditures) with purposes of "direct mail," "direct mail advertising," and "direct mail." Documentation that was provided by CRC was insufficient to make a determination pertaining to the proper classification of these disbursements and verification as an operating expense.

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation and explained it provided all the requested documentation in its possession in a series of letters, USB thumb drives and online file site links to the Audit staff. CRC indicated that it was working to associate the provided invoices and communications with each other and would provide the final record associating all communications with invoices. Absent the provision of records, the Audit staff considers the matter a violation of recordkeeping requirements at 11 CFR §104.14(b)(1). (For more information, see p. 17.)

Finding 4. Failure to Itemized Debts and Obligations

During audit fieldwork, the Audit staff noted that CRC failed to disclose debts and obligations owed to three vendors totaling \$235,968. In response to the Interim Audit Report recommendation, CRC agreed to amend its disclosure reports for the applicable period and disclose the debt owed to CRC's former legal counsel. CRC stated it would not amend its reports to disclose the debt owed to its former get-out-the-vote (GOTV) vendor due to the termination of the contract. CRC subsequently filed amended reports to disclose debt owed to the two non-GOTV vendors. Absent the filing of amended reports to include the debt owed to the GOTV vendor, the Audit staff considers the matter unresolved. (For more detail, see p. 19.)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

A comparison of CRC's bank activity with its most recent amended reports prior to the audit revealed material misstatements in both 2011 and 2012. In addition, a comparison of CRC's bank activity with its original reports for 2011 and 2012 also revealed material misstatements. In response to the Interim Audit Report recommendation, CRC stated that the misstatements were inadvertent and agreed to file amendments to the relevant reports. CRC subsequently amended its reports to materially correct the misstatements identified for 2011. As of the date of this report, however, CRC has not materially complied with the recommendations to correct the misstatements in 2012, nor has it made an adjustment to reconcile the cash balance on its most recent report.

During audit fieldwork, CRC also provided bank statements and other related documentation for a Republican National Convention Expense Account, an apparent federal account. CRC did not report, however, any receipt and disbursement activity pertaining to this account on its disclosure reports. In response to the Interim Audit Report recommendation pertaining to the Republican National Convention Expense Account, CRC stated it has previously provided documentation that this account was not controlled by CRC and, as such, is not an unreported federal account. Absent bank documentation that confirms CRC was not associated with the Convention Account, the Audit staff considers this matter unresolved.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on-hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year;
- The total amount of disbursements for the reporting period and for the calendar year; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5).

Facts and Analysis

A. Misstatement of Financial Activity— Most Recent Reports Filed Prior to the Audit

1. Facts

The Audit staff reconciled CRC's reported financial activity with its bank records for calendar years 2011 and 2012. The following charts outline the discrepancies

between CRC's disclosure reports and its bank records. Succeeding paragraphs explain why the discrepancies occurred.

2011 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash-on-Hand @ January 1, 2011	\$71,745	\$70,571	(\$ 1,174) Overstated
Receipts	\$722,469	\$717,741	(\$4,728) Overstated
Disbursements	\$634,792	\$673,321	(\$38,529) Understated
Ending Cash-on-Hand @ December 31, 2011	\$ 159,422	\$ 114,991	(\$ 44,431) Overstated

The beginning cash balance was overstated by \$1,174 and the discrepancy is unexplained, but likely resulted from prior period discrepancies.

The understatement of disbursements resulted from the following:

• Transfers to non-federal entities, not reported	\$35,805
• Disbursements not reported	2,448
• Unexplained difference	276
Understatement of Disbursements	\$38,529

The overstatement of \$44,431 of the ending cash balance was a result of the reporting discrepancies in disbursements described above as well as the \$4,728 overstatement of receipts.

2012 Committee Activity			
	Reported	Bank Records²	Discrepancy
Beginning Cash-on-Hand @ January 1, 2012	\$159,422	\$114,991	(\$ 44,431) Overstated
Receipts	\$9,678,749	\$9,889,745	\$210,996 Understated
Disbursements	\$9,422,685	\$9,567,886	(\$145,201) Understated
Ending Cash-on-Hand @ December 31, 2012	\$ 415,486	\$ 436,850	\$ 21,364 Understated

² Correct reportable activity includes an adjustment to the bank account for \$9,146 itemized by CRC on Schedule A (Itemized Receipts) to correct the cash balance as recommended in a prior audit of CRC. See the Final Audit Report on the Colorado Republican Federal Campaign Committee, 2008 election cycle, Finding 1 – Misstatement of Financial Activity, Audit Division Recommendation, page 8.

The understatement of receipts resulted from the following:

• In-kind contributions, not reported as receipts ³	\$162,099
• Receipts from an individual and a PAC, not reported	25,000
• Unexplained difference	<u>23,897</u>
Understatement of Receipts	<u>\$210,996</u>

The understatement of disbursements resulted from the following:

• In-kind contributions, not reported as disbursements ³	\$162,099
• Disbursements in bank, not on reports	27,666
• Disbursements on reports, not in bank	(13,336)
• Incorrect or duplicate disbursement amounts reported	(23,228)
• Unexplained difference	<u>(8,000)</u>
Understatement of Disbursements	<u>\$145,201</u>

The \$21,364 understatement of the ending cash balance was a result of the reporting discrepancies noted above.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff provided workpapers and discussed the misstatement of financial activity at the exit conference. CRC representatives asked questions for clarification during the discussion, however, they did not provide a response to either the disbursements or receipts misstatements.

The Interim Audit Report recommended that CRC amend its disclosure reports to correct the misstatements noted above and reconcile the cash balance on its most recent report to identify any subsequent discrepancies that may affect the recommended adjustment.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, CRC stated it agreed with the Audit Division's recommendations regarding Finding 1A. CRC explained that the misstatements were inadvertent and that it would file amendments to the relevant reports consistent with the recommendation. CRC subsequently amended its reports to materially correct the misstatements identified for 2011. As of the date of this report, however, CRC has not materially complied with the recommendations to correct the misstatements in 2012, nor has it made an adjustment to reconcile the cash balance on its most recent report.

³ The unreported in-kind transactions discussed above were for disbursements paid on behalf of CRC for equipment and software licensing by the Republican National Committee (RNC) and the Republican Party of Wisconsin (RPW). Both the RNC and the RPW reported these transactions as in-kind contributions made to CRC.

B. Misstatement of Financial Activity – Original Reports Filed

1. Facts

During audit fieldwork, in addition to examining CRC's most recent reports filed prior to audit notification, the Audit staff compared CRC's originally filed reports with its bank records. The purpose of this additional reconciliation was to identify the degree to which CRC had misstated its original filings.

The Audit staff calculated that CRC understated the sum of the reported receipts on the original reports filed by \$803,097 and the sum of the reported disbursements on the original reports filed by \$637,688 over the two-year period (2011-2012). These figures include the \$4,728 and \$38,529 understatement of receipts and disbursements, respectively from 2011, and the \$210,996 and \$145,201 of the understatement of receipts and disbursements, respectively, from 2012 discussed in Section A above (Misstatement of Financial Activity – Most Recent Reports Filed Prior to the Audit).

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the understatement of receipts and disbursements on its original reports during the exit conference and provided copies of relevant schedules detailing the receipts and disbursements not reported. CRC representatives asked questions for clarification, and stated they understood the finding, but related that they inadvertently filed incorrect original reports.

The Interim Audit Report recommended that CRC provide any additional comments it deemed necessary with respect to this finding.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, CRC stated it agreed with the Audit Division's recommendations regarding Finding 1B but provided no further comments regarding the misstatement of financial activity for the original reports filed.

C. Misstatement of Financial Activity – Unreported Bank Account

1. Facts

During audit fieldwork, CRC representatives provided bank statements and other banking documentation for a bank account that was identified on the bank statements as the Colorado State Republican Central Committee Republican National Convention Expense Account (Convention Account).⁵ This account was maintained at the same financial depository used by CRC for other federal and non-federal bank

⁴ Net disbursement adjustments identified in Section A above (Misstatement of Financial Activity - Most Recent Reports Filed Prior to the Audit), totaling \$9,686, were correctly disclosed on the original reports in 2012.

⁵ As noted in the scope section of this report, CRC representatives also identified an additional federal bank account in its written response to the Internal Control Questionnaire, but have not yet provided bank statements or other documentation pertaining to this account to indicate whether there was reportable activity during the audit period. See p. 2.

accounts. The bank statements reflected that the Convention Account was active in January 2012, although it had a zero balance until April 20, 2012, at which time a deposit of \$1,000 was made.⁶ Although CRC provided copies of bank statements, deposit tickets and cancelled checks pertaining to this account, none of the receipts or disbursements appeared to have been reported. For the calendar year 2012, the total activity and the cash balance were as follows: receipts, \$87,354; disbursements, \$86,428; and ending cash-on-hand, \$926.⁷

In response to an Audit staff query, CRC's Chairman (Chairman) explained that the financial activity from this account did not need to be reported since it was a bank account that belonged to a separate legal entity identified as the Colorado Chairman's Host Committee for the Republican National Convention (Colorado RNC Host) and neither CRC or any of its officers or agents managed or controlled that committee's activities. The Chairman also provided a copy of the Articles of Incorporation that reflected the Colorado RNC Host was incorporated in the state of Colorado as a Non-Profit 501(c)(4) corporation on June 26, 2012, and was established independently to accept contributions and pay for certain events and promotion items for delegates and their guests from Colorado and other states in connection with the 2012 Republican National Convention in Tampa, Florida. The Chairman provided a link to the Colorado Secretary of State website and related to any additional questions pertaining to the Colorado RNC Host should be directed to that committee's legal representatives. The Chairman did not explain how CRC came to be in possession of the bank statements and other banking documentation. Likewise, the Chairman did not explain why the bank statement's name included the Colorado State Republican Central Committee, indicating CRC was an account holder of this account. Although requested, CRC did not authorize the Audit staff to submit a request to the bank to confirm the Employee Identification Number (EIN)⁸ that was associated with this account, nor did CRC provide any documentation from the bank that would clarify this matter.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the Convention Account during the exit conference and provided relevant schedules detailing the financial activity pertaining to this account. At that time, the Audit staff again requested that CRC provide documentation from the bank or give the Audit staff authority to contact the bank to confirm the EIN associated with this account. The CRC representatives provided documentation pertaining to the EIN for the Colorado Chairman's Host Committee for the Republican National Convention, but did not provide additional documentation from the bank to verify that the Convention Account was assigned to this EIN.

⁶ The next deposit into this account was not made until June 13, 2012 (\$5,250). The first debit (by wire) occurred on August 10, 2012 (\$10,000).

⁷ The tables and charts presented in Part A (Most Recent Reports Filed Prior to the Audit) do not include an analysis of the Convention Account.

⁸ The EIN is a unique nine-digit number that the Internal Revenue Service and other federal agencies use to identify a business. Banks will not allow a business entity to open an account without providing an EIN.

The Interim Audit Report recommended that CRC provide additional documentation to resolve the question of ownership and control of the Convention Account. To support its position, CRC should have obtained pertinent bank documentation confirming that the CRC's EIN was not associated with the Convention Account and, therefore, CRC was not required to report the financial activity associated with this account.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, CRC expressed its disagreement regarding Finding 1C. CRC stated that it has previously provided documentation demonstrating that the account in question was not controlled by CRC and, as such, was not an unreported federal account. CRC's position is that it has, by its prior correspondence, sufficiently demonstrated that it does not control the Convention Account. With its response, CRC enclosed a copy of the prior correspondence.

The Audit staff maintains that previously provided documentation did not resolve the question of ownership and control of the Convention Account. Absent bank documentation that confirms CRC was not associated with the Convention Account, the Audit staff considers this matter unresolved.

Finding 2. Reporting of Apparent Independent Expenditures

Summary

During audit fieldwork, the Audit staff reviewed operating expenditures totaling \$357,895 that CRC disclosed on Schedule B, Line 21b (Operating Expenditures) that appeared to be direct mail or media-related independent expenditures that should have been disclosed on Schedule B (Itemized Independent Expenditures).

Additionally, of the \$357,895 appeared to be independent expenditures, CRC did not provide sufficient documentation pertaining to dissemination dates to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$203,995. CRC also did not provide invoices associated with 77 direct mail communications that contained express advocacy as defined under 11 CFR 100.22 (a) or (b).

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation. CRC reiterated its belief that the communications at issue were not reportable as independent expenditures because they were subject to the volunteer material exemption. CRC further stated it has provided all such documentation in its possession to substantiate application of the volunteer material exemption.

The Audit staff reexamined the documentation provided during fieldwork related to the volunteer materials exemption for specific communications totaling \$93,090 and determined the disbursements were not independent expenditures. For the remaining

communications (consisting of \$110,905 and 77 mailers with no invoices) that CRC claims the volunteer materials exemptions is applicable, the Audit staff again recommends that CRC provide further evidence to support the application of the volunteer materials exemption to the specific communications involved. The Audit staff considered the disbursements for radio advertisements for \$153,900 to be independent expenditures that also required filing of 24 hour reports totaling \$32,164.

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 an 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 line (b) on Schedule E. 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 each time additional independent expenditures aggregate \$1,000 or more. 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).

D. Independent Expenditure Reports (48-Hour Reports). Any independent expenditures aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must be disclosed within 48 hours each time the expenditures aggregate \$10,000 or more. The reports must be filed with the Commission within 48 hours after the expenditure is made. 11 CFR §§104.4(f) and 104.5(g)(1).

E. 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).

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:

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

Facts and Analysis

A. Reporting of Apparent Independent Expenditures

1. Facts

During audit fieldwork, the Audit staff reviewed disbursements to ensure proper reporting. The Audit staff noted that CRC did not disclose any independent expenditures on Schedule E, however, made apparent media-related expenditures totaling \$357,895 and disclosed them as operating expenditures. These communications, as well as others that are not associated with invoices, were identified as possible independent expenditures. A breakdown analysis of these expenditures is as follows:

a. Independent Expenditures Reported as Operating Expenditures (Associated Invoice Provided)

CRC made nine apparent independent expenditures totaling \$357,895 that were documented as follows:

- i. CRC made six disbursements for apparent independent expenditures for direct mail totaling \$203,995 for which it provided a copy of the direct mailer with an associated invoice. According to the Audit staff, each of these direct mailers contained language expressly advocating the election or defeat of a clearly identified candidate as defined under 11 CFR §100.22(a).
- ii. CRC made three disbursements for apparent independent expenditures for radio ads totaling \$153,900 for which it provided supporting documentation such as payment reconciliations, airing dates, scripts and audio files. The beginning of one of the audio files included the voice of a opposition federal candidate. Based upon this portion of the audio file and the associated script, it appeared this radio ad expressly advocated the election or defeat of a clearly identified candidate as defined under 11 CFR 100.22(b).

b. Independent Expenditures Reported as Operating Expenditures (No Invoice Associated)

CRC provided 77 different direct mail communications that contained express advocacy as defined under 11 CFR 100.22(a) or (b). The communications are as follows:

- i. 72 direct mail communications contained language expressly advocating the election or defeat of clearly identified candidates, as defined under 11 CFR 100.22(a).
- ii. Five direct mail communications contained language that encouraged the reader to vote for Republicans and help repeal "Obamacare", with various reasons why Obamacare was bad for Colorado and/or America's economy. Based on the definition of express advocacy under 11 CFR 100.22(b), these communications could only be

interpreted by a reasonable person as advocating the election or defeat of clearly identified candidates.

CRC did not provide sufficient information to allow each of the 77 communications to be associated with an invoice. Without this additional information, the Audit staff is unable to calculate the disbursement amount for each communication. (See Finding 3.)

c. Volunteer Material Exemption

In response to the Audit staff's request during fieldwork for documentation to support that volunteers participated in exempt activity,⁹ CRC provided forms signed by 22 different mail processing volunteers. These forms reflected the volunteer's name, site location, and on most forms, the date. The mail piece section was left blank on all forms with one exception, in which a candidate's last name was specified. Based on the dates on the forms, it appeared most of this volunteer activity occurred immediately prior to the 2012 General Election.

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 exemption,¹⁰ but this was never achieved. Since a lack of clarity exists concerning the application of the volunteer materials exemption, it follows that the type and amount of documentation needed to support volunteer involvement is uncertain.

In view of the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the Audit staff recommended at the conclusion of fieldwork that CRC provide more detailed information and documentation for any volunteer involvement associated with each mailer.

2. Interim Audit Report and Audit Division Recommendation

At the exit conference, the Audit staff presented the schedule of disclosure errors for independent expenditures. CRC representatives provided a listing of additional invoice numbers and invoice amounts in response to the exit conference but did not provide any copies of communications or further information that would allow the available invoices to be associated with the copies of the communications.

⁹ CRC has not claimed that any exemptions apply with respect to any expenditures discussed above such as, for example, volunteer material exemption, slate cards exemptions, etc.

¹⁰ Proposed Interim Enforcement Policy, Agenda document No. 10-16.

The Interim Audit Report recommended that CRC:

- Provide additional invoices and/or information associating the 77 direct mail communications containing express advocacy with an invoice; and
- Provide documentation and evidence that apparent independent expenditures totaling \$357,895 and the 77 direct mail communications containing express advocacy, did not require reporting as independent expenditures. Evidence should have included any documentation such as volunteer timesheets and photographs to support the involvement of volunteers in the processing or distribution of the communications noted above.
- Absent such evidence, CRC should have amended its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation. CRC reiterated its belief that the communications at issue were not reportable as independent expenditures because they were subject to the volunteer material exemption. CRC further stated it has provided all documentation in its possession substantiating volunteer involvement including the volunteer names, the location where the work was done and the date of the volunteer involvement. CRC stated it had never been requested to provide volunteer timesheets and photographs, and that it did not collect such information. CRC further stated that "...it has provided enough information to substantiate application of the volunteer material exemption" and that it would not make any amendments to disclose the disbursements in question as independent expenditures.

The Audit staff maintains that the \$153,900 spent on radio communications should be reported as independent expenditures since the volunteer materials exemptions does not apply to those communications.

With respect to the 22 volunteer forms signed by volunteers on direct mailers of \$93,000, the Audit staff has reexamined the documentation and believes the documentation provided in support of the volunteer materials exemption is consistent with such evidence provided in past audits. As a result, these disbursements are not considered independent expenditures. For the remaining communications (consisting of \$110,905 and 77 direct mailers without invoices) that CRC claims the volunteer materials exemptions is applicable, the Audit staff again recommends that CRC provide further evidence to support the application of the volunteer materials exemption to the specific communications involved. Such evidence will assist the Commission in determining if the volunteer materials exemption is applicable to these communications.

B. Failure to File 24/48 Hour Reports for Apparent Independent Expenditures

1. Facts

In addition to not reporting any independent expenditures during the audit period, CRC also did not file 24 or 48-hour reports for any independent expenditures. Therefore, the apparent independent expenditures identified above by the Audit staff may also have required such a filing.

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided CRC with a schedule of possible undisclosed 24/48-hour reports. CRC representatives did not offer any comments regarding this matter.

The Interim Audit Report recommended that, absent documentation and evidence that apparent independent expenditures totaling \$57,895 and the 77 direct mailer communications containing express advocacy did not require reporting as independent expenditures (per Part A above), CRC provide documentation to support the date of public dissemination for each communication to determine whether a filing of a 24/48-hour report was required.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation. CRC reiterated its belief that the communications at issue were not reportable as independent expenditures because they were subject to the volunteer material exemption. For that reason, CRC did not believe any 24 or 48-hour reports were necessary for these disbursements.

The Audit staff maintains that \$153,900 in radio advertisements are independent expenditures that required 24-hour reports totaling \$32,164.

The Audit staff maintains that unless further evidence of the volunteer involvement with the specific communications is provided, the Commission may conclude the remaining direct mailer totaling \$10,905 as well as the 77 direct mailers without invoices may be reportable as independent expenditures and may require 24 or 48-hour reports.

Finding 3. Recordkeeping for Communications

Summary

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. CRC reported 28 expenditures totaling \$5,812,448, on Schedule B, Line 21b (Operating Expenditures) with purposes of "direct mail," "direct mail advertising" or "party direct mail." Documentation that was provided by CRC was insufficient to make a determination pertaining to the purpose for these disbursements and verification as an operating expense.

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation and explained it provided all the requested documentation in its possession in a series of letters, USB thumb-drives and online file site links to the Audit staff. CRC indicated that it was working to associate the provided invoices and communications with each other and would provide the final record associating all communications with invoices. Absent the provision of records, the Audit staff considers the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1).

Legal Standard

A. 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).

B. Preserving Records and Copies of Reports. The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 52 U.S.C. §30102(d).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. CRC made 28 expenditures totaling \$5,812,448 for which documentation was insufficient to make a determination pertaining to whether these disbursements were correctly reported on Schedule-B, Line 21b (Operating Expenditures).

The Audit staff's analysis resulted in the following:

i. **Disbursements- No Invoices or Copies of Communications Provided (\$2,156,415)**

Disbursements totaling \$2,156,415 were paid to two direct mail vendors, and were disclosed on Schedule B with purposes of "direct mail", "direct mail advertising" or "party direct mail", but no invoices or associated communications were provided. Without sufficient details, the Audit staff is unable to verify CRC's reporting of these amounts as operating expenditures. The Audit staff requested copies of the invoices and the associated direct mail piece for each of the disbursements. To date, these invoices or other information to associate the payments to a particular communication have not been provided.

ii. Disbursements- Invoices Provided – Not Able to Associate with Copies of Communications (\$3,656,033)

Disbursements totaling \$3,656,033 were paid to direct mail vendors and were disclosed on Schedule B with purposes of “direct mail,” “direct mail advertising” or “party direct mail.” For these disbursements, CRC provided invoices but did not provide information about the related mail communications. Without sufficient details, the Audit staff is unable to verify CRC’s reporting itemization of these amounts as operating expenditures. The Audit staff requested information that would allow an association between the invoice and the communication, however, CRC has not responded to this request.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented a schedule of the disbursements for which further records were necessary to verify the accuracy of CRC’s reporting. The Audit staff again requested that CRC provide additional invoices and information that would associate each invoice to the corresponding communication. CRC representatives provided a listing of additional invoice numbers and invoice amounts in response to the exit conference but did not provide any copies of communications or further information that would allow the available invoices to be associated with the copies of the communications.

The Interim Audit Report recommended that CRC provide, in sufficient detail, the necessary information from which the reported operating expenditures totaling \$5,812,448 may be verified or explained. Such records should have included:

- Copies of invoices and identification of the associated communication, and
- If the communication has already been provided, information associating each communication with the invoice(s).

C. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation and explained that it has provided all the requested documentation in its possession in a series of letters, USB thumb-drives and online file site links to the Audit staff. CRC was working to associate the provided invoices and communications with each other and would provide the final record associating all communications with invoices as soon as the record is complete. Absent the provision of records, the Audit staff considers the non-compliance of the recordkeeping requirements at 11 CFR §104.14(b)(1).

Finding 4. Failure to Itemize Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that CRC failed to disclose debts and obligations owed to three vendors totaling \$235,968. In response to the Interim Audit Report recommendation, CRC agreed to amend its disclosure reports for the applicable period and disclose the debt owed to CRC’s former legal counsel. CRC stated it would not amend its reports to disclose the debt owed to its former get-out-the-vote (GOTV)

vendor due to the termination of the contract. CRC subsequently filed amended reports to disclose debt owed to the two non-GOTV vendors. Absent the filing of amended reports to include the debt owed to the GOTV vendor, the Audit staff considers the matter unresolved.

Legal Standard

A. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee until those debts are extinguished. 52 USC §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 or 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, not including rent, salary or other regularly recurring administrative expenses, 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.
- Regularly recurring administrative expenses, like rent, do not have to be treated as debts until payment is due.
- A debt exceeding \$500 must be disclosed in a report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

D. Disputed Debts. A disputed debt is a bona fide disagreement between the creditor and the committee as to the existence of a debt or the amount owed by the committee. Until the creditor and committee resolve the dispute (assuming the creditor did provide something of value), the committee must disclose:

- The amount the committee admits it owes;
- The amount the creditor claims is owed; and
- Any amounts the committee has paid the creditor. 11 CFR §116.10.

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff used available disbursement records to reconcile the accounts¹¹ of three CRC vendors. This review identified debts owed to these three vendors totaling \$235,968 that should have been disclosed on Schedule D.¹²

¹¹ The reconciliation consisted of calculating invoiced and paid amounts for individual reporting periods in the 2011 – 2012 election cycle. The Audit staff then determined whether outstanding debts were correctly disclosed on Schedule D. Each debt amount was counted once, even if it required disclosure over multiple reporting periods.

¹² There was no debt reported during the audit period for any of these three vendors.

One of the vendors provided legal services and had debt outstanding at the end of four reporting periods totaling \$100,197, including an outstanding balance at the end of the audit period of \$13,541. A second vendor that provided accounting services had an outstanding balance at the end of one reporting period for \$2,284, but did not have an outstanding balance at the end of the audit period. The last vendor had debt outstanding at the end of the audit period of \$133,487 that pertained to the unpaid balance of a contract for a GOTV program.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed these disclosure errors with CRC representatives and provided them with schedules detailing the debts that were not reported. CRC representatives disagreed with the Audit staff's determination with respect to the disclosure of debts owed to the vendor that provided legal services. Subsequent to the exit conference, CRC requested the consideration of a legal question by the Commission regarding the disclosure of the debt for legal services prior to payment. CRC contended the disclosure would violate confidential attorney/client privileges.¹³ CRC representatives also disagreed with the requirement to disclose debt for the GOTV program, stating that CRC had terminated the contract before the vendor provided all contracted services. CRC representatives provided a copy of an unsigned letter, sent by CRC to the GOTV program vendor, which advised this vendor of an immediate termination of the contract.

Based on the terms of contract, its termination does not release CRC from the obligation to make pro rata payments of fees for the services provided by the vendor. CRC stated that it terminated the contract before the vendor provided *all* of the contracted services which suggests that the vendor provided at least *some* of the contracted services before the termination of the contract. Available disbursement documentation provided by CRC did not indicate as to whether CRC paid the vendor for services that the vendor provided to CRC prior to the termination.

The Interim Audit Report recommended that CRC provide documentation demonstrating that expenditures totaling \$235,968 did not require reporting on Schedule D. As for the GOTV program vendor, the Interim Audit Report further recommended that CRC provide information and documentation relating to debt remaining for any services that the vendor provided before the termination of the contract. Since the termination letter was not signed, CRC should have submitted documentation such as a signed letter to the vendor, e-mails or telephone logs regarding the termination. Absent such documentation, the Interim Audit Report recommended that CRC amend its reports to disclose these debts and obligations.

C. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendations, CRC stated that, given the Commission's determination that the amounts owed to CRC's former counsel were not privileged from disclosure, CRC agreed to amend its disclosure reports for the applicable period and disclose the debt owed to CRC's former legal counsel. CRC stated it would

¹³ See Part I Background, Commission Guidance at p. 1.

not amend its reports to disclose the debt owed to its former GOTV vendor due to the termination of the contract. CRC provided the previously submitted unsigned termination letter but did not submit any documentation related to debt for any services prior to termination of the contract. CRC subsequently filed amended reports to disclose debt owed to the two non-GOTV vendors. Absent the filing of amended reports to include the \$133,487 debt owed to the GOTV vendor, the Audit staff considers the matter unresolved.

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