



Interim 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.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

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

About the Committee (p. 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 Non-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)

¹ 52 U.S.C. §30111(b).

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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 various 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 between reported figures and bank 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 CFR §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. 17.)

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	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2011	\$ 70,571
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 Non-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
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. Regarding the misstatement pertaining to the most recent amended reports, the Audit staff recommends that CRC amend its disclosure reports to correct the misstatements identified in 2011 and 2012. As for the misstatement pertaining to the CRC's original reports, the Audit staff recommends that CRC provide any comments it deems necessary with respect to this matter.

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. CRC took a position that such reporting was not required. The Audit staff recommends that CRC provide pertinent bank documentation relating to the ownership of this account. (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 E (Itemized Independent Expenditures).

Additionally, 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 \$357,895. 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).

If CRC believes that the apparent independent expenditures, including the \$357,895, and the 77 direct mail communications above, did not require reporting as independent expenditures, the Audit staff recommends that CRC provide evidence to support its conclusion. Absent such evidence, the Audit staff recommends that CRC amend its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures. Lastly, the Audit staff recommends that 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. (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" 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. The Audit staff recommends 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 include copies of invoices and identification of the associated communication, and, if the communication has already been provided, information associating each communication with an invoice(s). (For more detail, see p. 15.)

Finding 4. Failure to Itemized Debts and Obligations

During audit fieldwork, the Audit staff noted that CRC had failed to disclose debts and obligations owed to three vendors totaling \$235,968. The Audit staff recommends that, absent documentation demonstrating that these expenditures did not require reporting on Schedule D, CRC amend its disclosure reports to disclose these debts. (For more detail, see p. 17.)

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. Regarding the misstatement pertaining to the most recent amended reports, the Audit staff recommends that CRC amend its disclosure reports to correct the misstatements identified in 2011 and 2012. As for the misstatement pertaining to the CRC's original reports, the Audit staff recommends that CRC provide any comments it deems necessary with respect to this matter.

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. CRC took a position that such reporting was not required. The Audit staff recommends that CRC provide pertinent bank documentation relating to the ownership of this account.

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 accounts, not reported	\$35,805
• Disbursements not reported	2,448
• Unexplained difference	<u>276</u>
Understatement of Disbursements	<u>\$38,529</u>

The overstatement of \$44,431 of the ending cash balance was a result of the reporting discrepancies for 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 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	23,897
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	(8,000)
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 Audit staff recommends that, within 30 calendar days of service of this report, 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 adjustments.

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,

³ The unreported in-kind transactions discussed above were for disbursements paid on behalf of the 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.

respectively from 2011, and the \$210,996 and \$145,201⁴ 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 did not intentionally file incorrect original reports. The Audit staff recommends that, within 30 calendar days of service of this report, CRC provide any additional comments it deems necessary with respect to this matter.

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 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-

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.

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.

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 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.

The Audit staff recommends that, within 30 calendar days of service of this report, CRC provide additional documentation to resolve the question of ownership and control of the Convention Account. To support its position, CRC should obtain 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.

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.

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 E (Itemized Independent Expenditures).

Additionally, 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 \$357,895. 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).

If CRC believes that the apparent independent expenditures, including the \$357,895 and the 77 direct mail communications above, did not require reporting as independent expenditures, the Audit staff recommends that CRC provide evidence to support its conclusion. Absent such evidence, the Audit staff recommends that CRC amend its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures. Lastly, the Audit staff recommends that 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.

Legal Standard

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

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

Expressly advocating means any communication that:

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

advocating the election or defeat of one or more clearly identified candidates. 11 CFR §§100.16(a), 100.17 and 100.22.

- B. Disclosure Requirements – General Guidelines.** An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as a debt on Schedule D. Independent expenditures of \$200 or less need not be itemized, though the committee must report the total of those expenditures on 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. CFR §104.14(b)(1).

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 an 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 also unclear.

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 recommends that, as recommended below, 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.

The Audit staff recommends that, within 30 calendar days of the service of this report, CRC provide:

- Additional invoices and/or information associating the 77 direct mail communications containing express advocacy with an invoice; and
- Documentation and evidence that apparent independent expenditures totaling \$357,895 and the 77 direct mail communications containing express

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.

advocacy, did not require reporting as independent expenditures. Evidence should include 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, the Audit staff recommends that CRC amend its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures.

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.

Absent documentation and evidence that apparent independent expenditures totaling \$357,895 and the 77 direct mailer communications containing express advocacy did not require reporting as independent expenditures (per Part A above), the Audit staff recommends that, within 30 calendar days of service of this report, 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.

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. The Audit staff recommends 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 include copies of invoices and identification of the associated communication, and, if the communication has already been provided, information associating each communication with an invoice(s).

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. §301.02(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 Audit staff recommends that, within 30 calendar days of the service of this report, 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 include:

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

Finding 4. Failure to Itemize Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that CRC had failed to disclose debts and obligations owed to three vendors totaling \$235,968. The Audit staff recommends that, absent documentation demonstrating that these expenditures did not require reporting on Schedule D, CRC amend its disclosure reports to include these debts.

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 reoccurring 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 the 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

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 Get-Out-the-Vote (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 a vendor that provided legal services. Subsequent to the exit conference, CRC requested the consideration of a legal question by the Commission claiming the disclosure of the debt for legal services prior to payment would violate confidential attorney/client privileges. 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 seems to suggest that the vendor provided at least *some* of the contracted services

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 by any of these three vendors.

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 Audit staff recommends that, within 30 calendar days of service of this report, CRC provide documentation demonstrating that expenditures totaling \$235,968 did not require reporting on Schedule D. As for the GOTV program vendor, the Audit staff further recommends 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 submit documentation such as a signed letter to the vendor, e-mails or telephone logs regarding the termination. Absent such documentation, the Audit staff recommends that CRC amend its reports to disclose these debts and obligations.