



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 10, 2010

**MEMORANDUM**

**TO:** Joseph F. Stoltz  
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**FROM:** Christopher Hughey *pch*  
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**SUBJECT:** Interim Audit Report for Los Angeles County Democratic Central Committee (LRA 816)

**I. INTRODUCTION**

The Office of the General Counsel has reviewed the proposed Interim Audit Report ("IAR") for the Los Angeles County Democratic Central Committee (the "Committee").<sup>1</sup> Your cover memorandum requests comments on Finding 3, Reporting Debts and Obligations. The Committee's accounting firm, Durkee & Associates (D&A) erroneously transferred funds from the Committee's federal and Levin accounts, principally to a credit card merchant account that it controlled, and eventually repaid the funds more than a year later. In addition, D&A delayed payment of \$3,564 in credit card proceeds due to the Committee. You recommend that the Committee report these transactions as debts owed by D&A to the Committee. We agree that the Committee should report the funds transferred from its federal account and the delayed credit card proceeds as debts owed by D&A to the Committee. We also agree that the Committee should report funds erroneously transferred from its non-federal account to its federal account as a debt owed by the Committee to its non-federal account. We disagree,

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<sup>1</sup> We recommend that the Commission consider this document in Executive Session because the Commission may eventually decide to pursue an investigation of matters contained in the proposed Report. 11 C.F.R. §§ 2.4(a) and (b)(6).

however, that the Committee should report the Levin funds transfers as debts owed to the Committee because the Committee is not required to report debts related to Levin funds. In addition, we recommend that the proposed report address the payment of \$7,700 by D&A to the Committee for the delayed credit card proceeds in a separate finding or subsection of Finding 3. We suggest that the proposed report recommend that the Committee provide more information about this transaction to clarify whether it was a contribution or an extension of credit in the ordinary course of business. We concur with the remaining findings not specifically discussed in this memorandum. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this audit.

## **II. COMMITTEE MUST DISCLOSE DEBTS RELATED TO FEDERAL FUNDS BUT NOT DEBTS RELATED TO LEVIN FUNDS**

D&A erroneously transferred funds from the Committee's federal and Levin accounts to itself.<sup>2</sup> D&A is an accounting and business management firm operated by the Committee's treasurer, Kinde Durkee. The firm handles the Committee's accounting, recordkeeping, and reporting and acts as its credit card processor. Most of the funds at issue were erroneously transferred to a merchant account that D&A used to process credit card transactions for the Committee and other clients including political committees. According to the Committee's counsel, the erroneous transfers were related to problems with reconciling this credit card processing account.

The auditors calculated that D&A possessed funds obtained from the Committee's federal and Levin accounts totaling as much as \$98,565 between November, 2008 and March 23, 2010.<sup>3</sup> With respect to the federal account, D&A owed the Committee \$15,000 that D&A repaid in four installment payments between May 26, 2009 and December 15, 2009, and \$3,564 in credit card proceeds that were delayed.<sup>4</sup> From the Levin account, D&A erroneously transferred to itself \$45,000 that was repaid on March 23, 2010, and erroneously disbursed \$35,000 to a committee that is also a D&A client, Pasadena Area United Democratic Headquarters. This latter amount was repaid by D&A, not the Pasadena Area United Democratic Headquarters, in transfers that occurred between December 17, 2009 and January 28, 2010.<sup>5</sup> D&A eventually returned all of the

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<sup>2</sup> We suggest that the Audit staff explain in the cover memorandum to the Commission why it concludes that D&A transfers of Committee funds were erroneous.

<sup>3</sup> The erroneous transfers also caused some of the misstatements of activity in the Committee's federal and Levin accounts, which are addressed in Findings 1 and 2 of the proposed IAR.

<sup>4</sup> We address D&A's apparent advance of funds to cover these delayed credit card proceeds below in section III. of these comments.

<sup>5</sup> Despite its name, Pasadena Area United Democratic Headquarters' Statement of Organization states that it is a non-party committee. The Auditors have provided us with the following information about this series of transactions. Apparently D&A's merchant account was to have transferred to the Pasadena Area United Democratic Headquarters \$35,000 in contributions from contributors to that committee. Instead, D&A mistakenly transferred \$35,000 from the Committee's Levin account to

funds to the Committee's federal and Levin accounts but did not return some of the funds until more than a year after withdrawing them from the accounts.

In addition to these transactions, \$15,000 was transferred from the Committee's non-federal account to its federal account on December 31, 2008 and returned to the Committee's non-federal account on November 9, 2009. The reason for this transfer is not clear. The auditors recommend that the Committee amend its reports to correct the reporting of these transactions as debts and obligations (Schedule D).

We agree that the Committee should report the transactions related to the Committee's federal account as debts owed by D&A to the Committee on Schedule D. See 11 C.F.R. § 104.3(d) and 104.11. The erroneous transfers from the federal account that were later repaid by D&A and the delayed credit card proceeds were debts owed to the reporting committee that should be disclosed on its reports. See *id.* We also agree that the Committee should disclose the \$15,000 transfer from the Committee's non-federal account to its federal account as a debt owed by the Committee to its non-federal account because it was a debt owed by the reporting committee. See *id.*

We do not agree, however, that the erroneous transfers from the Committee's Levin account that were later repaid should be disclosed on Schedule D as debts owed to the reporting committee because the Committee is not required to disclose debts related to Levin funds. There is nothing in the regulations that requires committees to report debts owed to Levin funds. The regulations set forth specific disclosure requirements for Levin funds (on Schedule L) including disclosure of all receipts and disbursements for federal election activity and allocation information, but do not state anything about disclosure of debts owed by or to a Levin fund account.<sup>6</sup> See 11 C.F.R. § 300.36. Schedule L, the aggregation page for disclosure of Levin funds, does not list debts and obligations as a category of Levin fund activity that should be reported.<sup>7</sup> We do not think debts related to Levin funds are debts owed by or to a reporting political committee that should be disclosed as debts under sections 104.3(d) and 104.11. Levin funds are not

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Pasadena Area. At this point, apparently, D&A's merchant account had \$35,000 in funds that belonged to Pasadena Area; Pasadena Area had \$35,000 in Levin funds that belonged to the Committee; and the Committee was short \$35,000 in Levin funds. Rather than reverse all aspects of the transaction by having Pasadena Area return the \$35,000 in Levin funds to the Committee and then making Pasadena Area whole, Durkee apparently decided that it would be more efficient to send \$35,000 from D&A directly to the Committee's Levin account.

<sup>6</sup> We note that the erroneous transfers and repayments would be disclosed as Levin fund receipts and disbursements.

<sup>7</sup> Schedule L includes categories for disclosing receipts from persons, other receipts, total receipts, transfers to the federal or allocation account for listed federal election activity purposes, other disbursements, total disbursements, and beginning and ending cash on hand. Receipts and disbursements of Levin funds are also itemized on schedules L-A and L-B. Levin funds are also reflected in schedules H: disbursements of amounts allocated between federal and Levin funds are disclosed on Schedule H-6, and transfers of Levin funds for allocated federal election activity are disclosed on Schedule H-5.

federal funds. They are a special kind of non-federal funds that may be used to fund an allowable portion of limited types of federal election activity but also may be used for any use that is lawful under applicable state law, other than so-called "Type III" and "Type IV" federal election activity. See 11 C.F.R. §§ 300.30(b)(2), 300.31, 300.32(b), 300.33, 300.34, 300.36. Receipt and disbursement of Levin funds must meet certain conditions, restrictions and requirements. See *id.* A committee may have a joint non-federal and Levin account. 11 C.F.R. § 300.30(c)(3). Thus, for disclosure purposes, except as otherwise specifically provided for in the Commission's regulations, Levin funds are more like non-federal funds than federal funds. Debts owed to or by a committee's Federal account must be disclosed as debts. See 11 C.F.R. § 104.3(d) and 104.11. But Levin funds, like non-federal funds, need not be disclosed as debts.

Therefore, we disagree with the analysis and recommendation in Finding 3 with respect to the Levin fund transactions because the regulations do not require disclosure of debts related to Levin funds. We recommend that the draft IAR be revised to focus this finding on reporting of the transactions related to the federal account and the debt owed by the federal account to the non-federal account.

### III. MORE INFORMATION IS NEEDED TO CLARIFY D&A'S APPARENT ADVANCE

We recommend that the proposed report address the issue of whether D&A's payment of \$7,700 to the Committee for delayed credit card proceeds was a contribution. The proposed report states that the Committee's federal account received apparent advances from D&A totaling \$7,700 for the delayed credit card proceeds. Based on the available information, the sequence of events appears to be as follows. D&A apparently became aware of a delay in transmission from the credit card company to D&A's merchant account of funds representing contributions made by credit card to the Committee. D&A apparently was not aware of the full amount of the contributions due the Committee. Consequently, it estimated the amount, and made apparent advances to the Committee from the merchant account in the aggregate amount of \$7,700 (\$5,700 and \$2,000 checks) on December 22 and December 26, 2008. Checks in the same amounts from the Committee to D&A to repay the apparent advances were prepared on the same dates.<sup>8</sup> However, these checks did not clear the bank until February 17, 2009, and it is unclear when they were deposited. The Committee told the auditors that the \$7,700 represented an estimate of anticipated credit card deposits. D&A provided the auditors a list of contributions apparently associated with these transactions. The credit card contributions on that list totaled \$5,887. The auditors determined that the net credit card proceeds that should have been transferred were \$5,424. As of February 17, 2009, when the repayment checks cleared the bank, D&A had transferred to the Committee only \$1,860 of the \$5,424 that was due, leaving the \$3,564 of delayed credit card proceeds

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<sup>8</sup> The auditors provided copies of the checks and the Committee bank statement for our review. The repayment checks from the Committee have the annotations "Loan Payment Kinds Durkee" on the \$2000 check and "CC Loan Payment Kinds Durkee" on the \$5,700 check.

(discussed above) that was not actually transferred to the Committee until after the repayment of the \$7,700.

The Committee's counsel (who is also listed as D&A's agent for service) stated that it is in the ordinary course of D&A's business to advance its clients funds to cover unexpected delays in receipt of credit card proceeds. Counsel asserted that this cost is built into D&A's fees, and the procedure is followed for all of D&A's clients.

Much of the information surrounding these transactions is unclear. The auditors do not know why the credit card proceeds were delayed, when D&A received the delayed credit card proceeds, how D&A estimated the amount that it advanced to the Committee, or whether D&A knew which specific contributions had been delayed.

Additional information is necessary to clarify the nature of these transactions. The payments could be advances or, potentially, could be considered extensions of credit. If these transactions are considered advances, they would be contributions by D&A to the Committee. 2 U.S.C. § 431(8)(A) (i) ("contribution" includes any "advance . . . of money.") Because D&A is a limited liability company, the contribution may be excessive or prohibited depending on whether D&A has elected to be treated as a partnership or a corporation for tax purposes<sup>9</sup> If, however, these transactions are considered extensions of credit, they might not be contributions. Extensions of credit made in the ordinary course of the creditor's business, on terms substantially similar to those offered to nonpolitical debtors are not considered contributions, provided that commercially reasonable efforts are made to collect the debt. See 11 C.F.R. §§ 100.55, 116.1(e), 116.3.

To fully analyze these transactions, additional information is needed. We suggest that the proposed report address these transactions in a separate finding or as a subsection of Finding 3. In order to help the Commission determine whether to treat the \$7,700 as an extension of credit, the Committee should provide information about the specific terms D&A attaches to such extensions; whether similar terms are offered to nonpolitical D&A customers of similar size and risk of obligation; why D&A picked the time that it did to negotiate the Committee checks representing repayment of the \$7,700; and any other information it believes might clarify the transactions. It would also be helpful if the Committee, given its close relationship with D&A, was able to provide information about D&A's tax status; if D&A is not treated as a corporation for tax purposes, then the potentially excessive amount would not exceed \$2,700, which may not be worth inquiring about further.

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<sup>9</sup> Even if D&A has not elected corporate tax treatment, it may contribute no more than \$5,000 in any calendar year to the Committee. 2 U.S.C. § 441a(a)(1)(C). Thus, if the payment is considered an advance, and if D&A has elected partnership tax treatment or is a single member LLC, the advance would be excessive by \$2,700.