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VIA EMAIL ([audit2023@fec.gov](mailto:audit2023@fec.gov))

Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

Re: Comments on audit process for non-publicly-funded committees

Dear Commissioners:

Thank you for the opportunity to submit written comments on the Federal Election Commission's ("FEC" or "Commission") process for auditing committees that do not receive public funding. I write as an attorney who routinely advises clients on FEC compliance and represents clients before the Commission, including in audit proceedings. These comments are submitted on my own behalf and do not necessarily represent the views of any clients.

Based on recent experience, there are two troubling aspects of the audit process that stand out to me, both relating to the reporting of transactions that the Audit Division expects of audit respondents.

*First*, the materials that the Audit Division presents to respondents for corrective action on reports can be incomprehensible.

For example, in one completed audit, our client received a spreadsheet with dozens of notations along the lines of:

Based on the check copy this #1 loan appears to be a personal loan, although it is reported as a bank loan. And #12 is the \$[redacted] bank

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loan. This \$[redacted] is part of a personal check of \$[redacted] which includes \$[redacted] disclosed as a personal loan. Loan reported on Sch C for each period until incorrectly reported as paid on the Sch C, 2018 PostGen report, disclosure error for incorrect loan balance. Also, incorrect loan terms reported on Sch C (dates and amount do not agree to loan documentation). Incorrect payee disclosed on Schedule B line 19a (loan repayment) on 2017 Jan YrEnd report. Check disclosed to [redacted] when check is to [redacted].

Similar to previous personal. The loan was reported on Sch C from time of incurrence on 6/25/2018 (July 2018) to the PostGen 2018 report. However, the PostGen report stated a payment was made (per Sch C) but no payment was reported on Sch B or was made from the Comte's bank account. Therefore, a disclosure issue as payment was incorrectly reported as made on Sch C.

Based on dozens of such incomprehensible notations, our client was expected to amend its reports, and we spent the next several months attempting to clarify with the Audit and Reports Analysis Divisions exactly what it was that the client was being asked to amend and how to make the amendments. During that time, the audit process continued moving along and our client was unable to make all of the amendments to the auditors' satisfaction by the time the final audit report was presented to the Commission because we were unable to come to an understanding with the auditors of all of the amendments they were asking us to make.

This issue matters because committees' responsiveness to the auditors' instructions for corrective action is noted in the various iterations of the audit report, up through the final audit report that the Commission votes to adopt. Committees that comply with the instructions may be able to prevent an issue from becoming part of an enforcement proceeding or may receive mitigation of penalties if the issue does become part of an enforcement proceeding. Therefore, when the Audit Division does not present committees with clear and actionable guidance on the corrective action they are expected to take during the audit process, committees are deprived of the opportunity to prevent liability and mitigate penalties for themselves. Moreover, the resulting language in the final audit report stating that the committee failed to take corrective action is stigmatizing and neglects to account for the Audit Division's own role in the failure.

*Second*, a related issue we have encountered is that the Audit Division may determine a committee is in violation based on a standard for reporting transactions that is not prescribed by the statute, the Commission's adopted regulations, or even the Commission's published guidance. Rather, the Audit Division seems to have adopted its own internal secret standards for how certain committee transactions should be reported. If a committee fails to adhere to those exacting internal secret reporting standards, then its reporting is deemed to be "incorrect," even if the manner in which the committee reported the transaction does not mislead the public, violate any statute or regulation, or otherwise frustrate any value embodied in the Federal Election Campaign Act.<sup>1</sup>

The goal of the audit process should be "substantial compliance"<sup>2</sup>—not exacting compliance with every bureaucratic standard devised by the Audit Division, especially when those standards are not promulgated by statute or regulation and make no substantive difference to the public record.

\* \* \*

The Commission's audit process has become fairer to respondents over the years thanks to the Commission's adoption in 2009 of the opportunity to request hearings during audits.<sup>3</sup> However, because the process often is the punishment—and this is especially so when committees have to submit themselves to the microscope of an audit—it is always appropriate to continue to evaluate whether the process can be made better.

I hope the two particular issues I have raised above will be helpful as the Commission considers broadly how to improve its audit process.

Sincerely,



Eric Wang

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<sup>1</sup> We have presented more detail about this issue in response to a referral of an audit for enforcement. Because that matter is still pending before the Commission, we cannot provide additional detail in these publicly submitted comments.

<sup>2</sup> See 11 C.F.R. § 104.16(a); FEC, Notice of Public Hearing and Request for Public Comments, 88 Fed. Reg. 1228 (Jan. 9, 2023).

<sup>3</sup> FEC, Procedural Rules for Audit Hearings, 74 Fed. Reg. 33,140 (Jul. 10, 2009).