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August 11, 2006

Katrina Senger, Campaign Finance Analyst
Reports Analysis Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: August 2004, October 2004, Amended August 2005
and February 2006 Monthly Reports

Dear Ms. Senger:

I am responding to your identical July 12, 2006 letters concerning the above-referenced reports. These letters comprise the Commission s first communication to CWA COPE PCC concerning its transactions with AFL-CIO COPE PCC since my letter to your office on January 21, 2005, and a subsequent meeting in March 2005 with the Reports Analysis Division. In the interim, CWA COPE PCC has conducted its affairs in conformance with its understanding of the applicable law, as set forth in that letter.

Your current letters acknowledge that CWA COPE PCC could legally function as a collecting agent for AFL-CIO COPE PCC. However, the letter asserts that CWA COPE PCC has not demonstrated that it has acted in a manner consistent with being a collecting agent under the Commission s regulations [under Part 102] for the amounts transferred to AFL-CIO COPE PCC. We believe that CWA COPE PCC in fact has acted in compliance with these regulations, as explained below, and in a manner that serves the Act s purposes with respect to the individual, payroll-deducted contributions whose treatment by CWA COPE PCC (and then by AFL-CIO COPE PCC) are at issue. We would appreciate an opportunity to meet on these matters after AFL-CIO COPE PCC responds to the similar letters it has received from your office, which are due on August 18.

First, as we have previously explained, and as we understand that your office implicitly acknowledges, the 102.17 joint fundraising rules do not apply to the joint fundraising between CWA COPE PCC and AFL-CIO COPE PCC because each is a separate segregated fund of a labor organization. See 11 C.F.R. 102.6(a)(iii), 102.17(a)(iii).

Second, unlike joint fundraising efforts that are governed by 102.17, the CWA COPE PCC/AFL-CIO COPE PCC arrangement involves separate segregated funds whose connected organizations share a 100% restricted class overlap among the affected members, inasmuch as every member of CWA, the connected organization of CWA COPE PCC, is also a member of the AFL-CIO, the connected organization of AFL-CIO COPE PCC. See 11 C.F.R. 114.1(e)(4) and (j). Accordingly, either committee and either connected organization on its own may lawfully solicit all of the contributors to CWA COPE PCC. Virtually all of CWA COPE PCC s receipts are derived from payroll-deducted contributions by these CWA/AFL-CIO members, which are remitted to CWA COPE PCC by the employers of these members. And, the amounts transferred by CWA COPE PCC to AFL-CIO COPE PCC historically and routinely have reflected only a fraction of the sums that were eligible for transfer.

Your letters assert that CWA COPE PCC has not demonstrated its compliance with the collecting agent regulations in three respects. First CWA COPE PCC must transmit contributions to AFL-CIO COPE PCC within 10 or 30 days pursuant to 11 C.F.R. 102.6(c)(4). But no CWA COPE PCC transfer to AFL-CIO COPE PCC is identified that fails to comply with this requirement. In fact, given the volume, timing and amounts of the contributions and transfers, it is extremely unlikely that this provision has not been honored. CWA COPE PCC receives over $3 million per year, virtually all in employer transmittals of payroll-deducted contributions, and these are received on a virtually daily basis. Specifically, during 2005, CWA COPE PCC received $3,280,678.48 in individual contributions, or an average of $8,988.16 every day, $89,881.16 every 10 days and $269,645.76 every 30 days. In 2004, CWA COPE PCC received $3,197,277.99 in individual contributions, yielding comparable average figures over these three intervals. And, CWA COPE PCC s 2006 receipts are at a record pace,

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with individual contributions of $1,695,355.92 over the first six months, yielding even higher averages during these intervals. Moreover, virtually every sum attributable to any particular individual contributor in a particular employer remittance are less than the $50.01 threshold that triggers the 10-day rather than the 30-day, transmittal requirement, under 11 C.F.R. 102.8. We submit, then, that 102.6(c)(4) has been followed. Nonetheless, CWA COPE PCC will take additional steps in the future to ensure that any amounts transferred to AFL-CIO COPE PCC do not exceed the sum of individual contributions received by CWA COPE PCC during the previous 30 days.

Second, the letters assert the related requirements that CWA COPE PCC must either have a transmittal account solely for AFL-CIO COPE PCC contributions or keep separate records of all receipts and deposits, forward all contributor identification information, [and] report the transfer of funds to AFL-CIO COPE PCC, which would in turn be required to report the full amount of each contribution received from the original contributor, pursuant to 11 C.F.R. 102.6(c)(4)(ii), 102.6(c)(5), 102.6(c)(7) and 102.8. These regulations afford several transmittal options for a collecting agent, and the options you suggest would require CWA COPE PCC either to deposit particular employer remittances in a new separate transmittal account or otherwise to identify and record particular receipts that are subsequently transferred to AFL-CIO COPE PCC.

If CWA COPE PCC were to establish a transmittal account and send receipts through that account to AFL-CIO COPE PCC, or otherwise record the particular receipts transferred, and if AFL-CIO COPE PCC were then responsible for itemizing these contributions, reporting them to the Commission individually as either itemized or unitemized contribution receipts, as appropriate, and keeping the appropriate records as to the individual contributors, this would shift to AFL-CIO COPE PCC tasks that are now performed fully and accurately by CWA COPE PCC, the original recipient of all of the payroll-deducted contributions at issue. The administrative burden on CWA COPE PCC either maintaining a separate account or separately accounting for the AFL-CIO COPE PCC-bound receipts would be greater, than now, as would be even moreso the burden on AFL-CIO COPE PCC, which would have to maintain records concerning the individual member contributions that are attributed to CWA COPE PCC s transmittal. Indeed, for CWA COPE PCC to undertake this change would require considerable reprogramming of its systems.

In turn, this division of recordkeeping with respect to the same members is likely to generate additional ongoing administrative confusion. We understand your letters to suggest that these changes be prospective, but that does not, of course, alleviate the significant prospective burdens. Moreover, the consequent burdens and expense would not add any information to the public domain; in fact, the ironic impact of such a change in procedure might be a reduction of public information, for surely some individual contributors who reach the $200.01 annual aggregate reporting threshold if they were recorded solely as CWA COPE PCC contributors would not reach that threshold if some of their contributions were attributed solely to AFL-CIO COPE PCC. It is difficult to discern how the goals of the Act would be served by such requirements. Under the current arrangement, recording such distinctions among the individual contributions would serve no purpose and would be a highly artificial enterprise.

Nor is such a procedure plainly required by the Commission s regulations. The key difference between this collecting agent arrangement and that contemplated by 102.6 is that CWA COPE PCC is both a collecting agent for AFL-CIO COPE PCC and a separate segregated fund soliciting and receiving for itself contributions from the same members in its own right. (Alternatively, CWA may be viewed as the collecting agent acting via CWA COPE PCC. See 11 C.F.R. 102.6(b)(1)(iv) and (b)(2).) So, CWA COPE PCC is not acting solely as a collecting agent of AFL-CIO COPE PCC. This arrangement does not really fit the pure collecting agent model contemplated by 102.6, which assumes that the collecting agent is not a political committee simultaneously collecting contributions for itself from the same restricted class as a joint fundraiser. In our research the Commission has never addressed the relative reporting obligations of two separate segregated funds undertaking such an arrangement, again, where all transactions already are being fully and accurately reported. Cf. Advisory Opinion 1980-74 (approving local union s solicitation of members for two separate segregated funds without specifically requiring such reporting).

Under these circumstances, the sums transferred by CWA COPE PCC to AFL-CIO COPE PCC are more analogously viewed as a

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transfer that Part 104 otherwise requires be reported simply as a total amount, and not as an amount to be disaggregated for reporting purposes. See 11 C.F.R. 104.3(a)(2)(v), 104.3(a)(4)(iii), 104.3(b)(1)(ii), 104.3(b)(3)(ii). In fact, both CWA COPE PCC and AFL-CIO COPE PCC have been informally advised by the Reports Analysis Division to report these joint fundraising transfers as transfers on Form 3X, Lines 12 and 22 respectively, as the most closely analogous category, and they have done so for some time. But your letters would require both committees to change those methods of reporting upon which both they and the Commission have relied.

Finally, your letters assert that CWA COPE PCC must retain the required records for three years of the transactions with AFL-CIO COPE PCC, pursuant to 11 C.F.R. 102.6(c)(6). But the letters cite no instance of inadequate recordkeeping by CWA COPE PCC. In fact, CWA COPE PCC fully complies with this requirement with respect to both this arrangement and all of its other transactions.

Accordingly, we request that your office reconsider its position. Meanwhile, CWA COPE PCC and AFL-CIO COPE PCC are conferring with respect to their respective obligations, and we suggest, again, that a meeting would be useful after AFL-CIO COPE PCC separately responds on or before August 18.

Thank you for your consideration.
Yours truly,

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