



FEDERAL ELECTION COMMISSION
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February 24, 2010

MEMORANDUM

AGENDA ITEM

To: The Commission

Through: Alex Palmer *AP*
Acting Staff Director

From: Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division

Tom Hintermister *TH*
Audit Manager

By: Pat Sheppard *PJS*
Lead Auditor

Subject: Audit Hearing for The Jefferson Committee (TJC)

For Meeting of 03-04-10

As provided for in the Procedural Rules for an Audit Hearing, a copy of the subject draft final audit report and the legal analysis was sent to the TJC on September 11, 2009.

TJC requested a hearing on September 30, 2009 and indicated that it wished to primarily address Finding 4 (Receipt of Commingled Funds) of the draft Final Audit Report, but may also want to address Findings 1, 2, 3, 5 and 7 (respectively, Receipt of Impermissible Candidate Loans, Receipt of Prohibited Contributions, Receipt of Contributions in Excess of the Limit, Misstatement of Financial Activity, and Disclosure of Disbursements). On October 22, 2009, the Commission granted TJC's request for an hearing. Below is a summary of the brief comments provided by TJC with its hearing request.

Comments on Finding 4- Receipt of Commingled Funds

First, TJC questioned the authority used by the Audit staff for the conclusion that 11 CFR §102.15 is applicable to any *business funds* of an individual. The Audit staff identified ANJ Group, LLC, as the source of the funds that were commingled with the TJC. The Audit staff has not been provided information to determine whether or not the ANJ Group, LLC filed as a corporation under the Internal Revenue Service. If ANJ

Group, LLC filed as a partnership, then the Commission will need to determine if these funds are the personal funds of the company's principals. If so, the provision of 2 U.S.C. 432(a)(3) which states that all funds of a political committee shall be segregated from, and may not be commingled with, the personal funds of any individual would appear to be applicable.

Second, TJC commented on footnote 11 of the draft audit report. TJC believes the footnote implies that perhaps ANJ benefitted from the commingling transaction or somehow was in need of funds at the time of commingling transaction. Footnote 11 merely details the instrument used to complete the transaction that involved the commingling with TJC funds.

**Comments on Findings 5- Misstatement of Financial Activity and
Finding 7- Disclosure of Disbursements**

TJC objects to the use of the word "materially" in both findings since its meaning is not defined in any legal standards. Stating that TJC did not "materially" correct their reporting simply means that the amended reports filed by TJC did not meet the reporting error tolerances established by the Commission as defined in the Audit Division's Materiality Thresholds. It is further noted that TJC has received workpapers to support all reporting adjustments identified by the Audit staff with respect to each of these findings.

TJC did not provide any specific comments in their audit hearing request with respect to Findings 1, 2, or 3. If the Audit staff receives any further comments or information from TJC related to the draft final audit report prior to the hearing, they will be forwarded to the Commission. Please be advised other related document can be found in the following location: Ntsrv1\ voting ballot matters\Audit\Jefferson Committee. Should you have any questions, please contact Pat Sheppard or Tom Hintermister at 694-1200.

Attachments:

Draft Final Audit on The Jefferson Committee

Legal Analysis on the Draft Final Audit Report (#LRA 751)

TJC Request for Hearing dated September 30, 2009

Addendum to TJC Request for Hearing dated October 1, 2009



Report of the Audit Division on The Jefferson Committee

January 1, 2005 – December 31, 2006

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 Campaign (p. 2)

The Jefferson Committee (TJC) is the principal campaign committee for William J. Jefferson, Democratic candidate for the U.S. House of Representatives from the state of Louisiana, 2nd District. TJC is headquartered in New Orleans, LA. For more information, see the chart on the Campaign Organization, p.2.

Financial Activity (p. 2)

- **Receipts**
 - From Individuals \$ 436,895
 - From Other Political Committees 578,524
 - Candidate Loans 283,500
 - Other Receipts 4,415
 - **Total Receipts** \$ 1,303,334
- **Disbursements**
 - Operating Expenditures \$ 1,309,889
 - Other Disbursements 65,163
 - **Total Disbursements** \$ 1,375,052

Findings and Recommendations (p. 3)

- Receipt of Impermissible Candidate Loans (Finding 1)
- Receipt of Prohibited Contributions (Finding 2)
- Receipt of Contributions in Excess of the Limit (Finding 3)
- Commingled Funds (Finding 4)
- Misstatement of Financial Activity (Finding 5)
- Disclosure of Occupation/Name of Employer (Finding 6)
- Disclosure of Disbursements (Finding 7)
- Failure to File 48-Hour Notifications (Finding 8)
- Untimely Deposit of Contributions (Finding 9)

¹ 2 U.S.C. §438(b).

Report of the Audit Division on The Jefferson Committee

January 1, 2005 – December 31, 2006



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Part I

Background

Authority for Audit

This report is based on an audit of The Jefferson Committee (TJC), 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 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. 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. 2 U.S.C. §438(b).

Scope of Audit

This audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

Part II

Overview of Campaign

Campaign Organization

Important Dates	The Jefferson Committee
• Date of Registration	March 29, 1991
• Audit Coverage	January 1, 2005 – December 31, 2006
Headquarters	New Orleans, Louisiana
Bank Information	
• Bank Depositories	One
• Bank Accounts	Three checking accounts
Treasurer	
• Treasurer When Audit Was Conducted	Angela Coleman
• Treasurer During Period Covered by Audit	Jack Swetland (01/01/05 – 07/28/05) Angela Coleman (11/21/05 – 07/14/08) ² Tawanda Coleman (07/14/08 – Present)
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Treasurer

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2005	\$ 78,099
o From Individuals	436,895
o From Other Political Committees	578,524
o Candidate Loans	283,500
o Other Receipts	4,415
Total Receipts	\$1,303,334
o Operating Expenditures	1,309,889
o Other Disbursements	65,163
Total Disbursements	\$ 1,375,052
Cash on hand @ December 31, 2006	\$6,381

² On 10/18/2005, the FEC received notification that Jack Swetland had resigned as Treasurer effective July 28, 2005. An Amended Statement of Organization naming Angela Coleman as Treasurer was filed on 11/21/2005.

Part III

Summaries

Findings and Recommendations

Finding 1. Receipt of Impermissible Candidate Loans

The Candidate used the proceeds of a \$320,000 promissory note from his sister to loan \$150,500 to TJC during the audit period. As a result, the Candidate's sister made an excessive contribution to TJC totaling \$150,500. The Audit staff recommended that TJC provide documentation to verify the source of funds and demonstrate that the funds from the Candidate's sister did not result in the receipt of an excessive or prohibited contribution. It was also recommended that TJC amend its reports to reflect the actual source of all loans and any payments on the loans made by TJC, the Candidate, or any other person. In response to the interim audit report, the Candidate acknowledged that the funds were from his sister's company and her personal resources. TJC also provided a statement from the Candidate's sister indicating that her company is not taxed as a corporation. TJC also filed amended reports disclosing \$120,000 of the amount loaned during the 2006 election cycle; however, TJC did not correctly disclose the source of the loans. (For more detail, see p. 6)

Finding 2. Receipt of Prohibited Contributions

TJC received 55 apparent prohibited contributions totaling \$58,585 from corporations, LLCs, and a Native American tribe. The Audit staff recommended TJC demonstrate that these contributions were made with permissible funds or refund them. In response to the interim audit report, TJC provided evidence that nine contributions totaling \$18,200 were not prohibited. Although not considered prohibited, five of the contributions resulted in TJC's receipt of excessive contributions totaling \$8,800. Without further documentation or information to verify the permissibility of the remaining funds, the Audit staff maintains the remaining contributions from forty-three corporations totaling \$25,585 (\$43,585 - \$18,200) are prohibited. With regard to the contributions from the Native American tribe, TJC provided no additional information to verify the permissibility of these funds and, therefore, the Audit staff maintains the contributions totaling \$15,000 are prohibited. TJC has not made contribution refunds or disclosed the contributions requiring a refund as debts on Schedules D. (For more detail, see p. 10)

Finding 3. Receipt of Contributions in Excess of the Limit

TJC received \$17,530 in excessive contributions from fourteen individuals. Excessive contributions totaling \$15,100 were caused by TJC's failure to send individuals notification of a presumptive election redesignation and/or contributor reattribution. The remaining \$2,430 was not eligible for presumptive redesignation and/or reattribution and must be refunded. The Audit staff recommended that TJC provide documentation that the contributions were not excessive, or send notices to those contributors that were eligible for presumptive redesignations and/or reattributions, or refund the excessive amounts. In response to the interim audit report, TJC did not provide evidence that contributions totaling \$17,530 were not excessive. TJC also did not provide copies of

presumptive redesignation and/or reattribution letters sent for excessive contributions totaling \$15,100 or evidence of contribution refunds totaling \$2,430. TJC also has not filed amended reports to disclose the contributions requiring refunds on Schedules D (Debts and Obligations). (For more detail, see p. 13)

Finding 4. Commingled Funds

On June 24, 2005, the former TJC treasurer commingled \$25,015 from a non-campaign related business with TJC funds. Records indicate the business was associated with the Candidate's family and, according to the former TJC treasurer, "the transactions were done merely as an accommodation to expedite banking activity." The Audit staff recommended TJC provide any further comments it may have regarding this matter. In response to the interim audit report, TJC did not provide any new information regarding the transactions. However, the Candidate stated that at no time were the transactions known by, authorized by, or requested by himself or any member of his family. The Candidate also stated that no financial benefit was derived from the transactions by himself or TJC. (For more detail, see p. 16)

Finding 5. Misstatement of Financial Activity

A comparison of TJC's reported financial activity to the bank records revealed a misstatement of activity in 2006. Reported receipts and disbursements were understated by \$136, 836 and \$142,230 respectively in that year. TJC's reported cash balance was misstated throughout the period with the ending cash being understated by \$3,404. TJC filed some amended reports for 2006 after notification of the audit; however, a material misstatement of activity remains. The Audit staff recommended that TJC submit amended reports to correct the misstatements and amend its most recently submitted report to correct the cash balance. In response to the interim audit report, TJC filed amended reports. However, these amended reports did not materially correct the misstatement. (For more detail, see p. 18)

Finding 6. Disclosure of Occupation/Name of Employer

A review of contributions from individuals disclosed on Schedule A (Itemized Receipts) revealed the entries for 149 contributions totaling \$181,550 lacked or did not adequately disclose the contributor's occupation and/or name of employer. Furthermore, TJC did not use "best efforts" to obtain, maintain, and submit the required information. The Audit staff recommended that TJC contact each contributor for whom the information is lacking, submit evidence of such contact, and disclose any information received in amended reports. In response to the interim audit report, TJC filed amended reports to disclose the required occupation and employer information related to contributions totaling \$55,700. After the filing of these amendments, entries for 101 contributions totaling \$125,850 still lack or do not adequately disclose the contributor's occupation and/or name of employer. TJC provided a list of those individuals for whom letters would be sent requesting the missing or inadequate information as well as a copy of the letter to be sent. (For more detail, see p. 20)

Finding 7. Disclosure of Disbursements

A sample review of expenditures revealed that a material amount of disbursements itemized on the disclosure reports lacked or inadequately disclosed the required information. The projected dollar value of these transactions was \$209,588. These

disclosure discrepancies consisted of incorrect names, addresses, dates, missing or inadequate purposes, or missing memo entries associated with credit card transactions. The Audit staff recommended that TJC amend its reports to correct the disclosure of its disbursements. In response to the interim audit report, TJC filed amended reports and a written statement. However, these amended reports did not materially correct the disclosure of the disbursements on Schedules B. (For more detail, see p. 22)

Finding 8. Failure to File 48-Hour Notifications

TJC failed to file 48-hour notices for contributions totaling \$227,600. Most of the notices not filed were for contributions made prior to the run-off election and for loans reported as from the Candidate. The Audit staff recommended that TJC provide evidence that the 48-hour notices were timely filed or submit any written comments it considers relevant. In response to the interim audit report, TJC provided no additional comments regarding this issue. (For more detail, see p. 23)

Finding 9. Untimely Deposit of Contributions

TJC untimely deposited contributions totaling \$315,500 from political committees. The Audit staff recommended that TJC demonstrate that the deposits were made timely. Absent such demonstration, TJC should implement changes to its procedures to achieve future compliance and provide a description of such action. In response to the interim audit report, TJC provided additional documentation which indicated many of the contributions were initially received by a fundraising representative who forwarded the contributions which were then deposited by TJC in a timely manner. (For more detail, see p. 24)

Part IV

Findings and Recommendations

Finding 1. Receipt of Impermissible Candidate Loans

Summary

The Candidate used the proceeds of a \$320,000 promissory note from his sister to loan \$150,500 to TJC during the audit period. As a result, the Candidate's sister made an excessive contribution to TJC totaling \$150,500. The Audit staff recommended that TJC provide documentation to verify the source of the funds and demonstrate that the funds from the Candidate's sister did not result in the receipt of an excessive or prohibited contribution. It was also recommended that TJC amend its reports to reflect the actual source of all loans and any payments on the loans made by TJC, the Candidate, or any other person. In response to the interim audit report, the Candidate acknowledged that the funds were from his sister's company and her personal resources. TJC also provided a statement from the Candidate's sister indicating that her company is not taxed as a corporation. TJC also filed amended reports disclosing \$120,000 of the amount loaned during the 2006 election cycle; however, TJC did not correctly disclose the source of the loans.

Legal Standard

A. Formal Requirements Regarding Reports and Statements: An authorized committee shall maintain all records, including bank 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 and statements may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).

B. Expenditures by Candidates. Candidates for Federal office may make unlimited expenditures from personal funds as defined in 11 CFR §100.33 and 110.10.

C. Personal Funds. Personal funds of a candidate means the sum of all of the following:

(a) *Assets.* Amounts derived from any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had legal and rightful title or an equitable interest;

(b) *Income.* Income received during the current election cycle, as defined in 11 CFR §400.2, of the candidate, including:

- (1) A salary and other earned income that the candidate earns from bona fide employment;
- (2) Income from the candidate's stocks or other investments;
- (3) Bequests to the candidate;
- (4) Income from trusts established before the beginning of the election cycle as defined in 11 CFR §400.2;

- (5) Income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;
- (6) Gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle, as defined in 11 CFR §400.2; and
- (7) Proceeds from lotteries and similar legal games of chance. 11 CFR §100.33

D. Candidate as an Agent. Any candidate who receives a contribution and obtains a loan or makes any disbursement, in connection with his or her campaign shall be considered as having received such contribution, obtained such loan or made such disbursement as an agent of his or authorized committee(s). 11 CFR §101.2

E. Receipt of Prohibited Contributions – General Prohibition. Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Labor Organizations;
 - National Banks; 2 U.S.C. §441b and 441f.

F. Authorized Committee Limits. An authorized committee may not receive more than a total of \$2,000 per election from any one person. The Bipartisan Campaign Reform Act of 2002 (BCRA) includes provisions that index the individual contribution limit for inflation. The limit for individuals' contributions to candidates for the 2006 election cycle was \$2,100. 2 U.S.C. §441a(a)(1)(A), 11 CFR §110.1(a) and (b)

G. Contribution Defined. A gift, subscription, loan (except when made in accordance with 11 CFR §100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution. The term *loan* includes a guarantee, endorsement, and any other form of security. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110. A loan, to the extent it is repaid, is no longer a contribution. 11 CFR §100.52(a).

H. Personal Gifts and Loans. If any person, including a relative or friend of the candidate, gives or loans the candidate money in connection with his or her campaign, the funds are not considered personal funds of the candidate. Instead, the gift or loan is considered a contribution from the donor to the campaign, subject to the limitation and prohibitions of the Act. See Advisory Opinions 1985-33, 1982-64, and 1987-1.

I. Personal Use. A payment made to a candidate, even if used for personal expenditures, is a contribution unless the payment would have been made irrespective of the candidacy. Likewise, the payment of a particular expense by any person other than

the candidate or campaign committee shall be a contribution unless payment would have been made irrespective of the candidacy. 11 CFR §113.1(g)(6)

Facts and Analysis

The Audit staff identified loans totaling \$150,500 that could not be verified as being made with the Candidate's *personal funds*. TJC bank records indicate at least \$30,500 of this amount was drawn on accounts of a company named Jeffco Services, Inc. or Jeffco Services, LLC (Jeffco), for which the Candidate's sister is a principal.³ The source of a November 19, 2006 wire transfer in the amount of \$100,000 is not documented, however, according to the TJC treasurer, the wire was also from Jeffco.⁴ The source of a \$20,000 cashier's check payable to the Candidate and deposited by TJC on November 14, 2006 is also not documented. According to TJC's treasurer and the Candidate, all of these funds were covered by a promissory note between the Candidate and his sister. The promissory note dated February 1, 2007, after the transactions had occurred, outlines the repayment schedule, interest rate, and security for a loan of \$320,000 to the Candidate from his sister. According to the Candidate, he is obligated and has made payments to his sister on this promissory note.

The Audit staff maintains the promissory note does not establish that the funds borrowed from his sister were the *personal funds* of the Candidate. Rather, it appears that the Candidate borrowed the funds as an agent of TJC. As a result, TJC appears to have accepted excessive contributions or potentially prohibited contributions from the Candidate's sister or Jeffco of at least \$150,500. It is not known how much of the remaining amount covered by the promissory note, \$169,500, was received by the Candidate or how that money was used. As noted in the legal standards above, a payment made to a candidate, even if used for personal expenditures, is a contribution unless the payment would have been made irrespective of the candidacy. The timing of the promissory note coupled with the fact that some of the funds were transferred directly to TJC indicates the Candidate may have received the funds in connection with his campaign.

The Candidate also represents that he has made payments on the promissory note. However, TJC has not provided a schedule of those payments or any payments made by any other person. These payments also constitute contributions to TLC. Absent the submission of additional information the entire \$320,000 is considered an excessive or prohibited contribution to TJC, and payments on the loan by the Candidate, or any other person, are considered additional contributions that are required to be reported.

Regarding funds reportedly loaned to TJC by the Candidate, it is necessary for the Audit staff to review, at minimum, records that identify the account from which the wire transfer originated and the source of the funds used to purchase the cashier's check. The Audit staff made numerous requests of TJC for this documentation, but none was provided. In addition, on March 19, 2008, letters were sent to the Candidate and his

³ Checks deposited by TJC were imprinted with the names Jeffco Services, LLC and Jeffco Services, Inc. According to the Louisiana Secretary of State, the Candidate's sister is listed as a principal for both of these entities. On July 18, 2002, Jeffco Services, Inc. was dissolved, however; on that day Jeffco Services, LLC was registered as a new entity. It is not known whether Jeffco Services, LLC is taxed as a corporation or a partnership.

⁴ The Treasurer also held a position with Jeffco Services, Inc.

sister requesting such documentation and noting that, if not provided, the Commission may draw an adverse inference about the source of the funds. None of the documentation requested has been provided; however, a response was received from the Candidate's sister on April 21, 2008. In that letter she stated that all inquiries should be addressed to TJC and asked that she not be contacted again. TJC also provided a copy of a letter dated April 21, 2008 that it received from the Candidate in which he states the cashier's check was part of proceeds loaned to him by his sister. The Candidate also stated that no loans existed between Jeffco and himself or TJC.⁵

TJC also significantly understated Candidate loans in 2006. In that year, TJC reported the receipt of only \$148,000 in Candidate loans.⁶ However, TJC records indicate that Candidate loans totaling \$283,500 were actually received. The difference of \$135,500 is included in Finding 5 - Misstatement of Reported Activity.

Interim Audit Report Recommendation and Response

The Audit staff recommended that TJC provide documentation to verify the source of the funds and demonstrate that the funds from the Candidate's sister did not result in the receipt of an excessive or prohibited contribution. The records provided should include bank statements and other documentation to identify the source of funds for the November 19, 2006, \$100,000 wire transfer and the source of the funds used to purchase the \$20,000 cashier's check deposited by TJC on November 14, 2006. TJC should also provide documentation that indicates whether Jeffco Services, LLC is taxed as a corporation or a partnership.

Regarding the \$320,000 promissory note from the Candidate's sister, TJC should provide evidence that any payments to the Candidate or to a third party for his personal expenditures were made irrespective of his candidacy. TJC should also provide documentation for any payments made on this promissory note including those made by the Candidate or a third party. Failure to provide the necessary records may lead the Commission to draw an adverse inference concerning the permissibility of \$320,000 covered by the promissory note between the Candidate and his sister.

Regarding the disclosure of the loans totaling \$283,000, TJC should amend Schedules C on its reports accurately disclosing the source of the loans as either the Candidate's sister or Jeffco. In addition, TJC should report any payments on these loans as contributions from the Candidate or other persons making those payments.

In response to the interim audit report, TJC did not provide documentation to confirm the source of the \$100,000 wire transfer or the \$20,000 cashier's check as Jeffco. However, TJC provided the following statement from the Candidate's sister, "During the years 2006 and 2007, I made personal loans of \$320,000.00 to my brother, William Jefferson, from funds derived from my company, Jeffco Services, LLC., of which I am the sole owner." The Candidate's sister also provided statements verifying that Jeffco is not taxed as a corporation and that \$150,500 was extended to the Candidate during 2006 and

⁵ In conjunction with this audit report, the Audit staff has recommended the Commission issue subpoenas to obtain the information not provided in response to the letters sent to the Candidate and his sister on March 19, 2008.

⁶ TJC did not have adequate records to support the reported figure for Candidate loans of \$148,000. As such, the Audit staff could not identify the specific loans that were not reported.

\$169,500 during 2007. The Candidate also provided a statement indicating that the source of the funds was the company owned by his sister.

According to the Candidate's sister, these funds were provided to "...the Candidate for whatever he desired to make of them, including using them in his campaign, were that his decision." The statement indicates that the \$169,500 was loaned strictly to support the Candidate's personal and family obligations and could not be construed to be connected to his candidacy since his campaign ended in the prior year.⁷ It further indicates that the \$169,500 funds were extended beyond the period covered by the audit and could not reasonably be considered a prohibited contribution for the 2005-2006 audit period. The Candidate himself also provided a statement indicating that \$169,000 [sic \$169,500] was loaned by his sister using her personal funds and funds from Jeffco in 2007.

The Candidate's sister also provided copies of payments made in 2007 from the Candidate to her totaling \$5,000. Her statement indicates that these payments were for his personal obligation with her.

Based on the statements and information provided in response to the interim audit report, the Audit staff concludes that the Candidate's sister made excessive contributions using funds from Jeffco totaling \$150,500 during the 2005-2006 election cycle. The Audit staff notes that additional excessive contributions of at least \$174,500 (\$169,500 loan amount plus \$5,000 in loan payments) appear to have been made by the Candidate's sister after the period covered by the audit.

Regarding the disclosure of loans on Schedules C, TJC filed amended reports but did not report \$30,500 of the \$150,500 in loans and failed to correctly disclose the original source as the Candidate's sister for the remaining \$120,000 received from her.

Finding 2. Receipt of Prohibited Contributions

Summary

TJC received 55 apparent prohibited contributions totaling \$58,585 from corporations, LLCs, and a Native American tribe. The Audit staff recommended TJC demonstrate that these contributions were made with permissible funds or refund them. In response to the interim audit report, TJC provided evidence that nine contributions totaling \$18,200 were not prohibited. Although not considered prohibited, five of the contributions resulted in TJC's receipt of excessive contributions totaling \$8,800. Without further documentation or information to verify the permissibility of the remaining funds, the Audit staff maintains the remaining contributions from forty-three corporations totaling \$25,385 (\$43,585 - \$18,200) are prohibited. With regard to the contributions from the Native American tribe, TJC provided no additional information to verify the permissibility of these funds and, therefore, the Audit staff maintains the contributions totaling \$15,000 are prohibited. TJC has not made contribution refunds or disclosed the contributions requiring a refund as debts on Schedules D.

⁷ The Candidate filed a Statement of Candidacy for the 2008 election on May 21, 2007.

Legal Standard

A. Receipt of Prohibited Contributions – General Prohibition. Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Labor Organizations;
 - National Banks; 2 U.S.C. §441b and 441f.

B. Definition of Limited Liability Company. A limited liability company (LLC) is a business entity recognized as an LLC under the laws of the State in which it was established. 11 CFR §110.1(g)(1).

C. Application of Limits and Prohibitions to LLC Contributions. A contribution from an LLC is subject to contribution limits and prohibitions, depending on several factors, as explained below:

1. LLC as Partnership. The contribution is considered a contribution from a partnership if the LLC chooses to be treated as a partnership under Internal Revenue Service (IRS) tax rules, or if it makes no choice at all about its tax status. A partnership contribution may not exceed \$2,100 per candidate, per election, and it must be attributed to each lawful partner. 11 CFR §110.1(a), (b), (e) and (g)(2).
2. LLC as Corporation. The contribution is considered a corporate contribution—and is barred under the Act—if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are traded publicly. 11 CFR §110.1(g)(3).
3. LLC with Single Member. The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1(g)(4).
4. At the time it makes the contribution, an LLC shall provide to the recipient committee information on how the contribution is to be attributed and affirm that it is eligible to make the contribution. 11 CFR §110.1(g)(5).

D. Questionable Contributions. If a contribution that presents genuine questions about its permissibility is received and deposited, the treasurer shall make his or her best efforts to determine whether it is from a prohibited source. If the legality of the contribution cannot be verified within 30 days of the treasurer's receipt it shall be refunded to the contributor. 11 CFR §103.3(b)(1).

E. Application of Limits and Prohibitions to Native American Tribe Contributions. A contribution from a Native American tribe is subject to the contribution limitations and prohibitions. 2 U.S.C. §431(11) and 441a(a)(1)(A).

F. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person as adjusted by the Consumer Price Index. 2 U.S.C. §441a(a)(1)(A) and 11 CFR §110.1(a) and (b). Based on the

respective CPIs, the contribution limit for any one person for the 2006 election cycle was \$2,100 and \$2,300 for the 2008 election cycle.

Facts and Analysis

TJC received apparent prohibited contributions totaling \$58,585. This amount includes contributions from twenty-four corporations totaling \$18,710, twenty-two LLCs totaling \$24,875 and one Native American tribe totaling \$15,000.

For the contributions from corporations, the Audit staff verified the corporate status of the entities at the time the contributions were made with the Louisiana Secretary of State. For contributions from LLCs, TJC provided no documentation that stated whether the companies elected to be treated as a partnership or corporation by the Internal Revenue Service (IRS). Absent documentation explaining how each entity is taxed, these contributions present genuine questions about having come from prohibited sources.

TJC also accepted three \$5,000 contributions from the Tunica-Biloxi Tribe of LA between March 14, 2006 and December 11, 2006. Based on available documentation and disclosure reports filed with the Commission, it does not appear that these contributions were from the federally registered political action committee (TBIPAC) associated with this tribe. Further, these contributions do not appear on non-federal reports filed with the State of Louisiana. The contribution checks were all imprinted with Tunica-Biloxi Tribe of LA as the account holder and "consolidated account" as the account name. According to the Secretary of State of Louisiana, the Tunica-Biloxie Indians of Louisiana, Inc. is a non-profit corporation. Absent evidence that these contributions were not drawn on corporate accounts, it appears that the \$15,000 is prohibited.⁸ If it is established that the funds are not corporate or from the federally registered political action committee, the contributions exceed the individual contribution limitations by \$8,500 (\$5,800 for 2006 election cycle and \$2,700 for 2008 election cycle).

A list that included the contributions above was presented to the treasurer of TJC. In response, TJC sent letters to contributors asking for their filing status with the IRS. On January 13, 2008, the treasurer submitted letters from several of the contributors noting that they were treated as a partnership for contribution purposes. The contributions discussed above exclude those clarified by the January 13 submission.

Interim Audit Report Recommendation and Response

The Audit staff recommended that TJC:

- Provide evidence demonstrating that the contributions in question were made with permissible funds. For contributions in question from LLCs, TJC should provide a statement from each entity explaining its tax treatment or a copy of IRS Form 8832; or
- Refund \$58,585 to the contributors or disgorge the funds to the U.S. Treasury. TJC should provide evidence of any refunds (copies of the front and back of negotiated refund checks); or

⁸ Should TJC demonstrate that these contributions are from TBIPAC, an excessive contribution of \$2,500 to the primary election would result since TBIPAC already contributed \$2,500 to TJC for the primary election.

- For any amounts determined to be excessive from the Native American tribe, TJC must refund the excessive portion and provide evidence of such refund (copy of the front and back of negotiated refund check) or pay the amount to the U.S. Treasury; or
- If funds are not available to make the necessary refunds, disclose the contributions requiring refunds on Schedule D (Debt and Obligations) until funds become available to make such refunds.

In response to the interim audit report, TJC provided evidence that one contribution of \$500 was not prohibited. TJC also documented that three contributions totaling \$8,400 were from a limited liability company that is not taxed as a corporation. Although not considered prohibited, these contributions resulted in TJC's receipt of an excessive contribution totaling \$6,300. Therefore, the Audit staff concludes that TJC accepted prohibited contributions from twenty-one corporations totaling \$9,810 (\$18,710 - \$8,900).

For the twenty-two contributions from LLC's totaling \$24,875, TJC provided documentation received from three LLC's totaling \$9,300 that indicated the companies were not taxed as corporations. Although not considered prohibited, two contributions resulted in TJC's receipt of excessive contributions from these companies totaling \$2,500. Without further documentation or information to verify the permissibility of the funds from LLC's, the Audit staff maintains the remaining contributions totaling \$15,575 (\$24,875 - \$9,300) are prohibited.

With regard to the contributions from Native American tribe totaling \$15,000, TJC provided the following statement, "The tribe may own a corporation, but it, itself, is not a corporation, but a nationally recognized Native American Tribe, permitted to contribute under 2 U.S.C. Section 431(11) and 441(a)(1)(A)." TJC provided no additional information to determine whether or not the contributions were from a corporate account. TJC acknowledged the receipt of an excessive contribution and stated that \$6,900 of this amount was applied to the 2007-2008 election cycle and the remaining portion would be reported as a debt to the tribe. Without further documentation or information to verify the permissibility of these funds, the Audit staff maintains the contributions totaling \$15,000 are prohibited.

TJC has not made contribution refunds to these entities or disclosed those contributions requiring a refund as debts on Schedules D. It is noted that TJC's FEC reports disclose a cash balance of \$1,164 as of December 31, 2008.

Finding 3. Receipt of Contributions in Excess of the Limit

Summary

TJC received \$17,530 in excessive contributions from fourteen individuals. Excessive contributions totaling \$15,100 were caused by TJC's failure to send individuals notification of a presumptive election redesignation and/or contributor reattribution. The remaining \$2,430 was not eligible for presumptive redesignation and/or reattribution and must be refunded. The Audit staff recommended that TJC provide documentation that the contributions were not excessive, or send notices to those contributors that were

eligible for presumptive redesignations and/or reattributions, or refund the excessive amounts. In response to the interim audit report, TJC did not provide evidence that contributions totaling \$17,530 were not excessive. TJC also did not provide copies of presumptive redesignation and/or reattribution letters sent for excessive contributions totaling \$15,100 or evidence of contribution refunds totaling \$2,430. TJC also has not filed amended reports to disclose the contributions requiring refunds on Schedules D (Debts and Obligations).

Legal Standard

A. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person as adjusted by the Consumer Price Index. 2 U.S.C. §441a(a)(1)(A) and 11 CFR §110.1(a) and (b).

Based on the respective CPIs, the contribution limit for any one person for the 2006 election cycle was \$2,100 and \$2,300 for the 2008 election cycle.

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable contribution to the donor; or
- Deposit the contribution into its federal account and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).
- The excessive portion may also be redesignated to another election or reattributed to another contributor as explained below.

C. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- Refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the next election if the contribution:

- Is made before that candidate's primary or general election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary or general election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

Also, the committee may presumptively redesignate the excessive portion of a general election contribution back to the primary election and runoff election contribution back to the general election if the amount redesignated does not exceed the committee's primary or general net debt position.

The committee is required to notify the contributor in writing of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the

option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

D. Reattribution of Excessive Contributions. When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by each contributor; or
- Refund the excessive contribution. 11 CFR §110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- How the contribution was attributed; and
- That the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

Facts and Analysis

TJC received fifteen excessive contributions totaling \$17,530 from thirteen individuals. Of these excessive contributions, eight totaling \$13,400 were excessive for the primary election, four totaling \$2,930 were excessive for the general election and one totaling \$300 was excessive for the runoff election. TJC also received two undesigned contributions after the runoff election that exceeded the 2008 primary election limit (\$2,300) by a total of \$900.

Of the excessive contributions, \$15,100 (86%) would have been resolved had TJC sent contributor notifications under the presumptive redesignation and/or reattribution rules. It should be noted that TJC did maintain a sufficient balance in its bank accounts to refund the excessive contributions.

The Audit staff presented this matter to TJC's treasurer at the exit conference and provided a schedule of the excessive contributions. In response, TJC's treasurer provided a copy of a presumptive reattribution or redesignation letter that was being sent to contributors who made excessive contributions. TJC also indicated that for certain excessive contributions, a letter was being sent to the contributor to presumptively redesignate the contribution to the 2008 primary election. However, the Audit staff did not recognize TJC's efforts with respect to the 2008 election because the presumptive redesignation procedure can only be applied to contributions within an election cycle.

In summary, TJC received excessive contributions totaling \$17,530 and provided a copy of a letter that was being sent to contributors who made excessive contributions totaling \$15,100. Absent further evidence, the remaining excessive contributions totaling \$2,430 should be refunded.

Interim Audit Report Recommendation and Response

The Audit staff recommended that TJC:

- Provide evidence demonstrating that the contributions were not excessive. Evidence could include documentation that was not available during the audit including copies of solicitation cards completed by the contributors at the time of their contribution that clearly inform the contributors of the limitations; timely notifications sent to contributors eligible for presumptive redesignation and/or reattribution; or, timely refunds, redesignations, or reattributions made for excessive contributions (copies of the front and back of negotiated refund checks) or;
- Absent such evidence, TJC should provide a copy of each presumptive redesignation and/or reattribution letter that was sent for excessive contributions totaling \$15,100. Such notice must demonstrate that both the contributor and the individual to whom the contribution was reattributed were notified. TJC must also demonstrate that the notices were actually sent and offers the contributors the option of receiving a refund of the excessive amount. Absent the contributor's request for a refund, these notices obviate the need to refund the contributions or make a payment to the U.S. Treasury.
- For the remaining excessive contributions (\$2,430), TJC must refund the excessive portion to the contributors and provide evidence of such refunds (copies of the front and back of negotiated refund checks) or pay the amount to the U.S. Treasury; or
- If funds are not available to make the necessary refunds, disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make such refunds.

In response to the interim audit report, the Candidate provided the following statement, "The IAR concluded that \$15,000 of the total \$17,550 have been satisfied by letters written by the treasurer to the contributors and other actions; the \$2,430 that remains, could be corrected by listing them on Schedule D as a campaign debt. This has been done." As noted above in the interim audit report recommendation, to resolve the excessive contributions totaling \$15,000, TJC was to provide copies of the presumptive redesignation or reattribution letter sent to each contributor. To date, the Audit staff has not received any copies of such letters purportedly sent by TJC. TJC also has not filed amended reports listing debts on Schedule D to those individuals for excessive amounts totaling \$2,430.

Finding 4. Commingled Funds

Summary

On June 24, 2005, the former TJC treasurer commingled \$25,015 from a non-campaign related business with TJC funds. Records indicate the business was associated with the Candidate's family and, according to the former TJC treasurer, "the transactions were done merely as an accommodation to expedite banking activity." The Audit staff recommended TJC provide any further comments it may have regarding this matter. In response to the interim audit report, TJC did not provide any new information regarding the transactions. However, the Candidate stated that at no time were the transactions known by, authorized by, or requested by himself or any member of his family. The

Candidate also stated that no financial benefit was derived from the transactions by himself or TJC.

Legal Standard

Commingled funds- All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members or associates of that committee, or with the personal funds of any other individual.⁹ 11 CFR §102.15

Facts and Analysis

On June 24, 2005, the former TJC treasurer commingled funds from a business with a TJC campaign account. These transactions involved the deposit of a check in the amount of \$25,015 from The ANJ Group, LLC and a wire transfer to iGate, Inc of \$25,000.¹⁰ Each of the documents associated with these transactions were signed by TJC's former treasurer who had check writing authority for The ANJ Group, LLC and TJC.

Since these transactions were not reported and limited documentation was available, the Audit staff requested that TJC provide further documentation or an explanation of the circumstances surrounding these transactions. In response, the current TJC treasurer wrote a letter to the former TJC treasurer in which he was asked to confirm whether the transactions were simply an error resulting from a payment made from the wrong account or to provide a proper explanation for the transactions.

In response, the former TJC treasurer stated, "... the funds in question which were wired¹¹ from the Jefferson Committee account were not campaign funds. An amount of \$25,000 from another business account was deposited into the Jefferson Committee campaign account and simultaneously wired from the campaign account to an [i]Gate account at a bank in Kentucky. This amount was not reported as a campaign transaction since it did not involve campaign funds. As these entities have different banking institutions, this was done merely as an accommodation to me to expedite my performing these banking activities."

No further explanation was provided as to why payment was not made directly from The ANJ Group, LLC to iGate, Inc. or the reason(s) for the payment. The Audit staff has no knowledge of how or if the transactions above relate to other transactions between The ANJ Group, LLC and iGate, Inc.

⁹ It is implied that this regulation is applicable to any business funds of an individual.

¹⁰ The Louisiana Secretary of State records the Candidate's wife, Andrea G. Jefferson, as a manager for The ANJ Group, LLC. It is also noted that, Vernon L. Jackson, the former Chairman and Chief Executive Officer of iGate, Inc, has entered into a plea agreement in which he pled guilty to a charge of bribery of a public official. The plea agreement states that Vernon L. Jackson caused the transfer of \$367,500 from iGate, Inc. to The ANJ Group, LLC between 2001 and 2004 in return for official acts performed by the Congressmen.

¹¹ The transaction was accomplished using a check that was signed by TJC's former treasurer but included an annotation on the back that it was a wire transfer. Since the transaction cleared TJC's account on the same day the check was written and the two entities used different banks, it appears that the check was used to authorize the wire transfer.

Interim Audit Report Recommendation and Response

The Audit staff recommended that TJC provide any further comments it may have regarding this matter.

In response to the interim audit report, TJC did not provide any new information regarding the transactions. However, the Candidate provided a statement which explained that at no time were the transactions made by the former TJC treasurer known, authorized, or requested by himself or any member of his family. The Candidate also stated that no financial benefit was derived from the transactions by himself or TJC.

Finding 5. Misstatement of Financial Activity

Summary

A comparison of TJC's reported financial activity to the bank records revealed a misstatement of activity in 2006. Reported receipts and disbursements were understated by \$136, 836 and \$142,230 respectively in that year. TJC's reported cash balance was misstated throughout the period with the ending cash being understated by \$3,404. TJC filed some amended reports for 2006 after notification of the audit; however, a material misstatement of activity remains. The Audit staff recommended that TJC submit amended reports to correct the misstatements and amend its most recently submitted report to correct the cash balance. In response to the interim audit report, TJC filed amended reports. However, these amended reports did not materially correct the misstatement.

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; and
- The total amount of disbursements for the reporting period and for the calendar year;
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2),(3),(4) and (5).

Facts and Analysis

The Audit staff reconciled TJC's reported financial activity to its bank records and determined there were misstatements of activity for 2006¹². The following charts outline the discrepancies 2006 and explain the misstatements identified during the audit.

2006 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ January 1, 2006	\$305,461	\$314,260	\$8,799 Understated
Receipts	\$618,015	\$754,851	\$136,836 Understated
Disbursements	\$920,485	\$1,062,715	\$142,230 Understated
Ending Cash Balance @ December 31, 2006	\$2,992	\$6,396	\$3,404 Understated

¹² The reconciliation was based on reports filed prior to notification of the audit on May 1, 2007.

Receipts – 2006

The understatement of receipts was the net result of the following:

• Loans Not Reported	+ \$133,500
In 2006, TJC reported \$148,000 in loans from the Candidate. However, TJC actually received \$283,500 it considered Candidate loans. See Finding 1.	
• Receipts Overstated	- 28,400
TJC reported several contributions that could not be associated with any bank deposit. TJC also reported the receipt of an inter-account transfer of \$8,100 that should not have been reported.	
• Receipts Not Reported	+ 21,330
TJC did not report contributions received from several individuals, LLCs and corporations.	
• Receipts Reported with the Incorrect Amount	+ 3,750
TJC reported contributions with amounts that were different from the amount on the checks.	
• Unitemized Receipts Not Reported	+ 2,940
TJC reported the sum of \$14,625 in unitemized contributions, however, the correct total of unitemized contributions was calculated to be \$17,565.	
• Other Receipts Not Reported	+ 2,350
• Bank Interest Not Reported	+ 806
• Unexplained Difference.	+ 560
Total Net Understatement of Receipts	<u>\$136,836</u>

Disbursements – 2006

The understatement of disbursements was the net result of the following:

• Disbursements Not Reported	+ 168,462
TJC did not report disbursements including \$28,500 for payroll, \$24,100 to a consultant, \$21,619 for printing, and \$11,522 in credit card payments. Most of the disbursements not reported were made between October and December.	
• Disbursements Overstated	- 91,589
This amount includes a \$25,360 disbursement that TJC reported twice. Of the amount overstated, the Audit staff identified only one disbursement of \$3,248 that could be associated with a check number. The remaining \$88,341 in reported disbursements were not supported by any available accounting records.	
• Canvassing Expenses Not Reported (Net)	+ 48,836
TJC made more than 2,600 payments (mostly under \$200) for canvassing expenses totaling \$234,714. However, TJC's disclosure reports include only \$185,878 of such expenses.	
• Disbursements Reported with Incorrect Amounts	+ 2,176
TJC reported expenditures with amounts that were different from the amounts that cleared the bank.	
• Unexplained Difference	+ 14,346
Total Net Understatement of Disbursements	<u>142,230</u>

Cash Balance

On December 31, 2006 the cash balance was understated by \$3,404; as a result of the misstatements detailed above.

TJC filed amendments to the 12 Day Pre-General and 12 Day Pre-Runoff reports after notification of the audit that corrected some but not all of the misstatements noted above.

The Audit staff discussed this matter with the TJC's treasurer at the exit conference. The treasurer stated that any remaining misstated activity would be corrected in amended reports.

Interim Audit Report Recommendation and Response

The Audit staff recommended that TJC amend its disclosure reports for 2006 to correct the misstatements. TJC should also reconcile all reported activity to bank records for periods subsequent to the audit period and, if necessary, amend its most recently filed report to correct any discrepancy in the cash balance. The adjustment to the cash balance should include a notation that the change is due to audit adjustments from a prior period.

In response to the interim audit report, TJC filed amended reports. However, these amended reports did not materially correct the misstatement.

Finding 6. Disclosure of Occupation/Name of Employer

Summary

A review of contributions from individuals disclosed on Schedule A (Itemized Receipts) revealed the entries for 149 contributions totaling \$181,550 lacked or did not adequately disclose the contributor's occupation and/or name of employer. Furthermore, TJC did not use "best efforts" to obtain, maintain, and submit the required information. The Audit staff recommended that TJC contact each contributor for whom the information is lacking, submit evidence of such contact, and disclose any information received in amended reports. In response to the interim audit report, TJC filed amended reports to disclose the required occupation and employer information related to contributions totaling \$55,700. After the filing of these amendments, entries for 101 contributions totaling \$125,850 still lack or do not adequately disclose the contributor's occupation and/or name of employer. TJC provided a list of those individuals for whom letters would be sent requesting the missing or inadequate information as well as a copy of the letter to be sent.

Legal Standard

A. Required Information for Contributions from Individuals. For each itemized contribution from an individual, the committee must provide the following information:

- The contributor's full name and address (including zip code);
- The contributor's occupation and the name of his or her employer;
- The date of receipt (the date the committee received the contribution);
- The amount of the contribution; and
- The election cycle-to-date total of all contributions from the same individual. 11 CFR §100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A).

B. Preserving Documents. Committees must preserve these records for 3 years after a report is filed. 2 U.S.C. §432(d).

C. Best Efforts Ensures Compliance. When the treasurer of a political committee shows that the committee used “best efforts” (see below) to obtain, maintain, and submit the information required by the Act, the committee’s reports and records will be considered in compliance with the Act. 2 U.S.C. §432(h)(2)(i).

D. Definition of Best Efforts. The treasurer and the committee will be considered to have used “best efforts” with respect to contributions if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
 - A clear request for the contributor’s full name, mailing address, occupation, and name of employer; and
 - The statement that such reporting is required by Federal law.
- Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee’s records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

A review of contributions from individuals disclosed on Schedule A (Itemized Receipts) revealed that 149 contributions totaling \$181,550 lacked or did not adequately disclose the contributor’s occupation and/or name of employer. In most cases, the required information was either missing or disclosed as “Information Requested.” The records provided to the Audit staff did not contain any follow-up request for the information. Also, amended reports filed after notification of the audit that did not correct the disclosure of contributor information.

The Audit staff discussed this matter at the exit conference. In response, TJC’s treasurer stated they were reviewing records for the required information and would be sending letters to contributors and that any information received would be included in amended reports. She also commented that TJC has always endeavored to get the proper disclosure information from contributors, but it has not always been forwarded by the contributor.

The Audit staff concludes that TJC did not exercise “best efforts” to obtain, maintain, and submit the information during the period covered by the audit nor has TJC provided documentation to support any recent action taken.

Interim Audit Report Recommendation and Response

The Audit staff recommended that TJC take the following action:

- Provide documentation that it exercised best efforts to obtain, maintain and submit the required contributor information; or

- Make an effort to contact each contributor for whom the required information was not in TJC files and submit evidence of such contact (such as copies of letters to the contributors and/or phone logs); and,
- Submit amended reports to disclose any information TJC obtains in response to this recommendation.

In response to the interim audit report, TJC filed amended reports to disclose the required occupation and employer information related to contributions totaling \$55,700. According to TJC, this information was received from best efforts letters mailed in September 2007 and April 2008. After the filing of these amendments, entries for 101 contributions totaling \$125,850 still lack or do not adequately disclose the contributor's occupation and/or name of employer. For the remaining, TJC provided a copy of letter and a list of those individuals for whom letters would be sent requesting the missing or inadequate information. TJC stated that they will update their database and inform the Commission as contributor information is received.

Finding 7. Disclosure of Disbursements

Summary

A sample review of expenditures revealed that a material amount of disbursements itemized on the disclosure reports lacked or inadequately disclosed the required information. The projected dollar value of these transactions was \$209,588. These disclosure discrepancies consisted of incorrect names, addresses, dates, missing or inadequate purposes, or missing memo entries associated with credit card transactions. The Audit staff recommended that TJC amend its reports to correct the disclosure of its disbursements. In response to the interim audit report, TJC filed amended reports and a written statement. However, these amended reports did not materially correct the disclosure of the disbursements on Schedules B.

Legal Standard

A. Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 in an election cycle, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee; and
- Purpose (a brief description of why the disbursement was made—see below). 11 CFR §104.3(b)(4)(i).

B. Examples of Purpose.

- **Adequate Descriptions.** Examples of adequate descriptions of purpose include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, catering costs, loan repayment, or contribution refund. 11 CFR §104.3(b)(4)(i)(A).
- **Inadequate Descriptions.** The following descriptions do not meet the requirement for reporting purpose: advance, election day expenses, other expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3(b)(4)(i)(A).

Facts and Analysis

A sample review of disbursements itemized on Schedules B (Itemized Disbursements) revealed that a material amount of those disbursements lacked or inadequately disclosed the required information. The projected dollar value of these transactions was \$209,588. These disclosure discrepancies consisted of incorrect names, addresses, dates, missing or inadequate purposes (such as campaign worker or consultant), or missing memo entries to disclose the original vendor for transactions associated with payments to credit card companies.

TJC filed amended reports after notification of the audit, but those amended reports did not materially correct these errors and omissions.

This matter was discussed with TJC's treasurer at the exit conference. TJC's treasurer stated that the disclosure problems would be corrected in amended reports.

Interim Audit Report Recommendation and Response

The Audit staff recommended that, TJC amend its reports to correct the disclosure of disbursements on Schedules B.

In response to the interim audit report, TJC filed amended reports and a written statement. However, these amended reports did not materially correct the disclosure of the disbursements on Schedules B. TJC provided the following statement "The Jefferson Committee has combed its itemized disbursements and has used its very best efforts to disclose any names, addresses, dates missing or adequate purposes or missing memo entries associated with credit card transactions that appear on its report."

Finding 8. Failure to File 48-Hour Notifications

Summary

TJC failed to file 48-hour notices for contributions totaling \$227,600. Most of the notices not filed were for contributions made prior to the run-off election and for loans reported as from the Candidate. The Audit staff recommended that TJC provide evidence that the 48-hour notices were timely filed or submit any written comments it considers relevant. In response to the interim audit report, TJC provided no additional comments regarding this issue.

Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate, including:

- Contributions from the candidate;
- Loans from the candidate and other non-bank sources; and
- Endorsements or guarantees of loans from banks. 11 CFR §104.5(f).

Facts and Analysis

The Audit staff reviewed those contributions of \$1,000 or more that were received during the 48-hour notice filing period for the primary (07/23/2006-08/08/2006), general (10/19/2006-11/04/2006, and run-off (11/20/2006-12/04/2006) elections. TJC failed to file 48-hour notices for 50 contributions totaling \$227,600 as summarized below.

	Primary	General	Run-off	Total
48 Hour Notices Not Filed	\$4,000 (2)	\$57,100 (14)	\$166,500 (34)	\$227,600 (50)

Among the contributions that required 48-hour notices are loans reported as from the Candidate. The other contributions for which 48-hour notices were not filed were from twenty-nine (29) individuals, fourteen (14) political committees, and four (4) LLCs.

This matter was discussed with TJC's treasurer at the exit conference and the Audit staff subsequently provided schedules of the contributions for which 48-hour notices were not filed. In response, the TJC's treasurer stated she misunderstood the filing requirement.

Interim Audit Report Recommendation and Response

The Audit staff recommended that TJC provide evidence that these 48-hour notices were timely filed or provide any further comments it considers relevant. In response to the interim audit report, TJC provided no additional comments regarding this issue.

Finding 9. Untimely Deposit of Contributions

Summary

TJC untimely deposited contributions totaling \$315,500 from political committees. The Audit staff recommended that TJC demonstrate that the deposits were made timely. Absent such demonstration, TJC should implement changes to its procedures to achieve future compliance and provide a description of such action. In response to the interim audit report, TJC provided additional documentation which indicated many of the contributions were initially received by a fundraising representative who forwarded the contributions which were then deposited by TJC in a timely manner.

Legal Standard

A. Deposit of Receipts. The treasurer of a political committee must deposit contributions (or return them to the contributors without being deposited) within 10 days of the treasurer's receipt. 11 CFR §103.3(a).

B. Receipt of Contributions. Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receipt, forward such contribution to the treasurer. 11 CFR §102.8(a).

Facts and Analysis

TJC untimely deposited contributions totaling \$315,500 from political committees. This amount represents approximately 24% of deposits made during the period covered by the

audit. The Audit staff identified contributions from political committees that were deposited an average of 18 days late and in one instance, 184 days late. TJC did not record the receipt date for contributions. Therefore, in calculating the number of days late, the Audit staff used the check date plus an allowance for delivery and compared that to the deposit date¹³. In accordance with 11 CFR §102.8(a), the Audit staff allowed 10 days for deposit of the contribution.

This matter was discussed with TJC's treasurer at the exit conference. In response, TJC's treasurer noted that although there were gaps in the receipt and deposit of some checks, it is likely that no checks were held because all receipts were quickly spent. It is her belief that the donors wrote checks on a certain date and then had them delivered to the TJC at a "much later date."

Interim Audit Report Recommendation and Response

The Audit staff recommended that TJC demonstrate that the deposits were made timely. Absent such demonstration, TJC should implement changes to its procedures to achieve future compliance and provide a description of such changes.

In response to the interim audit report, TJC materially complied with the Audit staff's recommendation by providing additional documentation which indicated that many of the contributions were initially received by a fundraising representative. The documentation supports that these contributions were forwarded by the fundraising representative and then deposited by TJC in a timely manner.

¹³ The Audit staff calculated the date of receipt as three days from the date on the contributors check to allow for delivery of the contribution.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 10, 2009

MEMORANDUM

TO: John D. Gibson
Chief Compliance Officer

Joseph F. Stoltz
Assistant Staff Director

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Lawrence L. Calvert, Jr. *LLC*
Associate General Counsel

Lorenzo Holloway *LH*
Assistant General Counsel
For Public Finance and Audit Advice

Albert Veldhuyzen *AV*
Attorney

Allison T. Steinle *AS*
Attorney

SUBJECT: Draft Final Audit Report on the Committee to Elect William J. Jefferson (LRA # 751)

I. INTRODUCTION

The Office of General Counsel has reviewed the Draft Final Audit Report ("Proposed Report") on the Committee to Elect William J. Jefferson ("Committee"). We concur with the findings in the Proposed Report and offer the following comments regarding Finding 1 (Receipt of Impermissible Candidate Loans). If you have any questions, please contact Albert R. Veldhuyzen, the attorney assigned to this audit.

II. FUNDS LOANED TO COMMITTEE WERE PROHIBITED OR EXCESSIVE (FINDING 1)

Jeffco Services, the corporation or limited liability company (“LLC”) of Congressman Jefferson’s sister, directly transferred funds to the Committee.¹ However, the Committee claims that these funds were a personal loan from Congressman Jefferson to the Committee, comprising proceeds from a loan to the Congressman from his sister. The loan from the sister supposedly was evidenced by a separate promissory note executed after the transfer of funds from the Jeffco entities to the Committee. Two questions need to be addressed: 1) whether there is any way Congressman Jefferson would be able to claim the funds as personal funds; and 2) what evidence he or his Committee could submit to show that the loans were proper.

Regarding the first question, Congressman Jefferson would not be able to claim the loan as personal funds because the funds originated directly from his sister’s corporation or LLC rather than from his own personal funds. Given that the loan proceeds flowed directly from the Jeffco entities to the Committee, this may have been a transaction between the Jeffco entities and the Committee. However, even assuming that the promissory note between Congressman Jefferson and his sister covered the funds paid out by the Jeffco entities such that the sister can be considered to have made the loan to him in her personal capacity, loans received by a candidate for use in connection with his or her campaign are considered to have been received by the candidate as an agent of the authorized committee. *See* 2 U.S.C. § 432(e)(2). Those funds in the amount of \$320,000 were transmitted directly to the Committee’s account and were used for campaign purposes. Therefore, the indications are that, 1) To the extent funds were transferred from Jeffco Services, Inc. to the Committee, the Committee received a prohibited contribution from Jeffco Services, Inc. in violation of 2 U.S.C. § 441b(a); 2) To the extent funds were transferred from Jeffco Services, LLC to the Committee, the Committee either a) received a prohibited contribution from Jeffco Services, LLC if it is treated as a corporation for tax purposes, or b) received an excessive contribution from Jeffco Services, LLC (and potentially from its members) if Jeffco Services, LLC is a multi-member LLC treated as a partnership for tax purposes, or c) received an excessive contribution from the Congressman’s sister if Jeffco Services, LLC is a single member LLC.

As to the second question, we do not believe there is anything the Committee could provide to show that the funds did not originate with the sister or the Jeffco entities. The Committee and/or Congressman Jefferson and/or his sister should provide bank records showing that the funds did not originate with the corporation (or LLC taxed as a corporation) in order to avoid a finding that the contribution was prohibited (as opposed to excessive).

¹ The Committee deposited checks with the imprinted names of Jeffco Services, LLC and Jeffco Services, Inc. While the candidate’s sister is a principal for both of these entities according to the Louisiana Secretary of State, the candidate has not provided any information regarding the precise nature of the relationship between the sister and the Jeffco entities. It is not known whether Jeffco Services, LLC is taxed as a corporation or a partnership.

The Audit Division notes that the loan from the sister was for a larger amount than what was loaned to the Committee, in which case the difference between the funds transferred to the Committee and her total loan to him also may be an excessive or prohibited contribution. A payment made to a candidate, even if used for personal expenditures, is a contribution “unless the payment would have been made irrespective of the candidacy.” 11 C.F.R. § 113.1(g)(6). The Explanation and Justification states, “If a third party pays for the candidate’s personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy.” *Explanation and Justification for 11 C.F.R. 113.1(g)(6)*, 60 Fed. Reg. 7862, 7871 (Feb. 9, 1995). If the parties can show that the sister’s loan to Congressman Jefferson would have been received even in the absence of the candidacy, then the loan amount received by the Congressman in excess of what was loaned to the Committee would not be treated as a contribution. In any case, the amount loaned to the Committee was prohibited or excessive.

FAX

TO: PAT SHEPPARD, AUDITOR

FAX NUMBER: 202 219-3483

FROM: ANGELA COLEMAN 

FAX NUMBER: 504 324-2231

DATE: SEPTEMBER 30, 2009

REGARDING: REQUEST FOR AUDIT HEARING

TOTAL NUMBER OF PAGES INCLUDING COVER: 2

PHONE NUMBER FOR FOLLOW-UP: 504 975-1723

MS. SHEPPARD,

**ATTACHED, PLEASE FIND THE JEFFERSON COMMITTEE'S REQUEST FOR A
REMOTE HEARING CONSIDERING THE AUDIT FINDINGS.**

**The Jefferson Committee
1723 Valmont Street
New Orleans, LA 70115
504 975-1723**

TO: Commission Audit Hearing
FROM: The Jefferson Committee
DATE: September 30, 2009
RE: Request for hearing



The Jefferson Committee hereby requests a hearing, to be conducted as a closed hearing, and to be conducted remotely, regarding the following issues contained in the "Report of The Audit Division on The Jefferson Committee":

Finding 4. Commingled Funds : This finding appears to result from a reference in footnote 9 of the audit report, that the regulation, 11 CFR, Section 102.15, implies applicability to "any business funds of an individual." No authority is cited for this conclusion. And, in footnote 11 of the report, the factual conclusion is offered that "it appears that the check (from the TJC check) was used to authorize the wire transfer " (of funds), implying that perhaps ANJ benefitted or somehow needed illiquid funds for wire purposes that was immediately replaced by an illiquid ANJ check. ANJ had abundant funds on hand to wire the money involved to the party that received it, and needed nor sort an accommodation from the Jefferson Committee. This was an inadvertent act, which was plainly unauthorized, discovered by TJC only as a result of this audit, (since the treasurer failed to bring it to the attention of the candidate or the committee by reporting it) based on the pure desire for convenience of the treasurer to use the bank closest to him, that holding TJC account, as opposed to walking several blocks to the depository bank of ANJ to complete the transaction involved, and did not infringe upon the requirement that TJC keep its funds segregated, as it did scrupulously since its inception.

The TJC is unsure whether the 15th day requirement for requesting a hearing regarding the final audit report is 15 calendar days or 15 business days, we were working on the idea that it involved 15 business days. In any event, the audit report was brought to my attention on the 15th of September.

We would also like to address the issue of the receipt of prohibited contributions and receipt of contributions in excess of the limit, findings 1, 2 and 3.

Thank you,



TO: Commission Audit Hearing
FROM: The Jefferson Committee
DATE: October 1, 2009
RE: Request for hearing

Apart from the legal issue identified relating to Finding 4. Commingled Funds, The Jefferson Committee hereby requests a hearing to consider the following additional issues.

The legal standards explained in the report do not define the phrase "did not materially correct the misstatement." TJC amended its reports, in some cases quite substantially, usually with the welcomed guidance of some members of the FEC's audit staff. Yet, in the case of Findings 5. Misstatement of Financial Activities and 7. Disclosure of Disbursements, the Final Audit concludes, without explanation in its legal analysis, that the work of TJC in response to the Interim Audit did not "materially" correct the misstatement. We have searched without success to identify the basis for the use of this legal standard. We disagree with the Audit, if it purports to use this term in its common sense usage, for the changes made in amendments were substantial, and went a very long way in meeting the initial questions raised in the audit. But, an analysis based on the idea of common usage would appear to be unfair to the party called upon to respond. The term should depend upon a written definition that provides an objective standard that gives appropriate notice to TJC in order for it to respond agreeably. The standard is, therefore, in the view of TJC, one that is too vague to be fairly enforced.