



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2011-08-26
11:43 AM

August 26, 2011

MEMORANDUM

AGENDA ITEM

To: The Commission
Through: Alec Palmer
Staff Director *AP*
From: Patricia Carmona *PC*
Chief Compliance Officer

For Meeting of 8-31-11

SUBMITTED LATE

Thomas Hintermister *TH*
Acting Assistant Staff Director
Audit Division

Alex Boniewicz *TH F. AS*
Audit Manager

By: Kendrick Smith *KS*
Lead Auditor

Subject: Audit Hearing for Chris Dodd for President, Inc. (CDFP)

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 CDFP and its Counsel on July 8, 2011. Counsel for the CDFP (Counsel) requested a hearing on July 26, 2011.

In response, Counsel stated they would like to discuss Finding 2, Receipt of Prohibited Contribution and Contributions that Exceed Limits, and Finding 3, Misstatement of Financial Activity. Specifically, regarding Finding 2, Counsel wishes to address the conclusion in the audit report that the CDFP received a prohibited contribution of \$15,423 from the International Association of Firefighters (IAFF) and excessive general election contributions of \$244,050. With respect to Finding 3, Counsel disputes the conclusion in the audit report that net realized losses of \$150,370 must be disclosed to the Commission.

The Audit staff provides the following comments with respect to the items as outlined in CDFP's response to the Draft Final Audit Report.

A. Union Treasury Contribution (See Finding 2)

Counsel contends there is no sound basis for finding that it received a prohibited contribution since the IAFF's separate segregated fund, FIREPAC, billed CDFP for part of the \$15,423 prohibited contribution amount and that the CDFP eventually paid \$32,233 to FIREPAC. The Audit staff maintains that the CDFP received a prohibited contribution from the IAFF. It is important to note that CDFP representatives indicated to the Audit staff that the IAFF initially paid for the RV. In addition, the invoice to CDFP was from IAFF and indicated that CDFP used the RV for 18 days just prior to the Iowa caucus. Furthermore, CDFP made payment for the RV more than one-and-a-half years after both the invoice date and the payment due date listed on the invoice and subsequent to discussions with the Audit staff regarding the receipt of a possible prohibited contribution from the IAFF.

B. Timely Resolution of Contributions (See Finding 2)

Counsel disagrees with the representation of the excessive contributions in the audit report. Specifically, Counsel disagrees with the representation of excessive contributions totaling \$160,050 as resolved in an untimely manner. The fact is that \$147,750 of the \$160,050 excessive contributions (approximately 92%) represents two disgorgements to the U.S. Treasury on November 30, 2010 (checks for \$144,950 and \$2,800). Counsel informed the Audit staff that the disgorgement checks were for 82 stale-dated refund checks (nearly all written on August 21, 2008) and contributions that the CDFP lacked evidence of refund or timely redesignation. As such, the Audit staff agrees that it appears that the CDFP originally sought resolution of the excessive contributions of \$144,950 in a timely manner (by preparing refunds in accordance to the guidance outlined in Advisory Opinion 2008-04). However, final resolution of these excessive contributions (disgorgement of \$144,950 to the U.S. Treasury) did not occur until more than 2 years from the date of the original refunds (an even longer resolution period if we consider the actual date of the contributions). Therefore, the Audit staff does not consider these excessive contributions as timely resolved.

Counsel further disagrees with the Audit staff's representation of the redesignation documentation provided during the audit fieldwork. On page 14 of the Draft Final Audit Report, it states that redesignation letters were "not previously available" before the CDFP's response to the Preliminary Audit Report. During the audit fieldwork, the Audit staff reviewed and copied all redesignation letters provided by CDFP. As a result, the Audit staff has more than 200 copies of such letters. The redesignation letters provided by CDFP in response to the Preliminary Audit Report were not included in the Audit staff's copies.

Regarding Counsel's additional claim that the Draft Final Audit Report incorrectly states that there are contributions of \$173,210 that have not been transferred to the Candidate's Senatorial Committee, Friends of Chris Dodd (FOCD), the CDFP has not provided any documentation verifying the actual transfer of these contributions from its general contributions account or other CDFP account to the FOCD account. The CDFP has provided the necessary redesignation letters for these contributions; however, from the financial documentation provided to the Audit staff, it appears that the CDFP has not transferred this amount.

C. Brokerage Account Losses (See Finding 3)

Counsel contends that neither the statute nor the regulations explicitly refers to the disclosure of losses, especially within a brokerage account. Further, counsel noted an inconsistency between the Audit staff's recommendation to report the losses as receipts using a negative entry and the Office of General Counsel's guidance in its legal analysis of the Draft Final Audit Report to report such losses as 'other disbursements' (LRA 744, p.4). Guidance for the reporting of investment income or losses is provided in the Commission's *Campaign Guide for Political Party Committees* (Chapter 12 – Completing Form 3X for Investments – p.86). It states that investment income received or lost during the reporting period must be reported in the "Other Receipts" category of the Detailed Summary Page. It further adds that "Losses are indicated by negative entries." The Audit staff's recommendation for the reporting of realized gains and/or losses is consistent with the guidance in the Campaign Guide. The Audit staff would not object to the CDFP's reporting of net realized investment losses as an 'other disbursement' as suggested by the Office of General Counsel in its legal analysis. If CDFP were to amend its reports to reflect the net realized investment losses as an 'other disbursement', the Audit staff would conclude that CDFP materially corrected the misstatement of activity for 2008. Absent CDFP's reporting of the net realized investment losses, CDFP's reports are materially misstated.

Other documents related to the draft final audit report and audit hearing are located in Ntsrv1\Voting Ballot Matters\Audit\Chris Dodd for President, Inc.\Hearing Documents. Should you have any questions, please contact Kendrick Smith or Alex Boniewicz.

Attachments:

- Draft Final Audit Report on Chris Dodd for President, Inc.
- OGC Legal Analysis on the Draft Final Audit Report (LRA 744)
- Chris Dodd for President, Inc.'s Response to the Draft Final Audit Report and Request for Hearing dated July 26, 2011



Draft Final Audit Report of the Audit Division on Chris Dodd for President, Inc. January 24, 2007 – September 30, 2008

Why the Audit Was Done

Federal law requires the Commission to audit every political committee established by a candidate who receives public funds for the primary campaign.¹ The audit determines whether the candidate was entitled to all of the matching funds received, whether the campaign used the matching funds in accordance with the law, whether the candidate is entitled to additional matching funds, and whether the campaign otherwise complied with the limitations, prohibitions, and disclosure requirements of the election law.

Future Action

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

About the Committee (p. 2)

Chris Dodd for President, Inc. is the principal campaign committee of Christopher J. Dodd, a candidate for the Democratic Party's nomination for the office of President of the United States. The Committee is headquartered in West Hartford, Connecticut. For more information, see chart on the Campaign Organization, p. 2.

Financial Activity (p. 3)

• Receipts	
○ Contributions from Individuals	\$ 9,848,996
○ Contributions from Political Committees	750,402
○ Transfers from Affiliated Committees	4,632,357
○ Loans Received	1,302,811
○ Matching Funds Received	1,961,742
○ Offsets to Operating Expenditures	127,012
○ Other Receipts	47,506
Total Receipts	\$ 18,670,826
• Disbursements	
○ Operating Expenditures	\$ 14,978,850
○ Loan Repayments	1,302,811
○ Transfers to Other Authorized Committees ²	507,910
○ Contribution Refunds	1,365,901
Total Disbursements	\$ 18,155,472

Findings and Recommendations (p. 4)

- Net Outstanding Campaign Obligations (Finding 1)
- Receipt of Prohibited Contribution and Contributions that Exceed Limits (Finding 2)
- Misstatement of Financial Activity (Finding 3)

¹ 26 U.S.C. §9038(a).

² This represents the transfer of general election contributions redesignated to the Candidate's Senate committee, Friends of Chris Dodd.

Draft Final Audit Report of the Audit Division on Chris Dodd for President, Inc.

January 24, 2007 – September 30, 2008



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Part I

Background

Authority for Audit

This report is based on an audit of Chris Dodd for President, Inc. (CDFP), undertaken by the Audit Division of the Federal Election Commission (the Commission) as mandated by Section 9038(a) of Title 26 of the United States Code. That section states “After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received [matching] payments under section 9037.” Also, Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission’s Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

Scope of Audit

This audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The receipt of transfers from other authorized committees.
4. The disclosure of contributions and transfers received.
5. The disclosure of disbursements, debts and obligations.
6. The recordkeeping process and completeness of records.
7. The consistency between reported figures and bank records.
8. The accuracy of the Statement of Net Outstanding Campaign Obligations.
9. The campaign’s compliance with spending limitations.
10. Other campaign operations necessary to the review.

Inventory of Campaign Records

The Audit staff routinely conducts an inventory of campaign records before it begins the audit fieldwork. CDFP’s records were materially complete and the fieldwork began immediately.

Part II

Overview of Campaign

Campaign Organization

Important Dates	
• Date of Registration	January 11, 2007
• Eligibility Period	November 26, 2007 - January 3, 2008 ³
• Audit Coverage	January 24, 2007 – September 30, 2008 ⁴
Headquarters	
West Hartford, Connecticut	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	One checking, two investment
Treasurer	
• Treasurer When Audit Was Conducted	Kathryn Damato
• Treasurer During Period Covered by Audit	Kathryn Damato
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid staff

³ The period during which the candidate was eligible for matching funds began on the date of certification of his matching fund eligibility and ended on the date the candidate announced his withdrawal from the campaign. See 11 CFR §9033.

⁴ Limited reviews of receipts and expenditures were performed after September 30, 2008, to determine whether the candidate was eligible to receive additional matching funds.

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 24, 2007	\$ 0
o Contributions from Individuals	\$ 9,848,996 ⁵
o Contributions from Political Committees	750,402
o Transfers from Affiliated Committees	4,632,357
o Loans Received	1,302,811
o Matching Funds Received	1,961,742 ⁶
o Offsets to Operating Expenditures	127,012
o Other Receipts	47,506
Total Receipts	\$ 18,670,826
o Operating Expenditures	\$ 14,978,850
o Loan Repayments	1,302,811
o Transfers to Other Authorized Committee	507,910 ⁷
o Contribution Refunds	1,365,901
Total Disbursements	\$ 18,155,472
Cash-on-hand @ September 30, 2008	\$ 515,354

⁵ Approximately 25,000 contributions from more than 19,200 individuals.

⁶ As of September 30, 2008, CDFP had made four matching fund submissions totaling \$1,999,514 of which \$1,961,742 was certified by the Commission and paid to CDFP. This represents 9 percent of the maximum entitlement (\$21,025,000) a 2008 Presidential candidate could receive.

⁷ This represents the transfer of general election contributions redesignated to the Candidate's Senate committee, Friends of Chris Dodd.

Part III

Summaries

Findings and Recommendations

Finding 1. Net Outstanding Campaign Obligations

As part of audit fieldwork, the Audit staff reviewed CDFP's financial activity through December 31, 2010. The review indicated that the Candidate did not receive matching fund payments in excess of his entitlement. In response to the Preliminary Audit Report, Counsel for CDFP (Counsel) did not dispute this finding, but noted that, in regard to the general election contributions maintained in an investment account, the basis value of the investment account, not the fair market value, should have been utilized in valuation.

(For more detail, see p. 6)

Finding 2. Receipt of Prohibited Contribution and Contributions that Exceed Limits

During audit fieldwork, Audit staff reviewed all contributions from other political committees. The review identified a prohibited contribution of \$15,423 from the International Association of Firefighters (IAFF), as well as \$51,000 in excessive contributions from other political committees. The prohibited contribution from the IAFF resulted from the rental of a bus/recreational vehicle (RV) decorated to identify Senator Dodd's Presidential campaign. The RV was provided to CDFP for its use just prior to the Iowa caucus. CDFP resolved this prohibited contribution, but in an untimely manner. The excessive contributions from other political committees were unresolved.

In addition, a review of general election contributions indicated that CDFP received contributions totaling \$244,050 for which it has not obtained the required redesignation letters necessary to transfer these funds to the Candidate's Senatorial Committee, Friends of Chris Dodd (FOCD). CDFP did not make appropriate refunds, either.

In its response to the Preliminary Audit Report, Counsel maintained that:

- CDFP had not received a prohibited contribution from the IAFF;
- regarding the \$51,000 in excessive contributions from other political committees, Counsel demonstrated that contributions totaling \$6,700 were not excessive, provided copies of negotiated refunds checks for excessive contributions totaling \$39,500, and provided non-negotiated refund checks for the remaining \$4,800; and,
- with respect to the \$244,050 in general election excessive contributions, documentation that Counsel provided demonstrated excessive contributions totaling \$234,850 had been resolved, a contribution of \$2,100 was not excessive and excessive contributions totaling \$7,100 remain unresolved. (For more detail, see p. 8)

Part IV

Findings and Recommendations

Finding 1. Net Outstanding Campaign Obligations

Summary

As part of audit fieldwork, the Audit staff reviewed CDFP's financial activity through December 31, 2010. The review indicated that the Candidate did not receive matching fund payments in excess of his entitlement. In response to the Preliminary Audit Report, Counsel for CDFP (Counsel) did not dispute this finding, but noted that, in regard to the general election contributions maintained in an investment account, the basis value of the investment account, not the fair market value, should have been utilized in valuation.

Legal Standard

- A. Net Outstanding Campaign Obligations (NOCO).** Within 15 days after the candidate's date of ineligibility, the candidate must submit a statement of "net outstanding campaign obligations." This statement must contain, among other things:
- The total of all committee assets including cash on hand, amounts owed to the committee and capital assets listed at their fair market value;
 - The total of all outstanding obligations for qualified campaign expenses; and
 - An estimate of necessary winding-down costs. 11 CFR §9034.5(a).
- B. Entitlement to Matching Payments after Date of Ineligibility.** If, on the date of ineligibility, a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments provided that he or she still has net outstanding campaign debts on the day when the matching payments are made. 11 CFR §9034.1(b).

Facts and Analysis

A. Facts

The Candidate's date of ineligibility (DOI) was January 3, 2008. As part of audit fieldwork, the Audit staff reviewed CDFP's financial activity through December 31, 2010, and prepared the Statement of Net Outstanding Campaign Obligations that appears on the next page.

Chris Dodd for President, Inc.
Statement of Net Outstanding Campaign Obligations
As of January 3, 2008
Prepared through December 31, 2010

Assets

Primary Election Cash in Bank	\$ 271,389	
General Election Cash in Bank	1,706,575	
Accounts Receivable	46,899	
Capital Assets	<u>8,407</u>	
Total Assets		\$2,033,270

Liabilities

Primary Election Accounts Payable	\$ 542,065	
General Election Accounts Payable	1,706,575	[a]
Loans Payable	1,302,811	
Winding Down Costs:		
Actual 1/4/08 – 12/31/10	1,301,910	[b]
Amounts Payable to U.S. Treasury for:		
Unresolved Excessive Contributions (See Finding 2)	<u>4,800</u>	[c]
Total Liabilities		<u>4,858,161</u>
Net Outstanding Campaign Obligations (Deficit) as of January 3, 2008		<u>(\$2,824,891)</u>

Footnotes to NOCO Statement:

- [a] To ensure that the need to refund general election contributions had no impact on matching fund entitlement, the Audit staff adjusted this payable to match the general election cash in bank amount. Prior to DOI, CDFP received general election contributions of \$1,749,670; however, at DOI, the fair market value of the investment account in which these contributions were maintained was \$1,706,575, a loss of \$43,095.
- [b] Estimated winding down costs are not included above because this would only increase the deficit. It is likely that CDFP is still incurring minimal salary and legal expenses.
- [c] This amount does not include \$7,100 in unresolved excessive general election contributions.

Shown below are adjustments for funds received after January 3, 2008, through July 17, 2008 (the date of the last matching fund payment):

Net Outstanding Campaign Obligations (Deficit) as of 1/3/08	(\$2,824,891)
Private Contributions and Other Receipts Received 1/4/08 through 7/17/08	503,712
Matching Funds Received 1/4/08 through 7/17/08	1,961,741
Remaining Net Outstanding Campaign Obligations (Deficit) as of 7/17/08	(\$359,438)

As presented above, CDFP has not received matching fund payments in excess of its entitlement.

B. Preliminary Audit Report & Audit Division Recommendation

The Audit staff presented the NOCO to CDFP representatives at the exit conference. In response, CDFP did not address the NOCO.

In the Preliminary Audit Report, the Audit staff recommended that CDFP demonstrate whether an adjustment(s) was required to any component of the NOCO statement or provide any other comments it desired.

C. Committee Response to Preliminary Audit Report

In response to the Preliminary Audit Report, Counsel did not dispute the NOCO but stated that incorrect amounts were presented for “General Election Cash in Bank” and “General Election Accounts Payable” because these figures were generated using the fair market value instead of the basis value of the account. They further added that “While this error does not affect the Committee’s net financial position, it is significant in light of Findings 2 and 3...”

In accordance with 11 C.F.R. §9034.5(a)(2)(i), the Audit staff presented the general election investment account at fair market value as of the Candidate’s DOI.

Finding 2. Receipt of Prohibited Contribution and Contributions that Exceed Limits

Summary

During audit fieldwork, Audit staff reviewed all contributions from other political committees. The review identified a prohibited contribution of \$15,423 from the International Association of Firefighters (IAFF), as well as \$51,000 in excessive contributions from other political committees. The prohibited contribution from the IAFF resulted from the rental of a bus/recreational vehicle (RV) decorated to identify Senator Dodd’s Presidential campaign. The RV was provided to CDFP for its use just prior to the Iowa caucus. CDFP resolved this prohibited contribution, but in an untimely manner. The excessive contributions from other political committees were unresolved.

In addition, a review of general election contributions indicated that CDFP received contributions totaling \$244,050 for which it has not obtained the required redesignation letters necessary to transfer these funds to the Candidate's Senatorial Committee, Friends of Chris Dodd (FOCD). CDFP did not make appropriate refunds, either.

In its response to the Preliminary Audit Report, Counsel maintained that:

- CDFP had not received a prohibited contribution from the IAFF;
- Regarding the \$51,000 in excessive contributions from other political committees, Counsel demonstrated that contributions totaling \$6,700 were not excessive, provided copies of negotiated refund checks for excessive contributions totaling \$39,500, and provided non-negotiated refund checks for the remaining \$4,800; and,
- With respect to the \$244,050 in general election excessive contributions, documentation that Counsel provided demonstrated excessive contributions totaling \$234,850 had been resolved, a contribution of \$2,100 was not excessive and excessive contributions totaling \$7,100 remain unresolved.

Legal Standard

A. Authorized Committee Limits. An authorized committee may not receive more than a total of \$2,300 per election from any one person or \$5,000 per election from a multicandidate political committee. 2 U.S.C. §441a(a)(1)(A), (2)(A) and (f); 11 CFR §§110.1(a) and (b) and 110.9.

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

- Return the questionable check to the donor; or
- Deposit the check into its federal account and:
 - o Keep enough money in the account to cover all potential refunds;
 - o Keep a written record explaining why the contribution may be illegal;
 - o Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
 - o Seek a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanation of redesignation); and
 - o If the committee does not receive a proper redesignation within 60 days of receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5).

C. Redesignation of Excessive Contributions. When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

1. The redesignation must be signed by the contributor;
2. The redesignation must be received by the committee within 60 days of the committee's receipt of the original contribution; and
3. The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days of receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

D. General Election Contributions. If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors or redesignated in accordance with 11 CFR §§110.1(b)(5) or 110.2(b)(5), as appropriate.

E. Unreimbursed Value of Transportation. The unreimbursed value of transportation provided to any campaign traveler is an in-kind contribution from the service provider to the candidate committee on whose behalf the campaign traveler traveled. 11 CFR §100.93(b)(2).

F. Payment of Transportation. If a campaign traveler uses any other means of transportation, with the exception of an airplane, the campaign committee on whose behalf the travel is conducted, must pay the service provider within 30 calendar days of the date of receipt of the invoice for such travel, but not later than 60 calendar days after the date the travel began. 11 CFR §100.93(d).

G. Receipt of Prohibited Contribution from Labor Organizations. Political campaigns may not accept contributions made from the general treasury funds of labor organizations. 2 U.S.C. §441b.

Facts and Analysis

A. Receipt of Prohibited Contribution

1. Facts

During audit fieldwork, the Audit staff noted that CDFP was billed \$12,088 on February 12, 2008, by the International Association of Fire Fighters for a share of the rental cost of an RV. The RV was rented for a period of 48 days from November 18, 2007 to January 4, 2008. It was decorated to identify Senator Dodd's Presidential campaign. The invoice from the IAFF indicated that CDFP used the RV for 18 days in December 2007, through the date of ineligibility. The cost was prorated using a daily rate. The total cost of the rental for the 48 days was \$32,233, with \$15,423 attributed to the cost of the vehicle and \$16,810 to the cost of "wrapping" it to identify the campaign. The invoice requested that payment of \$12,088 be made within 60 days to the International Association of Firefighters Interested in Registration and Education PAC (FIREPAC), a separate segregated fund of the IAFF.

In its December 2007 monthly report, FIREPAC disclosed making an independent expenditure⁸ on November 28, 2007, in support of Dodd for "RV Art & Wrapping" in the amount of \$16,810. When questioned, CDFP representatives stated that the IAFF initially paid for the RV to use as transportation to events involving communications with the IAFF's restricted class. They stated that FIREPAC paid to wrap the RV because it

⁸ FIREPAC reported independent expenditures of approximately \$374,000 in support of CDFP.

was a communication expressly advocating Senator Dodd's presidential candidacy, which had not been coordinated with CDFP. CDFP later sought to determine whether it could obtain the use of the wrapped RV from the IAFF for its own purposes. The IAFF made the RV available and CDFP used it just prior to the Iowa caucus. As mentioned above, the invoice was for a portion of the cost (\$12,088); however, CDFP paid the entire RV rental and wrapping cost of \$32,233. It should also be noted that CDFP's payment occurred more than one-and-a-half years after the invoice date. After reporting the independent expenditure, FIREPAC disclosed a debt owed by CDFP in its March 2008 monthly report for the full cost of the RV (\$32,233) and continued to report this debt until it reported the reimbursement in its December 2009 monthly report⁹.

2. Preliminary Audit Report & Audit Division Recommendation

In response to a discussion of this issue at the exit conference, CDFP representatives provided a copy of a reimbursement check, dated October 21, 2009, to IAFF FIREPAC for \$32,233. CDFP representatives stated that CDFP paid both for the use of the bus and the cost of the wrap to avoid receiving an in-kind contribution. In response to other inquiries from the Audit staff, CDFP representatives stated that it was their understanding that the IAFF paid the rental cost of the bus; that the same bus wrapping was utilized by both the IAFF and CDFP; and, that they are not aware of any other expenses that were paid by FIREPAC relating to the use or wrap of the bus after CDFP acquired its use.

The Audit staff acknowledges that the payment of \$32,233 by CDFP was an attempt to rectify this matter. However, the rental portion of the RV cost (\$15,423), apparently paid by the IAFF, appears to be a prohibited contribution. Labor organizations are prohibited from making contributions to political campaigns. The contribution was resolved in an untimely manner by CDFP as a result of the reimbursement made to FIREPAC, noted above.

In the Preliminary Audit Report, the Audit staff recommended that CDFP provide documentation demonstrating that it did not receive a prohibited contribution of \$15,423 from the IAFF, including documentation to verify that the IAFF did not pay for the rental portion of the RV.

3. Committee Response to Preliminary Audit Report

CDFP's response did not include any additional documentation. However, Counsel maintained that CDFP cannot be found to have received a prohibited contribution when it was directed (on the IAFF's invoice) to pay FIREPAC and it simply complied. In addition, Counsel stated that even if CDFP should have paid the IAFF, the 60-day timetable in 11 CFR §100.93 should not apply because it applies only to non-commercial forms of transportation. Counsel maintained that "the primary purpose of the wrapped bus was not to transport people from place to place, but rather to serve as an unusual form of campaign visibility, like the C-SPAN bus or the Ron Paul blimp." Analyzed in this manner, Counsel believed the proper question was whether the campaign paid for the use of the bus within a commercially reasonable time (Counsel cited 11 CFR §114.9(d) -

⁹ A reimbursement from CDFP was inadvertently deposited into its non-federal account. The subsequent transfer was reflected on the year-end report.

Use or rental of corporate or labor organization facilities by other persons). Counsel further added that the circumstances that led to the delay in payment were not adequately considered. The response stated that while the payment remained outstanding, CDFP was in a deficit position with many competing obligations that it sought to manage as best it could. Counsel maintained that CDFP chose to pay the full cost of the bus rental and wrap, in an abundance of caution, even though there was a strong argument that it could have paid less.

Regardless of whether the payment for the use of the RV is considered under 11 CFR §100.93 - use of non-commercial forms of transportation or 11 CFR §114.9(d) - use of corporate or labor organization facilities, reimbursement was not made within a commercially reasonable time.

CDFP's possible financial difficulty after the campaign does not excuse its acceptance of the contribution or explain why CDFP did not consider resolution of the contribution a high-priority obligation.

Finally, CDFP's decision to pay the entire rental cost of the RV does not negate the fact that CDFP received a contribution from a labor organization that it failed to resolve timely.

B. Apparent Excessive Contributions from Other Political Committees

1. Facts

During audit fieldwork, the Audit staff identified \$51,000 in apparent excessive contributions from other political committees, which remained unresolved. The contributions included:

- Three totaling \$8,000 that had been timely refunded by CDFP; however, the refund checks never cleared CDFP's bank account. As such, these remained unresolved excessive contributions.
- One for \$4,000 for which CDFP presented a timely, completed redesignation letter. However, CDFP neither transferred the contribution to FOCD, nor refunded it. It was noted that transferring the funds to FOCD would have resolved this issue, but because the candidate was no longer seeking re-election to the Senate, the transfer may not be plausible. The Audit staff considered this an unresolved excessive contribution.
- Thirteen excessive contributions totaling \$39,000 for which CDFP had failed to provide any evidence of a refund or redesignation.

2. Preliminary Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided a listing of these excessive contributions. Counsel did not address these contributions in its response.

In the Preliminary Audit Report, the Audit staff recommended that CDFP provide documentation demonstrating that it did not receive excessive contributions. Such documentation was to include evidence of a transfer to FOCD for the contribution that had been redesignated but not transferred, copies of refund checks negotiated in a timely

manner, or redesignation letters signed and dated in a timely manner. Absent such documentation, the Audit staff recommended that CDFP make appropriate refunds to contributors and provide evidence of such actions (copies of the front and back of negotiated refund checks) or make a payment of \$51,000 to the U.S. Treasury.

3. Committee Response to Preliminary Audit Report

In response to the Preliminary Audit Report, Counsel provided documentation demonstrating that three contributions totaling \$6,700 were not excessive. For the remaining 14 contributions totaling \$44,300, refund checks dated November 30, 2010, were submitted.

After consideration of CDFP's response, the Audit staff noted that three contributions totaling \$6,700 did not exceed the limits, 12 totaling \$39,500 were refunded in an untimely manner, and two totaling \$4,800 remain unresolved until evidence is provided that the refund checks have been negotiated. If CDFP is unable to provide such evidence, the Audit staff recommends that any unresolved excessive contributions be disgorged to the U.S. Treasury.

C. Receipt of Excessive General Election Contributions

1. Facts

During audit fieldwork, the Audit staff identified contributions designated for the General election totaling \$244,050¹⁰ for which CDFP did not provide the required redesignation letters necessary to transfer the funds to FOCD. In accordance with Advisory Opinion 2008-04 (AO), CDFP had six days from the receipt of the AO (dated September 2, 2008) to obtain redesignations or make refunds. Even if CDFP had obtained the required redesignation letters, it lacked the funds to complete the transfer or refund at the time. The Audit staff considered these unresolved excessive contributions until CDFP provided such letters.

2. Preliminary Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided CDFP representatives with a schedule outlining these excessive contributions. In its response, Counsel maintained that CDFP had properly refunded all its general election contributions. In the Preliminary Audit Report, the Audit staff recommended that CDFP provide documentation demonstrating that these contributions were not excessive. Such documentation was to include copies of timely negotiated refund checks or timely signed and dated redesignation letters. Absent this documentation, the Audit staff directed CDFP to make appropriate refunds to contributors and provide evidence of such actions (copies of the front and back of negotiated refund checks) or make a payment of \$244,050 to the U.S. Treasury.

3. Committee Response to Preliminary Audit Report

In its response to the Preliminary Audit Report, Counsel maintained that, upon receipt of the Preliminary Audit Report, of the \$244,050 in asserted unredesignated and unrefunded

¹⁰ The Audit staff also noted that CDFP transferred general contributions (\$67,800) to FOCD for which redesignation letters were not provided and has redesignation letters for \$98,410 in contributions to be transferred, but insufficient funds to do so.

contributions, only \$14,900 awaited refund or disgorgement. The documentation provided by Counsel included:

- a. Copies of 30 redesignation letters, for contributions totaling \$74,800, which were all completed and signed by the contributors. All the letters requested redesignation to the FOCD 2010 primary or general election and were dated prior to May 2008.
- b. A copy of an email confirmation from its receipts processing vendor demonstrating that it had processed a refund of a \$2,300 contribution on September 13, 2007.
- c. A copy of a negotiated disgorgement check for a contribution of \$5,000 and a letter sent to the Bureau of Public Debt on November 25, 2008. Other documentation stated that the political action committee, which made the original contribution, no longer existed.
- d. A copy of a negotiated disgorgement check to the U.S. Treasury for \$144,950 and dated November 30, 2010. Counsel stated that this check was for 82 stale-dated refund checks. Counsel provided check stubs for all the refund checks. From the check stubs, it appears that nearly all the refund checks were written on August 21, 2008. Counsel also added that, "While the Committee agrees that the stale-dated refund checks must be disgorged, many do not provide an appropriate basis for a finding of excessive contributions, in that they were lawfully received and timely refunded."
- e. Web page verification from its receipts processing vendor demonstrating that a \$2,100 contribution was returned for non-sufficient funds.
- f. Copies of a negotiated refund check for \$5,000, four refund checks totaling \$7,100, and a negotiated disgorgement check of \$2,800 to the U.S. Treasury for contributions that Counsel stated CDFP lacked evidence of refund or timely redesignation. All refund checks were dated November 26, 2010, and the disgorgement check was dated November 30, 2010.

As a result of the documentation presented by Counsel in response to the Preliminary Audit Report, which was not previously available, the \$244,050 of general election contributions discussed in the Preliminary Audit Report are categorized in the following manner:

- Excessive contributions totaling \$160,050 were resolved in an untimely manner;
- Excessive contributions totaling \$74,800¹¹ were resolved in a timely manner;
- A contribution of \$2,100 was not excessive, as it had been returned for non-sufficient funds; and,
- Excessive contributions totaling \$7,100 remain unresolved. Cancelled check copies (front and back) and/or other documentation demonstrating that these

¹¹ Based on its response to the Preliminary Audit Report, there are contributions of \$173,210 (\$74,800 + \$98,410) for which CDFP provided redesignation letters, but has not transferred to FOCD. As of March 31, 2011, CDFP's reported ending cash is \$14,289.

remaining refunds were negotiated should be provided or the amount should be disgorged to the U.S. Treasury.

Finding 3. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of reported figures with bank records revealed that CDFP understated its receipts by \$355,240 and overstated its disbursements by \$190,935 in 2008. In response to the Preliminary Audit Report, CDFP amended its reports, but excluded an adjustment relating to net realized investment losses. As a result, receipts for 2008 remain misstated.

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 election cycle;
- The total amount of disbursements for the reporting period and for the election cycle; and
- 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

A. Facts

As a part of fieldwork, the Audit staff reconciled reported activity with bank records for 2008. The following chart outlines the discrepancies for the beginning cash balances, receipts, disbursements, and the ending cash balances. The succeeding paragraphs explain why the differences occurred, if known.

2008 Committee Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ January 1, 2008	\$ 2,489,560	\$ 2,456,875	\$ 32,685 Overstated
Receipts	\$ 1,910,177	\$ 2,265,417	\$ 355,240 Understated
Disbursements	\$ 4,397,873	\$ 4,206,938	\$ 190,935 Overstated
Ending Cash Balance @ September 30, 2008	\$ 515,970 ¹²	\$ 515,354	\$ 616 Overstated

¹² The reported ending cash balance is incorrect because CDFP decreased its beginning cash-on-hand by \$12,949 in its August 2008 Monthly Report and increased beginning cash-on-hand by \$527,055 in its October 2008 Monthly Report. The unexplained changes in cash may have been an attempt to correct the cash discrepancies that resulted from the misstatements of receipts and disbursements. Absent these incorrect adjustments by CDFP, the reported ending cash balance at September 30, 2008 would have been \$1,864.

The overstatement of opening cash-on-hand (\$32,685) resulted from discrepancies that occurred in the previous year, 2007.

The understatement of receipts resulted from the following:

• Matching fund payment received 7/17/08, not reported	\$ 514,173
• Net realized losses (investment accounts), not reported ¹³	(150,370)
• Vendor refund, not reported	5,876
• Offsets to operating expenditures, not reported	23,954
• Political committee contributions, not reported	16,100
• Unexplained difference	<u>(54,493)</u>
Net understatement of receipts	<u>\$ 355,240</u>

The overstatement of disbursements resulted from the following:

• Loan repayment, over-reported	\$ (144,757)
• Disbursements and investment fees, not reported	239,950
• Net errors in reporting payroll and fees	41,733
• Transfer to the Candidate's Senate committee, over-reported ¹⁴	(351,210)
• Reported disbursements that actually cleared bank in Dec. '07	(3,300)
• Unexplained difference	<u>26,649</u>
Net overstatement of disbursements	<u>\$ (190,935)</u>

The overstatement of ending cash-on-hand (\$616) resulted from the misstatements described above.

B. Preliminary Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed the misstatement and provided CDFP representatives with copies of the Audit staff's bank reconciliation. In its response to the exit conference, regarding the over reporting of transfers to the Candidate's Senate committee (totaling \$351,210), CDFP representatives stated that CDFP had instructed its broker to transfer the funds to the FOCD account, and the broker's delay in making the transfer caused the reporting discrepancy. The reporting error could have been avoided if CDFP had not reported the transfer until the funds were actually transferred. Regarding the reporting of operating expenditures, CDFP representatives stated that many operating expenditures were not reported because they were unaware of the data processing requirements for entering debts and obligations. Thus, many debt payments were not disclosed in CDFP's reports. CDFP representatives did not address any other discrepancies (noted above).

In the Preliminary Audit Report, the Audit staff recommended that CDFP amend its reports to correct the misstatements for 2008.

¹³ It should be noted that this relates to realized gains and losses disclosed by the brokerage firm as such in its monthly statements, which were not reported by CDFP. These net realized losses resulted from the decline in the stock market.

¹⁴ CDFP reported this transfer in September 2008, when it actually occurred in October of 2008. The Audit staff's bank reconciliation was done through September 2008. As such, it was recommended that CDFP amend its reports to correctly disclose the transfer in October 2008.

C. Committee Response to Preliminary Audit Report

In response to the Preliminary Audit Report, Counsel stated that, after the date of ineligibility, CDFP had some difficulty in preparing its reports. Counsel maintained this was due mainly to problems experienced in the use of the financial database. Counsel added that this is why, for example, CDFP failed to disclose a matching fund payment received on July 17, 2008, and over-reported a \$144,757 loan repayment. Counsel concluded that CDFP is complying with the Preliminary Audit Report's recommendations by filing amendments to correct these misstatements.

Counsel further added that the Preliminary Audit Report does not correctly present the level of misstatement, mainly because of its incorrect treatment of CDFP's brokerage account. Counsel argued that the Preliminary Audit Report "appears to confuse fluctuations in the account's fair market value, which do not need to be reported, with the actual sale of the portfolio assets." Counsel contended that the Preliminary Audit Report's treatment of the \$351,210 transfer of general election contributions and the \$150,370 in net realized losses resulted from this incorrect treatment.

In response to the Preliminary Audit Report, CDFP filed amended reports for calendar years 2008 and for a portion of 2009. CDFP did not accept the Audit staff's assessment of its investment accounts and, as such, included only a portion of the adjustments relating to the investment accounts in its amended reports. Specifically, those reports did not include net realized losses of \$150,370 (see section A. above). However, by not amending its reports for the adjustment arising from net realized losses, receipts remain misstated for 2008. CDFP materially corrected disbursements.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 24, 2011

MEMORANDUM

TO: Joseph F. Stoltz
Assistant Staff Director

FROM: Christopher Hughey *CHK*
Acting General Counsel

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

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

Delanie DeWitt Painter *DDP*
Attorney

SUBJECT: Draft Final Audit Report for Chris Dodd for President, Inc. (LRA 744)

The Office of the General Counsel has reviewed the Draft Final Audit Report (“DFAR”) for Chris Dodd for President, Inc. (“Committee”). We generally concur with the findings in the DFAR and have specific comments on Finding 2: Receipt of Prohibited Contribution and Contributions that Exceed Limits and Finding 3: Misstatement of Financial Activity. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this audit.

I. COMMITTEE RECEIVED APPARENT PROHIBITED IN-KIND CONTRIBUTION FROM IAFF (Finding 2)

We concur that the Committee received an apparent prohibited in-kind contribution of \$15,423 from the International Association of Firefighters (“IAFF”), a labor organization. The IAFF apparently paid \$15,423 for the rental of a bus that the Committee used between December 17, 2007 and January 4, 2008, at the end of the Iowa campaign. The Committee explained that the IAFF initially paid for the bus rental for transportation to IAFF events, and the Committee later obtained use of the bus for its campaign. The IAFF sent the Committee a February 12, 2008 invoice for the bus, which stated that “as advised by our election law legal counsel the campaign has 60 days from the conclusion of the Iowa caucus to reimburse the IAFF for the rental cost as it is considered a transportation cost.” The invoice continued that the Committee should reimburse the IAFF’s separate segregated fund, IAFF FIREPAC (“FIREPAC”)

by March 4, 2008.¹ But the Committee did not pay FIREPAC for the bus rental until October 21, 2009, more than a year and a half later, when it paid \$32,233.²

The Committee has not demonstrated that it did not receive a prohibited in-kind contribution or that the IAFF did not pay for the bus rental. *See* 2 U.S.C. § 441b. In response to the Preliminary Audit Report (“PAR”), the Committee contends that the 60 day timetable for reimbursement of other means of transportation in 11 C.F.R. § 100.93 should not apply because the bus was primarily a form of advertising. It argues that since the “primary purpose of the wrapped bus was not to transport people from place to place, but rather to serve as an unusual form of campaign visibility, like the C-Span bus or the Ron Paul blimp,” the question should be whether the campaign paid for the bus within a commercially reasonable time, and it cites 11 C.F.R. § 114.9(d). The Committee asserts that it did not receive a prohibited contribution because the invoice instructed it to pay FIREPAC, not IAFF. Finally, it contends that the payment was delayed because it was in a deficit position with competing obligations and that it paid the full cost of the bus rental and decoration “in an abundance of caution.”

The Committee’s arguments are not persuasive. The Committee paid for the bus more than a year and a half after both the invoice date and the payment due date listed on the invoice. This delayed payment was neither within the section 100.93 standard for reimbursement of other means of transportation nor within a commercially reasonable time. Because the bus was used, at least in part, for transportation, there would have been no contribution if the Committee had timely reimbursed IAFF for the bus rental cost. The Committee could have properly paid the cost of the bus rental as an other means of transportation not operated for commercial passenger service within 30 days of receipt of the invoice or 60 days after the travel began. *See* 11 C.F.R. § 100.93(d). The Committee’s failure to make timely reimbursement resulted in a prohibited in-kind contribution. *See* 11 C.F.R. § 100.93 (b)(2). Alternatively, if the bus rental cost is considered a form of campaign advertising like a blimp or rolling billboard that was provided by a vendor or as a labor organization facility used by the Committee, the Committee should have paid for the bus rental cost within a commercially reasonable time. *See* 11 C.F.R. § 114.9(d), *see also* 11 C.F.R. § 116.3. Yet it failed to do so. The invoice directed the Committee to pay by March 4, 2008, but the Committee paid a year and half later. The fact that the Committee was in a deficit position and had other debts does not make the delayed payment of this debt commercially reasonable. Moreover, the amount at issue relates only to the cost of bus rental and not to the decoration of the bus, which would be more clearly related to an advertising purpose. Further, the fact that the Committee was instructed to pay FIREPAC rather than IAFF does not change the fact

¹ The IAFF billed the Committee \$12,087.54 for 18 days of the 48 day total that the IAFF and the Dodd campaign used the bus. The Committee, however, paid the \$32,233 total cost of the bus rental and decoration. We note that the \$16,810 cost of decorating the bus was apparently paid by FIREPAC and is not at issue in the DFAR.

² Both the Committee and FIREPAC disclosed the full \$32,233 cost of the bus as a debt owed by the Committee to FIREPAC beginning with the March 2008 reports and continuing until the Committee paid the debt in full in October 2009. The Committee provided a copy of a check to FIREPAC, dated October 21, 2009, for \$32,233.

that the IAFF, a union, paid for the bus rental cost. Therefore, the Committee received a prohibited in-kind contribution from the IAFF.

While we concur with your conclusion, we suggest that the discussion at page 12 of the DFAR be revised to delete the references to 11 C.F.R. § 103.3 in the second and third paragraphs. We do not think a 30 day standard based on section 103.3 is appropriate here. Section 103.3 contains the rules for deposit and refund of contributions like checks rather than an in-kind contribution that results from a bus rental.

II. CLARIFY IMPACT OF INVESTMENT ACCOUNT LOSSES ON EXCESSIVE CONTRIBUTIONS AND MISSTATEMENT (Findings 2 and 3)

We concur with the Audit staff's analysis of excessive contributions (Finding 2) and misstatement of financial activity (Finding 3) but suggest several revisions to clarify these findings in the DFAR.³ The Audit staff should clarify the impact of the Committee's investment account on these findings. The Committee had an investment account ("General Account") with a brokerage for general election contributions received during the primary election period under the conditions set forth in AO 2007-03 (Obama), which lost a substantial amount of value during the audit period because of the decline in the stock market.⁴ See AO 2008-04 (Dodd). In response to the PAR, the Committee made numerous arguments about why the General Account's losses should not result in excessive contributions. However, these arguments are irrelevant to the draft you have asked us to review. Instead, they seem to refer to a potential issue raised by the auditors at a previous stage in the audit about whether the Committee properly valued assets transferred from the General Account to Senator Dodd's Senate committee. At an earlier stage in the audit, the Audit Division believed that the value of those transferred assets, which were intended to cover redesignations of presidential general election contributions to the Senate committee, could potentially have raised excessive contribution issues. The DFAR, however, does not contain any finding of excessive contributions arising from a loss in value of the General Account assets transferred to the Senate committee. Most of the contributions from the General Account are considered either timely or untimely resolved based on the Committee's response to the PAR. For the Committee's benefit, the DFAR should make clear that the two references to the investment account in the misstatement finding are not related to the value of the assets transferred from the General Account to the Senate committee and that the excessive contributions finding is not now based on the value of the General Account assets transferred to the Senate committee.

The DFAR should provide additional explanation to clarify the misstatement finding (Finding 3). The misstatement finding refers to the Committee's failure to report \$150,370 in net realized investment losses. This has nothing to do with the transfer of any assets from the General

³ In addition to these changes, we suggest that the discussion of apparent excessive contributions from other political committees at pages 12-13 be revised to clarify how the specific contributions identified in the bullet points on page 12 were resolved by the Committee's response to the PAR.

⁴ After Senator Dodd withdrew from the primary race on January 3, 2008, he was no longer a potential general election candidate, and the Committee was required to refund or redesignate the general election contributions. See 11 C.F.R. § 102.9(e)(3); AO 2008-04; AO 2007-03; AO 2003-18 (Smith).

Account to the Senate committee, because that transfer took place in October 2008, after the close of the audit coverage period on September 30, 2008. Nor, contrary to the Committee's contention, does it reflect any unrealized losses, which are not required to be reported. Rather, this part of the misstatement finding simply reflects the accumulated net *realized* losses resulting from activity in the investment accounts from January 1, 2008 through September 30, 2008, which were identified as net realized losses on the broker statements. Realized capital losses must be reported as “other disbursements” in the reporting period in which they are realized. *See* Memorandum to Wanda J. Thomas, Audit Report on Friends of Weiner (Mar. 4, 2009) (This Office concluded that the committee was not required to report unrealized gains and losses as cash on hand under 11 C.F.R. § 104.3(a)(1), but the report should be clarified to reflect that the Audit Division’s view was that the committee failed to report realized gains and losses.) The Committee failed to report these net realized losses, which, in part, resulted in the misstatement.

The misstatement finding also states that the Committee overreported \$351,210 in transfers to the Senate committee. Although this amount relates to the transfer of assets from the General Account to the Senate committee, the overreporting finding is based on the timing of that transfer, not on the appropriate value of the assets. The Committee reported that the transfer occurred in September 2008, but in fact it did not occur until October 2008. The transfer should not have been reported on the report covering September 2008. More to the point, the misreporting of the transfer results in an overstatement of disbursements for the audit coverage period because the transfer did not in fact take place during the audit coverage period as originally reported. We understand that the Committee has amended its reports to correct this misstatement.

The excessive contributions finding (Finding 2) should clarify that the excessive contribution finding is not based on the value of the assets moved from the General Account to the Senate committee for redesignated contributions, and that these contributions are considered resolved. In several places (text and footnote 10 on page 13, footnote 11 on page 15) the DFAR states that the Committee had redesignation letters for moving general contributions to the Senate Committee, but it had insufficient funds to make the transfers. Footnote 11 states that there is \$173,210 in contributions for which the Committee provided redesignation letters but has not provided evidence that it actually moved the funds to the candidate’s Senate Committee. Because the excessive contributions finding is not based, as we understand it, on any lack of funds or failure to move the funds for redesignated contributions, we question the need for these references.

In addition, we suggest several other changes throughout the DFAR to clarify that the valuation of assets moved from the General Account to the Senate committee has no impact on the findings in the DFAR. We suggest you delete the last sentence of footnote (a) of the Statement of Net Outstanding Campaign Obligations on page 7, which states “This loss and subsequent losses are the basis for the excessive contributions of \$244,050 identified during audit fieldwork discussed in finding 2.” We also suggest you delete the last sentence in the last paragraph of Finding 1 on page 8, which states “The valuation of the investment account has no impact here, but is discussed further in Findings 2 and 3.” These sentences could create confusion because the \$244,050 in excessive contributions related to the General Account identified in the PAR was

Memorandum to Joseph F. Stoltz
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based on lack of documentation of redesignations or other resolution of those contributions, not on the loss of value of the General Account.



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July 26, 2011

BY ELECTRONIC AND U.S. MAIL

Mr. Thomas Hintermister
Acting Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

**Re: Chris Dodd for President, Inc.
Response to Final Audit Report**

Dear Mr. Hintermister:

We write in response to the Draft Final Audit Report of the Audit Division on Chris Dodd for President, Inc. ("the Committee"). We appreciate the review of the Committee's response to the Preliminary Audit Report, and the changes that resulted. But the Draft Final Audit Report persists in erroneously contending that the Committee received a prohibited union treasury contribution; that it failed to resolve its general election contributions appropriately; and that it misstated receipts through use of a brokerage account. We ask the Commission to correct these findings, and we request the opportunity to discuss these matters in a hearing.

A. There Is No Sound Basis for a Finding of a Union Treasury Contribution

Finding 2 continues to allege that the Committee received a prohibited union treasury contribution of \$15,423 from the International Association of Firefighters – even though the union's *separate segregated fund*, FIREPAC, billed the Committee a lesser amount of \$12,088; even though the Committee overpaid FIREPAC in an abundance of caution; and even though FIREPAC disclosed the Committee's debt and later deposited the funds into its own account. *See* Draft Final Audit Report at 10-12. While the Committee paid its debt to FIREPAC later than

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it would have preferred, there is no sound basis for finding that it received a contribution from the union itself.¹

B. The Committee Timely Resolved the Overwhelming Majority of Its Individual Contributions

Echoing the Preliminary Audit Report, the Draft Final Audit Report claims:

During audit fieldwork, the Audit staff identified contributions designated for the General election totaling \$244,050 ... for which [the Committee] did not provide the required redesignation letters necessary to transfer the funds to [the Senate campaign].

Draft Final Audit Report at 13. Later, however, the Draft Final Audit Report acknowledges that all but \$7,100 of these contributions have been resolved. The final audit report should make clear that – for the bulk of these contributions – the Committee timely obtained redesignations and issued refunds.

The finding of excessive individual contributions arose from audit error. The Committee raised funds for the general election and kept them in an investment account. When the Committee received permission to redesignate its general election contributions to the candidate's Senate campaign, *see* Advisory Opinion 2008-04, it transferred the timely redesignated contributions from its brokerage account to the Senate campaign's brokerage account. This transfer was done by journal entry.

The auditors initially claimed that, because the fair market value of the Committee's brokerage account at the time of transfer fell below the total amount of general election contributions, the Committee was unable to transfer all of the redesignated funds. To identify the excessive contributions that supposedly resulted, the auditors do not appear to have looked to the actual written redesignations. Instead, they used an accounting method. This is why – in language removed from the Draft Final Audit Report, at the General Counsel's urging – the Preliminary Audit Report said that the "loss and subsequent losses are the basis for the excessive contributions of \$244,050 identified during audit fieldwork discussed in finding 2." Preliminary Audit Report at 7.

¹ The Draft Final Audit Report presents no factual basis for its gratuitous claim that the Committee "did not consider resolution of the contribution a high-priority obligation" – and there is none. Draft Final Audit Report at 12.

When the Committee reviewed the list of excessive contributions provided by the auditors, it quickly verified that it had obtained written redesignations for \$74,800 of them.² The Committee produced copies of these letters to the auditors in its response to the Preliminary Audit Report. The Committee also showed that another contribution on the list had been refunded in September 2007; that still another had been returned for nonsufficient funds; and that refund checks for the bulk of the remainder were issued before the Advisory Opinion 2008-04 deadline. *See* Draft Final Audit Report at 14.

Thus, the Draft Final Audit Report confirms that – of the \$244,050 in individual contributions that were supposedly excessive – only \$7,100 remain unresolved. *See id.* Yet the Final Audit Report persists in its claim of excessive contributions. It says incorrectly that the Committee "did not provide the required redesignation letters," *id.* at 13; that "[e]xcessive contributions totaling \$160,050 were resolved in an untimely manner," *id.* at 14; and that "there are contributions of \$173,210" that the Committee "has not transferred to" the Senate campaign. This continued claim is mistaken and should be changed.

C. The Draft Misstatement Finding Errs in Its Treatment of Brokerage Account Losses

This audit began before the Commission considered the Audit Report on Friends of Weiner, the principal campaign committee of Anthony Weiner's 2004 House campaign. In that audit, the Audit Division ultimately retreated from an initial contention that a committee must report unrealized gains and losses. A similar misunderstanding of the law initially shaped this audit. It drove the auditors' now-discarded finding of excessive contributions that was supposed to have resulted from the brokerage account's drop in value. *See* Legal Analysis Draft Final Audit Report (May 24, 2011), at 3. It also drove the remaining finding of misstatement that was based on losses in the brokerage account. *See* Draft Final Audit Report at 17.

At the Exit Conference, the auditors presented the misstatement owing to the brokerage account as "Net Investment Adjustments ... Monthly Profit/Loss." As the Committee noted in its response to the Exit Conference, the auditors' supporting schedules indicated that these amounts were calculated based on fluctuations in value. The Preliminary Audit Report was the first time the auditors referred to "realized losses." Preliminary Audit Report at 12.

² The Committee disputes the Draft Final Audit Report's contention that the redesignation letters were "not previously available" before the response to the Preliminary Audit Report. Draft Final Audit Report at 14. The Draft Final Audit Report acknowledges that the Committee's records "were materially complete" at the start of fieldwork. *Id.* at 1.

Mr. Thomas Hintermister
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Yet even assuming that the current misstatement finding reflects the sum of realized losses – in other words, the accumulation of losses from actual sales of stock, as opposed to mere fluctuations in value – the statute and regulations still provide no explicit guidance on how these must be reported. The statute requires disclosure of, *inter alia*, "dividends, interest and other forms of receipts" and "... any other disbursements." 2 U.S.C. §§ 434(b)(2)(J), (4)(G). Yet neither the statute nor the regulations explicitly refers to the disclosure of losses, especially within a brokerage account.

Even the Draft Final Audit Report shows the lack of clarity on this issue. The auditors say that the undisclosed losses resulted in an "**understatement of receipts.**" See Draft Final Audit Report at 16 (emphasis added). But the General Counsel's legal analysis says that "[r]ealized capital losses must be reported as '**other disbursements**' in the reporting period in which they are realized" – which is inconsistent with the auditors' proposed finding of misstated **receipts**. See Legal Analysis Draft Final Audit Report (May 24, 2011), at 4 (emphasis added).

The Commission should not find that the Committee violated the law on such an ambiguous question, when the auditors changed the legal standard in the middle of the audit, and when there is still no clear agreement about how the Committee specifically should have reported this activity. This is especially true here, where the invested funds were segregated so as not to be used in the primary election. One could easily tell from the Committee's reports how much Senator Dodd had raised for the general election – and how much he would have available when nominated, or would have to dispose of when he lost.

We appreciate the Commission's attention to these matters.

Very truly yours,

The image shows two handwritten signatures in black ink. The first signature is on the left and appears to be 'M. Elias'. The second signature is on the right and is more stylized, appearing to be 'B. Svoboda'.

Marc E. Elias
Brian G. Svoboda