



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEDERAL ELECTION
COMMISSION
SECRETARIAT

May 11, 2012 2012 MAY 11 P 3:43

MEMORANDUM

AGENDA ITEM

To: The Commission

Through: *AP* Alec Palmer *AP*
Staff Director

For Meeting of 6-21-12

From: Patricia Carmona *PC*
Chief Compliance Officer

Tom Hintermister *TH*
Assistant Staff Director
Audit Division

Kendrick Smith *KS*
Audit Manager

By: Robert Morcomb *RM*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the Friends of Todd Young (FOTY) (A11-06)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presents its recommendations below and discusses the findings in the attached Draft Final Audit Report (DFAR). The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

Finding 1. Receipt of Apparent Prohibited Contributions

FOTY had no additional comments on this finding in response to the DFAR. The Audit staff recommends that the Commission find that FOTY received apparent prohibited contributions totaling \$19,100.

Finding 2. Receipt of Contributions in Excess of the Limit

FOTY had no additional comments on this finding in response to the DFAR. The Audit staff recommends that the Commission find that FOTY received apparent excessive contributions totaling \$94,854.

Finding 3. Failure to File 48-Hour Notices

FOTY had no additional comments on this finding in response to the DFAR. The Audit staff recommends that the Commission find that FOTY failed to file 48-hour notices for 51 contributions totaling \$75,700.

The Committee did not request an audit hearing.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Robert Morcomb or Kendrick Smith at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on the Friends of Todd Young

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on the Friends of Todd Young

February 12, 2009 - December 31, 2010

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)

Friends of Todd Young is the principal campaign committee for Todd C. Young, Republican candidate for the U.S. House of Representatives from the state of Indiana, 9th District, and is headquartered in Bloomington, Indiana. For more information, see the chart on the Campaign Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 1,708,269
○ Contributions from Other Political Committees	233,843
○ Transfers from Authorized Committees	14,702
○ Offsets to Operating Expenditures	7,404
Total Receipts	\$ 1,964,218
• Disbursements	
○ Operating Expenditures	\$ 1,926,326
○ Contribution Refunds	18,200
○ Contributions to Political Committees	5,000
Total Disbursements	\$ 1,949,526

Findings and Recommendations (p. 3)

- Receipt of Apparent Prohibited Contributions (Finding 1)
- Receipt of Contributions in Excess of the Limit (Finding 2)
- Failure to File 48-Hour Notices (Finding 3)

¹ 2 U.S.C. §438(b).

Draft Final Audit Report of the Audit Division on the Friends of Todd Young

February 12, 2009 - December 31, 2010

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Part I

Background

Authority for Audit

This report is based on an audit of Friends of Todd Young (FOTY), 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 whether 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

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, 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 individual contributors' occupation and name of employer;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other committee operations necessary to the review.

Part II

Overview of Campaign

Campaign Organization

Important Dates	
• Date of Registration	February 20, 2009
• Audit Coverage	February 12, 2009 - December 31, 2010
Headquarters	
Bloomington, Indiana	
Bank Information	
• Bank Depositories	One
• Bank Accounts	One checking account
Treasurer	
• Treasurer When Audit Was Conducted	Larry Ness
• Treasurer During Period Covered by Audit	Connie K. Nass
Management Information	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ February 12, 2009	\$ 0
Receipts	
○ Contributions from Individuals	1,708,269
○ Contributions from Other Political Committees	233,843
○ Transfers from Authorized Committees	14,702
○ Offsets to Operating Expenditures	7,404
Total Receipts	\$ 1,964,218
Disbursements	
○ Operating Expenditures	1,926,326
○ Contribution Refunds	18,200
○ Contributions to Political Committees	5,000
Total Disbursements	\$ 1,949,526
Cash-on-hand @ December 31, 2010	\$ 14,692

Part III Summaries

Finding and Recommendation

Finding 1. Receipt of Apparent Prohibited Contributions

During audit fieldwork, a review of contributions revealed that FOTY received 24 apparent prohibited contributions totaling \$19,700. FOTY had refunded \$3,750 of the \$19,700, albeit in an untimely manner.

In response to the Interim Audit Report recommendation, FOTY representatives provided documentation demonstrating that two contributions, totaling \$600, were not prohibited contributions and refunded the remaining \$15,350 in apparent prohibited contributions. The Audit staff concludes that FOTY received apparent prohibited contributions totaling \$19,100 and has refunded all of these contributions, albeit in an untimely manner. (For more detail, see p. 4)

Finding 2. Receipt of Contributions in Excess of the Limit

During audit fieldwork, the Audit staff reviewed contributions from individuals. This review indicated that FOTY had received apparent excessive contributions totaling \$94,854. These errors occurred as a result of FOTY not resolving the excessive portion of contributions either by forwarding a presumptive letter to its contributors or by issuing a refund in a timely manner.

In response to the Interim Audit Report recommendation, FOTY representatives provided documentation demonstrating that it had materially resolved the apparent excessive contributions, albeit in an untimely manner. (For more detail, see p. 7)

Finding 3. Failure to File 48-Hour Notices

During audit fieldwork, a review of contributions received during the 48-hour filing periods revealed that FOTY failed to file 48-hour notices for 51 contributions totaling \$75,700. Most of the unfiled notices were for general election contributions.

In response to the Interim Audit Report recommendation, FOTY representatives stated that they had no additional information to provide in connection with this finding. (For more detail, see p. 10)

Part IV

Findings and Recommendations

Finding 1. Receipt of Apparent Prohibited Contributions

Summary

During audit fieldwork, a review of contributions revealed that FOTY received 24 apparent prohibited contributions totaling \$19,700. FOTY had refunded \$3,750 of the \$19,700, albeit in an untimely manner.

In response to the Interim Audit Report recommendation, FOTY representatives provided documentation demonstrating that two contributions, totaling \$600, were not prohibited contributions and refunded the remaining \$15,350 in apparent prohibited contributions. The Audit staff concludes that FOTY received apparent prohibited contributions totaling \$19,100 and has refunded all of these contributions, albeit in an untimely manner.

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) from the general treasury funds of corporations. This prohibition applies to any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative. 2 U.S.C. §441b.

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 to be 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 \$2,400 per candidate, per election, in the 2010 election cycle. Such a contribution 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 to be from a corporation—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 to be 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).

D. Limited Liability Company’s Responsibility to Notify Recipient Committee. 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).

E. Organizations Financing. Organizations that are not political committees under the Act that make contributions and expenditures, but do not qualify as political committees under 11 CFR 100.5, must demonstrate through a reasonable accounting method that the organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution, expenditure or payment. 11 CFR §102.5(b).

F. Questionable Contributions. If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below.

1. Within 10 days of the treasurer's receipt of the questionable contribution, the committee must either:
 - Return the contribution to the contributor without depositing it; or
 - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
 - Confirm the legality of the contribution; or
 - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).
 Any contribution that appears to be illegal or is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds. 11 CFR §103.3(b)(4).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff's sample review of contributions received by FOTY identified contributions that appeared to be from prohibited sources. As a result, the Audit staff performed a review of all deposit batches for prohibited contributions. This full review identified the following possible prohibited contributions:

- 16 checks from LLCs totaling \$14,650; and
- eight checks from corporations totaling \$5,050.

For the contributions from corporations, the Audit staff verified the corporate status of the entities, as of the date of the contribution, with the various Secretary of State offices and a registered agent of a company. For contributions from the LLCs, FOTY provided no documentation that stated whether the companies elected to be treated as a partnership or corporation for tax purposes.

FOTY did not maintain a separate account for the possible prohibited contributions. A review of cash balances determined that FOTY did not maintain sufficient funds to make refunds of the possible prohibited contributions.²

Prior to audit fieldwork, FOTY sent out letters to contributors regarding the permissibility and allocation of the possible prohibited LLC and corporate contributions. Specifically, FOTY sent these letters on March 11, 2011 and May 6, 2011.

Of the 24 possible prohibited contributions totaling \$19,700 identified by the Audit staff, FOTY refunded contributions from corporations totaling \$3,750; however, FOTY made these refunds in an untimely manner. Therefore, the remaining amount of possible prohibited contributions is \$15,950 (\$19,700 - \$3,750).

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with FOTY representatives at the exit conference and provided a schedule of the apparent prohibited contributions identified in the review. A FOTY representative stated that they were working on obtaining more documentation.

In response to the exit conference, FOTY representatives provided some copies of letters that had been sent to contributors requesting information about the permissibility of their contribution. However, FOTY sent all the letters subsequent to the 2010 election cycle and the Audit staff received no further information relating to the 24 possible prohibited contributions it identified.

The Interim Audit Report recommended that FOTY:

- Provide evidence demonstrating that the remaining 20 contributions³ in question were made with permissible funds;
- Refund \$15,950, the remaining amount of apparent prohibited contributions that either has not been refunded or has not received a statement or explanation from the contributor attesting to the permissibility of the contributions;
- Disgorge the remaining funds (\$15,950) to the U.S. Treasury and provide evidence of such disgorgement; or

² FOTY's primary election was on 5/4/2010. The cash-on-hand analysis showed that, on 4/28/2010, funds were not sufficient to make all the necessary refunds.

³ It should be noted that one of the contributions was only partially refunded.

- If funds are not available to make the necessary refunds or disgorgement, disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds became available to satisfy this obligation.

C. Committee Response to the Interim Audit Report

In response to the Interim Audit Report, FOTY provided documentation demonstrating that two contributions, totaling \$600, were not prohibited contributions because the contributor files federal income taxes as a partnership. Also, FOTY provided documentation demonstrating that the remaining contributions were refunded in an untimely manner.

The Audit staff concludes that FOTY accepted apparent prohibited contributions totaling \$19,100. FOTY refunded all of these contributions, albeit in an untimely manner.

Finding 2. Receipt of Contributions in Excess of the Limit

Summary

During audit fieldwork, the Audit staff reviewed contributions from individuals. This review indicated that FOTY had received apparent excessive contributions totaling \$94,854. These errors occurred as a result of FOTY not resolving the excessive portion of contributions either by forwarding a presumptive letter to its contributors or by issuing a refund in a timely manner.

In response to the Interim Audit Report recommendation, FOTY representatives provided documentation demonstrating that it had materially resolved the apparent excessive contributions, albeit in an untimely manner.

Legal Standard

A. Authorized Committee Limits. For the 2010 election, an authorized committee may not receive more than a total of \$2,400 per election from any one person. 2 U.S.C. §441a(a)(1)(A), 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 contributions and keep enough money on hand to cover all potential refunds until the legality of the contribution is established. If deposited, the committee must seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation). If the committee does not receive a proper reattribution or 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. Joint Contributions. Any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order or other negotiable instrument or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

D. Reattribution of Excessive Contributions. Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to another contributor. The committee must inform the contributor that:

1. The reattribution must be signed by both contributors;
 2. The reattribution 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(k)(3).

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

Notwithstanding the above, any excessive portion of a contribution that was made on a written instrument 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 shall notify each contributor:

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

E. 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 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 contribution.
- 11 CFR §110.1(b)(5)(ii)(A).

Within 60 days of receiving the excessive contribution, the committee must either receive the proper redesignation or refund the contribution 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).

When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

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

The committee is required to notify the contributor 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. 11 CFR 110.1(b)(5)(i)(D)(ii).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff utilized a combination of sample testing and focused reviews to identify apparent excessive contributions from individuals totaling \$94,854. This total is comprised of \$94,554⁴, the projected dollar value of the sample errors, and \$300, the result of a focused review of the remaining contributions. These apparent excessive contributions resulted from FOTY not resolving the excessive portion of contributions by forwarding a presumptive letter to its contributors, informing them of how their contribution was redesignated/reattributed or refunding the excessive contribution. FOTY resolved excessive contributions totaling \$11,820 in an untimely manner, by issuing refunds, prior to audit notification.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided FOTY representatives with a schedule of the apparent excessive contributions. The representatives asked general questions about presumptive letters and issuance of refunds.

In response to the exit conference, FOTY representatives submitted documentation relative to the apparent excessive contributions. The Audit staff received copies of three refund checks, dated in August 2011 and totaling \$550; two of these checks were not negotiated. The Audit staff also received copies of presumptive letters dated August 5, 2011, totaling \$21,450.

As a result of the refunds issued prior to audit notification (\$11,820), the refunds issued in response to the exit conference (\$550) and the presumptive letters sent to contributors in response to the exit conference (\$21,450), the remaining apparent excessive contributions FOTY did not address totaled \$61,034 (\$94,854 - \$11,820 - \$550 - \$21,450).

⁴ The sample error amount was projected using a Monetary Unit Sample with a 95 percent confidence level plus the result of a focused review of contributions not included in the sample population. The sample estimate could be as low as \$53,689 or as high as \$135,419.

The Interim Audit Report recommended that FOTY provide documentation demonstrating that contributions totaling \$61,034 were not excessive. Absent such a demonstration, FOTY should have resolved these apparent excessive contributions by either (1) sending presumptive redesignation/retribution letters informing contributors about how the excessive portion of their contributions was resolved and offering a refund, (2) refunding the excessive portion of each contribution and providing evidence of such refunds, (3) disclosing the contributions requiring refund on Schedule D if funds were not available to make the necessary refunds, or (4) making a payment of \$61,034 to the U.S. Treasury and providing evidence of such payment.

C. Committee Response to the Interim Audit Report

In response to the Interim Audit Report, FOTY provided copies of presumptive redesignation and/or presumptive retribution letters sent subsequent to receiving the Interim Audit Report. After reviewing the documentation, the Audit staff concluded that \$44,076 in apparent excessive contributions had been resolved in an untimely manner. FOTY also provided photocopies of two negotiated refund checks sent to two individuals, totaling \$300.

In summary, of the \$94,854 in apparent excessive contributions, FOTY has demonstrated that it resolved contributions totaling \$77,896 (\$21,450 + \$11,820 + \$550 + \$44,076) in an untimely manner.

Finding 3. Failure to File 48-Hour Notices

Summary

During audit fieldwork, a review of contributions received during the 48-hour filing periods revealed that FOTY failed to file 48-hour notices for 51 contributions totaling \$75,700. Most of the unfiled notices were for general election contributions.

In response to the Interim Audit Report recommendation, FOTY representatives stated that they had no additional information to provide in connection with this finding.

Legal Standard

Last-Minute Contributions (48-Hour Notices). 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 guarantee of loans from banks. 11 CFR §104.5(f)

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed contributions of \$1,000 or more received during the 48-hour notice filing period for the primary election (4/15/2010 - 5/01/2010) and for the general election (10/14/2010 – 10/30/2010). FOTY failed to file 48-hour notices for 51 contributions totaling \$75,700, as summarized below.

	Primary	General	Total
48-Hour Notices Not Filed	\$2,500 (2)	\$73,200 (49)	\$75,700 (51)

The contributions for which 48-hour notices were not filed were from 41 individuals for \$60,200, eight political committees for \$13,500 and two LLCs for \$2,000.

B. Interim Audit Report & Audit Division Recommendation

This matter was discussed with FOTY representatives at the exit conference and the Audit staff provided a schedule of the contributions for which 48-hour notices were not filed. FOTY representatives did not provide any comments on this matter.

The Interim Audit Report recommended that FOTY either submit evidence that the 48-hour notices were filed in a timely manner or any additional comments it considered relevant.

C. Committee Response to the Interim Audit Report

In response to the Interim Audit Report, FOTY representatives stated that they had no additional information.