MEMORANDUM

To: The Commission

Through: Alec Palmer
       Staff Director

From: Patricia C. Orrock
       Chief Compliance Officer

Thomas Hintermister
       Assistant Staff Director
       Audit Division

Marty Kuest
       Audit Manager

By: Pamela Wilkerson
       Lead Auditor

Subject: Audit Division Recommendation Memorandum on Paul Tonko for
         Congress (A11-05)

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. The Office of General Counsel has reviewed this
memorandum and concurred with the recommendations.

Finding 1. Receipt of Prohibited Contributions
The Audit staff recommends that the Commission find that Paul Tonko for
Congress received a projected total of $6,705 in contributions from apparent
prohibited sources.

Finding 2. Misstatement of Financial Activity
The Audit staff recommends that the Commission find that Paul Tonko for
Congress misstated their financial activity for calendar year 2009.

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 Pamela Wilkerson or Marty Kuest at 694-1200.

Attachment:
- Draft Final Audit Report of the Audit Division on Paul Tonko for Congress

cc: Office of General Counsel
Draft Final Audit Report of the Audit Division on Paul Tonko for Congress (January 1, 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. The audit determines whether the committee complied with the limitations, prohibitions, and disclosure requirements of the Act.

About the Campaign (p. 2)
Paul Tonko for Congress is the principal campaign committee for Paul David Tonko, Democratic candidate for the U.S. House of Representatives from the State of New York, 21st District, and is headquartered in Albany, New York. For more information, see the chart on Campaign Organization, p.

Financial Activity (p. 2)
- Receipts
  - Contributions from Individuals $511,122
  - Contributions from Political Committees 476,034
  - Other Receipts 318
  Total Receipts $987,474
- Disbursements
  - Operating Expenditures $816,435
  - Other Disbursements 13,654
  Total Disbursements $830,089

Findings and Recommendations (p. 3)
- Receipt of Prohibited Contributions (Finding 1)
- Misstatement of Financial Activity (Finding 2)

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

1 2 U.S.C. §438(b).
Draft Final Audit Report of the Audit Division on Paul Tonko for Congress

(January 1, 2009 – December 31, 2010)
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Part I
Background

Authority for Audit
This report is based on an audit of Paul Tonko for Congress (TFC), 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 committees required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the disclosure and reporting requirements for substantial compliance with the Act. 2 U.S.C. §435(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;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributions including 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  May 6, 2008
- Audit Coverage  January 1, 2009 - December 31, 2010

Headquarters  Albany, New York

Bank Information
- Bank Depositories  One
- Bank Accounts  One

Treasurer
- Treasurer When Audit Was Conducted  Mr. Patrick J. Bulgaro
- Treasurer During Period Covered by Audit  Mr. Patrick J. Bulgaro

Management Information
- Attended Commission Campaign Finance Seminar  No
- Who Handled Accounting and Recordkeeping Tasks  Mr. Patrick J. Bulgaro

Overview of Financial Activity
(Audited Amounts)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash-on-hand @ January 1, 2009</td>
<td>$ 2,012</td>
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<tr>
<td><strong>Receipts</strong></td>
<td></td>
</tr>
<tr>
<td>Contributions from Individuals</td>
<td>$511,122</td>
</tr>
<tr>
<td>Contributions from Political Committees</td>
<td>$476,034</td>
</tr>
<tr>
<td>Other Receipts</td>
<td>$318</td>
</tr>
<tr>
<td><strong>Total Receipts</strong></td>
<td>$987,474</td>
</tr>
<tr>
<td><strong>Disbursements</strong></td>
<td></td>
</tr>
<tr>
<td>Operating Expenditures</td>
<td>$816,435</td>
</tr>
<tr>
<td>Other Disbursements</td>
<td>$13,654</td>
</tr>
<tr>
<td><strong>Total Disbursements</strong></td>
<td>$830,089</td>
</tr>
<tr>
<td>Cash-on-hand @ December 31, 2010</td>
<td>$159,397</td>
</tr>
</tbody>
</table>
Part III
Summaries

Findings and Recommendations

Finding 1. Receipt of Prohibited Contributions
During audit fieldwork, a sample review of contributions from individuals identified contributions received from apparent prohibited sources. The projected amount of apparent prohibited contributions received by TFC totaled $6,795.

In response to the Interim Audit Report, TFC refunded ineivable contributions totaling $5,450 and disgorged the balance of $1,255 to the U.S. Treasury.
(For more detail, see p. 4.)

Finding 2. Misstatement of Financial Activity
During audit fieldwork, a comparison of TFC's financial activity with its bank records revealed a misstatement of disbursements and ending cash-on-hand in 2009. TFC understated disbursements by $9,286 and overstated ending cash-on-hand by $10,259.

In response to the Interim Audit Report, TFC amended its disclosure reports to correct the misstatements.
(For more detail, see p. 6.)
Part IV
Findings and Recommendations

Finding 1. Receipt of Prohibited Contributions

Summary
During audit fieldwork, a sample review of contributions from individuals identified contributions received from apparent prohibited sources. The projected amount of apparent prohibited contributions received by TFC totaled $6,700.

In response to the Interim Audit Report, TFC refunded 14 impermissible contributions totaling $5,450 and disgorged the balance of $1,255 to the U.S. Treasury.

Legal Standard
A. Receipt of Prohibited Corporate Contributions. Political campaigns may not accept contributions made from the general treasury funds of corporations. This prohibition applies to any type of corporation including 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(f)(1).

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

1. LLC as Partnership. The contribution is considered a contribution from a partnership if 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. For the 2010 election, a partnership contribution may not exceed $2,400 per campaign per election, and it must be attributed to each lawful partner. 11 CFR §110.3(b), (c) and (g)(2).

2. LLC as Corporation. The contribution is considered a corporate contribution—and is barred under the Act—if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are traded publicly. 11 CFR §110.1(g)(3).

3. LLC with Single Member. The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1(g)(4).
D. Limited Liability Company’s Responsibility to Notify Recipient Committee. At the time it makes a contribution, an LLC must notify the recipient committee:
• that it is eligible to make the contribution; and
• in the case of an LLC that considers itself a partnership (for tax purposes), how the contribution should be attributed among the LLC’s members. 11 CFR §110.1(g)(5).

E. 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 deposing 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 must not spend the funds and must be prepared to refund them. It must then maintain sufficient funds to make the refunds or establish a separate account in a designated depository for possibly illegal contributions. 11 CFR §103.3(c).
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 oral request for evidence that the contribution is legal. Evidence 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 those 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. 11 CFR §103.3(b)(1) and (5).

F. Refund or Disgorge Questionable Contributions. If the identity of the original contributor is unknown, the committee must either refund the funds to the source of the original contribution or pay the funds to the U.S. Treasury. AO 1996-5.

Facts and Analysis

A. Facts
During audit fieldwork, a sample review of contributions from individuals identified contributions received from apparent prohibited sources. The contributions were made on checks imprinted with Inc, LLC or PC. The projected amount of apparent prohibited contributions received by TFC totaled $6,705. TFC refunded four contributions identified in the sample totaling $2,400 and 10 other prohibited contributions totaling $4,305. The error amount was projected using a Monetary Unit Sample program with a 95% confidence level. The sample estimate of $6,705 (midpoint of range) could be as low as $3,047 or as high as $14,385.
$3,050. TFC had not addressed the remaining $1,255 ($6,705 - $2,400 - $3,050) from the sample estimate.

**B. Interim Audit Report & Audit Division Recommendation**

This matter was discussed with TFC representatives at the exit conference and they were provided a schedule of the apparent prohibited contributions.

The Interim Audit Report recommended that TFC provide evidence demonstrating that the contributions in question were made with permissible funds, make the necessary refunds or disgorge to the U.S. Treasury the impermissible amount.

**C. Committee Response to Interim Audit Report**

TFC Counsel noted that the Interim Audit Report does not associate the amount, $1,255, with any particular contributions, making it impossible for the Committee to demonstrate that they were made with permissible funds. He further noted that the impermissible amount may have been less.

TFC disgorge the remaining impermissible fund, $1,255, to the U.S. Treasury.

**Finding 2. Misstatement of Financial Activity**

**Summary**

During audit fieldwork, a comparison of TFC's activity with its bank records revealed a misstatement of disbursements and ending cash-on-hand in 2009. TFC understated disbursements by $9,286 and overstated ending cash-on-hand by $10,259.

In response to the Interim Audit Report, TFC amended its disclosure reports to correct the misstatements.

**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 B. 2 U.S.C. §434(b)(1), (2), (4) and (5).

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3 TFC's Counsel provided copies of the front and back for only two of the 14 refund checks.
Facts and Analysis

A. Facts
During audit fieldwork, a reconciliation of TFC's reported financial activity with bank records for 2009 indicated that disbursements and the ending cash balance were misstated. Disbursements were understated by $9,286 and ending cash was overstated by $10,259. The following chart outlines the discrepancies for 2009 and provides explanations for the misstated activity.

<table>
<thead>
<tr>
<th>2009 Committee Activity</th>
<th>Reported</th>
<th>Bank Records</th>
<th>Discrepancy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beginning Cash</td>
<td>$2,021</td>
<td>$2,012</td>
<td>$9</td>
</tr>
<tr>
<td>Receipts</td>
<td>$251,202</td>
<td>$250,238</td>
<td>$964</td>
</tr>
<tr>
<td>Disbursements</td>
<td>$150,456</td>
<td>$159,742</td>
<td>$9,286</td>
</tr>
<tr>
<td>Ending Cash</td>
<td>$102,767</td>
<td>$2,558</td>
<td>$10,259</td>
</tr>
</tbody>
</table>

The understatement of disbursements was as a result of the following:
- Disbursements not reported
- Unexplained difference

\[ \text{Sum of Reporting Adjustments} = \text{\$9,179} \]

\[ \text{\$107} \]

\[ \text{\$9,286} \]

In 2009, TFC overstated ending cash by $10,259 due to the differences noted above.

B. Interim Audit Report & Audit Division Recommendation
This matter was discussed and explained to the TFC representatives after the Exit Conference.

The Interim Audit Report recommended that TFC amend its reports to correct the misstatement in 2009 and amend its most recently filed report to correct the cash-on-hand balance with an explanation that the change resulted from a prior period audit adjustment.

C. Committee's Response to Interim Audit Report
TFC filed amended reports to materially correct the misstatement.