



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

January 12, 2005

MEMORANDUM

TO: Lawrence H. Norton
General Counsel

THROUGH: James A. Pehrkon
Staff Director

Robert J. Costa
Deputy Staff Director

FROM: Joseph F. Stoltz
Assistant Staff Director
Audit Division

Martin L. Favín
Audit Manager

Zuzana O. Parrish
Lead Auditor

SUBJECT: National Italian American Political Action Committee (A03-44) –
Referral Matter

On January 5, 2005, the Commission approved the final audit report on the National Italian American Political Action Committee. The final audit report (FAR) will be released to the public on January 13, 2005, and includes the following issue which meets the criteria for referral to your office: Receipt of Contributions that Exceed Limits (Materiality Threshold II.C.1.). The audit finding noted two individuals who had made excessive loans or contributions. Loan repayments were made to the first individual, albeit untimely. No action was taken with regard to the excessive contributions from the second individual.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Zuzana Parrish or Marty Favín at 694-1200.

Attachment:

- FAR Finding (Receipt of Contributions that Exceed Limits)

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Receipt of Contributions that Exceed Limits

Summary

The Audit staff identified two individuals whose aggregate contributions (including loans) exceeded the contribution limits by \$15,350. In March 2004, NIAPAC repaid loans to untimely resolve a portion of the excessive contributions, but has taken no action with respect to the rest. In the interim audit report the Audit staff recommended that NIAPAC submit documentation to show that the contributions were not excessive or refund the remaining amount. In response, a letter was submitted from the first individual confirming repayment of the loans he had made to NIAPAC. No action was taken with regard to the second individual.

Legal Standard

A. Non-Connected Committee Limits A non-connected committee may not receive more than a total of \$5,000 per year from any one contributor. 2 U.S.C. §§441a(a)(1)(C), (2)(C) and (f); 11 CFR §§110.1(a) and (d) and 110.9(a).

B. Contribution. The term contribution includes any loans (excluding a bank loan), a guarantee, endorsement, and any other form of security. A loan which exceeds the contribution limitations of 2 U.S.C. §441a and 11 CFR §110 shall be unlawful whether or not it is repaid. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. 11 CFR §100.7(a)(1)(A)(B).

C. 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:
 - Keep enough money in the account to cover all potential refunds;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on schedule A if the contribution has to be itemized before its legality is established;

D. Revised Regulations Applied. The Commission recently adopted new regulations that allow committees greater latitude to reattribute contributions to joint account holders and has decided to apply these regulations to current matters. The Audit staff has evaluated the excessive contributions discussed below using the new regulations.

Facts and Analysis

The Audit staff reviewed all receipts and identified two individuals whose aggregate contributions exceeded the contribution limits by \$15,350.

In 2001, NIAPAC received \$10,100 from an individual as follows: a loan of \$2,500 (January 2001); a contribution of \$100 (March 2001); and, a loan of \$7,500 (June 2001). The two loans were itemized on Schedules A when received and properly disclosed on Schedules C until repaid in March 2004. However, since a loan is defined as a contribution and is

therefore subject to contribution limitations, this individual exceeded the \$5,000 limit by \$5,100 (\$10,100 - \$5,000) from June 2001 until March 2004.

NIAPAC received contributions in 2002 from another individual totaling \$15,250 as follows: \$10,000 (June 2002); \$5,000 (September 2002); and \$250 (October 2002). The aggregate amount of these contributions, \$15,250, exceeded the contribution limit by \$10,250 (\$15,250 - \$5,000).

At the exit conference, the Audit staff brought these matters to the attention of the NIAPAC representatives who explained that the first individual was the founder of NIAPAC and that he made the loans when funds coming in to NIAPAC were not sufficient to pay its obligations. They added that he wanted to ensure that the local businesses were paid what they were owed by NIAPAC. Officials provided no additional information relative to the second individual. At the exit conference, NIAPAC representatives agreed to refund the remaining excessive portion to the second individual.

No separate account was maintained by NIAPAC for questionable contributions and NIAPAC did not consistently maintain a sufficient balance to cover the refund of these contributions during the period in question.

Interim Audit Report Recommendation and Committee Response

In the interim audit report, the Audit staff recommended that NIAPAC:

- Provide evidence demonstrating that the contributions in question were not excessive; or
- Refund \$10,250 to the second individual discussed above, providing evidence of such refund (copy of the front and back of the negotiated refund check); and
- If funds were not available to make the necessary refund, it was further recommended that the refund due be disclosed on Schedule D (Debts and Obligations) until funds became available to make the refund.

In response, a letter was submitted from the first individual confirming repayment of the loans he had made to NIAPAC. No action was taken with regard to the second individual.