

Finding 2. Receipt of Contributions in Excess of the Limit

Summary

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that TCFC received apparent excessive contributions totaling \$74,302. These errors occurred as a result of TCFC not resolving the excessive portions of contributions by forwarding presumptive redesignation or reattribution letters to its contributors, obtaining signed redesignation letters from its contributors, or issuing refunds for the excessive contributions in a timely manner. In response to the exit conference, TCFC materially resolved, albeit untimely, the apparent excessive contributions. In response to the Interim Audit Report recommendation, TCFC provided documentation which demonstrated that one remaining refund check had been negotiated and stated that it has fully complied with the auditors' recommendations as to this finding. In response to the Draft Final Audit Report, TCFC stated its response to the Interim Audit Report would suffice. The Audit staff concluded TCFC received excessive contributions totaling \$74,302, which were untimely resolved by TCFC.

The Commission approved a finding that TCFC received excessive contributions totaling \$74,302.

Legal Standard

- A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,700 per election from any one person or \$5,000 per election from a multicandidate political committee. 52 U.S.C. §30116; 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:
 - Keep enough money in the account to cover all potential refunds or establish a separate account in a campaign depository for such contributions;
 - 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;
 - 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); and
 - If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

C. Joint Contributions. Any contribution made by more than one person, except for a contribution made by a partnership, must 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. The Commission regulations permit committees to ask contributors 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 the other contributor. The committee must inform the contributor that:

- The reattribution must be signed by both contributors;
- The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after 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).

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

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

E. 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:

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

Within 60 days after 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).

Presumptive Redesignation - 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:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. 11 CFR §110.1(b)(5)(ii)(B)(1)-(4).

The committee is required to notify the contributor by any written method, including electronic mail, 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)(ii)(B)(5) and (6).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff utilized sample testing and reviews of other contributions not included in the sample population to identify apparent excessive contributions from individuals.

Excessive Contributions – Testing Method	
Sample Projection Amount ¹	\$51,802
Review of contributions not in the sample (error amount)	\$6,900
Review of contributions redesignated to the 2018 Primary election (error amount)	\$15,600
Total Amount of Excessive Contributions	\$74,302
Reasons for Excessive Contributions	
Contributions not resolved via presumptive letter or refund	\$58,702
Contributions not resolved via signed redesignation letter or refund	\$15,600
Total Amount of Excessive Contributions	\$74,302

¹ The sample error projection (\$51,802) is based on a Monetary Unit Sample with a 95 percent confidence level. The sample estimate could be as low as \$34,528 or as high as \$74,141. A review of other contributions not included in the sample population identified excessive contributions totaling \$6,900.

B. Additional Information

The errors totaling \$6,900 were the result of TCFC not sending a presumptive letter to its contributors informing them how their contribution had been attributed or designated by TCFC. The errors totaling \$15,600 were the result of TCFC designating contributions to the 2018 Primary election without authorization from its contributors.

TCFC did not maintain a separate account for questionable contributions. However, based on its cash on hand at the end of the audit period (\$322,825), it appears that TCFC did maintain sufficient funds to make refunds of the apparent excessive contributions.

C. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with TCFC representatives at the exit conference and provided schedules of the apparent excessive contributions. TCFC representatives asked questions regarding the documentation needed to resolve the excessive contributions. The Audit staff explained that the presumptive letters sent in response to the exit conference would untimely resolve most of the excessive contributions. For others, obtaining a signed redesignation letter would untimely resolve the excessive contributions.

In response to the exit conference, TCFC submitted the following documentation:

Corrective Action Taken in Response to Exit Conference	
Presumptive Letters Sent <i>Untimely</i>	\$47,500
Signed Redesignation Letters Obtained <i>Untimely</i>	\$13,000
Refund Issued <i>Untimely</i>	\$2,600

The Audit staff concluded that, of the \$74,302 in excessive contributions, TCFC demonstrated that it resolved contributions totaling \$63,100 in an untimely manner. As such, TCFC has materially resolved the excessive contributions, albeit untimely.

The Interim Audit Report recommended that TCFC provide documentation which demonstrated that the refund check had been negotiated for the untimely refund of \$2,600. It was further recommended that TCFC provide any comments it deemed relevant to this matter.

D. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, TCFC provided documentation which demonstrated that one remaining refund check of \$2,600, untimely issued to remedy an excessive portion of a contribution, had been negotiated. In addition, TCFC stated it has fully complied with the auditors' recommendations as to this finding.

E. Draft Final Audit Report

The Draft Final Audit Report acknowledged that TCFC provided evidence that materially resolved, albeit untimely, the excessive contributions.

F. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, TCFC stated its response to the Interim Audit Report would suffice.

Commission Conclusion

On February 14, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that TCFC received excessive contributions totaling \$74,302.

The Commission approved the Audit staff's recommendation.

1-21-19-140601-01