



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AR# 99-12

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Audit Referral 00-07

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: LINCOLN DIAZ-BALART FOR CONGRESS COMMITTEE - REFERRAL
MATTERS

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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On March 24, 2000, the Commission approved the final audit report on the Lincoln Diaz-Balart for Congress Committee. The final audit report was released to the public on April 4, 2000. As a result, the attached findings meet the criteria for referral for possible compliance action: Finding II.A. - Apparent Excessive Contributions; Finding II.B. - Apparent Prohibited Contributions; and Finding II.C. - Misstatement of Financial Activity

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Henry Miller or Alex Boniewicz at 694-1200.

Attachments as stated

A. APPARENT EXCESSIVE CONTRIBUTIONS

Section 441(a)(1)(A) of Title 2 of the United States Codes states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. Subsection (b) of 11 CFR §110.1 explains that *with respect to any election* means that if the contribution is not designated in writing by the contributor for a particular election then the contribution applies to the next election for that Federal office after the contribution is made. A contribution is considered made when the contributor relinquishes control over the contribution by delivering the contribution to the Candidate, the political committee, or an agent of the committee. A contribution mailed is considered made on the date of the postmark.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states that, the treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of 11 CFR 110.1. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b) or 110.1(k), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, that any contribution which appears to be illegal under 11 CFR 103.3(b)(3), and which 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.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that 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. If a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor. If a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR 110.1, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors

C. MISSTATEMENT OF FINANCIAL ACTIVITY

Sections 434(b)(1), (2), and (4) of Title 2 of the United States Code state, in part, that a political committee shall disclose the amount of cash on hand at the beginning of the reporting period and the total amount of all receipts and the total amount of all disbursements for the reporting period and calendar year.

The Audit staff's reconciliation of LDC's reported financial activity to its bank activity for the period of January 1, 1997 through December 31, 1998 revealed misstatements of its reported beginning cash-on-hand, receipts, disbursements and ending cash-on-hand. LDC did not maintain records to show the derivation of its reported amounts. Absent such records, the Audit staff could not identify all differences between bank activity and reported activity.

1. 1997 Misstatement

LDC reported a beginning cash balance of \$475,460 on January 1, 1997. The correct cash balance was determined to be \$361,384. This amount was overstated by \$114,076, a difference which has not been explained and that carried through the entire audit period. LDC representatives suggested that at least one additional Certificate of Deposit that was not documented in the available records may have been owned by LDC. Records for any additional investment or other bank accounts were requested during the audit fieldwork, but none were forthcoming.

LDC reported total receipts of \$166,150. LDC should have reported total receipts of \$157,288, an overstatement of \$ 8,861. The overstatement resulted, in part, from LDC's failure to report in-kind contributions of \$ 759 and the overstatement of reported interest by \$2,070. In addition, receipts were overstated by \$6,550 on the Year End Report; this appears to have resulted from a 12/15/97 deposit having been considered twice in calculating total receipts. Finally, absent documentation demonstrating the derivation of LDC reported amounts, there remained an unexplained difference of \$1,000.

Total reported disbursements were \$55,016. LDC should have reported total disbursements of \$71,986, a net understatement of \$16,970. The understatement stemmed mainly from LDC's: failure to report disbursements totaling \$17,446; reporting of disbursements totaling \$1,229, which were not supported by checks or debit memos from LDC's bank accounts; failure to report in-kinds contributions of \$759; and an unexplained difference of \$6.

Reported ending cash-on-hand was \$586,593. The correct cash balance was determined to be \$446,686. The amount was overstated by \$139,907 as a result of the discrepancies noted above. Consequently, beginning cash on hand for 1998 was similarly misstated.

2. 1998 Misstatement

LDC reported total receipts of \$375,791; it should have reported total receipts of \$414,673. Therefore, receipts were understated by the net amount of \$38,882. The difference, for the most part, is the result of the net understatement of reported receipts during the calendar year by \$51,110. Although the amounts by which receipts were overstated or understated could be calculated by reporting period, absent LDC workpapers detailing the source of its reported figures, the Audit staff is unable to explain this understatement. It is noted that the largest difference (\$41,325) appears to have occurred in the post election reporting period. Also contributing to the misstatement of receipts was LDC's failure to report in-kind contributions totaling \$331; its failure to report interest totaling \$102; a mathematical error on its Pre General disclosure report resulting in an overstatement of receipts by \$12,395; and, an unexplained overstatement of reported receipts by \$266.

LDC reported total disbursements of \$427,154. The Audit staff determined that \$505,118 should have been reported, resulting in an understatement of \$77,964. That difference is the result of LDC's: failure to report disbursements totaling \$84,832, failure to report in-kind disbursements of \$331; incorrect disclosure of the amounts of some disbursements resulting in a net overstatement totaling \$6,921; and, an unexplained overstatement of \$278.

The reported ending cash balance on December 31, 1998 was \$535,210. The correct cash balance was \$356,240, a difference of \$178,970. The misstatement is the result of the discrepancies noted above.

These matters were discussed at the exit conference and LDC's representative was provided copies of the Audit staff's bank reconciliations for 1997 and 1998. With respect to the discrepancy in the reported cash on hand figure that existed during the entire audit period, the representative maintained LDC was waiting for the bank to provide the necessary documents. On July 27, 1999, when no records were forthcoming and LDC representatives ceased communicating with the Audit staff, the Commission approved subpoenas to Ana Carbonell, the Congressman's District Director; Rafael J. Diaz-Balart, LDC Custodian of Records; and banks known to have been utilized by LDC. This was an effort to identify any other certificates of deposits or additional bank accounts used by LDC, whose records have not yet been made available to the Audit staff, and which could explain the approximately \$114,000 overstatement of LDC's cash on hand during the audit period. The responses to the subpoenas did not identify any additional bank accounts or certificates of deposits that were maintained by LDC. In addition, Mr. Ayuban Tomas, Committee Treasurer, who was not subpoenaed in deference to his reported ill health, was contacted by telephone and asked if he could offer any assistance. Mr. Tomas explained that without his records, which he had turned over to Ms. Carbonell, he could be of no assistance. Finally, on December 9, 1999, the Commission approved a letter to Congressman Diaz-Balart requesting information or documentation that would help resolve the discrepancy. Any such information or documentation was to be provided by December 31. Subsequent to this deadline, several

attempts were made by the Audit staff to contact the Congressman's office to inquire about the lack of any response to the letter. On January 6th, the Audit staff was able to speak with Stephen D. Vermillion, the Congressman's Chief of Staff. He indicated that the letter had been received and that the matter had been referred to Ms. Carbonell. Further, Ms. Carbonell advised him that she had discussed the matter with the Congressman. Since no further response addressing the misstatement of cash on hand was received from either Ms. Carbonell or Mr. Vermillion; the interim audit report was issued on January 10, 2000.

The interim audit report recommended that LDC submit a written reconciliation and explanation which addresses the overstatement of its cash on hand balance. The Audit staff further recommended that LDC file comprehensive amended Summary and Detailed Summary Pages for calendar years 1997 and 1998 which correct all the reporting errors noted above.

As part of its response to the interim audit report, LDC submitted amended reports which appear to materially correct the misstatement noted above. However, the narrative portion of LDC's response fails to completely explain the overstatement of its cash on hand balances by about \$114,000 during the period audited. The narrative states that, with respect to the 1995 -1996 reporting period:

- interest received for a certificate of deposit purchased during 1995 was overstated by \$5,288. LDC also provided a Form 1099-INT for 1996 showing earned interest of \$13,650.77;
- deposits in 1995 (\$2,200) and 1996 (\$4,500) were duplicated in the reports for those years. LDC provided deposit receipts for the two deposits; and
- the remaining difference stems from disbursements that were not reported. LDC provided a schedule listing 14 disbursements totaling \$12,748.

The Audit staff was unable to confirm LDC's assertion that interest was overstated by \$5,288. LDC's disclosure reports for much of 1996 did not include Schedules A identifying the source of the reported interest income. It was, therefore, not possible to verify the amount of interest reported from any particular institution. Likewise LDC's statement that two deposits were duplicated in its reports could not be confirmed, absent workpapers detailing the source of its reported figures, or other documentation to support this explanation. It is the Audit staff's opinion that, in order to adequately address these apparent errors, the Audit staff would require bank statements for all accounts (including certificate of deposits) and LDC workpapers showing the derivation of its reported figures.

With respect to the unreported disbursements, the Audit staff notes that \$3,235 of the \$12,748 was in fact reported. For the remaining disbursements (\$9,513), LDC did not provide needed documentation (such as canceled checks and appropriate bank statements) to

support that these disbursements were in fact made. At best, LDC's response only explains about \$20,000 of the \$114,000 cash balance overstatement.

Finally, in an attempt to explain the misstatement of cash on hand, the Audit staff reviewed all disclosure reports and supporting schedules filed by LDC during the period 1991 to 1996. Those reports were reviewed for mathematical accuracy and for any entry that could explain all or part of the \$114,000 difference (e.g. a reported redemption of a certificate of deposit). The review did not yield any explanation.

To date, LDC has not submitted any additional documentation or explanation addressing the overstatement of its cash balance.