



FEDERAL ELECTION COMMISSION  
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July 9, 2002

**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. Favin  
Audit Manager

Rickida L. Skinner  
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SUBJECT: Rod Grams for U.S. Senate (A01-01) – Referral Matter

AUDIT REFERRAL # 02-10

On May 31, 2002, the Commission approved the final audit report on Rod Grams for U.S. Senate. The final audit report was released to the public on June 10, 2002 and includes a finding that meets the criteria for referral to your office for possible compliance action (see attachment).

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

**Attachment:**

- FAR Finding II.A. (Receipt of Contributions in Excess of the Limitations)

**AUDIT FINDING AND RECOMMENDATION****RECEIPT OF CONTRIBUTIONS IN EXCESS OF THE LIMITATIONS**

Section 441a(a)(1)(A) of Title 2 of the United States Code 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)(2) 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 political committee. A contribution mailed is considered made on the date of the postmark.

Sections 103.3(b)(3) and (4) of Title 11 of the Code of Federal Regulations state, in part, that contributions which exceed the contribution limitations may be deposited into a campaign depository or returned to the contributor. 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). If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor. Further, 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(b)(5)(i) and (ii) of Title 11 of the Code of Federal Regulations states, in part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if:

- the contribution was designated in writing for a particular election, and the contribution, either on its face or when aggregated with other contributions from the same contributor for the same election, exceeds the limitation at 11 CFR §110.1(b)(1);
- the contribution was designated in writing for a particular election and the contribution was made after that election and the contribution cannot be accepted under the net debts outstanding provisions of 11 CFR §110.1(b)(3);
- the contribution was not designated in writing for a particular election, and the contribution exceeds the limitation on contributions set forth in 11 CFR §110.1(b)(1); or

- the contribution was not designated in writing for a particular election, and the contribution was received after the date of an election for which there are net debts outstanding on the date the contribution is received.

Further, a contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation and, within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states 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 and 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(b), (c) or (d), as appropriate, 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 provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 110.1(l)(5) of Title 11 of the Code of Federal Regulations states that if a political committee does not retain the written records concerning redesignation or reattribution, the redesignation or reattribution shall not be effective, and the original designation or attribution shall control.

Section 110.9(a) of Title 11 of the Code of Federal Regulations states that no candidate or political committee shall accept any contribution or make any expenditure in violation of the provisions of part 110. No officer or employee of a political committee shall accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

1. Contributions from Individuals

A review of contributions from individuals for compliance with the 2 U.S.C. §441a(a)(1)(A) limitation indicated that RGFS accepted excessive contributions totaling \$157,378 from 237 individuals (\$138,924 related to the Primary election and \$18,454 related to the General election). Many of the reported entries on the Committee's Schedules A (Itemized Receipts) indicated that these contributions had been reattributed among individuals, such as spouses, or redesignated to another election. However, the available contribution records did not support these redesignations and reattributions.

The \$138,924 in excessive contributions related to the Primary election was comprised of \$27,743 of untimely redesignations and reattributions, \$26,882 of untimely refunds, and \$84,299 of contributions that lacked adequate redesignation and reattribution documentation. The \$18,454 in excessive contributions related to the General election was comprised of \$1,500 of untimely redesignations and reattributions, \$600 of untimely refunds, and \$16,354 of contributions that lacked adequate redesignation and reattribution documentation.

Mr. Schmidt, the former treasurer, stated at an interim conference that the software program used by RGFS was supposed to notify RGFS staff when a contribution was excessive. At the exit conference, RGFS officials were given detailed schedules of the excessive contributions discussed above. They offered no comment. In response to the exit conference, RGFS officials provided additional redesignation and reattribution documentation the Audit staff considered in its review and the appropriate adjustments were made to arrive at the figures discussed above.

2. Contributions from Unregistered Political Organizations

The review of contributions from political committees indicated that RGFS received eight contributions from six unregistered political organizations that exceeded the 2 U.S.C. §441a(a)(1)(A) limitation by \$2,975. All eight were attributable to the 2000 Primary election. These items were designated as "primary" on both the RGFS' contributions database and reported entries on Schedules A. No documentation was made available relative to these items.

At the exit conference, the Audit staff explained to RGFS officials that these contributions were considered excessive because unregistered political organizations are limited to contributions aggregating \$1,000 per election. RGFS officials were given a detailed schedule of the excessive contributions. They offered no comment.

3. Response to the Interim Audit Report

In response to the interim audit report, the current RGFS treasurer acknowledged that the excessive contributions received from June through early September 2000 resulted from the failure of RGFS to receive timely redesignation or reattribution documentation and that RGFS underwent turnover with respect to staff responsible for the data entry of contributor information. She added that she had been informed by RGFS staff

employed at that time that the software repeatedly malfunctioned by deleting contributor records for no reason and that these "performance glitches undoubtedly contributed to the Committee's difficulties in maintaining accurate contributor records for this time period."

Also included in the response was a document entitled Excessive Contributions Process, dated July 7, 2000, that set forth procedures for RGFS staff when excessive contributions were received during various time periods. These procedures included the following: sending refund checks with follow-up phone calls; arranging personal meetings with donors to request an exchange of checks; sending out redesignation/retribution letters and business reply envelopes with follow-up phone calls; and, printing all information relative to excessive contributions to give to a particular staff person for follow-up. The treasurer stated that she had "...no reason to believe these procedures were not followed with respect to each of the contributions in question; however, after a duly diligent search, the Committee has been unable to locate retribution or redesignation letters from these contributors with respect to these contributions."

Included with the response were copies of redesignation/ retribution statements dated March 5, 2002, apparently sent to each of the contributors in question, and copies of the front and back of negotiated refund checks for seven refunds, totaling \$4,415. There were also copies of the front only of two \$1,000 refund checks, totaling \$2,000. All nine of the refund checks were dated October 2001 or later, more than a year after RGFS's receipt of the contributions. RGFS also provided documentation for \$3,154 in contributions it intends to refund and information on data entry errors made relative to some of the noted excessive contributions. The RGFS treasurer stated that this matter "...consisted of an isolated problem over a short period of time, not systemic, willful conduct" and added that "[t]aken in context, this small error demonstrates the Committee's commitment to compliance with FEC regulations and is grounds for no further FEC action in this matter."

In summary, of the \$100,653 (\$84,299 + \$16,354) in excessive contributions received from individuals, RGFS has provided evidence of refunds totaling \$4,415. Therefore, excessive contributions totaling \$96,238 (\$100,653 - \$4,415) are still considered unresolved.

Also in the response to the interim audit report, RGFS agreed to refund the eight excessive contributions, totaling \$2,975, to the unregistered political organizations and disclose these contributions as debts if sufficient funds do not exist to make refunds.