

Part IV

Findings and Recommendations

Failure to Respond to the Interim Audit Report

An interim audit report was issued on March 4, 2008, advising CFC of the findings and recommendations resulting from the audit of Cranley for Congress. A March 13, 2008 telephone conversation with the treasurer confirmed receipt of the interim audit report. CFC was requested to respond to the interim audit report by April 7, 2008. On April 2, 2008 the treasurer was sent an e-mail reminding him of the response due date. CFC did not respond to the interim audit report recommendations or request additional time to respond.

Finding 1. Receipt of Contributions That Exceed Limits

Summary

The Audit staff identified contributions from 51 individuals and one partnership that exceeded the limitation by \$96,162. Excessive contributions totaling \$85,000 were caused by CFC's failure to send individuals notification of election redesignation and contributor reattribution. Also included in the excessive amount were contributions totaling \$550 that were untimely refunded. The remaining \$10,612 were not eligible for presumptive redesignation and/or reattribution and must be refunded.

The Audit staff recommended that CFC provide evidence demonstrating that the contributions were not excessive, send notices to those contributors that were eligible for presumptive redesignation and/or reattribution, or refund the excessive amounts.

Legal Standard

- A. Authorized Committee Limits:** An authorized committee may not receive more than a total of \$2,000 per election from any one person.¹ 2 U.S.C. §441a(a)(1)(A) and 11 CFR §110.1(a) and (b). The Bipartisan Campaign Reform Act of 2002 (BCRA) includes provisions that indexes the individual contribution limit for inflation. The limit for individuals' contributions to candidates for the 2006 election cycle was \$2,100.
- B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
- return the questionable contribution to the donor; or
 - deposit the contribution into a campaign depository and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

¹ Person refers to an individual, partnership, or any group of persons, not including the federal government. 11 CFR §100.10.

The excessive portion may also be redesignated to another election or reattributed to another contributor as explained below.

C. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee 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.

The committee is required to notify the contributor in writing 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. For this action to be valid, the committee must retain copies of the notices sent. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

D. Reattribution of Excessive Contributions. When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by all contributors; or
- refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).

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 attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

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

For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(l)(4)(ii).

Facts and Analysis

The Audit staff identified contributions from 51 individuals and one partnership that exceeded the limitation by \$96,162. Of these excessive contributions, 34 contributors

totaling \$67,050 were excessive for the primary election and 18 contributors totaling \$29,112 were excessive for the general election.

In most instances, CFC either reattributed the excessive portion of the contribution to another individual, or redesignated the excessive portion of the contribution to the next election. However, in either case, CFC did not provide evidence of timely reattributions or redesignations or provide evidence that the contributors were notified of any presumptive reattribution or redesignation made by CFC. Of the excessive contributions, \$85,000 would have been resolved had CFC notified contributors under the presumptive redesignations and/or reattributions rules.

Also included in the excessive amount were two refunds totaling \$550 that were not made in a timely manner.

Finally, the remaining excessive contributions totaling \$10,612 could not be resolved by redesignation and/or reattribution and therefore must be refunded to the contributor or paid to the U.S. Treasury. In most instances, these contributions were written on single account checks for the general election and the excessive portion of these contributions were not eligible for redesignation or reattribution. It should also be noted that CFC maintained a sufficient balance in its bank account to refund the excessive contributions.

Interim Audit Report Recommendation

The Audit staff recommended that CFC:

- Provide evidence demonstrating that the contributions were not excessive. Evidence could include documentation that was not available during the audit including copies of solicitation cards completed by the contributors at the time of their contribution that clearly inform the contributors of the limitations; timely notifications sent to contributors eligible for presumptive redesignation and/or reattribution; or, timely refunds, redesignations, or reattributions made for excessive contributions (copies of the front and back of negotiated refund checks) or;
- Absent such evidence, CFC should send notices to those contributors that were eligible for presumptive redesignations and/or reattributions (\$85,000) to inform those contributors how the contribution was designated and/or attributed. These notices must also offer the contributors the option of receiving a refund of the excessive amount. CFC should provide evidence to the Audit staff that the notices were sent. Absent the contributor's request for a refund, these notices obviate the need to refund the contributions or make a payment to the U.S. Treasury.
- For the remaining excessive contributions for which refunds have not been issued (\$10,612), CFC must refund the excessive portion to the contributors and provide evidence of such refunds (copies of the front and back of negotiated refund checks) or pay the amount to the U.S. Treasury; or
- If funds are not available to make the necessary refunds, disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make such refunds.

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Finding 2. Misstatement of Financial Activity

Summary

A comparison of CFC's reported financial activity to the bank records revealed a misstatement of activity in calendar year 2006. Reported receipts were understated by \$42,787; reported disbursements were understated by \$27,648; and the ending cash balance on December 31, 2006 was understated as a result of the receipt and disbursement discrepancies. The Audit staff recommended that CFC amend its disclosure reports to correct the misstatement.

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 A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4), and (5).

Facts and Analysis

The Audit staff reconciled the reported financial activity to the bank records and determined there was a misstatement of activity in 2006. The following chart outlines the discrepancies.

2006 Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance January 1, 2006	\$ 179,094	\$ 179,094	\$ 0
Receipts	\$ 1,836,816	\$ 1,879,603	\$ 42,787 Understated
Disbursements	\$ 2,012,799	\$ 2,040,447	\$ 27,648 Understated
Ending Cash Balance December 31, 2006	\$ 3,111	\$ 18,250	\$ 15,139 Understated

The understatement of receipts resulted from the following:

• Contributions not reported	+ \$137,972
• Contributions reported with incorrect amounts (Net)	+ 4,207
• Contributions reported twice	- 8,875
• Reported amounts not traced to bank activity	- 87,973
• Unexplained difference	- 2,544
• Net Understatement of Receipts	\$ 42,787

CFC received contributions via credit cards and through conduits; however, these contributions were not consistently reported. The amount above for “Contributions not reported” included earmarked contributions from individuals totaling \$60,308 and credit card contributions from individuals totaling \$69,434 that were either not reported or were included in the transactions discussed below.

The amount above for “Reported amounts not traced to bank activity” included \$53,058 disclosed as a lump sum from ActBlue for earmarked contributions, and \$31,830 disclosed as a lump sum from Newtek Merchant Solutions, CFC’s credit card processor. CRC did not maintain reconciliation documentation to validate these two transactions, nor was the Audit staff able to find any entry or combinations of entries on CFC’s bank statements that explained these amounts.

The understatement of disbursements resulted from the following:

• Disbursements not reported	+ \$44,730
• Disbursements reported with incorrect amounts (Net)	- 1,758
• Disbursements reported twice	- 3,212
• Reported amounts not traced to bank activity	- 12,138
• Unexplained difference	+ 26
• Net Understatement of Disbursements	\$ 27,648

The understatement of the Ending Cash Balance on December 31, 2006 resulted from the receipt and disbursement discrepancies noted above.

Interim Audit Report Recommendation

The Audit staff recommended that CFC amend its disclosure reports for calendar year 2006 to accurately report the receipt and disbursement activity. CFC should also amend their most recently filed report to correct the cash on hand balance and include a notation that the change is due to audit adjustments.

Finding 3. Reporting of Earmarked Contributions

Summary

The Audit staff identified earmarked contributions totaling \$508,122 that were not reported or improperly disclosed on Schedules A. The Audit staff recommended that CFC amend its reports to correctly report and disclose these earmarked contributions.

Legal Standard

- A. Reporting by Political Committee Conduit.** A political committee that serves as a conduit of an earmarked contribution must disclose the earmarked contribution, regardless of amount, on two separate reports: the committee’s next regularly scheduled FEC report, and a special “Transmittal Report” sent to the recipient authorized committee. 11 CFR §110.6(c)(1).

B. Reporting by Recipient Committee. When a candidate committee receives an earmarked contribution(s) through an allowable conduit, each individual contribution should be itemized when the individual's total contributions to the committee aggregate over \$200 per election cycle. This itemization must include the full name, address, occupation, and employer of the individual contributor along with the date the contribution was received by the conduit. Contributions from PACs, authorized committees, or any political committees must be itemized regardless of the amount contributed.

In addition, the total contribution(s) transmitted through the conduit should be itemized on Schedule A as a memo entry. The conduit's full name and address must be provided, along with the date the contribution(s) was received by the candidate committee and the total amount of earmarked contributions received from the conduit. 11 CFR §110.6(c)(2).

Facts and Analysis

The Audit staff identified earmarked contributions from individuals and political committees received by CFC totaling \$508,122 that were not reported or improperly disclosed on Schedules A. These contributions were passed on to CFC through eight different conduits via 97 transmittals totaling \$504,020.² Forty-seven of these transmittals totaling \$158,797 were passed on in the form of the original contributors' check. The remaining fifty transmittals totaling \$345,223 were passed on in the form of the conduit's check. A review of all earmarked contributions identified the following discrepancies:

Contributor Discrepancies³

• Contributions from individuals reported but lacking identification as earmarked	\$183,076
• Contributions from individuals not reported ⁴	250,046
• Contributions from political committees reported but lacking identification as earmarked	75,000
Total earmarked contributions	\$508,122

Conduit Discrepancies

• Conduit transmittals not reported as memo entries	\$312,943
• Transmittals reported as contributions from the conduit rather than as memo entries	191,077
Total conduit transmittals	\$504,020

² This amount represents gross earmarked contributions totaling \$508,122 minus \$4,102 in processing fees.

³ Approximately 38% of the earmarked contributions from individuals aggregated over \$200 and were required to be itemized on Schedule A. All of the earmarked contributions from political committees were required to be itemized on Schedule A regardless of amount.

⁴ This amount includes contributions totaling \$191,077 (net of processing fees) reported as contributions from the conduit rather than as earmarked contributions from individuals, and earmarked contributions totaling \$60,308 that do not appear to have been reported. The earmarked contributions totaling \$60,308 are included as an adjustment in Finding 2 – Misstatement of Financial activity.

Interim Audit Report Recommendation

The Audit staff recommended that CFC amend its reports to correctly report and disclose these earmarked contributions.

Finding 4. Disclosure of Occupation/Name of Employer

Summary

A sample review of contributions from individuals revealed that a material amount of transactions lacked or did not adequately disclose the occupation and/or name of employer. The projected dollar value of these contributions was \$466,784. Furthermore, there was no evidence that “best efforts” to obtain, maintain, and submit the information had been exercised. The Audit staff recommended that CFC contact each contributor for which the information is lacking, submit evidence of such contact, and disclose any information received.

Legal Standard

A. Disclosure of Receipts. For each itemized contribution, the committee must provide the following information:

- The full name and address (including zip code) of the contributor or other source;
- The name of the contributor’s employer (if the contributor is an individual);
- The contributor’s occupation (if the contributor is an individual);
- Election to which a contribution or loan was designated;
- The date of receipt;
- The amount; and
- The aggregate election cycle-to-date of all receipts (within the same category) from the same source. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A).

B. Election Cycle. The election cycle begins on the first day following the date of the previous general election and ends on the date of the next general election. 11 CFR §100.3(b).

C. Best Efforts Ensures Compliance. When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee’s reports and records will be considered in compliance with the Act. 2 U.S.C. §432(h)(2)(i).

D. Definition of Best Efforts. The treasurer and the committee will be considered to have used “best efforts” if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
 - A clear request for the contributor’s full name, mailing address, occupation, and name of employer; and
 - The statement that such reporting is required by Federal law.
- Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.

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- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

A sample review of contributions from individuals revealed that a material amount of transactions lacked or did not adequately disclose the contributor's occupation and/or name of employer. The projected dollar value of these contributions was \$466,784. In most cases, the required information was either missing or disclosed as "Best Efforts." The records provided to the Audit staff did not contain any follow-up request for the information. Therefore, CFC did not demonstrate "Best Efforts" to obtain, maintain, and submit the necessary information.

Interim Audit Report Recommendation

The Audit staff recommended that CFC contact each contributor for which the information is lacking, submit evidence of such contact, and disclose any information received.

Finding 5. Disclosure of Disbursements

Summary

A sample review of disbursements itemized on Schedules B revealed a material amount of transactions that lacked or inadequately disclosed the required information. The projected dollar value of these disbursements was \$1,464,982. These disclosure discrepancies consisted of missing addresses, missing or inadequate purposes, or missing memo entries for reimbursements to individuals. The Audit staff recommended that CFC amend its reports to correct the disclosure of disbursements on Schedules B.

Legal Standard

A. Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 in an election cycle, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee⁵; and
- Purpose (a brief description of why the disbursement was made—see below). 11 CFR §104.3(b)(4)(i).

B. Examples of Purpose.

- Adequate Descriptions. Examples of adequate descriptions of "purpose" include the following: dinner expenses, media, salary, polling, travel, party fees, phone

⁵ Payee means the person who provides the goods or services to the committee. 11 CFR §102.9(b)(2)(i)(A).

banks, travel expenses, travel expense reimbursement, catering costs, loan repayment, or contribution refund. 11 CFR §104.3 (b)(4)(i)(A).

- **Inadequate Descriptions.** The following descriptions do not meet the requirement for reporting “purpose”: advance, election day expenses, other expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3 (b)(4)(i)(A).

- C. Reporting Reimbursements to Individuals for Expenses Other than Travel and Subsistence.** When itemizing reimbursements to individuals for goods or services, if the payment to the original vendor aggregates in excess of \$200 in an election cycle, a memo entry including the name and address of the original vendor, as well as the date, amount and purpose of the original purchase must be provided. 11 CFR §104.3 (b)(4)(i) and Advisory Opinions 1992-1 and 1996-20.

Facts and Analysis

A sample review of disbursements itemized on Schedules B revealed a material amount of transactions that lacked or inadequately disclosed the required information. The projected dollar value of these transactions was \$1,464,982. The majority of these discrepancies were due to missing addresses, missing or inadequate purposes, or missing memo entries for reimbursements to individuals.

For those transactions with an inadequate purpose, it was determined that a person not associated with CFC would not easily discern why the disbursement was made when reading the name of the recipient with the purpose disclosed on Schedules B. The sample also revealed that CFC did not disclose as memo entries the original vendors for expense reimbursements to individuals.

Interim Audit Report Recommendation

The Audit staff recommended that CFC amend its reports to correct the disclosure of disbursements on Schedules B.

Finding 6. Reporting of Debts and Obligations

Summary

The Audit staff identified debts totaling \$106,605 that were not itemized on Schedules D (Debts and Obligations). The Audit staff recommended that CFC amend its disclosure reports to itemize these debts and obligations on the appropriate Schedules D.

Legal Standard

- A. Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. Separate Schedules. A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations.

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

The Audit staff identified debts totaling \$106,605 that were not itemized on Schedules D. These debts consisted of eight transactions to seven vendors, all of which were more than \$500 and not paid in full during the reporting period in which the debt was incurred. The majority of these debts were incurred during the October 15, 2006 Quarterly and 12 Day Pre-General reporting periods. It was also noted that CFC did not report any debts or obligations owed during the audit period.

Interim Audit Report Recommendation

The Audit staff recommended that CFC amend its reports itemizing these debts and obligations on the appropriate Schedules D.

Finding 7. Disclosure of Line of Credit

Summary

The Audit staff identified a line of credit itemized on Schedules C (Loans) and Schedules C-1 (Loans and Line of Credit from Lending Institutions) that lacked or inadequately disclosed the required information. The Audit staff recommended that CFC amend its reports to correctly disclose the line of credit itemized.

Legal Standard

- A. Reporting Loans.** All loans received by a committee must be itemized and continuously reported until repaid. All repayments made on a loan must also be itemized. 11 CFR §104.3(a)(4)(iv) and 11 CFR §104.3(b)(4)(iii).
- B. Schedule C.** Both the original loan and payments to reduce principal must be reported on Schedule C each reporting period until the loan is repaid. 11 CFR §104.3(d).
- C. Schedule C-1.** A committee that obtains a loan from a bank or other permissible lending institution must also file Schedule C-1 with the first report due after a new loan or line of credit has been established. In the case of a committee that has

obtained a line of credit, a new Schedule C-1 must be filed with the next report whenever the committee draws on the line of credit. An authorized representative of the lending institution must sign the statement on Line I. 11 CFR §104.3(d)(1) and (3).

Facts and Analysis

CFC established a line of credit at a lending institution in the amount of \$190,000. The term of the loan was one year beginning February 22, 2006, with an interest rate of 9.50%. The Candidate was listed as a guarantor for the line of credit according to bank documents, and CFC's checking account balance was used as collateral. CFC made five draws totaling \$110,000 and two repayments as follows:

Line of Credit Draws		Line of Credit Repayments	
February 24, 2006	\$ 30,000		
March 9, 2006	\$ 30,000		
April 18, 2006	\$ 20,000		
May 10, 2006	\$ 10,000	May 22, 2006	\$ 60,000
May 11, 2006	\$ 20,000	May 23, 2006	\$ 50,000
	<u>\$110,000</u>		<u>\$110,000</u>

Based on the above information, the Audit staff identified several reporting discrepancies on Schedules C. First, CFC did not disclose the due date or interest rate on Schedules C for the February 24, 2006 and March 9, 2006 line of credit draws. Second, CFC disclosed the entire \$110,000 repayment on the May 11, 2006 Schedule C (\$20,000), resulting in a \$90,000 credit balance outstanding. CFC should have applied the payment separately to each of the five line of credit draws on Schedules C. Third, CFC did not disclose the Candidate as a guarantor on any of the Schedules C filed.

CFC also failed to disclose required information on Schedules C-1 on the 12 Day Pre-Primary and July Quarterly reporting periods. For the 12 Day Pre-Primary report, CFC improperly disclosed the loan amount (disclosed as \$60,000 instead of \$190,000). In addition, CFC did not disclose any information under Section B for the amount of the draw and the outstanding balance (Amount of Draw should have been \$60,000 and Total Outstanding Balance should have been \$60,000).

For the July Quarterly report, CFC improperly disclosed on the loan amount (disclosed as \$0 instead of \$190,000) and again did not disclose any information under Section B (Amount of Draw should have been \$50,000 and Total Outstanding Balance should have been \$110,000). In addition, this Schedule C-1 was not signed by a representative of the lending institution as required.

Interim Audit Report Recommendation

The Audit staff recommended that CFC amend its reports to correctly disclose the line of credit itemized on Schedules C and Schedules C-1.

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