COPY

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL: 11-04
DATE REFERRED: August 9, 2011
DATE ACTIVATED: November 7, 2011

STATUTE OF LIMITATIONS: April 20, 2013

SOURCE:	AUDIT REFERRAL
RESPONDENT:	John Edwards for President and Julius Chambers, in his official capacity as Treasurer
RELEVANT STATUTES AND REGULATIONS:	2 U.S.C. § 431(8)(B)(vii) 2 U.S.C. § 434 2 U.S.C. § 438(b) 11 C.F.R. § 100.7(b)(11) 11 C.F.R. § 100.8(b)(12) 11 C.F.R. § 104.3 11 C.F.R. § 104.11 11 C.F.R. § 111.35(d)(4)
INTERNAL REPORTS CHECKED:	Audit Documents Disclosure Reports
FEDERAL AGENCIES CHECKED:	None

I. INTRODUCTION

This matter was generated by a referral from the Audit Division following a Commission audit pursuant to 2 U.S.C. § 438(b). On July 28, 2011, the Commission approved the Final Audit Report ("FAR") for John Edwards for President and Julius Chambers, in his official capacity as treasurer ("JEFP" or the "Committee"), which recommended that the Commission adopt a finding that JEFP failed to itemize loan repayments, in violation of 2 U.S.C. § 434(b)(5)(D) and 11 C.F.R. § 104.3(b)(4)(iii). The finding stemmed from JEFP's failure to properly itemize disbursements for four loan installment repayments totaling $4,344,469 in its

April 2008 Monthly Report, as required by the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations. JEFP admits in its response to the FAR that its April 2008 Monthly Report did not contain the Schedule B-P itemizing the four installment repayments of approximately $1 million each. *See* JEFP Response to Final Audit Report for AR 11-04 dated October 14, 2011 ("JEFP Response").

Based on the information set forth in the FAR and the JEFP Response, we recommend the Commission open a Matter Under Review, find reason to believe that John Edwards for President and Julius Chambers, in his official capacity as treasurer, failed to properly itemize loan repayments in its April 2008 Monthly Report in violation of 2 U.S.C. § 434(b)(5)(D) and 11 C.F.R. § 104.3(b)(4)(iii), and enter into pre-probable cause conciliation with JEFP.

II. FACTUAL AND LEGAL ANALYSIS

A committee that obtains a loan from a bank must itemize the receipt of a loan, regardless of the amount, on a separate Schedule A for the appropriate loan category, and all repayments made on the loan must be itemized on the Schedule B-P (Itemized Disbursements) and Schedule C (Loans). 2 U.S.C. § 434(b)(3)(E) and (5)(D); 11 C.F.R. §§ 104.3(a)(3)(vii), 104.3(b)(2)(iii) and 104.3(d). A committee that obtains a loan from a bank also must file a Schedule C-1 (Loans and Lines of Credit from Lending Institutions) with the first report due after receiving a new loan or a new line of credit has been established.[1] 11 C.F.R. § 104.3(d)(1). A committee must

[1] Schedule C-1 requires that the following information be disclosed: (1) the date and amount of the loan or line of credit; (2) the interest rate and repayment schedule of the loan, or each draw on the line of credit; (3) the types and value of additional collateral or other sources of repayment securing the loan or line of credit and whether that security interest is perfected; and (4) an explanation of the basis of the credit established if the bases in (3) are not applicable. 11 C.F.R. § 104.3(d)(1)(i)-(iv). The committee treasurer must sign the schedule on Line G and attach a copy of the loan agreement. 11 C.F.R. § 104.3(d)(2). The lending institution must sign the statement on Line I, attesting that: the terms of the loan and other information regarding the extension of the loan are accurate; the terms and conditions of the loan are no more favorable than those extended to similarly situated borrowers; the lending institution is aware that the loan must be made on a basis that assures repayment; and that, in making the loan, it has complied with the regulations set forth at 11 C.F.R. §§ 100.7(b)(11) and 100.8(b)(12).

continue to itemize and report all loans until they are repaid in full. 11 C.F.R. §§ 104.3(d) and 104.11.

In November 2007 and December 2007, JEFP originated three loans with the same bank in Alexandria, Virginia: the first loan on November 30, 2007 for $5.2 million; the second loan on December 19, 2007 for $2.6 million; and the third loan on December 28, 2007 for $1.3 million. The three loans totaled $9.1 million, and each had a due date of May 31, 2008. JEFP reported the loans, along with the repayment installments, in its monthly disclosure reports for the period December 2007 - June 2008 without error, except for the April 2008 Monthly Report, as discussed below.

In the course of conducting an audit of JEFP, pursuant to 2 U.S.C. § 438(b), the Audit staff identified four loan installment repayments, totaling $4,344,469, that were not properly itemized in the April 2008 Monthly Report. *See* FAR at 22. JEFP made four loan installment payments for the following dates and amounts: $1,112,253.40 on March 6, 2008; $1,101,700.04 on March 13, 2008; $1,067,843.06 on March 20, 2008; and $1,062,672.76 on March 27, 2008. JEFP included the aggregate amounts of these repayments on the Detailed Summary Pages of its April 2008 Monthly Report, and itemized them on Schedule C and Schedule C-1, but did not itemize them on Schedule B-P (Itemized Disbursements) of the report. *Id.*

Although the Summary Page, and Schedules C and C-1 provide information about the sum total of the loan repayments, the lending institution, and the lender's address, these pages do not itemize the amounts and show the exact dates of the specific installments of the loan repayments. These pages also do not include the "purpose of disbursement" line that is on the Schedule B-P. Therefore, this information would not have been available to anyone reviewing the April 2008 Monthly Report.

Regarding JEFP's failure to itemize the four loan repayments in the April 2008 Monthly Report, the FAR states,

> The matter was discussed [with JEFP] at the exit conference. There was no obvious reason why the loan repayments were not itemized, but a JEFP representative agreed to amend the committee's reports as necessary. The Audit staff recommended that JEFP file amended reports itemizing the loan repayments on Schedule B-P, line 27.... In response, JEFP amended reports itemizing the loan repayments.

See FAR at 22. According to the FAR, JEFP then amended its April 2008 Monthly Report and corrected the reporting error soon after the exit interview, at which JEFP claims to have become aware of the reporting error for the first time. *See id.*

JEFP argues that the Summary Page and Schedules C and C-1 of the April 2008 Monthly Report correctly reported the $4,344,469 in loan repayments and disclosed relevant details of the disbursements, including the name and address of the lending institution, as well as the amounts borrowed and the dates the loans were incurred. JEFP Response at 1-2. JEFP points out that the March and May 2008 Monthly Reports properly disclosed and itemized the same loans. *Id.* Thus, JEFP points out that there was public disclosure of the existence of the loan, the purpose of the loan, the lending institution and its address, and the total amount repaid on the loan during the month of April 2008, even if the specific dates and amounts of the disbursements making up those loan repayments were not properly itemized. *Id.* JEFP also points out that Senator Edwards, who ended his presidential campaign on January 30, 2008, was no longer a candidate at the time of the April 2008 disclosure filing.

JEFP asserts that it followed the same procedures when completing the March and April 2008 Monthly Reports, and that the omission of the information on Schedule B-P of the April 2008 Monthly Report, "in all likelihood resulted from a software issue" or a technical error. *Id.* at 2. The auditor who conducted the exit interview confirms that her notes reflect that JEFP raised the possibility of a technical problem during the exit conference and speculated that the computer software might have caused the omission of information on the Schedule B-P. It does not appear, however, that JEFP provided any additional information to corroborate this surmise, nor was any supporting information provided in the response to the referral notification.

Nor, in any event, would a software problem alleviate JEFP's responsibility to adhere to the Act's specific requirement that loan repayments be disclosed with the name and address of the person to whom the repayment is made, as well as all applicable dates and amounts. 2 U.S.C. § 434(b)(5)(D). Pursuant to 2 U.S.C. §434(a) and (b), a committee is responsible for using the appropriate computer software and certifying the accuracy of its disclosures.[2] Further, committees and their treasurers have a duty and an obligation to review filings with the Commission and file appropriate amendments in a timely manner. *Id.*

Accordingly, we recommend the Commission find reason to believe that John Edwards for President and Julius Chambers, in his official capacity as treasurer, failed to properly itemize loan repayments in its April 2008 Monthly Report, in violation of 2 U.S.C. § 434(b)(5)(D) and 11 C.F.R. § 104.3(b)(4)(iii).

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[2] *See also* 11 C.F.R. § 111.35(d)(4) specifying that, in the Administrative Fines context, committee computer, software, or Internet service provider failures do not establish that the committee used its best efforts to file in a timely manner.

IV. RECOMMENDATIONS

1. Open a MUR in AR 11-04;

2. Find reason to believe that John Edwards for President and Julius Chambers, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(5)(D) and 11 C.F.R. § 104.3(b)(4)(iii), by failing to properly itemize loan repayments in its April 2008 Monthly Report;

3. Approve the attached Factual and Legal Analysis;

4. Approve the attached Conciliation Agreement; and

5. Approve the appropriate letter.

January 6, 2012
Date

Anthony Herman
General Counsel

Kathleen Guith
Acting Associate General Counsel
for Enforcement

Susan L. Lebeaux
Assistant General Counsel

Camilla Jackson Jones
Attorney

Attachments:

1. JEFP Final Audit Report
2.

AUDIT REFERRAL # 11-04

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

12044313091

August 9, 2011

MEMORANDUM

To: Christopher Hughey
Acting General Counsel

Through: Alec Palmer
Staff Director

From: Patricia Carmona
Chief Compliance Officer

Thomas Hintermister
Acting Assistant Staff Director
Audit Division

Thomas J. Nurthen
Audit Manager

By: Mary E. Moss
Lead Auditor

Subject: John Edwards for President - Referral Matter

On July 28, 2011, the Commission approved the final audit report on John Edwards for President. The final audit report includes the following matter that is referable:

Failure to Itemize Loan Repayments.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Mary Moss or Tom Nurthen at 694-1200.

Attachments: Finding 3 – Failure to Itemize Loan Repayments

cc: Lorenzo Holloway

Finding 3. Failure to Itemize Loan Repayments

Summary

During audit fieldwork, the Audit staff identified loan repayments, totaling $4,344,469, that were not itemized. Although JEFP reported the amounts on the Detail Summary Pages and itemized them on Schedule C (Loans) and Schedule C-1 (Loans and Lines of Credit From Lending Institutions), it did not itemize them on Schedule B-P (Itemized Disbursements). JEFP complied with the Audit staff's recommendation and amended its reports to itemize the loan repayments.

The Commission approved this finding.

Legal Standard

When to itemize. When a loan repayment is made to any person in any amount, the committee must report the:

- name and address of the payee; and
- date and amount of payment. 2 U.S.C. §434(b)(5)(D) and 11 CFR §104.3(b)(4)(iii).

Facts and Analysis

A. Facts

During fieldwork, the Audit staff identified loan repayments, totaling $4,344,469, which JEFP did not itemize. Although JEFP included the aggregate amount of these payments on the Detailed Summary Pages, it failed to provide supporting Schedules B-P, itemizing the payments.

B. Preliminary Audit Report & Audit Division Recommendation

This matter was discussed at the exit conference. There was no obvious reason why the loan repayments were not itemized, but a JEFP representative agreed to amend the committee's reports as necessary.

The Audit staff recommended that JEFP file amended reports itemizing the loan repayments on Schedule B-P, line 27(b).

C. Committee Response to the Preliminary Audit Report

In response, JEFP filed amended reports itemizing the loan repayments.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that JEFP amended its reports to itemize the loan repayments.

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Commission Conclusion

On July 21, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that JEFP failed to itemize loan repayments, totaling $4,344,469, on Schedule B-P (Itemized Disbursements).

The Commission approved the Audit staff's recommendation.

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Final Audit Report of the Commission on John Edwards for President

January 3, 2007 - March 31, 2008

Why the Audit Was Done

Federal law requires the Commission to audit every political committee established by a candidate who receives public funds for the primary campaign.[1] The audit determines whether the candidate was entitled to all of the matching funds received, whether the campaign used the matching funds in accordance with the law, whether the candidate is entitled to additional matching funds, and whether the campaign otherwise complied with the limitations, prohibitions, and disclosure requirements of the election law.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Campaign (p. 2)

John Edwards for President is the principal campaign committee for John Edwards, a candidate for the Democratic Party's nomination for the office of President of the United States. The Committee is headquartered in Chapel Hill, North Carolina. For more information, see the chart on the Campaign Organization, p.2.

Financial Activity (p. 3)

• **Receipts**	
o Contributions From Individuals	$39,643,966
o Matching Funds Received	7,404,083
o Bank Loan	8,974,714
o Offsets to Expenditures	967,088
o Other Receipts	129,527
Total Receipts	**$ 57,119,378**
• **Disbursements**	
o Operating Expenditures	$44,405,156
o Contribution Refunds	3,720,268
o Loan Repayments and Other Disbursements	7,383,067
Total Disbursements	**$ 55,508,491**

Commission Findings (p. 4)

- Matching Funds Received in Excess of Entitlement (Finding 1)
- Misstatement of Financial Activity (Finding 2)
- Failure to Itemize Loan Repayments (Finding 3)
- Stale-Dated Checks (Finding 4)

[1] 26 U.S.C. §9038(a).

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Final Audit Report of the Commission on John Edwards for President

January 3, 2007 – March 31, 2008

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Part I
Background

Authority for Audit
This report is based on an audit of John Edwards for President (JEFP), undertaken by the Audit Division of the Federal Election Commission (the Commission) as mandated by Section 9038(a) of Title 26 of the United States Code. That section states "After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037." Also, Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

Scope of Audit
This audit examined:
1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The receipt of transfers from other authorized committees.
4. The disclosure of contributions and transfers received.
5. The disclosure of disbursements, debts and obligations.
6. The recordkeeping process and completeness of records.
7. The consistency between reported figures and bank records.
8. The accuracy of the Statement of Net Outstanding Campaign Obligations.
9. The campaign's compliance with spending limitations.
10. Other campaign operations necessary to the review.

Inventory of Campaign Records
The Audit staff routinely conducts an inventory of campaign records before it begins the audit fieldwork. JEFP's records were substantially complete and the fieldwork began immediately.

Audit Hearing
JEFP declined the opportunity for an audit hearing.

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Part II
Overview of Campaign

Campaign Organization

Important Dates	
• Date of Registration	January 5, 2007
• Eligibility Period	October 31, 2007 – January 30, 2008[2]
• Audit Coverage	January 3, 2007 – March 31, 2008[3]
Headquarters	Chapel Hill, North Carolina
Bank Information	
• Bank Depositories	Three
• Bank Accounts	17 Checking, 2 Investment
Treasurer	
• Treasurer When Audit Was Conducted	Julius L. Chambers
• Treasurer During Period Covered by Audit	Julius L. Chambers
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

[2] The period during which the candidate was eligible for matching funds began on the date of certification of his matching fund eligibility and ended on the date the candidate announced his withdrawal from the campaign. See 11 CFR §9033.

[3] Limited reviews of receipts and expenditures were performed after March 31, 2008, to determine whether the candidate was eligible to receive additional matching funds.

Overview of Financial Activity
(Audited Amounts)

Cash on hand @ January 3, 2007	$ 0
o Contributions From Individuals	39,643,966
o Matching Funds Received	7,404,083[4]
[redacted]	[redacted]
o Offset to Expenditures	967,088
o Other Receipts	129,527
Total Receipts	$57,119,378
o Operating Expenditures	44,405,156
o Contribution Refunds	3,720,268
o Loan Repayments and Other Disbursements	7,383,067
Total Disbursements	$55,508,491
Cash on hand @ March 31, 2008	$ 1,610,887

[4] JEFP received an additional $5,478,795 in matching funds after March 31, 2008 for a total of $12,882,878. This represents 61 percent of the maximum entitlement ($21,025,000) a Presidential candidate could have received in the 2008 cycle.

Part III
Summaries

Commission Findings

Finding 1. Matching Funds Received in Excess of Entitlement

A review of JEFP's financial activity through December 31, 2008, and estimated winding down costs indicated that it received matching funds totaling $2,136,507, in excess of the Candidate's entitlement. JEFP's Statement of Net Outstanding Campaign Obligations (NOCO) understated its cash-on-hand, overstated its accounts payable and winding down expenses. In response, Counsel for JEFP (Counsel) stated that the payroll of February 7, 2008, represents a qualified campaign expense that should be included in the NOCO. Counsel also stated JEFP's overall objection to the repayment of matching funds.

The Commission approved this finding. (For more detail, see p. 6.)

Finding 2. Misstatement of Financial Activity

A comparison of JEFP's reported financial activity to its bank records revealed a material misstatement of reported cash-on-hand in calendar year 2007 through March 31, 2008. JEFP understated its December 31, 2007, cash-on-hand balance by $585,814 and understated its March 31, 2008, cash-on-hand balance by $4[illegible],676. JEFP materially complied with the Audit staff's recommendation and amended its most recently filed report to correct the cash-on-hand balance.

The Commission approved this finding. (For more detail, see p. 20.)

[redacted] JEFP complied with the Audit staff's recommendation and amended its reports to itemize the loan repayments.

[redacted]

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Finding 4. Stale-Dated Checks

The Audit staff identified 202 stale-dated checks, totaling $267,529, and recommended that JEFP provide evidence that the checks are not outstanding or make a payment to the United States Treasury. In response JEFP documented that certain checks were no longer stale-dated as they either had cleared the bank or were for amounts that were determined to be not owed. As a result, the remaining 128 stale-dated checks, totaling $141,808, require repayment to the United States Treasury.

The Commission approved this finding. (For more detail, see p. 23.)

Summary of Amounts Owed to the United States Treasury

• Finding 1	Matching Funds Received in Excess of Entitlement	$2,136,507
• Finding 4	Stale-Dated Checks	141,808
	Total Due U.S. Treasury	$ 2,278,315

Part IV
Commission Findings

Finding 1. Matching Funds Received in Excess of Entitlement

Summary
A review of JEFP's financial activity through December 31, 2008, and estimated winding down costs indicated that it received matching funds totaling $2,136,507, in excess of the Candidate's entitlement. JEFP's Statement of Net Outstanding Campaign Obligations (NOCO) understated its cash-on-hand, overstated its accounts payable and winding down expenses. In response, Counsel for JEFP (Counsel) stated that the payroll of February 7, 2008, represents a qualified campaign expense that should be included in the NOCO. Counsel also stated JEFP's overall objection to the repayment of matching funds.

The Commission approved this finding.

Legal Standard
A. Net Outstanding Campaign Obligations. Within 15 days after the candidate's date of ineligibility (see definition below), the candidate must submit a statement of "net outstanding campaign obligations." This statement must contain, among other things:

- the total of all committee assets including cash on hand, amounts owed to the committee and capital assets listed at their fair market value;
- the total of all outstanding obligations for qualified campaign expenses; and
- an estimate of necessary winding-down costs. 11 CFR §9034.5(a).

B. Date of Ineligibility. The date of ineligibility is whichever of the following dates occurs first:

- the day on which the candidate ceases to be active in more than one state;
- the 30th day following the second consecutive primary in which the candidate receives less than 10 percent of the popular vote;
- the end of the matching payment period, which is generally the day when the party nominates its candidate for the general election; or
- in the case of a candidate whose party does not make its selection at a national convention, the last day of the last national convention held by a major party in the calendar year. 11 CFR §§9032.6 and 9033.5.

C. Qualified Campaign Expense. Each of the following expenses is a qualified campaign expense.

- An expense that is:
  - o incurred by or on behalf of the candidate (or his or her campaign) during the period beginning on the day the individual becomes a candidate and continuing through the last day of the candidate's eligibility under 11 CFR §9033.5;
  - o made in connection with the candidate's campaign for nomination; and
  - o not incurred or paid in violation of any federal law or the law of the state where the expense was incurred or paid. 11 CFR §9032.9(a).
- An expense incurred for the purpose of determining whether an individual should become a candidate, if that individual subsequently becomes a candidate, regardless of when that expense is paid. 11 CFR §9034.4(a)(2).
- An expense associated with winding down the campaign and terminating political activity. 11 CFR §9034.4(a)(3).
- Monetary bonuses paid after the date of ineligibility for committee employees and consultants, provided that they are paid in recognition of campaign related activities or services; pursuant to a written contract made before the date of ineligibility; and, no later than 30 days after the date of ineligibility. 11 CFR §9034.4(a)(5).

D. Value of Capital Assets. The fair market value of capital assets is 60 percent of the total original cost of the assets when acquired. A candidate may claim a lower fair market value for a capital asset by listing the asset on the NOCO statement separately and demonstrating, through documentation, the lower fair market value. 11 CFR §9034.5(c)(1).

E. Entitlement to Matching Payments after Date of Ineligibility. If, on the date of ineligibility, a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments provided that he or she still has net outstanding campaign debts on the day the matching payment is made. 11 CFR §9034.1(b).

F. Winding Down Limitation. The total amount of winding down costs that may be paid for, in whole or part, with matching funds shall not exceed the lesser of:

- 10 percent of the overall expenditures limitation pursuant to 11 CFR 9035.1: or
- 10 percent of the total of:
  - o The candidate's expenditures subject to the over expenditure limitation as of the candidate's date of ineligibility; plus
  - o The candidate's expenses exempt from the expenditure limitations as of the candidate's date of ineligibility. 11 CFR §9034.11(b)(1) and (2).

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Facts and Analysis

A. Facts

The Audit staff prepared a Statement of Net Outstanding Campaign Obligations as of January 30, 2008, the Candidate's date of ineligibility (DOI). The Audit staff presented the audited statement that appears on the next page in the Preliminary Audit Report. This statement was based on the review of JEFP's financial activity through December 31, 2008 and included estimates for winding down costs thereafter. The Audit staff and JEFP agreed on all NOCO components except for accounts payable for qualified campaign expenses.

John Edwards for President
Statement of Net Outstanding Campaign Obligations
As of January 30, 2008
Prepared thru April 30, 2010

Assets

Primary Election Cash-in-Bank	$3,971,887	
General Election Cash-in-Bank	3,321,290	
Accounts Receivable	455,789	
Capital Assets	29,134	
Total Assets		$ 7,778,100

Liabilities

Primary Election Accounts Payable for Qualified Campaign Expenses @ 1/30/08	$2,313,509		
Refund of General Election Contributions	3,321,290		
Loan Payable @ 1/30/08	8,974,713		
Actual Winding Down Costs (1/31/08 – 4/30/10)	2,584,568		
Estimated Winding Down Costs (5/1/10 – 12/31/11)	1,423,060	[a]	
Payable to U.S. Treasury – Stale-Dated Checks	72,583		
Total Liabilities			$18,689,723
Net Outstanding Campaign Obligations (Deficit) as of January 30, 2008			($10,911,623)

Footnote to NOCO Statement:

[a] Estimated winding down costs will be compared to actual winding down costs and adjusted accordingly.

Shown below are adjustments for funds received after January 30, 2008 and through July 17, 2008.

Net Outstanding Campaign Obligations (Deficit) as of 1/30/08	($ 10,911,623)
Private Contributions Received 1/31/08 through 7/16/08	358,983
Interest Income Received 1/31/08 through 7/16/08	22,110
Matching Funds Received 1/31/08 through 7/16/08	8,825,425
Remaining entitlement as of 7/16/08	($ 1,705,105)
Matching Funds Received 7/17/08	4,057,453
Amount Received in Excess of Matching Fund Entitlement	$ 2,352,348

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During the exit conference response period, the Audit staff analyzed JEFP's payroll for the period August 2007 through January 2008. The review indicated that JEFP's explanation was incorrect. Employees were paid in full from August 2007 through January 15, 2008. However, during the following pay period, which ended January 30, 2008, employees received half of their normal net pay.[5] Therefore, the Audit staff considered that portion of the February 7, 2008 payroll necessary to make up the difference in net pay plus associated employee/employer payroll taxes ($204,322) to be a qualified campaign expense and included the amount on the NOCO in accounts payable. The Audit staff considered the remaining portion of the February 7, 2008 payroll, or $556,871, a non-qualified campaign expense and not included in the NOCO payables.

Subsequently, JEFP provided a second explanation of this payroll. The Assistant Treasurer indicated that as of January 1, 2008, campaign staff worked 24 hours a day, seven days a week, with the understanding that salary would be increased for those affected. The Assistant Treasurer further indicated that JEFP did not have sufficient funds to pay the increased salary on the normal pay dates in January and that after DOI, JEFP calculated the total amount due each employee and paid the increased salary on February 7, 2008. It is JEFP's opinion that the February 7, 2008 payroll represents a qualified campaign expense, which was due at DOI and therefore should be included in the NOCO.

With respect to resources not being available during January 2008 to pay the increased salaries, JEFP records indicate its average daily cash was approximately $4.2 million for January, excluding general election contributions, which could not be used for primary expenses. Further, JEFP offered no explanation as to how the increased amount was calculated or how and when employees were notified; nor did it provide any documentation for the decision to increase salary. As a result, the Audit staff did not accept JEFP's explanation.

The Audit staff notified JEFP of its conclusion by email and gave JEFP 10 days to respond. The email explained that $556,871, representing employee net pay and employee/employer payroll taxes, would not be included in the NOCO. Counsel objected to the notification by email and demanded a second exit conference.

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[5] It is not clear why this payroll was delayed. As can be seen from the NOCO statement, JEFP appears to have had funds available to meet the payroll, even setting aside the general election contributions, which could not be used for primary expenses.

As a result, in the Preliminary Audit Report, the Audit staff concluded that JEFP was not entitled to $2,352,348 of the matching fund payment ($4,057,453) it received on July 17, 2008.

1. Cash-In-Bank

The primary difference between the NOCO presented on the previous page and those prepared by JEFP is the cash-in-bank balance. JEFP understated cash by $4.5 million. Most of the understatement of cash represented funds received for the general election during the primary election period. The understatement of assets caused the NOCO statements to show a larger deficit and matching fund entitlement than was the case. The Audit staff and JEFP agree on the cash balances presented in the NOCO statement.

2. Accounts Payable for Qualified Campaign Expenses – Payroll

Even though JEFP's accounts payable figure on its NOCO was not accurate, the Audit staff and JEFP now agree on the amount of accounts payable, except for the February 7, 2008 payroll. The Audit staff's calculation of accounts payable on the NOCO statement does not include $556,871 in payroll paid on February 7, 2008. Absent further documentation, $556,871 is considered to be a monetary bonus paid to 99 employees. As noted in the legal standards, in order to be a qualified campaign expense, monetary bonuses paid after DOI to employees in recognition of campaign-related activities or services must be paid no later than 30 days after DOI and provided for pursuant to a written contract made prior to DOI (11 CFR §9034.4(a)(5)). JEFP representatives confirmed that there were no written contracts.

JEFP paid staff twice monthly from inception through January 30, 2008. In January 2008, the payroll periods ended on January 15, 2008 and January 30, 2008. On January 31, 2008, another pay period concluded. This payroll totaled $761,193 and was paid on February 7, 2008. The amount, in effect, tripled each employee's pay for the month of January. Throughout the audit fieldwork, the Audit staff made numerous requests for an explanation and documentation of this payroll.

B. Preliminary Audit Report & Audit Division Recommendation

1. First Exit Conference

This matter was presented to JEFP at the exit conference held on February 3, 2009. The Audit staff provided its NOCO and workpapers supporting all NOCO components.

Prior to the exit conference, the Assistant Treasurer responded that the purpose of the February 7, 2008 payroll was to reimburse employees who had not been paid their entire salary due to limited funds available beginning sometime in August 2007. Although requested, JEFP provided no specific details to explain how this payroll was calculated or what employees were not paid their full salary. At the exit conference, the Audit staff made the Assistant Treasurer aware that documentation supporting this payroll had not been made available.

2. Second Exit Conference

Although not required, a second exit conference was held on April 2, 2009.

Payroll

The Audit staff again informed JEFP that $556,871 of salary and payroll taxes were considered non-qualified campaign expenses, excludable from the NOCO. Counsel offered as a possible (third) explanation that certain staff may have traveled to state office locations in order to clean out the offices and return rental cars. However, no documentation supporting this explanation was provided. Again, the Audit staff provided JEFP an additional 10-day response period.

In response, Counsel stated that in December 2007, JEFP determined that those staying through the end of the campaign would receive a salary increase, which would be paid out as permitted by JEFP resources. JEFP intended this pay increase primarily to compensate staff for the fact that JEFP dispatched staff to many different field locations throughout the country for the January primaries and caucuses, placing them on an around-the-clock schedule. JEFP also designed the increase in pay to cover increased costs that staffers incurred because they were on the road. In addition, Counsel stated that on January 30, 2008, the date of ineligibility, JEFP had approximately 70 office and volunteer sites in several cities in various states. JEFP had deployed staff to these locations, where it was necessary to clean out and close field offices. JEFP determined that it would be more efficient to pay these individuals a finite amount instead of asking employees to turn in receipts for reimbursement. According to Counsel, this would have been a difficult accounting process, which JEFP could more efficiently manage by a lump-sum salary payment.

A few days later, JEFP provided a schedule that reflected JEFP's determination that all employees received a 31 percent increase in salary between December 23, 2007 and February 15, 2008, which was paid in one lump sum on February 7, 2008. JEFP gave examples of three different employees and how this paycheck would have been allocated between payable and winding down categories.

With respect to the accounting burden of paying travel expenses, JEFP had accounting procedures in place for handling travel reimbursements. Throughout the campaign, the staff submitted travel reimbursements. Some were included in the NOCO's accounts payable. The effect of a campaign increasing salary in lieu of paying for travel reimbursements creates additional expenses for the campaign, such as the employer's share of payroll taxes, not to mention the additional tax burden placed on employees. While it is reasonable that some staff would have been involved in the office closeout process, it is not likely that all staff, such as the chief of staff, chief financial officer or finance director, took part in this effort. The close out took place after DOI when only 14 people remained on the payroll.

Estimated Winding Down Expenses
In response, JEFP estimated it would spend a total of $2,771,004 in winding down expenses for calendar years 2009 through 2011 ($969,972 for 2009, $959,972 for 2010, $841,060 for 2011).[6] For the period January 31, 2008 through April 30, 2010, estimates were converted to actual winding down expenses. Based on JEFP's actual spending from January 2009 through April 2010, the Audit staff calculated that estimated winding down expenses for the period of May 1, 2010 through December 31, 2011, $1,423,060 may be necessary to wind down the campaign. With the exception of the adjustment for storage costs, the Audit staff's remaining estimated winding down expenses are very close to the amount calculated by JEFP.

It should be noted that throughout the post-audit period, the Audit staff consistently monitored estimated winding down expenses. Bank records and reported activity are reviewed in order to convert estimated winding down expenses to actual winding down expenses.

JEFP's Overall Objection to the Repayment of Matching Funds
JEFP argues that the combination of a shortfall in the Presidential Primary Matching Payment Account (Matching Payment Account) and the lack of a quorum in the Commission during the first half of 2008 put JEFP at a disadvantage with respect to the receipt of matching funds. JEFP argued that matchable contributions received prior to DOI should be matched regardless of whether there are qualified campaign expenses to pay, and concluded that the failure to match these contributions violates the First Amendment rights of both the candidate and those individuals who contributed to the candidate's committee.

With respect to JEFP's response, the Audit staff believes that under 26 USC §9033(c)(2), a candidate who has passed the date of ineligibility is not entitled to any further matching fund payments except to defray qualified campaign expenses incurred before the candidate became ineligible. The fact that JEFP received contributions that otherwise would be matchable does not determine whether the candidate is eligible for further payments. The intent of this section is to allow the candidate to receive matching funds after the date of ineligibility only to pay debts for qualified campaign expenses. In implementing this provision, the Commission considered both debts incurred before the date of ineligibility and necessary costs of wrapping up the campaign. It also established a procedure to monitor whether the candidate still has qualified campaign expenses to be paid prior to each post date of ineligibility payment, known as the NOCO Statement.[7] Finally, the possibility of a shortage in the Matching Payment Account is recognized and an equitable distribution calculation is specified in both 26 USC §9037(b) and 11 CFR §9037.2. That equitable distribution formula was followed.

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[6] In its 2009 estimates, JEFP included storage costs of $18,000 for the next seven years. JEFP inadvertently included this same cost in its 2010 and 2011 estimates. The necessary adjustment has been made.

[7] See 11 CFR 9034.1(b), and 9034.5

Subsequent to the date of ineligibility, campaigns are required to submit a NOCO indicating the campaign has sufficient net debt to justify additional matching funds. The last matching fund payment JEFP received was $4,057,453 on July 17, 2008. This payment was based on a NOCO filed on June 25, 2008 that reflected net debt of $4,684,340. However, as previously noted, that NOCO statement was misstated.

There is no question that the combination of the shortfall in the Matching Payment Account and the Commission's lack of a quorum delayed payments. The Commission took all steps in its power to minimize the impact on all matching fund recipients. All matching fund requests received through December of 2007 were processed and certified while the Commission still had a quorum. That allowed the Treasury Department to begin making payments as soon as funds became available without the need for further Commission action. All payments certified by the Commission before January 1, 2008 were paid as funds became available between February and April 2008. This procedure also allowed campaigns to borrow funds using the matching funds as collateral. JEFP used this avenue to borrow $8.9 million in November and December 2007, before any payments could have been made under any circumstances. Even though the Commission could not certify any payments during the first half of 2008, matching fund requests received after January 1, 2008 were processed, and the campaigns were informed of the matchable amount. Campaigns could use those amounts as collateral for loans if they desired. Finally, any additional expenses incurred by campaigns as a result of these circumstances, such as interest on loans or increased legal costs, would have been treated as qualified campaign expenses and would have resulted in an additional matching fund entitlement.

In summary, although it is true that matching fund payments were delayed during the first half of 2008, the Act and Commission's regulations are clear that in order to receive matching fund payments after the date of ineligibility, a candidate must have net outstanding campaign obligations on the date that the matching fund payments are made. JEFP does not argue that it had sufficient obligations to justify the full amount it received and agrees that it significantly understated its assets on its NOCO Statement. The fact that JEFP may have received contributions before the date of ineligibility that were not matched or that payments were delayed for reasons beyond the control of the Commission or JEFP, does not allow JEFP to receive matching fund payments after the date of ineligibility in excess of the amount of qualified campaign expenses to be paid.

Based on the above, JEFP was not entitled to $2,352,348 of the matching funds payment ($4,057,453) it received on July 17, 2008. Therefore, the Audit staff recommended that JEFP demonstrate that it did not receive matching funds in excess of its entitlement. The Preliminary Audit Report noted that absent such a demonstration, the Audit staff will recommend that the Commission make a determination that $2,352,348 in matching funds is repayable to the United States Treasury.

C. Committee Response to the Preliminary Audit Report

In response to the Preliminary Audit Report, Counsel related that there were no major discrepancies with the NOCO. Counsel continued to maintain, however, that the entire

February 7, 2008 payroll should be considered a qualified campaign expense and not as a bonus.

Counsel also restated JEFP's overall objection to repayment of Matching Funds as discussed in its exit conference response on page 13 of this report.

In addition, Counsel provided another explanation for the February 7, 2008 payroll and included a chart that categorized that portion of the payroll in dispute differently from its previous explanations.

JEFP's Breakdown of That Portion of the February 7, 2008, Payroll in Dispute:

Additional Make-up Salary	**$ 44,917**
Winding Down Expenses	
Salary January 31, 2008 through February 7, 2008	**$187,567**
Lump Sum Payment for Expenses	**$320,659**
Total	**$553,143**[8]

JEFP provided a chart that indicated it reduced the salary of six employees in 2007. Although JEFP provided no documentation to support this chart, it concluded that these six employees were owed $44,917 and that, at a minimum, this amount should be added to the $204,322 that the Audit staff recognized as permissible make-up salary.

JEFP indicated that the remaining portion of the February 7, 2008 payroll was for winding down costs, which are qualified campaign expenses. The two main components of these winding down costs were staff salaries and lump sum payments made to staff to reimburse for travel, lodging and meal expenses incurred during the month of January, and through February 7, 2008.

According to the response, staff salaries for the period of January 31, 2008 through February 7, 2008 totaled $187,567, an average $3,552 per staff. Lump sum payments for expenses totaled $320,659, an average reimbursement of $3,239 per staff.

The Audit staff reviewed JEFP's response and offers the following:

Make-up Salary – $44,917. The Audit staff conducted a review of the available payroll records for each individual listed by JEFP. The payroll records supported a reduction in pay for the six employees, totaling $44,917. However, one of the six individuals listed, (make-up salary - $16,500) was not paid on February 7, 2008. Therefore, any reduction in pay for this individual is irrelevant when discussing the February 7, 2008 payroll. This individual received a payment of $7,675 for salary on February 11, 2008 that had already been included in accounts payable on the NOCO. As a result, the Audit staff included an additional $28,417 ($44,917 - $16,500) as a qualified campaign expense on the NOCO.

[8] The amount in dispute is actually $556,871. JEFP's total is misstated by $3,728.

Winding Down Salary - $187,567 January 31, 2008, to February 7, 2008. JEFP indicated that winding down salaries for the period averaged $3,552 per employee. JEFP appears to be saying that this payroll represented salary payments for only 53 (of the 99) individuals paid on February 7, 2008 ($187,567 / $3,552). JEFP has not provided any documentation that identifies the staff members who were paid. This new explanation is inconsistent with the fact that 99 individuals were paid on February 7, 2008.

Further, if the average salary per staff member ($3,552) is incorrect and JEFP meant that all 99 individuals were paid for winding down activities during this period, it should be noted that 14 of these individuals remained on the payroll and received their normal salary for this same period on February 15, 2008 (pay period January 31, 2008 through February 14, 2008). The amount of that payroll has always been included in the NOCO as a winding down expense. The Audit staff does not accept JEFP's explanation.

Lump Sum Payment for Expenses - $320,659. JEFP claimed that all 99 individuals incurred expenses for winding down the campaign ($320,659 / $3,239). However, JEFP has not provided documentation demonstrating that all 99 individuals incurred expenses or retained any documentation supporting these expenses.

The response stated that high-level staff performed winding down duties such as organizing and archiving financial documents, contacting vendors, thanking donors and coordinating with the candidates. It is unlikely these types of activities would generate reimbursed expenses. Again, these high-level employees, 14 in total, received their normal pay covering the same period, likely for performing these same tasks. As indicated above, the amount of the February 15, 2008 payroll (January 31, through February 14, 2008) was included in the NOCO as a winding down expense. The Audit staff does not accept JEFP's explanation.

Finally, incurring salary and documented reimbursed expenses after the candidate's date of ineligibility would be considered permissible winding down expenses. Even if the Commission were to accept JEFP's explanation with respect to the amount in question ($528,454 ($556,871 - $28,417)), the NOCO statement presented on page 18 includes maximum allowable amount of winding down expenses. Including this amount would require an adjustment to the remaining estimated winding down expenses presented in that NOCO but would not affect the amount of matching funds determined to be in excess of the candidate's entitlement. JEFP would still be required to make a repayment of matching funds, totaling $2,136,507.

Specifically, based on JEFP's actual winding down expenses during the post ineligibility period, the Audit staff estimated that JEFP will spend an additional $1,216,981 in winding down expenditures and reach the winding down limit ($4,205,000) by August 31, 2012. As previously stated, should the Commission accept JEFP's position on the remaining $528,454 the Audit staff would reduce estimated winding down expenses to $688,527 ($1,216,981 - $528,454). As a result, assuming a constant level of winding down spending, JEFP would reach the winding down limit by October 2011. The repayment would remain at $2,136,507. If, however, the Commission does not accept

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JEFP's explanation and JEFP spends less than the winding down estimate shown, the repayment would increase accordingly.

The Audit staff continues to believe that only $232,739 ($204,322 + $28,417) of the February 7, 2008 payroll represented a qualified campaign expense. The remaining $528,454 represented a non-qualified campaign expense.

Additional NOCO Adjustments

Based on JEFP's response to Finding 4, Stale-Dated Checks, the following components of the NOCO have been adjusted accordingly: (1) Cash-in-bank, (2) Accounts Payable for Qualified Campaign Expenses and (3) Payable to U.S. Treasury – Stale-Dated Checks.

The Audit staff revised the NOCO to include all revisions discussed above. We have also calculated actual winding down expenses through December 31, 2010 and updated the estimated winding down expenses through August 31, 2012. The revised NOCO appears on the following page.

John Edwards for President
Statement of Net Outstanding Campaign Obligations
As of January 30, 2008
Prepared thru December 31, 2010

Assets

Primary Election Cash-in-Bank	$3,968,555		
General Election Cash-in-Bank	3,321,290		
Accounts Receivable	455,789		
Capital Assets	29,134		
Total Assets			$ 7,774,768

Liabilities

Primary Election Accounts Payable for Qualified Campaign Expenses @ 1/30/08	$2,341,276		
Refund of General Election Contributions	3,321,290		
Loan Payable @ 1/30/08	8,974,713		
Actual Winding Down Costs (1/31/08 – 12/31/10)	2,988,019		
Estimated Winding Down Costs (1/1/11 – 8/31/12)	1,216,981	[a]	
Payable to U.S. Treasury – Stale-Dated Checks	59,953		
Total Liabilities			$18,902,232
Net Outstanding Campaign Obligations (Deficit) as of January 30, 2008			($11,127,464)

Footnote to NOCO Statement:

[a] Estimated winding down costs have been calculated not to exceed limitations at 11 CFR §9034.11(b).

Shown below are adjustments for funds received after January 30, 2008 through July 17, 2008.

Net Outstanding Campaign Obligations (Deficit) as of 1/30/08	($ 11,127,464)
Private Contributions Received 1/31/08 through 7/16/08	358,983
Interest Income Received 1/31/08 through 7/16/08	22,110
Matching Funds Received 1/31/08 through 7/16/08	8,825,425
Remaining entitlement as of 7/16/08	($ 1,920,946)
Matching Funds Received 7/17/08	4,057,453
Amount Received in Excess of Matching Fund Entitlement	$ 2,136,507

D. Draft Final Audit Report

The Draft Final Audit Report concluded that JEFP received $2,136,507 in excess of the Candidate's entitlement and should make a repayment of that amount to the United States Treasury.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit report, Counsel for JEFP (Counsel) restated many of the same arguments made previously with respect to the February 7, 2008 payroll and to JEFP's overall objection to the repayment of matching funds. In addition to those arguments, Counsel stated that the portion of the February 7, 2008 payroll in question ($528,454) should be treated as a "pre-DOI [date of ineligibility] qualified campaign expense" for the following reasons:[9]

- To compensate staff for overtime and extra hours worked during January 2008.
- To compensate staff for remaining with the campaign after DOI to perform functions relating to closing out campaign offices.
- To compensate staff for extra expenses they may have incurred, including assisting in the close-out of the campaign.

Counsel confirmed that the final payroll was to compensate staff for their work prior to DOI and to deal with obligations (leased office space, rental cars, leased equipment, etc.) that were undertaken by the campaign prior to DOI. As such, according to Counsel, the final payroll amount that the Audit Division is challenging is a qualified campaign expense because that expenditure (1) occurred within several days of the end of the campaign, (2) was driven by conditions and obligations in existence prior to DOI, and (3) should be treated on the same basis as other pre-DOI expenditures. Counsel also stated that "the final payroll was intended to deal with a variety of issues, including all of the explanations enumerated in the DFAR."

In addition, the response addresses a matter not discussed in detail in any response received previously received from JEFP. Counsel stated:

> "Since JEFP filed its Response to the Preliminary Audit Report in December 2010, JEFP has become involved in providing extensive information to the Department of Justice. Although the Committee is not under investigation, it has been necessary for JEFP to incur unanticipated expenses, including additional staff and legal costs. These costs do not fall within the ambit of typical 'winding down' costs because they are not incurred for a Commission audit or compliance with public financing laws. Rather, these costs are actually qualified campaign expenses that are beyond winding down costs. Because the Committee's efforts have been more extensive than anticipated, and have required a large financial

[9] In response to the Preliminary Audit Report, Counsel argued that this amount represented a winding down expense and identified an amount that represented staff salaries covering the period January 31, 2008, to February 7, 2008, as well as an amount that represented a lump-sum payment for expenses.

> commitment, JEFP might exceed the limit on winding down costs. (11 C.F.R. §9034.11.) Therefore, JEFP is seeking a determination from the Commission that the Committee may re-allocate those costs as qualified campaign expenses. In the alternative, the Committee requests that the Commission determine that, due to unforeseen circumstances, these expenses be excluded from winding down costs for the purposes of the 10% limit on such costs."

Finally, Counsel stated that the Statement of Net Outstanding Campaign Obligations (NOCO) as it appeared in the Draft Final Audit Report (DFAR) values JEFP's capital assets at $29,134 but that this valuation is not an accurate reflection of the current value of the assets. Counsel notes that the DFAR reflects valuation of assets from 2008. Since that date, the value of these assets has declined dramatically. The response explains that electronic items substantially decreased in value with age and several of these items are no longer functional. Therefore, the value of capital assets for NOCO purposes should be reduced to $1,775, the current value of these assets. Counsel also indicated that it will provide additional documentation.

Commission Conclusion

On July 21, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission determine that JEFP received $2,136,507 in matching funds in excess of the Candidate's entitlement and must repay that amount to the United States Treasury.

The Commission approved the Audit staff's recommendation.

Finding 2. Misstatement of Financial Activity

Summary

A comparison of JEFP's reported financial activity to its bank records revealed a material misstatement of reported cash-on-hand in calendar year 2007 through March 31, 2008. JEFP understated its December 31, 2007, cash-on-hand balance by $585,814 and understated its March 31, 2008, cash-on-hand balance by $468,676. JEFP materially complied with the audit staff's recommendation and amended its most recently filed report to correct the cash-on-hand balance.

The Commission approved this finding.

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

A. Facts
During fieldwork, a comparison of JEFP's reported financial activity to its bank records revealed a material misstatement of reported cash-on-hand for calendar year 2007 through March 31, 2008. The ending cash-on-hand balance for calendar year 2007 was understated by $585,814 and the ending cash-on-hand balance as of March 31, 2008 was understated by $468,676.

B. Preliminary Audit Report & Audit Division Recommendation
The misstatement of cash-on-hand was primarily due to two factors. First, JEFP understated unitemized receipts, most of which represented small credit card transactions. This was due to a contribution processing software malfunction. JEFP was unaware of this problem until the audit fieldwork. Second, certain disbursements, although initially reported, were inadvertently voided and missing from the amended reports.

This matter was discussed at the exit conference. The Audit staff provided JEFP representatives copies of the Audit staff's bank reconciliations and JEFP indicated a willingness to correct the misstated cash-on-hand figures.

The Audit staff recommended that JEFP amend its most recently filed report to correct the cash-on-hand balances, with an explanation that the change resulted from a prior period audit adjustment. It was also recommended that JEFP reconcile the cash balance of its most recent report to identify any subsequent discrepancies that may have affected the adjustments recommended by the Audit staff.

C. Committee Response to the Preliminary Audit Report
In response, JEFP amended its reports and reiterated that the misstatements were the result of an anomaly in the software used by JEFP.

D. Draft Final Audit Report
In the Draft Final Audit Report, the Audit staff acknowledged that JEFP amended its reports to correct the misstatements.

Commission Conclusion
On July 21, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that JEFP understated its ending cash-on-hand balance.

The Commission approved the Audit staff's recommendation.

Finding 3. Failure to Itemize Loan Repayments

Summary

During audit fieldwork, the Audit staff identified loan repayments, totaling $4,344,469, that were not itemized. Although JEFP reported the amounts on the Detail Summary Pages and itemized them on Schedule C (Loans) and Schedule C-1 (Loans and Lines of Credit From Lending Institutions), it did not itemize them on Schedule B-P (Itemized Disbursements). JEFP complied with the Audit staff's recommendation and amended its reports to itemize the loan repayments.

The Commission approved this finding.

Legal Standard

When to Itemize. When a loan repayment is made to any person in any amount, the committee must report the:

- name and address of the payee; and
- date and amount of payment. 2 U.S.C. §434(b)(5)(D) and 11 CFR §104.3(b)(4)(iii).

Facts and Analysis

A. Facts

During fieldwork, the Audit staff identified loan repayments, totaling $4,344,469, which JEFP did not itemize. Although JEFP included the aggregate amount of these payments on the Detailed Summary Pages, it failed to provide supporting Schedules B-P, itemizing the payments.

B. Preliminary Audit Report & Audit Division Recommendation

This matter was discussed at the exit conference. There was no obvious reason why the loan repayments were not itemized, but a JEFP representative agreed to amend the committee's reports as necessary.

The Audit staff recommended that JEFP file amended reports itemizing the loan repayments on Schedule B-P, line 27(b).

C. Committee Response to the Preliminary Audit Report

In response, JEFP filed amended reports itemizing the loan repayments.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that JEFP amended its reports to itemize the loan repayments.

Commission Conclusion

On July 21, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that JEFP failed to itemize loan repayments, totaling $4,344,469, on Schedule B-P (Itemized Disbursements).

The Commission approved the Audit staff's recommendation.

Finding 4. Stale-Dated Checks

Summary

The Audit staff identified 202 stale-dated checks, totaling $267,529, and recommended that JEFP provide evidence that the checks are not outstanding or make a payment to the United States Treasury. In response, JEFP documented that certain checks were no longer stale-dated as they either had cleared the bank or were for amounts that were determined to be not owed. As a result, the remaining 128 stale-dated checks, totaling $141,808, require repayment to the United States Treasury.

The Commission approved this finding.

Legal Standard

Handling Stale-Dated (Uncashed) Checks. If a committee has issued checks that the payees (creditors or contributors) have not cashed, the committee must notify the Commission of its efforts to locate the payees and encourage them to cash the outstanding checks. The committee must also submit a check payable to the United States Treasury for the total amount of the outstanding checks. 11 CFR §9038.6.

Facts and Analysis

A. Facts

During fieldwork, the Audit staff identified 202 stale-dated checks, totaling $267,529. The checks were dated between February 22, 2007 and May 21, 2008 and had not cleared the bank as of February 28, 2010. A majority of the stale-dated checks represented refunds of general election contributions.

B. Preliminary Audit Report & Audit Division Recommendation

This matter was discussed at the exit conference during which the Audit staff provided JEFP representatives with a schedule of the stale-dated checks. In response, JEFP indicated that it contacted a number of individuals/vendors and reissued $114,481 in stale-dated checks but did not provide the check numbers of the reissued checks. Without the check numbers, the Audit staff could not determine whether any of the reissued checks had cleared the bank.

In the Preliminary Audit report, the Audit staff recommended that JEFP provide evidence that:

- the $114,481 in reissued checks have cleared the bank by providing copies of the front and back of the negotiated checks along with bank statements; and
- the remaining stale-dated checks, totaling $153,048 ($267,529 - $114,481) had either been reissued and cleared JEFP's bank or had been voided because no obligation exists.

Absent such evidence, the Audit staff recommended that JEFP pay $267,529 to the United States Treasury.

C. Committee Response to the Preliminary Audit Report

In its response, JEFP stated that 83 checks, totaling $138,871, should be removed from the stale-dated check list and provided documentation in support of its position.

Based on a review of JEFP's response and the documentation presented, the Audit staff identified that 74 checks, totaling $125,721, were no longer stale-dated. For the remaining stale-dated checks, JEFP did not provide sufficient documentation to support its position that no obligation existed or that the checks had cleared the bank as of December 31, 2010. Therefore, JEFP is required to pay the United States Treasury for the remaining 128 stale-dated-checks, totaling $141,808.

D. Draft Final Audit Report

The Draft Final Audit Report concluded that JEFP was required to pay the United States Treasury for 128 stale-dated checks, totaling $141,808.

Commission Conclusion

On July 21, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission find that JEFP should pay $141,808 to the United States Treasury.

The Commission approved the Audit staff's recommendation.

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