



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 3, 2012

MEMORANDUM

To: The Commission

Through: Alec Palmer
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Thomas Hintermister *TH*
Assistant Staff Director
Audit Division

Marty Kuest *MK*
Audit Manager

By: Pamela Wilkerson *PW for PW*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on Paul Tonko for
Congress (A11-05)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presents its recommendations below and discusses the findings in the attached Draft Final Audit Report. The Office of General Counsel has reviewed this memorandum and concurred with the recommendations.

Finding 1. Receipt of Prohibited Contributions

The Audit staff recommends that the Commission find that Paul Tonko for Congress received a projected total of \$6,705 in contributions from apparent prohibited sources.

Finding 2. Misstatement of Financial Activity

The Audit staff recommends that the Commission find that Paul Tonko for Congress misstated their financial activity for calendar year 2009.

The Committee did not request an audit hearing.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Pamela Wilkerson or Marty Kuest at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on Paul Tonko for Congress

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on Paul Tonko for Congress

(January 1, 2009 - December 31, 2010)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determined whether the committee complied with the limitations, prohibitions, and disclosure requirements of the Act.

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. 1)

Paul Tonko for Congress is the principal campaign committee for Paul David Tonko, Democratic candidate for the U.S. House of Representatives from the State of New York, 21st District, and is headquartered in Albany, New York. For more information, see the chart on Campaign Organization, p. 1.

Financial Activity (p. 2)

| | | |
|---|--|-------------------|
| • Receipts | | |
| ○ Contributions from Individuals | | \$ 511,122 |
| ○ Contributions from Political Committees | | 476,034 |
| ○ Other Receipts | | 318 |
| Total Receipts | | \$ 987,474 |
| • Disbursements | | |
| ○ Operating Expenditures | | \$ 816,435 |
| ○ Other Disbursements | | 13,654 |
| Total Disbursements | | \$ 830,089 |

Findings and Recommendations (p. 3)

- Receipt of Prohibited Contributions (Finding 1)
- Misstatement of Financial Activity (Finding 2)

¹ 2 U.S.C. §438(b).

Draft Final Audit Report of the Audit Division on Paul Tonko for Congress

(January 1, 2009 – December 31, 2010)

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Table of Contents

| | Page |
|---|-------------|
| Part I. Background | |
| Authority for Audit | 1 |
| Scope of Audit | 1 |
| Part II. Overview of Campaign | |
| Campaign Organization | 2 |
| Overview of Financial Activity | 2 |
| Part III. Summaries | |
| Findings and Recommendations | 3 |
| Part IV. Findings and Recommendations | |
| Finding 1. Receipt of Prohibited Contribution | 4 |
| Finding 2. Misstatement of Financial Activity | 6 |

Part I

Background

Authority for Audit

This report is based on an audit of Paul Tonko for Congress (TFC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the minimum hold requirements for substantial compliance with the Act. 2 U.S.C. §434(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of excessive contributions;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other committee operations necessary to the review.

Part II

Overview of Campaign

Campaign Organization

| | |
|--|-------------------------------------|
| Important Dates | |
| • Date of Registration | May 6, 2008 |
| • Audit Coverage | January 1, 2009 - December 31, 2010 |
| Headquarters | |
| Albany, New York | |
| Bank Information | |
| • Bank Depositories | One |
| • Bank Accounts | One |
| Treasurer | |
| • Treasurer When Audit Was Conducted | Mr. Patrick J. Bulgaro |
| • Treasurer During Period Covered by Audit | Mr. Patrick J. Bulgaro |
| Management Information | |
| • Attended Commission Campaign Finance Seminar | No |
| • Who Handled Accounting and Recordkeeping Tasks | Staff |

Overview of Financial Activity (Audited Amounts)

| | |
|---|-------------------|
| Cash-on-hand @ January 1, 2009 | \$ 2,012 |
| Receipts | |
| o Contributions from Individuals | 511,122 |
| o Contributions from Political Committees | 476,034 |
| o Other Receipts | 318 |
| Total Receipts | \$ 987,474 |
| Disbursements | |
| o Operating Expenditures | 816,435 |
| o Other Disbursements | 13,654 |
| Total Disbursements | \$ 830,089 |
| Cash-on-hand @ December 31, 2010 | \$ 159,397 |

Part III Summaries

Findings and Recommendations

Finding 1. Receipt of Prohibited Contributions

During audit fieldwork, a sample review of contributions from individuals identified contributions received from apparent prohibited sources. The projected amount of apparent prohibited contributions received by TFC totaled \$6,705.

In response to the Interim Audit Report, TFC refunded 100% of the prohibited contributions totaling \$5,450 and disgorged the balance of \$1,255 to the U.S. Treasury.
(For more detail, see p. 4.)

Finding 2. Misstatement of Financial Activity

During audit fieldwork, a comparison of TFC's reported activity with its bank records revealed a misstatement of disbursements and ending cash-on-hand in 2009. TFC understated disbursements by \$9,286 and overstated ending cash-on-hand by \$10,259.

In response to the Interim Audit Report, TFC amended its disclosure reports to correct the misstatements.

(For more detail, see p. 6.)

Part IV

Findings and Recommendations

Finding 1. Receipt of Prohibited Contributions

Summary

During audit fieldwork, a sample review of contributions from individuals identified contributions received from apparent prohibited sources. The projected amount of apparent prohibited contributions received by TFC totaled \$6,705.

In response to the Interim Audit Report, TFC refunded 14 impermissible contributions totaling \$5,450 and disgorged the balance of \$1,255 to the U.S. Treasury.

Legal Standard

A. Receipt of Prohibited Corporate Contributions. Political campaigns may not accept contributions made from the general treasury funds of corporations. This prohibition applies to any type of corporation including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative. 2 U.S.C. §441b.

B. Definition of Limited Liability Company. A limited liability company (LLC) is a business entity recognized as an LLC under the laws of the state in which it was established. 11 CFR §110.1(g)(1)

C. Application of Limits and Prohibitions to LLC Contributions. A contribution from an LLC is subject to contribution limits and prohibitions, depending on several factors, as explained below:

1. **LLC as Partnership.** If the contribution is considered a contribution from a partnership under Internal Revenue Service (IRS) tax rules, or if it makes no choice at all about its tax status. For the 2010 election, a partnership contribution may not exceed \$2,400 per candidate per election, and it must be attributed to each lawful partner. 11 CFR §110.1(g)(2), (e) and (g)(2).
2. **LLC as Corporation.** The contribution is considered a corporate contribution—and is barred under the Act—if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are traded publicly. 11 CFR §110.1(g)(3).
3. **LLC with Single Member.** The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1(g)(4).

D. Limited Liability Company's Responsibility to Notify Recipient Committee. At the time it makes a contribution, an LLC must notify the recipient committee:

- that it is eligible to make the contribution; and
- in the case of an LLC that considers itself a partnership (for tax purposes), how the contribution should be attributed among the LLC's members. 11 CFR §110.1(g)(5).

E. Questionable Contributions. If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below.

1. Within 10 days of the treasurer's receipt of the questionable contribution, the committee must either:
 - return the contribution to the contributor without depositing it; or
 - deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must, therefore, maintain sufficient funds to make the refunds or establish a separate account in a foreign depository for possibly illegal contributions. 11 CFR §103.3(b)(1).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence may include, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within the next 30 days, the committee must either:
 - confirm the legality of the contribution; or
 - refund the contribution to the contributor and note the refund on the report which the refund was made. 11 CFR §103.3(b)(1) and (5).

F. Refund or Disgorge Questionable Contributions. If the identity of the original contributor is known, the committee must either refund the funds to the source of the original contribution or pay the funds to the U.S. Treasury. AO 1996-5.

Facts and Analysis

A. Facts

During audit fieldwork, a sample review of contributions from individuals identified contributions received from apparent prohibited sources. The contributions were made on checks imprinted with Inc, LLC or PC. The projected amount of apparent prohibited contributions received by TFC totaled \$6,705.² TFC refunded four contributions identified in the sample totaling \$2,400 and 10 other prohibited contributions totaling

² The error amount was projected using a Monetary Unit Sample program with a 95% confidence level. The sample estimate of \$6,705 (midpoint of range) could be as low as \$3,047 or as high as \$14,385.

\$3,050.³ TFC had not addressed the remaining \$1,255 (\$6,705 - \$2,400 - \$3,050) from the sample estimate.

B. Interim Audit Report & Audit Division Recommendation

This matter was discussed with TFC representatives at the exit conference and they were provided a schedule of the apparent prohibited contributions.

The Interim Audit Report recommended that TFC provide evidence demonstrating that the contributions in question were made with permissible funds, make the necessary refunds or disgorge to the U.S. Treasury the impermissible amount.

C. Committee Response to Interim Audit Report

TFC Counsel noted that the Interim Audit Report does not associate the amount, \$1,255, with any particular contributions, making it impossible for the Committee to demonstrate that they were made with permissible funds. He further noted that the impermissible amount may have been less.

TFC disgorged the remaining impermissible funds, \$1,255, to the U.S. Treasury.

Finding 2. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of TFC's reported activity with its bank records revealed a misstatement of disbursements and ending cash-on-hand in 2009. TFC understated disbursements by \$9,286 and overstated ending cash-on-hand by \$10,259.

In response to the Interim Audit Report, TFC amended its disclosure reports to correct the misstatements.

Legal Standard

Content 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 B, 2 U.S.C. §434(b)(1), (2), (4) and (5).

³ TFC's Counsel provided copies of the front and back for only two of the 14 refund checks.

Facts and Analysis

A. Facts

During audit fieldwork, a reconciliation of TFC's reported financial activity with bank records for 2009 indicated that disbursements and the ending cash balance were misstated. Disbursements were understated by \$9,286 and ending cash was overstated by \$10,259. The following chart outlines the discrepancies for 2009 and provides explanations for the misstated activity.

| 2009 Committee Activity | | | |
|-------------------------|-----------|--------------|------------------------|
| | Reported | Bank Records | Discrepancy |
| Beginning Cash | \$2,021 | \$2,021 | \$9 Overstated |
| Receipts | \$251,202 | \$250,238 | \$964 Overstated |
| Disbursements | \$150,456 | \$159,742 | \$9,286 Understated |
| Ending Cash | \$102,767 | \$113,026 | \$10,259 Overstated |

The understatement of disbursements was due to the following:

| | |
|-------------------------------------|-----------------|
| • Disbursements not reported | \$ 9,179 |
| • Unexplained difference | 107 |
| Sum of Reporting Adjustments | \$ 9,286 |

In 2009, TFC overstated ending cash by \$10,259 due to the differences noted above.

B. Interim Audit Report & Audit Division Recommendation

This matter was discussed and explained to the TFC representatives after the Exit Conference.

The Interim Audit Report recommended that TFC amend its reports to correct the misstatements in 2009 and amend its most recently filed report to correct the cash-on-hand balance with an explanation that the change resulted from a prior period audit adjustment.

C. Committee's Response to Interim Audit Report

TFC filed amended reports to materially correct the misstatement.