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VIA ELECTRONIC AND U.S. MAIL

April 10, 2012

Mr. Thomas Hintermister
Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Paul Tonko for Congress

Dear Mr. Hintermister:

On behalf of Paul Tonko for Congress ("the Committee"), I write in response to the Interim Audit Report of the Commission on Paul Tonko for Congress. Having complied with the Interim Audit Report's recommendations, the Committee appreciates the opportunity to provide further information regarding its findings.

BACKGROUND

The Committee registered with the Commission in 2008. It has not been a respondent in any proceeding before the Commission. During the 2010 election cycle, the Committee had consolidated its fundraising and compliance functions. Its reports were prepared and day-to-day compliance tasks performed by a finance director and an assistant finance director, who were on the Committee's permanent staff. This system was not adequate to meet the Committee's compliance needs. When the 2010 cycle was over, and when these staff members left the Committee, the Committee separated its finance and compliance functions. These functions are now performed by different people. Specifically, the compliance functions are now performed by an outside consultant who has performed similar work at the Congressional level. The Committee did not avail itself of such expertise during the 2010 cycle.

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The Commission notified the Committee of the audit on April 6, 2011. Field work began on August 8, 2011. The Exit Conference was held on September 21, 2011. At the Exit Conference, only the issue of prohibited contributions was presented as a potential finding. However, on January 13, 2012, the auditors told the Committee that a later review of the work papers surfaced an error in the bank reconciliation, and that the Interim Audit Report would contain an additional finding of misstatement of financial activity. The auditors said that the finding was triggered by the omission of approximately \$9,000 in disbursements during 2009.¹ They said also that this was a large enough percentage of the Committee's relatively few disbursements during the off-year to make the finding material. (As the Interim Audit Report indicates, the Committee only reported \$150,456 in disbursements during 2009.)

FINDINGS

Finding 1 – "Receipt of Prohibited Contributions" – was generated by a sample review of the Committee's receipts. The auditors projected that the Committee received \$6,705 in prohibited contributions. However, they said also that the estimate "could be as low as \$3,047 or as high as \$14,385." Interim Audit Report at 5. The projection resulted mainly from contributions that were received from limited liability companies (LLCs), for which there was insufficient documentation of non-corporate status.²

Whenever presented by the auditors with an actual, questionable contribution, the Committee has either documented its permissibility, or refunded or disgorged it. The Committee has further complied with the Interim Audit Report's recommendation by disgorging an additional \$1,255 to the Treasury. The Interim Audit Report does not associate this amount with any particular contributions, making it impossible for the Committee to demonstrate that they "were made with permissible funds," and indeed acknowledges that the true amount may have been lower. A copy of the disgorgement check accompanies this letter as Exhibit A.

As discussed above, Finding 2 – "Misstatement of Financial Activity" – resulted from the omission of approximately \$9,000 in disbursements from reports covering calendar year 2009. The omitted disbursements identified by the auditors spanned a period of nine months. They ranged from a bank service charge of \$1.12, to a \$3,900 software expense (of which \$1,918.45 was reported). Moreover, the disbursements identified by the auditors included two that had

¹ A spreadsheet provided by the auditors on January 13, 2012 presented an "unreported total" of \$9,278.88. The Interim Audit Report identifies "Disbursements not reported" of \$9,179, and an "Unexplained difference" of \$107, for a total of \$9,286. See Interim Audit Report at 7.

² As the Commission has noted, most LLCs are treated as partnerships under the Internal Revenue Code. See Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed. Reg. 37,397, 37,398 (1999).

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already been reported: a \$200 disbursement to the Frank Chapman Memorial Institute on June 30, 2009, and a disbursement to Carolyn McLaughlin for Common Council that was reported as made to "McLaughlin for Council President." The Committee has complied with the Interim Audit Report's recommendation by amending its reports.

We appreciate the opportunity to provide our views on these matters.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. M.", followed by a long horizontal flourish.

Brian G. Svoboda

Attachment