



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 25, 2017

MEMORANDUM

To: The Commission

Through: Alec Palmer
Staff Director

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

Thomas E. Hintermister *TH*
Assistant Staff Director
Audit Division

Doug Kodish *DK*
Audit Manager

By: Rhonda S. Gillingwater
Lead Auditor

Subject: Audit Division Recommendation Memorandum on Ted Cruz for Senate
(TCFS) (A13-05)

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

Finding 1. Reporting and Disclosure of Candidate Loans

A. Reporting of Candidate Loans

The Candidate made three loans totaling \$1,030,000 to TCFS for the 2012 primary election. TCFS has repaid the Candidate \$485,000. However, TCFS continued to report the remaining outstanding balance of \$545,000 as a loan payable to the Candidate, instead of converting this balance to a personal contribution from the Candidate. Subsequent to the exit conference, TCFS converted the loan to a personal contribution from the Candidate on its 2015 April Quarterly report.

In response to the Interim Audit Report, Counsel for TCFS provided no additional comments regarding this matter. TCFS declined to make any additional comments regarding this matter in its response to the DFAR.

The Audit staff recommends that the Commission find that TCFS failed to timely report the conversion of Candidate loans totaling \$545,000 as a contribution.

B. Disclosure of Candidate Loans

TCFS also failed to disclose that \$1,064,000 of the \$1,430,000 loaned by the Candidate to TCFS were borrowed funds from commercial lenders.

Amended Schedules C and C-1 should have been filed which would have disclosed the corrected loan information, terms of the loans and other loan details.

TCFS declined to make any additional comments regarding this matter in its response to the DFAR.

The Audit staff recommends that the Commission find that TCFS failed to properly disclose that \$1,064,000 of the Candidate loans originated from commercial lenders and failed to file the correct Schedules C and C-1.

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 Rhonda Gillingwater or Doug Kodish at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on Ted Cruz for Senate

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on Ted Cruz for Senate

(January 18, 2011 – December 31, 2012)

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 Act¹ (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. The audit determines 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 the matter discussed in this report.

About the Committee (p. 2)

Ted Cruz for Senate is the principal campaign committee for Ted Cruz, Republican candidate for the United States Senate from the state of Texas, and is headquartered in Austin, Texas. For more information, see the Campaign Organization Chart, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 12,044,368
○ Contributions from Political Committees	1,407,608
○ Transfers from Other Authorized Committees	175,347
○ Candidate Loans	1,430,000
○ Other Receipts	40,960
Total Receipts	\$ 15,098,283
• Disbursements	
○ Operating Disbursements	\$ 13,814,542
○ Candidate Loan Repayments	587,000
○ Contribution Refunds	192,327
○ Other Disbursements	25,000
Total Disbursements	\$ 14,618,869

Finding and Recommendation (p. 3)

- Reporting and Disclosure of Candidate Loans

¹ 52 U.S.C. §30111(b).

Draft Final Audit Report of the Audit Division on Ted Cruz for Senate

(January 18, 2011 – December 31, 2012)



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Part I

Background

Authority for Audit

This report is based on an audit of Ted Cruz for Senate (TCFS), 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 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. 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 threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(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 and loans;
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	February 2, 2011
• Audit Coverage	January 18, 2011 - December 31, 2012
Headquarters	Austin, Texas
Bank Information	
• Bank Depositories	Three
• Bank Accounts	Seven Checking
Treasurer	
• Treasurer When Audit Was Conducted	Bradley S. Knippa
• Treasurer During Period Covered by Audit	Bradley S. Knippa
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 18, 2011	\$ 0
Receipts	
○ Contributions from Individuals	12,044,368
○ Contributions from Political Committees	1,407,608
○ Transfers from Other Authorized Committees	175,347
○ Candidate Loans	1,430,000
○ Other Receipts	40,960
Total Receipts	\$ 15,098,283
Disbursements	
○ Operating Disbursements	13,814,542
○ Candidate Loan Repayments	587,000
○ Contribution Refunds	192,327
○ Other Disbursements	25,000
Total Disbursements	14,618,869
Cash-on-hand @ December 31, 2012	\$ 479,414

Part III

Summary

Finding and Recommendation

Reporting and Disclosure of Candidate Loans

During audit fieldwork, the Audit staff reviewed loans from the Candidate to TCFS for calendar years 2011 and 2012. The Candidate made five loans in the amount of \$1,430,000 to TCFS. Two loans, totaling \$400,000, were made to TCFS for the runoff election and were repaid in full prior to the start of the audit. The remaining three loans, totaling \$1,030,000, were for the primary election; TCFS repaid the Candidate \$485,000 for these loans. However, the remaining outstanding balance of \$545,000 was reported as a loan payable to the Candidate and was not converted to a personal candidate contribution, as required. Subsequent to the exit conference (in April 2015), TCFS converted the \$545,000 to a personal candidate contribution. In response to the Interim Audit Report recommendation, Counsel for TCFS provided no additional comments regarding this matter.

After the Interim Audit Report, the Audit staff was made aware that TCFS failed to disclose that \$1,064,000 of \$1,430,000 in Candidate loans previously reported were from commercial lenders, and it did not file the required Schedules C-1. The loans originated from a Citibank revolving line of credit for \$264,000, and from three Goldman Sachs margin loans totaling \$800,000. The remainders of the loan amount come from the Candidate's personal funds, totaling \$366,000. The Audit staff recommends TCFS amend the necessary reports to include corrected Schedules C and the appropriate Schedules C-1 to correctly disclose the source of funds loaned. (For more detail, see p. 4)

Part IV

Finding and Recommendation

Finding 1. Reporting and Disclosure of Candidate Loans

Summary

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After the Interim Audit Report, the Audit staff was made aware that TCFS failed to disclose that \$1,064,000 of \$1,430,000 in Candidate loans previously reported were from commercial lenders, and it did not file the required Schedules C-1. The loans originated from a Citibank revolving line of credit for \$264,000, and from three Goldman Sachs margin loans totaling \$800,000. The remainders of the loan amount come from the Candidate's personal funds, totaling \$366,000. The Audit staff recommends TCFS amend the necessary reports to include corrected Schedules C and the appropriate Schedules C-1 to correctly disclose the source of funds loaned.

Legal Standard

A. Personal Funds. Personal funds of a candidate consist of assets, income, or jointly owned spousal assets. Assets are amounts derived from any asset that, under applicable state law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had legal and rightful title or an equitable interest. Personal funds may also be income received during the current election cycle of the candidate, including salary and other earned income from bona fide employment and income from stocks or investments, including interest, dividends or proceeds from the sale of such stocks or investments. 11 CFR § 100.33.

B. Restriction on an Authorized Committee's Repayment of Personal Loans Exceeding \$250,000 Made by the Candidate to the Authorized Committee. Personal loans mean a loan or loans, including advance, made by a candidate, using personal funds, as defined in 11 CFR §100.33, to his or her authorized committee where the

proceeds of the loan were used in connection with the candidate's campaign for election. For personal loans that, in the aggregate, exceed \$250,000 in connection with an election, the authorized committee may:

- Repay the entire amount of the personal loans using contributions to the candidate or the candidate's authorized committee provided that those contributions were made on the day of election or before;
- May repay up to \$250,000 of the personal loans from contributions made to the candidate or the candidate's authorized committee after the date of the election; and
- Must not repay, directly or indirectly, the aggregate amount of the personal loans that exceeds \$250,000 from contributions to the candidate or the candidate's authorized committee if those contributions were made after the date of the election.

If the aggregate outstanding balance of the personal loans exceeds \$250,000 after the elections, the authorized political committees must comply with the following conditions:

- If the authorized committee uses the amount of cash-on-hand as of the day after the election to repay all or part of the personal loans, it must do so within 20 days of the election.
- Within 20 days of the election date, the authorized committee must treat the portion of the aggregate outstanding balance of the personal loans that exceeds \$250,000 minus the amount of cash-on-hand as of the day after the election used to repay the loan as a contribution by the candidate.
- The candidate's principal campaign committee must report the transactions in paragraphs (c) (1) and (c) (2) of this section in the first report scheduled to be filed after the election pursuant to 11 CFR §104.5(a) or (b).
- This section applies separately to each election. 11 CFR §116.11(a), (b), (c) and (d).

C. Candidate as an Agent. Any candidate who receives a contribution, obtains a loan or makes any disbursement, in connection with his or her campaign shall be considered as having received such contribution, obtained such loan or made such disbursement as an agent of his or authorized committee(s). 11 CFR §101.2.

D. 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 (b)(4)(iii). 11 CFR §104.11.

E. Schedule C. Both the original loan and payments to reduce principal must be reported each reporting period until the loan is repaid. The committee must report the following:

- The source of the loan; and
- The type of loan the candidate received (i.e. bank loan, brokerage account, credit

- card, or home equity line of credit) either in the first box for endorsers and
- guarantors with a notation for loan type or in the box for "Loan Source" after the candidate's name. 11 CFR §104.3(d) and § 104.11.

F. Schedule C-1.

1. **Loans to Candidates.** When a candidate obtains a loan from an advance on the candidate's brokerage account, credit card, home equity line of credit or other line of credit for use in connection with the candidate's campaign, the candidate's principal campaign committee must disclose in the report, covering the period when the loan was obtained, the following information on Schedule C-1 or C-P-1:
 - The date, amount, and interest rate of the loan, advance, or line of credit;
 - The name and address of the lending institution; and
 - The type and value of collateral or other sources of repayment that secure the loan, advance, or line of credit, if any. 11 CFR §104.3(d)(4).
2. **Loans to Committees.** When a committee obtains a loan from a bank or other permissible lending institution it must also file Schedule C-1 with the first report due after a new loan or line of credit has been established. The committee must disclose the following information on Schedule C-1:
 - The date and amount of the loan;
 - The interest rate and repayment schedule of the loan, or on each draw of line of credit;
 - The type and value of collateral or other sources of repayment that secure the loan or the line of credit, and whether that security interest was perfected; and
 - An explanation of the basis upon which the loan was made, if not made on the basis of either collateral or other sources of repayment.
3. **Loan Agreement/Line of Credit-** The committee must also attach a copy of the loan agreement. 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

A. Reporting of Candidate Loans

1. Facts

During audit fieldwork, the Audit staff reviewed five loans from the Candidate to TCFS totaling \$1,430,000. Two of these loans totaling \$400,000 were for the runoff election and were repaid to the Candidate before the audit commenced, leaving three loans to TCFS for the primary election totaling \$1,030,000. The following chart outlines the amounts and dates of these primary election loans and the repayments that TCFS has

made to the Candidate within 20 days of the primary election on May 29, 2012:

Date	Amount	Transaction	Running Balance
3/31/2012	\$70,000	Primary Loan	\$70,000
5/18/2012	\$400,000	Primary Loan	\$470,000
5/22/2012	\$560,000	Primary Loan	\$1,030,000
6/16/2012 ²	\$(235,000)	Loan Repayment	\$795,000
		Repayment Limit	(\$250,000) ³
		Primary Loan Balance to Report as Candidate Contribution	\$545,000

As noted above, the balances of the Candidate's loans for the primary election totaled \$795,000 on the twentieth day following the election. TCFS may repay up to \$250,000 of the personal loans for the primary election from contributions made to the Candidate after the date of the election. Also, TCFS was required to treat as a contribution the amount of \$545,000 (\$795,000 - \$250,000) which is equal to the outstanding balance of the Candidate primary loans less the repayment limit. TCFS was required to report the contribution of \$545,000 on the first report scheduled to be filed after the election (2012 July Quarterly). TCFS, however, continued to report the remaining balance as an outstanding primary loan from the Candidate on Schedule C (Loans) instead of converting the loan to a personal contribution from the Candidate on Schedule A, Line 11(d) (Contributions from the Candidate).

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the loans with TCFS at the exit conference and subsequently provided a detailed schedule outlining amounts loaned to TCFS, its repayments to the Candidate, and the loan balance outstanding. Counsel commented that TCFS should be allowed to pay off the balance of the loan and questioned the necessity of the loan conversion. However, in response to the exit conference, Counsel stated that TCFS reviewed the Audit staff's schedule of loans, compared it to its accounting records, and concluded that the schedule of loans was correct.

Counsel further stated that TCFS will report the loan balance of \$545,000 as a contribution from the Candidate per 11 CFR §116.11 (c). Counsel also noted that the Candidate may wish to note on the report his belief that the statute establishing limits on the amount of personal debt that may be repaid to a candidate, is unconstitutional.

Subsequent to the exit conference, TCFS disclosed the conversion of the loan to a contribution by the Candidate on Schedule A of its 2015 April Quarterly report. TCFS also informed the audit staff that it reserves the right to challenge the constitutionality of this provision of the law. Per 11 CFR §116.11 (c)(3), the Audit staff considered the disclosure of the Candidate contribution to the 2012 primary election as untimely.

² Single payment made within the 20 day period after the primary election.

³ In accordance with 11 CFR §116.11(b)(2), the Candidate was repaid a total of \$250,000 for the primary election loans with contributions made to the TCFS after the May 29, 2012 primary date.

The Interim Audit Report recommended that TCFS provide any comments it deemed relevant with respect to this matter.

3. Committee Response to Interim Audit Report (Report)

In response to the Interim Audit Report recommendation, Counsel for TCFS provided no additional comments regarding this matter. In response to the initial Draft Final Audit Report, Counsel reiterated that it had no comments and stated that no hearing was being requested⁴.

B. Disclosure of Candidate Loans

1. Facts

During audit fieldwork, the disclosure of loans from the Candidate was reviewed, and based upon documentation available at that time, the Audit staff found no reasonable basis to believe there was a material loan disclosure problem (all loans were disclosed as personal, none were disclosed as commercial loans). However, subsequent to the issuance of the Interim Audit Report to TCFS, the Audit staff became aware that most of the money loaned by the Candidate to TCFS came from both commercial and personal sources. Specifically, of the \$1,430,000 disclosed on TCFS's Schedule C, \$1,000,000 was obtained from the commercial lenders. One of the loans in the amount of \$4,000 came from a Citibank revolving line of credit and \$800,000 came from three Goldman Sachs margin loans. Only \$366,000 appears to have come from the Candidate's personal funds. Moreover, Schedules C-1 should have been filed which would have disclosed the terms of the loans and the loan delinquency.

As the facts concerning the disclosure of loans became known, TCFS filed a Miscellaneous Text Report Form and disclosed some but not all of the required loan information. After reviewing the information, the Commission's Reports Analysis Division requested TCFS file the necessary schedules C and C-1.⁵ To date, TCFS has not amended its reports to disclose the additional information. Accordingly, the Audit staff recommended that TCFS correct the necessary information on Schedules C and C-1.

⁴ A Draft Final Audit Report was issued to TCFS in December 2015, prior to the Audit Staff being made aware of commercial loans to TCFS originated by the Candidate.

⁵ These schedules are defined under the Legal Standards section of this report beginning on page 5.