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THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 6, 2018

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

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

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Assistant Staff Director *TH*
Audit Division

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Audit Manager

By: Lezhi Irving *KDS* for LI
Lead Auditor

Subject: Audit Division Recommendation Memorandum on Tony Cardenas for
Congress (A17-01)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to Tony Cardenas for Congress (TCFC) on October 23, 2018 (see attachment). In response to the DFAR, TCFC did not provide any additional comments. TCFC did not request an audit hearing.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR. The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

Finding 1. Misstatement of Financial Activity

In response to the Interim Audit Report, TCFC demonstrated that an over-reported disbursement was actually an outstanding check which was later reissued by TCFC and subsequently cleared its bank account. As a result of this new evidence, an adjustment to the 2016 disclosure reports was no longer necessary for this matter. In addition, TCFC amended its most recently filed disclosure report to correct its cash balance. TCFC did not provide any additional comments regarding this finding in its response to the DFAR.

The Audit staff recommends that the Commission find that TCFC did not misstate its disbursements and ending cash balance for calendar year 2016. The Audit staff further recommends that the Commission find that TCFC misstated its ending cash balance by \$10,237 for calendar year 2015.

Finding 2. Receipt of Contributions in Excess of the Limit

In response to the Interim Audit Report, TCFC provided documentation which demonstrated that one remaining refund check of \$2,600, untimely issued to remedy an excessive portion of a contribution, had been negotiated. In addition, TCFC stated it has fully complied with the auditors' recommendations as to this finding. TCFC did not provide any additional comments regarding this finding in its response to the DFAR.

The Audit staff recommends that the Commission find that TCFC received excessive contributions totaling \$74,302.

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 Lezhi Irving or Kendrick Smith at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on Tony Cardenas for Congress

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on Tony Cardenas for Congress (January 1, 2015 - December 31, 2016)

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 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 any of the matters discussed in this report.

About the Campaign (p. 2)

Tony Cardenas for Congress is the principal campaign committee for Tony Cardenas, Democratic candidate for the United States House of Representatives from the state of California, 29th District, and is headquartered in Washington, DC. For more information, see the Campaign Organization chart, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 678,652
○ Contributions from Political Committees	1,011,140
○ Other Receipts	3,883
Total Receipts	\$ 1,693,675
• Disbursements	
○ Operating Expenditures	\$ 1,544,050
○ Contribution Refunds	6,520
○ Other Disbursements	23,435
Total Disbursements	\$ 1,574,005

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Receipt of Contributions in Excess of the Limit (Finding 2)

¹ 52 U.S.C. §30111(b).

Draft Final Audit Report of the Audit Division on Tony Cardenas for Congress

(January 1, 2015 - December 31, 2016)

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Part I

Background

Authority for Audit

This report is based on an audit of Tony Cardenas for Congress (TCFC), 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	July 13, 2011
• Audit Coverage	January 1, 2015 - December 31, 2016
Headquarters	
Washington, DC	
Bank Information	
• Bank Depositories	One
• Bank Accounts	One Checking
Treasurer	
• Treasurer When Audit Was Conducted	Jennifer May (March 6, 2017 – Present)
• Treasurer During Period Covered by Audit	David Gould (September 16, 2011 - March 5, 2017)
Management Information²	
• Attended FEC Campaign Finance Seminar	Not Available
• Who Handled Accounting and Recordkeeping Tasks	Not Available

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2015	\$ 203,155
Receipts	
○ Contributions from Individuals	678,652
○ Contributions from Political Committees	1,011,140
○ Other Receipts	3,883
Total Receipts	\$ 1,693,675
Disbursements	
○ Operating Expenditures	1,544,050
○ Contribution Refunds	6,520
○ Other Disbursements	23,435
Total Disbursements	\$ 1,574,005
Cash-on-hand @ December 31, 2016	\$ 322,825

² During pre-audit, the Audit staff asked TCFC to complete an internal control questionnaire, which included these questions. To date, the questionnaire has not been returned by TCFC.

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of TCFC's reported financial activity with its bank records revealed misstatements of the ending cash balance for 2015 and the disbursements and ending cash balance for 2016. For 2015, TCFC understated the ending cash balance by \$10,237. For 2016, TCFC overstated disbursements by \$40,568, and understated the ending cash balance by \$38,999. In response to the Interim Audit Report recommendation, TCFC demonstrated that an over-reported disbursement was actually an outstanding check which was later reissued by TCFC. As such, TCFC provided evidence that no adjustment was needed to 2016 disclosure reports for this matter. In addition, TCFC amended its most recently filed disclosure report to correct its cash balance. (For more detail, see p. 4.)

Finding 2. Receipt of Contributions in Excess of the Limit

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that TCFC received apparent excessive contributions totaling \$74,302. These errors occurred as a result of TCFC not resolving the excessive portions of contributions by forwarding presumptive redesignation or reattribution letters to its contributors, obtaining signed redesignation letters from its contributors, or issuing refunds of the excessive portions of contributions in a timely manner. In response to the exit conference, TCFC materially resolved, albeit untimely, the apparent excessive contributions. In response to the Interim Audit Report recommendation, TCFC provided documentation which demonstrated that the refund check had been negotiated and stated that it has fully complied with the auditors' recommendations as to this finding. (For more detail, see p. 6.)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of TCFC's reported financial activity with its bank records revealed misstatements of the ending cash balance for 2015 and the disbursements and ending cash balance for 2016. For 2015, TCFC understated the ending cash balance by \$10,237. For 2016, TCFC overstated disbursements by \$40,568, and understated the ending cash balance by \$38,999. In response to the Interim Audit Report recommendation, TCFC demonstrated that an over-reported disbursement was actually an outstanding check which was later reissued by TCFC. As such, TCFC provided evidence that no adjustment was needed to 2016 disclosure reports for this matter. In addition, TCFC amended its most recently filed disclosure report to correct its cash balance.

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-to-date;
- the total amount of disbursements for the reporting period and for the election cycle-to-date; and
- certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled TCFC's reported financial activity with its bank records for calendar years 2015 and 2016. The 2015 ending cash balance was understated by \$10,237. This discrepancy resulted from misstatements prior to 2015 as the beginning cash balance for 2015 was also understated.

The following chart outlines the 2016 discrepancies between TCFC's disclosure reports and its bank records, and the succeeding paragraphs explain why the discrepancies occurred.

2016 Campaign Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2016	\$182,458	\$192,695	\$10,237 Understated
Receipts	\$1,087,161	\$1,075,355	\$11,806 Overstated
Disbursements	\$985,793	\$945,225	\$40,568 Overstated
Ending Cash Balance @ December 31, 2016	\$283,826	\$322,825	\$38,999 Understated

The overstatement of disbursements resulted from the following:

- Media expenses reported but never cleared bank \$39,498
 - Unexplained difference 1,070
- Overstatement of Disbursements** \$40,568

The \$38,999 understatement of the 2016 ending cash balance resulted from the reporting discrepancies described above, as well as prior period reporting differences.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the misstatements for 2015 and 2016 with TCFC representatives during the exit conference and provided copies of relevant work papers detailing the misstatements. In response, TCFC representatives stated that they intended to file amendments.

The Interim Audit Report recommended that TCFC amend its disclosure reports to correct the misstatements for both 2015 and 2016. In addition, TCFC should have amended its most recently filed disclosure report to correct the cash balance with an explanation that the change resulted from the prior period audit adjustment. It was further recommended that TCFC reconcile the ending cash balance of its most recent report to identify any subsequent discrepancies that would affect the adjustment recommended by the Audit staff.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, TCFC characterized the over-reported media expense of \$39,498 as an outstanding check at year end. TCFC representatives stated that the check was written on November 10, 2016 and was never cashed by the payee. When TCFC realized that the check had not been negotiated, it reissued a new check which was processed by the bank on January 10, 2017. This explanation had not been presented to the Audit staff prior to the issuance of the Interim Audit Report. However, the Audit staff believes the documentation and explanation support TCFC's position. As such, the Audit staff adjusted the bank reconciliation and re-categorized the disbursement as an outstanding check at year end. Since TCFC did not report the second disbursement in its disclosure reports, overall disbursements and the current cash-on-hand was not misstated. Therefore, in light of this clarification, no adjustment was needed to disclosure reports for this matter.

TCFC representatives also clarified other immaterial adjustments presented by the Audit staff in the bank reconciliation. Specifically, they stated that over-reported receipts totaling \$11,200 were reversals of contributions made in previous election cycles and one disbursement made in 2015 that was not cashed by the payee. This explanation had not been presented to the Audit staff prior to the issuance of the Interim Audit Report. However, the Audit staff believes the documentation and explanation support TCFC's position, but the Audit staff does not agree with the manner in which TCFC reported the reversals. While the manner in which TCFC reported the reversals did result in a correct cash balance, it also resulted in TCFC overstating its receipts and disbursements in its disclosure reports. TCFC agreed that it should have disclosed the reversals as negative disbursements on Schedule B (Itemized Disbursements). To correct this matter, TCFC amended its disclosure report in the manner recommended by the Audit staff.

Finding 2. Receipt of Contributions in Excess of the Limit

Summary

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that TCFC received apparent excessive contributions totaling \$74,302. These errors occurred as a result of TCFC not resolving the excessive portions of contributions by forwarding presumptive redesignation or reattribution letters to its contributors, obtaining signed redesignation letters from its contributors, or issuing refunds of the excessive portions of contributions in a timely manner. In response to the exit conference, TCFC materially resolved, albeit untimely, the apparent excessive contributions. In response to the Interim Audit Report recommendation, TCFC provided documentation which demonstrated that the refund check had been negotiated and stated that it has fully complied with the auditors' recommendations as to this finding.

Legal Standard

- A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,700 per election from any one person or \$5,000 per election from a multicandidate political committee. 52 U.S.C. §30116; 11 CFR §§110.1(a) and (b) and 110.9.
- B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
- Return the questionable check to the donor; or
 - Deposit the check into its federal account and:
 - Keep enough money in the account to cover all potential refunds or establish a separate account in a campaign depository for such contributions;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;

- Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation); and
- If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

C. Joint Contributions. Any contribution made by more than one person, except for a contribution made by a partnership, must include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

D. Reattribution of Excessive Contributions. The Commission regulations permit committees to ask contributors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

- The reattribution must be signed by both contributors;
- The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Presumptive Reattribution - Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be presumptively attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

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

E. Redesignation of Excessive Contributions. When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

- The redesignation must be signed by the contributor;
- The redesignation must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

Presumptive Redesignation - When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. 11 CFR §110.1(b)(5)(ii)(B)(1)-(4).

The committee is required to notify the contributor by any written method, including electronic mail, of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead. 11 CFR §110.1(b)(5)(ii)(B)(5) and (6).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff utilized sample testing and reviews of other contributions not included in the sample population to identify apparent excessive contributions from individuals.

Excessive Contributions – Testing Method	
Sample Projection Amount ³	\$51,802
Review of contributions not in the sample (error amount)	\$6,900
Review of contributions redesignated to the 2018 Primary election (error amount)	\$15,600
Total Amount of Excessive Contributions	\$74,302
Reasons for Excessive Contributions	
Contributions not resolved via presumptive letter or refund	\$58,702
Contributions not resolved via signed redesignation letter or refund	\$15,600
Total Amount of Excessive Contributions	\$74,302

B. Additional Information

The errors totaling \$6,900 were the result of TCFC not sending a presumptive letter to its contributors informing them how their contribution had been attributed or designated by TCFC. The errors totaling \$15,600 were the result of TCFC designating contributions to the 2018 Primary election without authorization from its contributors.

TCFC did not maintain a separate account for questionable contributions. However, based on its cash-on-hand at the end of the audit period (\$322,825), it appears that TCFC did maintain sufficient funds to make refunds of the apparent excessive contributions.

C. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with TCFC representatives at the exit conference and provided schedules of the apparent excessive contributions. TCFC representatives asked questions regarding the documentation needed to resolve the excessive contributions. The Audit staff explained that the presumptive letters sent in response to the exit conference would untimely resolve most of the excessive contributions. For others, obtaining a signed redesignation letter would untimely resolve the excessive contributions.

In response to the exit conference, TCFC submitted the following documentation:

³ The sample error projection (\$51,802) is based on a Monetary Unit Sample with a 95 percent confidence level. The sample estimate could be as low as \$34,528 or as high as \$74,141. A review of other contributions not included in the sample population identified excessive contributions totaling \$6,900.

Corrective Action Taken in Response to Exit Conference	
Presumptive Letters Sent <i>Untimely</i>	\$47,500
Signed Resignation Letters Obtained <i>Untimely</i>	\$13,000
Refund Issued <i>Untimely</i>	\$2,600

The Audit staff concluded that, of the \$74,302 in excessive contributions, TCFC demonstrated that it resolved contributions totaling \$63,100 in an untimely manner. As such, TCFC has materially resolved the excessive contributions, albeit untimely.

The Interim Audit Report recommended that TCFC provide documentation which demonstrated that the refund check had been negotiated for the untimely refund of \$2,600. It was further recommended that TCFC provide any comments it deemed relevant to this matter.

D. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, TCFC provided documentation which demonstrated that the refund check of \$2,600 had been negotiated. In addition, TCFC stated it has fully complied with the auditors' recommendations as to this finding.