



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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May 30, 2008

MEMORANDUM

AGENDA ITEM

For Meeting of: 12-18-08

To: The Commission

Through: Patrina M. Clark
Staff Director

From: John D. Gibson
Chief Compliance Officer

Joseph F. Stoltz
Assistant Staff Director
Audit Division

Alex Boniewicz
Audit Manager

By: Kendrick Smith
Lead Auditor

Subject: Report of the Audit Division on Karen Carter for Congress (A07-29)

Attached for your approval is the subject report.

Recommendation

The Audit staff recommends that the report be approved.

This report is being circulated on a tally vote basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session. If you have any questions, please contact Kendrick Smith or Alex Boniewicz at 694-1200.

Attachment:

Report of the Audit Division on Karen Carter for Congress



Report of the Audit Division on Karen Carter for Congress

August 21, 2006 – December 31, 2006

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)

Karen Carter for Congress is the principal campaign committee for Karen Carter, Democratic candidate for the U.S. House of Representatives from the state of Louisiana, 2nd District and is headquartered in New Orleans, Louisiana. For more information, see chart on the Campaign Organization, p. 2.

Financial Activity (p. 2)

- **Receipts**
 - Contributions from Individuals \$ 1,111,540
 - Contributions from Political Committees 158,488
 - Candidate Loan 39,500
 - Other Receipts 2,379
 - **Total Receipts** \$ 1,311,907
- **Disbursements**
 - Operating Expenditures & Other Disbursements \$ 1,276,626
 - **Total Disbursements** \$ 1,276,626

Findings and Recommendations (p. 3)

- Receipt of Prohibited Contributions (Finding 1)
- Receipt of Contributions that Exceed Limits (Finding 2)
- Failure to File 48-Hour Notices (Finding 3)
- Disclosure of Occupation/Name of Employer (Finding 4)
- Itemization of Contributions from Other Political Committees (Finding 5)

¹ 2 U.S.C. §438(b).

Report of the Audit Division on Karen Carter for Congress

August 21, 2006 – December 31, 2006



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Part I

Background

Authority for Audit

This report is based on an audit of Karen Carter for Congress (KCC), 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 threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

Following Commission approved procedures, the Audit staff evaluated various risk factors and as a result, the scope of this audit was limited to the following:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The consistency between reported figures and bank records.
5. The completeness of records.
6. Other committee operations necessary to the review.

Part II

Overview of Campaign

Campaign Organization

Important Dates	Karen Carter for Congress
• Date of Registration	August 25, 2006
• Audit Coverage	August 21, 2006 – December 31, 2006
Headquarters	New Orleans, Louisiana
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Three Business Checking Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Kenneth M. Carter
• Treasurer During Period Covered by Audit	Kenneth M. Carter
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	James S. Burland

Overview of Financial Activity (Audited Amounts)

Cash on hand @ August 21, 2006	\$ 0
○ Contributions from Individuals	\$ 1,111,540
○ Contributions from Political Committees	158,488
○ Candidate Loan	39,500
○ Other Receipts	2,379
Total Receipts	\$ 1,311,907
○ Operating Expenditures & Other Disbursements	\$ 1,276,626
Total Disbursements	\$ 1,276,626
Cash on hand @ December 31, 2006	\$ 35,281

Part III

Summaries

Findings and Recommendations

Finding 1. Receipt of Prohibited Contributions

The Audit staff identified 28 contributions totaling \$21,450 which, without additional information from the contributor, appeared to be from prohibited sources. In response to the interim audit report, KCC provided copies of letters in which the LLC and LLP contributors attested that they were eligible to make contributions to federal campaigns. (For more detail, see p. 4)

Finding 2. Receipt of Contributions that Exceed Limits

The Audit staff identified contributions from 40 individuals that exceeded the limitation by \$65,227. Excessive contributions totaling \$56,027 were caused by KCC's failure to send individuals notification of presumptive election redesignation and contributor reattribution. The remaining \$9,200 was not eligible for presumptive redesignation and reattribution and should have been refunded. In response to the interim audit report, KCC provided evidence that redesignation and/or reattribution letters were sent, demonstrated that contributions totaling \$4,200 were not excessive, and disclosed the remaining excessive contributions as debts on amended disclosure reports it filed. (For more detail, see p. 6)

Finding 3. Failure to File 48-Hour Notices

KCC failed to file 48-hour notices for 33 contributions totaling \$57,000 received prior to the general and run-off elections. In response to the interim audit report, KCC demonstrated that nine contributions totaling \$14,500 were not received within the 48-hour reporting period. (For more detail, see p. 9)

Finding 4. Disclosure of Occupation/Name of Employer

KCC failed to disclose the occupation and/or name of employer for 28% of itemized contributions from individuals. These contributions totaled \$452,793. Furthermore, there was no evidence that KCC utilized "best efforts" to obtain, maintain, and submit the missing information. In response to the interim audit report, KCC materially corrected these deficiencies by filing amended reports which disclosed the missing information for contributions totaling \$351,628 and demonstrated that it had used best efforts for contributions totaling \$79,870. (For more detail, see p. 9)

Finding 5. Itemization of Contributions from Other Political Committees

KCC failed to itemize 16 contributions from other political committees totaling \$7,591 on Schedules A (Itemized Receipts) of its disclosure reports. In response to the interim audit report, KCC disclosed these contributions in amended reports. (For more detail, see p. 11)

Part IV

Findings and Recommendations

Finding 1. Receipt of Prohibited Contributions

Summary

The Audit staff identified 28 contributions totaling \$21,450 which, without additional information from the contributor, appeared to be from prohibited sources. In response to the interim audit report, KCC provided copies of letters in which the LLC and LLP contributors attested that they were eligible to make contributions to federal campaigns.

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).²

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. The contribution is considered a contribution from a partnership if the LLC chooses to be treated as a partnership under Internal Revenue Service (IRS) tax rules, or if it makes no choice at all about its tax status. For the 2006 election, a partnership contribution may not exceed \$2,100 per candidate, per election, and it must be attributed to each lawful partner. 11 CFR §110.1(a), (b), (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

² In December 2007, the Commission considered an advisory opinion request in which a limited liability partnership (LLP) that elected corporate tax treatment asked whether the Commission considered it a corporation, and if so, would it be permitted to support a separate segregated fund (SSF). Although the Commission declined to act on this request, such entities may elect corporate tax treatment and should provide the same documentation that is required of a limited liability company.

- 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 after the treasurer receives 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 campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).
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 of legality includes, 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 these 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 covering the period in which the refund was made. 11 CFR §103.3(b)(1).

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

The Audit staff reviewed all contributions received by KCC and identified 28 contributions totaling \$21,450 which appeared to be from apparent prohibited sources. Most of these entities were either limited liability companies, limited liability partnerships, or corporations. As such, each contributing entity was required to affirm to KCC that it was eligible to make the contribution. Records provided by KCC did not contain any such affirmations or any follow-up by KCC.

The Audit staff presented this matter to KCC's representatives during the exit conference along with a schedule of the apparent prohibited contributions. KCC representatives stated they would review the matter and use all means to rectify the matter.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that KCC provide evidence that these contributions were not prohibited. Absent such evidence, KCC should have refunded the \$21,450 to the contributors and provided documentation for such refunds (i.e. copies, front and back, of

each negotiated refund check); or disgorged these funds to the U.S. Treasury. If funds were not available to make the refunds, then the refunds due should have been disclosed on Schedule D (Debts and Obligations) until funds became available to make the refunds.

In response to the interim audit report, KCC materially complied with Audit staff's recommendations by providing letters completed by LLC and LLP contributors which attested to their permissibility to contribute to federal campaigns.

Finding 2. Receipt of Contributions that Exceed Limits

Summary

The Audit staff identified contributions from 40 individuals that exceeded the limitation by \$65,227. Excessive contributions totaling \$56,027 were caused by KCC's failure to send individuals notification of presumptive election redesignation and contributor reattribution. The remaining \$9,200 was not eligible for presumptive redesignation and reattribution and should have been refunded. In response to the interim audit report, KCC provided evidence that redesignation and/or reattribution letters were sent, demonstrated that contributions totaling \$4,200 were not excessive, and disclosed the remaining excessive contributions as debts on amended disclosure reports it filed.

Legal Standard

A. Authorized Committee Limits. For the 2006 election, an authorized committee may not receive more than a total of \$2,100 per election from any one person as adjusted by the Consumer Price Index (CPI). 2 U.S.C. §441a(a)(1)(A), (c) and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- return the questionable contribution to the donor; or
- deposit the contribution into a campaign depository and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

The excessive portion of contributions may also be redesignated to another election or reattributed to another contributor as explained below.

C. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the

committee 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.

The committee is required to notify the contributor in writing 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. For this action to be valid, the committee must retain copies of the notices sent. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

- D. Reattribution of Excessive Contributions.** When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.
- The committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by all contributors; or
 - refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).

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 attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

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

For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(l)(4)(ii).

E. Refund or Disgorge Questionable Contributions. If the identity of the original contributor is known, the committee should 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

The Audit staff identified 42 contributions from individuals that exceeded the limitation by \$65,227. Of these excessive contributions, four were excessive by \$5,000 for the primary election, 28 were excessive by \$46,420 for the general election, and 10 were excessive by \$13,807 for the run-off election.

In most instances, KCC either reattributed the excessive amount to another individual, or redesignated the excessive amount to the next election. However, in either case, KCC did

not provide evidence of written reattributions or redesignations or provide evidence that the contributors were notified of any presumptive reattribution or redesignation made.

Of the excessive contributions, \$56,027 could have been resolved by KCC sending presumptive redesignations and/or reattributions letters. The remaining excessive contributions totaling \$9,200 appeared resolvable only by refund to the contributor or disgorgement to the U.S. Treasury. In most instances, these contributions were written on checks, imprinted with a single account holder, for the run-off election and the excessive amounts, therefore, were not eligible for redesignation or reattribution. It should also be noted that KCC did not maintain a sufficient balance in its bank account to refund the excessive contributions.

The Audit staff discussed this matter with KCC representatives at an exit conference and provided a schedule of the excessive contributions. The representatives stated they would review the matter and comply with the Audit staff's recommendation.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that KCC:

- Provide evidence demonstrating that the contributions were not excessive. Evidence should have included documentation that was not made available to the Audit staff during the audit, including copies of solicitation cards completed by the contributors at the time of their contribution that clearly informed the contributors of the limitations; timely notifications sent to contributors eligible for presumptive redesignation and/or reattribution; or, timely refunds (copies of the front and back of negotiated refund checks), redesignations, or reattributions for excessive contributions; or,
- Absent such evidence, KCC should have sent notices to those contributors that were eligible for presumptive redesignation and/or reattribution (\$56,027) to inform those contributors how the contribution was designated and/or attributed and offering the contributors the option of receiving a refund of the excessive amount. KCC should have provided evidence to the Audit staff that the notices were sent. Absent the contributor's request for a refund, these notices would have obviated the need to refund the contributions or make a payment to the U.S. Treasury; and,
- For the remaining excessive contributions, KCC should have refunded the excessive portion to the contributors or paid the amount to the U.S. Treasury. If refunds were made, KCC should have provided evidence of such refunds (copies of the front and back of negotiated refund checks); or
- If funds were not available to make the necessary refunds, disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds became available to make such refunds.

In response to the interim audit report recommendation, KCC provided copies of letters sent to contributors that were eligible for presumptive redesignation and/or reattribution (\$56,027). KCC also demonstrated that one contribution for \$4,200 had been returned by the bank due to insufficient funds. For the remaining contributions (\$5,000), KCC filed amended reports disclosing them as debts.

Finding 3. Failure to File 48-Hour Notices

Summary

KCC failed to file 48-hour notices for 33 contributions totaling \$57,000 received prior to the general and run-off elections. In response to the interim audit report, KCC demonstrated that nine contributions totaling \$14,500 were not received within the 48-hour reporting period.

Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate. 11 CFR §104.5(f).

Facts and Analysis

The Audit staff reviewed 226 contributions, totaling \$381,688, which were greater than or equal to \$1,000 and received during the 48-hour notice filing periods of the general and run-off elections. KCC did not file 48-hour notices for 33 contributions totaling \$57,000 (\$34,700 for the general and \$22,300 for the run-off elections).

Subsequent to the exit conference, a KCC representative was provided a schedule of the 48-hour notices not filed. The representative stated she would review the schedule and respond accordingly.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended KCC provide:

- documentation to demonstrate the contributions in question were properly included in 48-hour notices; or,
- documentation establishing the contributions were not subject to 48-hour notification; and/or,
- any written comments it considered relevant.

In response to the interim audit report, KCC provided copies of deposit tickets and contributor checks, demonstrating that it had not received nine contributions totaling \$14,500 within the 48-hour reporting period. Of these, one contribution was never received by KCC (duplicate entry).

Finding 4. Disclosure of Occupation/Name of Employer

Summary

KCC failed to disclose the occupation and/or name of employer for 28% of itemized contributions from individuals. These contributions totaled \$452,793. Furthermore, there was no evidence that KCC utilized “best efforts” to obtain, maintain, and submit the missing information. In response to the interim audit report, KCC materially corrected these deficiencies by filing amended reports which disclosed the missing information for

contributions totaling \$351,628 and demonstrated that it had used best efforts for contributions totaling \$79,870.

Legal Standard

- A. Disclosure of Receipts.** For each itemized contribution, the committee must provide the following information:
- The full name and address (including zip code) of the contributor or other source;
 - The name of the contributor’s employer (if the contributor is an individual);
 - The contributor’s occupation (if the contributor is an individual);
 - Election to which a contribution or loan was designated;
 - The date of receipt;
 - The amount; and
 - The aggregate election cycle-to-date of all receipts (within the same category) from the same source. 2 U.S.C. §434(b)(3)(A) and 11 CFR §§100.12 and 104.3(a)(4).
- B. Best Efforts Ensures Compliance.** When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee’s reports and records will be considered in compliance with the Act. 2 U.S.C. §432(h)(2)(i).
- C. Definition of Best Efforts.** The treasurer and the committee will be considered to have used “best efforts” if the committee satisfied all of the following criteria:
- All written solicitations for contributions included:
 - A clear request for the contributor’s full name, mailing address, occupation, and name of employer; and
 - The statement that such reporting is required by Federal law.
 - Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
 - The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee’s records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

A review of contributions from individuals revealed that 450 contributions totaling \$452,793 lacked or did not adequately disclose the occupation and/or name of employer. In most cases, the required information was either missing or disclosed as “Information Requested” or “REQUESTED.” The records provided to the Audit staff did not contain any follow-up request for the information. Therefore, KCC did not demonstrate “Best Efforts” to obtain, maintain, and submit the necessary information.

The Audit staff discussed this matter with KCC representatives at an exit conference and provided schedules of the disclosure errors. KCC representatives stated they would review the matter and make every effort to obtain the missing information. Subsequent to the exit conference, a KCC representative provided schedules listing occupation and name of

employer information for 287 of the 450 contributions missing the information. In addition, KCC submitted letters it sent to another 51 contributors in an attempt to obtain the missing information.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that KCC contact each contributor still lacking occupation and name of employer information, submit evidence of such contact, and file amended reports to disclose any information in hand or obtained as the result of additional efforts.

In response to the interim audit report, KCC submitted documentation showing it had contacted contributors relative to 423 of these contributions and had received updated information for 297 contributions (66% of missing information). KCC submitted amended reports which disclosed the missing information for contributions totaling \$351,628. In addition, it demonstrated "best efforts" for additional contributions totaling \$79,870 by providing copies of letters sent to contributors to obtain missing information (28% of missing information). These actions materially comply with the Audit staff's recommendation.

Finding 5. Itemization of Contributions from Other Political Committees

Summary

KCC failed to itemize 16 contributions from other political committees totaling \$7,591 on Schedules A (Itemized Receipts) of its disclosure reports. In response to the interim audit report, KCC disclosed these contributions in amended reports.

Legal Standard

Regardless of Amount. Several types of receipts must be itemized on Schedule A regardless of amount. They include:

- Contributions from political committees and similar organizations;
 - Transfers from other party committees and party organizations;
 - Transfers from non-federal accounts and of Levin funds;
 - Loans received;
 - Loan payments received; and
 - Refunded contributions received from political committees.
- 2 U.S.C. §434(b)(3)(B), (C), (D) and (E).

Facts and Analysis

The Audit staff identified 16 contributions from other political committees totaling \$7,591 that were not itemized on Schedules A of KCC's disclosure reports. All the contributions were from federal political action committees which require itemization on Schedule A, Line 11(c). Included among the contributions were five in-kind contributions reported by Planned Parenthood Action Fund, Inc. (PPAF) totaling \$4,774. KCC provided a letter from PPAF stating it had no record of notifying KCC of its in-kind contributions. As such, KCC contended it had no knowledge of these in-kind contributions from PPAF.

Subsequent to the exit conference, the Audit staff discussed these matters with KCC representatives and provided a schedule of the transactions noted above. A representative stated she would review this matter.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that KCC amend its reports to disclose these transactions. In response to the interim audit report recommendation, KCC filed amended reports disclosing these contributions.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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A07-20

December 4, 2008

MEMORANDUM

To: The Commission

Through: Joseph F. Stoltz *JFS*
Acting Staff Director

From: John D. Gibson *JDG*
Chief Compliance Officer

Wanda J. Thomas *WJT*
Assistant Staff Director
Audit Division

Alex Boniewicz *AB*
Audit Manager

By: Kendrick Smith *KS*
Lead Auditor

Subject: Report of the Audit Division on Karen Carter for Congress (A07-29)

This office is submitting an Errata to the subject report circulated November 12, 2008. The voting deadline was November 19, 2008; however, the document has not yet been placed on an open session agenda. On page 4 of the report, Footnote 2 has been revised to read:

“In July 2008, the Commission responded to an advisory opinion request from an LLP organized under the laws of Florida, which elected corporate tax treatment for Federal tax purposes and, although taxed as a corporation in other states, would be taxed as a partnership in the states of Florida and Massachusetts. This LLP wanted to know whether the Commission considered it a corporation or partnership under the Act and Commission regulations and would it be permitted to support a separate segregated fund (SSF). The Commission determined that it would consider the LLP to be a partnership. This suggests that contributions from such entities should be treated in a manner similar to LLCs, requiring the Audit staff to determine tax filing status of an LLP with the appropriate state.”

Attached is the substitute page. This change does not affect the Audit staff's recommendation on this matter. If you have any questions, please contact Kendrick Smith or Alex Boniewicz at 694-1200.

Part IV

Findings and Recommendations

Finding 1. Receipt of Prohibited Contributions

Summary

The Audit staff identified 28 contributions totaling \$21,450 which, without additional information from the contributor, appeared to be from prohibited sources. In response to the interim audit report, KCC provided copies of letters in which the LLC and LLP contributors attested that they were eligible to make contributions to federal campaigns.

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).²

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.** The contribution is considered a contribution from a partnership if the LLC chooses to be treated as a partnership under Internal Revenue Service (IRS) tax rules, or if it makes no choice at all about its tax status. For the 2006 election, a partnership contribution may not exceed \$2,100 per candidate, per election, and it must be attributed to each lawful partner. 11 CFR §110.1(a), (b), (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

² In July 2008, the Commission responded to an advisory opinion request from an LLP organized under the laws of Florida, which elected corporate tax treatment for Federal tax purposes and, although taxed as a corporation in other states, would be taxed as a partnership in the states of Florida and Massachusetts. This LLP wanted to know whether the Commission considered it a corporation or partnership under the Act and Commission regulations and would it be permitted to support a separate segregated fund (SSF). The Commission determined that it would consider the LLP to be a partnership. This suggests that contributions from such entities should be treated in a manner similar to LLCs, requiring the Audit staff to determine tax filing status of an LLP with the appropriate state.