



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

March 27, 2002

MEMORANDUM

TO: RON M. HARRIS  
PRESS OFFICER  
PRESS OFFICE

FROM: JOSEPH F. STOLTZ *JFS*  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE AUDIT REPORT ON  
NANCY KEENAN FOR MONTANA

Attached please find a copy of the audit report and related documents on Nancy Keenan for Montana, which was approved by the Commission on March 21, 2002.

All parties involved have received informational copies of the report and the report may be released to the public.

Attachment as stated

cc: Office of General Counsel  
Office of Public Disclosure  
Reports Analysis Division  
FEC Library

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REPORT OF THE AUDIT DIVISION  
ON THE  
**Nancy Keenan for Montana**

Approved March 21, 2002



FEDERAL ELECTION COMMISSION  
999 E STREET, N.W.  
WASHINGTON, D.C.

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## NANCY KEENAN FOR MONTANA

### EXECUTIVE SUMMARY

Nancy Keenan for Montana (NKFM) registered with the Federal Election Commission on June 1, 1999, as the principal campaign committee for the Nancy Ann Keenan, Democratic candidate for the U.S. House of Representatives from the State of Montana, At Large District.

The audit was conducted pursuant to 2 U.S.C. §438(b), which states that the Commission may conduct audits of any political committee whose reports fail to meet the threshold level of compliance set by the Commission.

The one finding of the audit was presented to NKFM at the completion of fieldwork on November 12, 2001, and later in the interim audit report. NKFM's response to that finding is contained in the audit report.

The following is an overview of the finding contained in the audit report.

**APPARENT EXCESSIVE CONTRIBUTIONS** — 2 U.S.C. §441a(a)(1). A review of NKFM's receipt records identified 17 contributions and two in-kind contributions, from individuals, which exceeded the contribution limitations by \$16,852. Seventeen contributions were on their face greater than \$1,000. The remaining two excessive contributions resulted from contributions that aggregated in excess of \$1,000.

In response to the interim audit report, NKFM refunded the excessive amounts to the contributors.





***REPORT OF THE AUDIT DIVISION  
ON  
NANCY KEENAN FOR MONTANA***

**I. BACKGROUND**

**A. AUDIT AUTHORITY**

This report is based on an audit of Nancy Keenan for Montana (NKFM), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code, which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under Section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall 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.

**B. AUDIT COVERAGE**

The audit covered the period from May 4, 1999, the date of the first financial transaction, through December 31, 2000. NKFM reported a beginning cash balance of \$0; total receipts for the audit period of \$1,923,276; total disbursements for the audit period of \$1,932,124; and an ending cash balance of \$30,018 on December 31, 2000.<sup>1</sup>

**C. COMMITTEE ORGANIZATION**

NKFM registered with the Federal Election Commission on June 1, 1999, as the principal campaign committee for the Nancy Ann Keenan (the Candidate), Democratic

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<sup>1</sup> These figures do not foot as the result of errors in carrying forward the ending cash on hand balance from one report to the beginning cash on hand balance of the next report; and, understating both reported receipts (\$25,692); and disbursements (\$85). The correct ending cash on hand balance was determined to be \$16,759. Further, total receipts and disbursements were calculated by summing the current period totals for each reporting period. These amounts for receipts and disbursements differ from the figures for total receipts (\$1,930,651) and total disbursements (\$1,935,363) calculated by summing the calendar year-to-date amounts reported for 1999 and 2000. These misstatements were determined to be immaterial; NKFM representatives were advised of these discrepancies.

candidate for the U.S. House of Representatives from the State of Montana, At Large District. The Treasurer for NKFM from inception through the present is Mr. Francis Bardanouve. NKFM maintains its headquarters in Helena, Montana.

To manage its financial activity, NKFM used five bank accounts. From these accounts, NKFM made approximately 1100 disbursements totaling \$1,932,209. NKFM received contributions from individuals totaling \$1,331,004, contributions from political action committees and other political committees (\$577,494), interest from investment and savings accounts (\$22,579), and, offsets to operating expenditures of \$17,891.<sup>2</sup> NKFM utilized common accounting software and campaign management software to prepare and file its reports. Accounting, recordkeeping and reporting functions were performed by paid staff, one member of which attended an FEC seminar. Other members of the staff worked in previous campaigns, although not necessarily in the preparation of reports.

#### **D. AUDIT SCOPE AND PROCEDURES**

Following Commission approved procedures, the Audit staff evaluated various risk factors and, as a result, the scope of the audit included the following general categories:

1. the receipt of contributions or loans in excess of the statutory limitations (See Finding II.);
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as the completeness and accuracy of the information disclosed;
4. the accuracy of total reported receipts, disbursements and cash balances as compared to NKFM's bank records;
5. adequate recordkeeping for NKFM's receipt transactions; and,
6. other audit procedures that were deemed necessary in the situation.

Unless specifically discussed below, no material non-compliance with statutory or regulatory requirements was detected. It should be noted that the Commission may pursue further the matter discussed in this report in an enforcement action.

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<sup>2</sup> These categories of receipts total \$1,948,968 or \$25,693 more than reported receipts of \$1,923,276. The difference was not considered material.

## II. AUDIT FINDING AND RECOMMENDATION

### APPARENT EXCESSIVE CONTRIBUTIONS

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal Office, which, in the aggregate, exceed \$1,000.

Section 110.1 (b) of Title 11 of the Code of Federal Regulations explains that *with respect to any election* means that if the contribution is not designated in writing by the contributor for a particular election then the contribution applies to the next election for that Federal office after the contribution is made. A contribution is considered made when the contributor relinquishes control over the contribution by delivering the contribution to the Candidate, the political committee, or an agent of the committee. A contribution that is mailed is considered made on the date of the postmark.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states that the treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of 11 CFR §110.1. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR §§110.1(b) or 110.1(k), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in relevant part, that any contribution which appears to be illegal under 11 CFR §103.3(b)(3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing and if a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor. If a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR §110.1(b), the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint



contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution, and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 110.1(b)(5) of Title 11 of the Code of Federal Regulations states, in relevant part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if the contribution exceeds the limitation on contributions set forth in 11 CFR §110.1(b)(1). A contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation and within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Section 110.1(l)(5) of Title 11 of the Code of Federal Regulations states, in part, that if a political committee does not retain the written records concerning redesignation or reattribution, the redesignation or reattribution shall not be effective, and the original designation or attribution shall control.

A review of NKFM's receipt records identified 17 contributions<sup>3</sup> and two in-kind contributions, from individuals, which exceeded the contribution limitations by \$16,852. Seventeen contributions were on their face greater than \$1,000. The remaining two excessive contributions resulted from contributions that aggregated in excess of \$1,000.

Additionally, of these 19 excessive contributions, 12 contributions totaling \$10,813 related to the primary election and seven contributions, totaling \$6,039, related to the general election.

For all of the excessive contributions, except one, the excessive portion was either designated to another election or attributed to another contributor on NKFM's disclosure reports. For the one exception, contributions were received and reported in different calendar years; therefore, the aggregate amount disclosed would not indicate an excessive contribution.

NKFM did not provide reattribution or redesignation letters for any of the above contributors, nor were any of the excessive contributions refunded to the contributor.

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<sup>3</sup> One contribution is from a partnership. The check was annotated to attribute the contribution to three partners. The contribution is considered to be an excessive contribution from both the partnership and the individual.

Although NKFM did not deposit these excessive contributions into a separate account they did maintain sufficient funds during most of the audit period to refund these contributions. The Audit staff determined the available cash balance to be \$16,759 on December 31, 2000.<sup>4</sup>

At the exit conference, NKFM's representatives were made aware of the apparent excessive contributions. NKFM's representatives offered no response at that time.

The interim audit report the Audit staff recommended that NKFM provide evidence demonstrating that the contributions noted above were not in excess of the limitation. Absent such evidence, it was recommended that NKFM refund these contributions and provide evidence of all refunds (copies of the front and back of the negotiated refund checks). If funds were not available to make the necessary refunds, those contributions requiring refunds were to be disclosed as debts on Schedule D (Debts and Obligations) until such time that funds became available to make the refunds.

NKFM's response to the interim audit report stated that the Candidate's status as a "first-time" candidate, the relatively large volume of NKFM's activity and the pressures of the campaign resulted in some recordkeeping lapses. The response continued by noting that the report made no suggestion that NKFM intended to receive excessive contributions; rather, the finding resulted principally from the failure to maintain certain required redesignations and reattributions. According to the response, the Candidate has taken out a personal loan on behalf of NKFM in order to make the recommended refunds. Copies of all refund checks, made prior to their negotiation, were included with the response. NKFM has agreed to furnish copies of the negotiated refund checks and bank statements as they become available.

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<sup>4</sup> The latest report filed by NKFM discloses a cash on hand balance of \$536 on December 31, 2001.





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WASHINGTON, D.C. 20463

A01-18

March 22, 2002

Mr. Francis Bardanouve, Treasurer  
Nancy Keenan for Montana  
2001 Gold Rush  
Helena, MT 59601

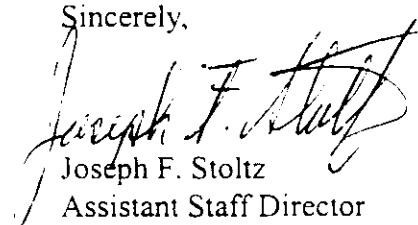
Dear Mr. Bardanouve:

Attached please find the Report of the Audit Division on Nancy Keenan for Montana. The Commission approved the report on March 21, 2002.

The Commission approved Final Audit Report will be placed on the public record on March 27, 2002. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 219-4155.

Any questions you have related to matters covered during the audit or in the report should be directed to Philomena Brooks or Alex Boniewicz of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,



Joseph F. Stoltz  
Assistant Staff Director  
Audit Division

Attachment as stated

cc: Brian Svoboda, Perkins Coie LLP



## CHRONOLOGY

### NANCY KEENAN FOR MONTANA

Audit Fieldwork	September 17 - November 12, 2001
Interim Audit Report to the Committee	January 18, 2002
Response Received to the Interim Audit Report	March 7, 2002
Final Audit Report Approved	March 21, 2002