



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 31, 2006

MEMORANDUM

TO: ROBERT W. BIERSACK
PRESS OFFICER
PRESS OFFICE

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

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
NADER FOR PRESIDENT 2004

Attached please find a copy of the final audit report and related documents on Nader for President 2004 that was approved by the Commission on January 20, 2006.

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
Web Manager



Report of the Audit Division on Nader for President 2004

October 14, 2003 – December 31, 2004

Why the Audit Was Done

Federal law requires the Commission to audit every political committee established by a candidate who receives public funds for the primary campaign.¹ The audit determines whether the candidate was entitled to all of the matching funds received, whether the campaign used the matching funds in accordance with the law, whether the candidate is entitled to additional matching funds, and whether the campaign otherwise complied with the limitations, prohibitions, and disclosure requirements of the election law.

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 Committee (p. 2)

Nader for President 2004 is the principal campaign committee for Ralph Nader, a candidate for the Independent Party's nomination for the office of President of the United States. The Committee is headquartered in Washington, DC. For more information, see chart on the Campaign Organization, p. 2.

Financial Activity (p. 3)

• Receipts	
○ Contributions from Individuals	\$ 1,541,996
○ Matching Funds Received	865,425
○ Loans Received	694,500
○ Offsets to Operating Expenditures	189,702
○ Transfers from General Committee	96,328
○ Other Receipts	39,506
○ Total Receipts	\$ 3,427,457
• Disbursements	
○ Operating Expenditures	\$ 2,647,353
○ Loan Repayments	694,500
○ Transfers to General Committee	71,136
○ Contribution Refunds	10,949
○ Other Disbursements	880
○ Total Disbursements	\$ 3,424,818

Findings and Recommendations (p. 4)

- Net Outstanding Campaign Obligations (Finding 1)
- Stale-Dated Checks (Finding 2)

¹ 26 U.S.C. §9038(a).

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Part I

Background

Authority for Audit

This report is based on an audit of Nader for President 2004 (NFP), undertaken by the Audit Division of the Federal Election Commission (the Commission) as mandated by Section 9038(a) of Title 26 of the United States Code. That section states "After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received [matching] payments under section 9037." Also, Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

Scope of Audit

This audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The receipt of transfers from other authorized committees.
4. The disclosure of contributions and transfers received.
5. The disclosure of disbursements, debts and obligations.
6. The recordkeeping process and completeness of records.
7. The consistency between reported figures and bank records.
8. The accuracy of the Statement of Net Outstanding Campaign Obligations.
9. The campaign's compliance with spending limitations.
10. Other campaign operations necessary to the review.

Inventory of Campaign Records

The Audit staff routinely conducts an inventory of campaign records before it begins the audit fieldwork. NFP's records were materially complete and the fieldwork began immediately.

Part II

Overview of Campaign

Campaign Organization

Important Dates	Nader for President 2004
• Date of Registration	February 23, 2004
• Eligibility Period ²	May 26, 2004 – September 2, 2004
• Audit Coverage	October 14, 2003 – December 31, 2004 ³
Headquarters	Washington, DC
Bank Information	
• Bank Depositories	One
• Bank Accounts	Four - checking
Treasurer	
• Treasurer When Audit Was Conducted	Carl Mayer
• Treasurer During Period Covered by Audit	Carl Mayer
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid staff

² The period during which the Candidate was eligible for matching funds, beginning on the date of certification of eligibility and ending on the date the Candidate announced his withdrawal from the campaign. See 11 CFR §9033.

³ Limited reviews of receipts and expenditures were performed through June 30, 2005 to determine whether the Candidate was eligible to receive additional matching funds.

Overview of Financial Activity (Audited Amounts)

Cash on hand @ October 14, 2003	\$ 0
o Contributions from Individuals	\$ 1,541,996 ⁴
o Matching Funds Received	865,425 ⁵
o Loans Received	694,500
o Offsets to Operating Expenditures	189,702
o Transfers from General Committee	96,328
o Other Receipts	39,506
Total Receipts	\$ 3,427,457
o Operating Expenditures	\$ 2,647,353
o Loan Repayments	694,500
o Transfers to General Committee	71,136
o Contribution Refunds	10,949
o Other Disbursements	880
Total Disbursements	\$ 3,424,818
Cash on hand @ December 31, 2004	\$ 2,639

⁴ Approximately 15,500 contributions from 11,000 individuals.

⁵ NFP received an additional \$25,603 in matching funds after 12/31/04 for a total of \$891,028. This represents 4.78% of the maximum entitlement (\$18,655,000).

Part III

Summaries

Findings and Recommendations

Finding 1. Net Outstanding Campaign Obligations

Based on its financial activity through December 31, 2004, and estimated winding down costs necessary to terminate the campaign, NFP did not receive matching fund payments in excess of the Candidate's entitlement. In response to the preliminary audit report, NFP concurred with the Audit staff's conclusion. (For more detail, see p. 5)

Finding 2. Stale-Dated Checks

The Audit staff identified 10 stale-dated checks totaling \$2,731 issued by NFP. In the preliminary audit report the Audit staff recommended that NFP provide evidence that the checks were not outstanding or make a payment of \$2,731 to the United States Treasury. In response to the preliminary audit report, NFP provided documentation that it voided and subsequently reissued 4 checks totaling \$1,578. NFP further demonstrated that as of September 30, 2005, the recipients had cashed all 4 reissued checks. Finally, NFP submitted its payment to the United States Treasury for the remaining six stale-dated checks totaling \$1,153 (\$2,731-1,578). (For more detail, see p. 8)

Summary of Amount Owed to the U.S. Treasury

No amounts are owed to the United States Treasury.

Part IV

Findings and Recommendations

Finding 1. Net Outstanding Campaign Obligations

Summary

Based on its financial activity through December 31, 2004, and estimated winding down costs necessary to terminate the campaign, NFP did not receive matching fund payments in excess of the Candidate's entitlement. In response to the preliminary audit report NFP concurred with the Audit staff's conclusion.

Legal Standard

Net Outstanding Campaign Obligations (NOCO). Within 15 days after the candidate's date of ineligibility (see definition below), the candidate must submit a statement of "net outstanding campaign obligations." This statement must contain, among other things:

- The total of all committee assets including cash on hand, amounts owed to the committee and capital assets listed at their fair market value;
- The total of all outstanding obligations for qualified campaign expenses; and
- An estimate of necessary winding-down costs. 11 CFR §9034.5(a).

Date of Ineligibility. The date of ineligibility is whichever of the following dates occurs first:

- The day on which the candidate ceases to be active in more than one state;
- The 30th day following the second consecutive primary in which the candidate receives less than 10 percent of the popular vote;
- The end of the matching payment period, which is generally the day when the party nominates its candidate for the general election; or
- In the case of a candidate whose party does not make its selection at a national convention, the last day of the last national convention held by a major party in the calendar year. 11 CFR §§9032.6 and 9033.5.

Qualified Campaign Expense. Each of the following expenses is a qualified campaign expense.

- An expense that is:
 - Incurred by or on behalf of the candidate (or his or her campaign) during the period beginning on the day the individual becomes a candidate and continuing through the last day of the candidate's eligibility under 11 CFR §9033.5;
 - Made in connection with the candidate's campaign for nomination; and
 - Not incurred or paid in violation of any federal law or the law of the state where the expense was incurred or paid. 11 CFR §9032.9.

- An expense incurred for the purpose of determining whether an individual should become a candidate, if that individual subsequently becomes a candidate, regardless of when that expense is paid. 11 CFR §9034.4.
- An expense associated with winding down the campaign and terminating political activity. 11 CFR §9034.4(a)(3).

Value of Capital Assets. The fair market value of capital assets is 60% of the total original cost of the assets when acquired, except that assets that are received after the date of ineligibility must be valued at their fair market value on the date received. A candidate may claim a lower fair market value for a capital asset by listing the asset on the NOCO statement separately and demonstrating, through documentation, the lower fair market value. 11 CFR §9034.5(c)(1).

Entitlement to Matching Payments after Date of Ineligibility. If, on the date of ineligibility (see above), a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments provided that he or she still has net outstanding campaign debts on the day when the matching payments are made. 11 CFR §9034.1(b).

Facts and Analysis

The Candidate's date of ineligibility (DOI) was September 2, 2004. After becoming ineligible due to the application of 11 CFR §9033.5, the Candidate continued to campaign for the general election. For purposes of determining Net Outstanding Campaign Obligations, the Audit staff only considered winding down costs incurred after December 3, 2004, the end of the expenditure report period as described in 11 CFR §9002.12.⁶ Winding down costs were allocated between NFP and Nader For President 2004 General Committee (General Committee) using a 67/33 ratio, respectively, as proposed by NFP and verified for reasonableness by the Audit staff. In addition, the Audit staff reviewed NFP's financial activity through September 30, 2005, analyzed estimated winding down costs, and prepared the Statement of Net Outstanding Campaign Obligations that appears on the next page:

⁶ Therefore, all operating expenditures incurred by NFP between 9/3/04 and 12/3/04 were attributed to the General Committee and, as of July 2005, were fully repaid to NFP. See Footnote [b] to NOCO Statement on the following page.

Nader for President 2004
Statement of Net Outstanding Campaign Obligations
As of September 2, 2004
Prepared September 30, 2005

Assets

Cash in Bank	\$ 28,668	[a]
Cash on Hand	803	
Accounts Receivable	36,808	[b]
Capital Assets	38,002	
Other Assets	<u>58,551</u>	
Total Assets		\$162,832

Liabilities

Accounts Payable for Qualified Campaign Expenses at 9/2/04	\$ 186,491	
Winding Down Costs:		
Actual 12/4/04 – 9/30/05	\$264,669	
Estimated Winding Down Costs (10/1/05 - 6/30/06)	<u>17,488</u>	282,157 [c]
Loan Payable at 9/2/04		105,652
Due to NFP 2004 General Committee		6,330
Amount Payable to the U.S. Treasury for:		
Stale-Dated Checks (See Finding 2)	<u>1,153</u>	[d]
Total Liabilities		<u>\$581,783</u>
Net Outstanding Campaign Obligations (Deficit) as of September 2, 2004		(\$418,951)

Footnotes to NOCO Statement:

- [a] Adjusted for stale-dated checks issued prior to DOI.
- [b] This figure includes operating expenditures of \$20,149 incurred by NFP between 9/3/04 and 12/3/04, the end of the expenditure report period (11 CFR §9002.12). As of July 28, 2005, the General Committee reimbursed the net amount payable to NFP.
- [c] The Audit staff will review NFP's disclosure reports to compare actual figures with the estimates and make adjustments accordingly.
- [d] In its response to the preliminary audit report, NFP settled this liability by submitting a payment to the United States Treasury in the amount of \$1,153. As a result, no amounts are owed to the United States Treasury. See Finding 2.

The Statement of Net Outstanding Campaign Obligations as of September 2, 2004 presented above shows NFP to be in a deficit position in the amount of \$418,951. Presented below are adjustments for funds received after September 2, 2004:

Net Outstanding Campaign Obligations (Deficit) as of 9/2/04	(\$ 418,951)
Private Contributions Received 9/3/04 through 3/1/05	215,703
Matching Funds Received 9/3/04 through 3/1/05	<u>194,522</u>
Net Outstanding Campaign Obligations (Deficit) Remaining as of 3/1/05	(\$ 8,726)

As presented above, NFP has not received matching fund payments in excess of the amount to which the Candidate is entitled.

The Audit staff's prepared Statement of Net Outstanding Campaign Obligations was provided to NFP at the conference held at the end of fieldwork and NFP offered no response.

Committee Response to Recommendation and Audit Staff's Assessment

In response to the preliminary audit report, NFP concurred with the Audit staff's conclusion that no matching funds were received in excess of the Candidate's entitlement.

Finding 2. Stale-Dated Checks

Summary

The Audit staff identified 10 stale-dated checks totaling \$2,731 issued by NFP. In the preliminary audit report the Audit staff recommended that NFP provide evidence that the checks were not outstanding or make a payment of \$2,731 to the U.S. Treasury. In response to the preliminary audit report, NFP provided documentation that it voided and subsequently reissued 4 checks totaling \$1,578. NFP further demonstrated that as of September 30, 2005, the recipients had cashed all 4 reissued checks. Finally, NFP submitted payment to the U.S. Treasury for the remaining six stale-dated checks totaling \$1,153 (\$2,731-1,578).

Legal Standard

Handling Stale-Dated (Uncashed) Checks. If a committee has issued checks that the payees (creditors or contributors) have not cashed, the committee must notify the Commission of its efforts to locate the payees and encourage them to cash the outstanding checks. The committee must also submit a check payable to the U. S. Treasury for the total amount of the outstanding checks. 11 CFR §9038.6.

Facts and Analysis

The Audit staff's reconciliation of NFP's bank accounts through December 31, 2004, and review of financial activity through March 10, 2005, identified 10 stale-dated checks totaling \$2,731 issued by NFP. The checks were dated between 4/27/04 and 9/3/04 and had not cleared the bank as of July 31, 2005.

The Audit staff provided NFP a schedule of stale-dated checks at the exit conference.

Preliminary Audit Report Recommendation

The Audit staff recommended that NFP provide evidence within 60 calendar days of service of this report that:

- The checks were not outstanding by providing copies of the front and back of the negotiated checks along with bank statements; or
- The outstanding checks had been voided by providing either:
 - Copies of the voided check with evidence that no obligation exists, or
 - Copies of the front and back of negotiated replacement checks along with bank statements.
- Absent such evidence, the Audit staff recommended that \$2,731 be paid to the U.S. Treasury; and
- The amount due should be disclosed on Schedule D-P (Debts and Obligations) until paid.

Committee Response to Preliminary Audit Report

In response to the preliminary audit report, NFP provided documentation that it voided and subsequently reissued 4 checks totaling \$1,578. NFP further demonstrated that as of September 30, 2005, the recipients had cashed all 4 reissued checks. Finally, NFP submitted payment to the United States Treasury for the remaining six stale-dated checks totaling \$1,153 (\$2,731-1,578). NFP complied with the Audit staff's recommendation and therefore no further action is necessary.