



FEDERAL ELECTION COMMISSION
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2008 NOV -5 P 1:36

November 4, 2008

MEMORANDUM

AGENDA ITEM
For Meeting of: 11-13-08

To: The Commission

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

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

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

Alex R. Boniewicz *ARB*
Audit Manager

By: Rhonda Gillingwater *RG*
Lead Auditor

Subject: Report of the Audit Division on Sharpton 2004

Attached for your approval is the subject report. The report contains the following recommendations with amounts to be paid to the U.S. Treasury.

• Finding 3	Receipt of Prohibited Contributions	\$ 486,803
• Finding 4	Receipt of Contributions that Exceed Limits	10,500
Total Due		\$ 497,303

Your attention is directed to the following matters: Finding 2, Candidate Personal Spending Limit and Finding 3, Receipt of Prohibited Contributions. These findings stem from Audit staff work involving Reverend Sharpton's (the Candidate) use of his personal American Express account to pay for presidential activity and the apparent payment of other presidential activity by the National Action Network ("NAN"), a not for profit corporation for which the Candidate serves as President.

The available records suggest that many campaign expenses were paid for using the Candidate's personal American Express (Amex) card. Sharpton 2004 paid some charges directly and for others it reimbursed the Candidate. In addition, over \$107,000 of the total charges to the Candidate's Amex card was paid by NAN; and Counsel for NAN has indicated that the remaining amount may have been paid by Rev-Als Production Inc.

During the period of the campaign, the Candidate may well have engaged in campaign-related travel, travel on behalf of NAN, travel on behalf of Rev-Als Production Inc., and purely personal travel. But virtually no effort appears to have been made by Sharpton 2004, the Candidate, NAN or Rev-Als Production Inc. to keep any sort of detailed records demonstrating what payments paid for which travel, which trips were for multiple purposes, or which legs of multi-purpose trips included campaign activity at those stops. Given 11 CFR §9034.7 (b)(2), which provides that the costs of any leg of a multi-purpose trip where campaign activity is included at the stop must be paid entirely by the campaign; given that the committee bears the burden of proof in the audit context; and given Sharpton 2004's nearly complete failure to produce any information on this subject in the course of the audit, we recommend the conclusions set forth in Findings 2 and 3.

For Finding 4, the Audit staff notes that as a result of the Commission's decision with other audits, Sharpton 2004 was provided an opportunity to send notifications to contributors whose contributions would have been eligible for "presumptive reattribution" pursuant to 11 C.F.R. §110.1(k)(3)(ii)(B) or to make refunds. Sharpton 2004 did not demonstrate that any action regarding the excessive contributions had been taken. As a result, the amount due to the U.S. Treasury was increased to \$10,500.

In addition, please note the Date of Ineligibility used in the preliminary audit report is March 15, 2004. This date was obtained from the March 22, 2004 Memorandum to the Commission entitled Notification of Date of Ineligibility – Sharpton 2004 (LRA #644). However, the Commission determined that the Candidate did not qualify for public funding calling into question the relevance of the Date of Ineligibility.

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 Alex Boniewicz or Rhonda Gillingwater at extension 1200.

Attachment:

Report of the Audit Division on Sharpton 2004



Report of the Audit Division on Sharpton 2004

August 27, 2002 – 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. 3)

Sharpton 2004 is the principal campaign committee for the Reverend Alfred C. Sharpton, a candidate for the Democratic Party's nomination for the office of President of the United States and is headquartered in Alexandria, VA. For more information, see the chart on Campaign Organization, p. 3.

Financial Activity (p. 4)

• Receipts

○ Contributions from Individuals	\$ 517,787
○ Matching Funds Received	100,000
○ Contributions from Political Committees	17,925
○ Loans Received	187,000
○ Total Receipts	\$ 822,712

• Disbursements

○ Operating Expenditures	\$ 620,633
○ Fundraising Disbursements	67,502
○ Loan Repayments	100,000
○ All Other Disbursements	33,813
○ Total Disbursements	\$ 821,948

Findings and Recommendations (p. 5)

- Net Outstanding Campaign Obligations (Finding 1)
- Candidate Personal Spending Limit (Finding 2)
- Receipt of Prohibited Contributions (Finding 3)
- Receipt of Contributions that Exceed the Limits (Finding 4)
- Misstatement of Financial Activity (Finding 5)

¹ 26 U.S.C. §9038(a).

Report of the Audit Division on Sharpton 2004

August 27, 2002 – December 31, 2004



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Part I

Background

Authority for Audit

This report is based on an audit of Sharpton 2004, 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 disclosure of contributions and transfers received.
4. The disclosure of disbursements, debts and obligations.
5. The recordkeeping process and completeness of records.
6. The consistency between reported figures and bank records.
7. The accuracy of the Statement of Net Outstanding Campaign Obligations.
8. The campaign’s compliance with spending limitations.
9. 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. Sharpton 2004 records were sufficiently complete to begin fieldwork.

Campaign Background Information

Matching Funds

In order for the Commission to certify a candidate as eligible to receive public funds under the Presidential Primary Matching Payment Account Act (the Matching Payment Act), the candidate must satisfy two basic requirements: 1) submit a letter of candidate agreement and certifications,² and 2) submit a satisfactory threshold submission of contributions that can be matched (11 CFR §§9033.2(a)(1) and (c). On March 11, 2004, the Federal Election Commission determined that Reverend Alfred C. Sharpton (the Candidate) and Sharpton 2004, satisfied the eligibility requirements to receive matching funds. On the same date, the Commission authorized an investigation of the Candidate and Sharpton 2004 under 11 CFR §9039.3(a)(1) to resolve whether Reverend Sharpton had exceeded his limitation on expenditures from personal or family funds of \$50,000,

² The Candidate signed this letter on January 2, 2004.

(personal spending limit), for the purpose of determining the Candidate's continuing eligibility for public funds under the Matching Payment Act.

Documentation subsequently reviewed by the Audit staff revealed that the Candidate had exceeded his personal spending limit and thus on April 29, 2004, the Commission made a final determination to suspend further matching funds. (See Finding 2, Candidate Personal Spending Limit, pg. 11) On May 14, 2004, the Commission determined that Sharpton 2004 must repay all matching funds (\$100,000) it had received. The Candidate paid all monies owed, making four payments of principal and interest, each in the form of a cashier's check. The last payment was received on February 23, 2006.

National Action Network

The Candidate established the National Action Network (NAN) in 1991, with the stated goal of fighting to empower people by providing extensive voter education, services aiding the poor, supporting economically small community businesses, as well as confronting racism and violations of civil and human rights. The Candidate is NAN's president. Funds raised by NAN appear to be from corporations, memberships, two annual fundraising dinners and Saturday morning rallies.

Based upon a review of NAN bank records, it is the opinion of the Audit staff that the Candidate used funds raised by NAN to promote his presidential campaign. The Audit staff noted payments for such expenses as voter registration and fundraising, as well as substantial payments to the Candidate's American Express credit card (Amex account). (See Finding 3, Receipt of Prohibited Contributions, pg. 16)

Part II

Overview of Campaign

Campaign Organization

Important Dates	Sharpton 2004
Date of Registration	January 21, 2003
Eligibility Period ³	March 11, 2004 – March 15, 2004
Audit Coverage	August 27, 2002 – December 31, 2004 ⁴
Headquarters	Alexandria, VA
Bank Information	
Bank Depositories	Two
Bank Accounts	Six – Checking Accounts
Treasurer	
Treasurer When Audit Was Conducted	Andrew Rivera
Treasurer During Period Covered by Audit	Luis A. Miranda, Jr. (January 21, 2003 - January 19, 2004) Andrew A. Rivera (January 20, 2004 – Present)
Management Information	
Attended FEC Campaign Finance Seminar	No
Used Commonly Available Campaign Management Software Package	Yes
Who Handled Accounting and Recordkeeping Tasks	Paid Staff

³ This period began with the date the Candidate satisfied matching fund eligibility requirements and ended, as determined by the Commission, when the Candidate announced he was no longer actively campaigning for the Democratic nomination for President. See 11 CFR §9033.5(1)

⁴ Sharpton 2004 has not filed a report with the Commission since its December 2004 Year End report.

Overview of Financial Activity (Audited Amounts)

Cash on hand @ August 27, 2002	\$ 0
○ Contributions from Individuals	\$ 517,787 ⁵
○ Matching Funds Received	100,000
○ Contributions from Political Committees	17,925
○ Loans Received	187,000
Total Receipts	\$ 822,712
○ Operating Expenditures	\$ 620,633
○ Fundraising Disbursements	67,502
○ Loan Repayments	100,000
○ All Other Disbursements	33,813
Total Disbursements	\$ 821,948
Cash on hand @ December 31, 2004	\$ 764

⁵ Approximately 2,800 contributions were received from more than 2,500 individuals.

Part III

Summaries

Findings and Recommendations

Finding 1. Net Outstanding Campaign Obligations

A review of Sharpton 2004's financial activity indicated that as of March 15, 2004, it was in a debt position. As noted in the background section, the Candidate has repaid all of the matching funds received (\$100,000) to the U.S. Treasury. In response to the preliminary audit report (PAR), Sharpton 2004 submitted workpapers and a narrative that addressed the Statement of Net Outstanding Campaign Obligations (NOCO) as presented in the PAR. After further review and adjustments, it is the opinion of the Audit staff that as of March 15, 2004, Sharpton 2004 was in a deficit position of \$1,426,661. (For more detail, see p. 8)

Finding 2. Candidate Personal Spending Limit

A review of Sharpton 2004's financial activity revealed that as of December 3, 2002, the Candidate had exceeded his personal spending limit of \$50,000. By the end of February 2004, the Candidate had exceeded the limit by \$500,980. The majority of the expenditures were related to expenses for travel charged to the Candidate's Amex account. In response to the PAR, Sharpton 2004 submitted its own breakdown of expenses from the Amex account, stating that it believed that \$338,743 in expenses were directly related to the Candidate's presidential campaign. Sharpton 2004 did not provide any documentation to support its breakdown. Sharpton 2004 indicated a willingness to amend its disclosure reports for those items that had not been previously reported; but to date, amended reports have not been filed. The Audit staff's revised analysis indicates that the Candidate exceeded his personal spending limit by \$446,426, a reduction of \$54,554 from the original amount. (For more detail, see p. 11)

Finding 3. Receipt of Prohibited Contributions

The PAR concluded that Sharpton 2004 received \$735,314 in possible prohibited contributions from three sources. In response to the PAR, Sharpton 2004 submitted a narrative which stated that payments to Amex should be prorated, that many of the payments had not cleared the bank and that Sharpton 2004 did not have any information to determine the sources of assets and income of the Sharpton's or NAN that were used to make payments on the account. The Audit staff's revised analysis indicated that Sharpton 2004 had received a minimum of \$486,803 in prohibited funds. As a result, Sharpton 2004 should pay \$486,803 to the U.S. Treasury. (For more detail, see p. 16)

Finding 4. Receipt of Contributions that Exceed the Limits

A review of contributions from individuals indicated that Sharpton 2004 failed to resolve excessive contributions totaling \$10,500. Of these, only one was eligible for presumptive reattribution. No copy of a reattribution letter was provided and none of the contributions

were refunded. In response to the PAR, Sharpton 2004 states that it concurred with the finding and that it would implement the recommendations made in the report. To date, no evidence to show any corrective action regarding these excessive contributions has been provided. As a result, Sharpton 2004 should pay \$10,500 to the U.S. Treasury. (For more detail, see p. 22)

Finding 5. Misstatement of Financial Activity

A comparison of Sharpton 2004's reported activity to bank records revealed that receipts and disbursements, as well as ending cash on hand, had been materially misstated in calendar year 2004. Receipts were understated by \$110,279, due primarily to not reporting the receipt of \$100,000 in matching funds. Disbursements were understated by \$24,937 for the most part due to payroll and bank fees paid in March 2004 but not reported. Ending cash on hand was understated by \$96,537. In its response to the PAR, Sharpton 2004 concurred that its activity was misstated in 2004 and indicated amended reports would be filed. To date, such reports have not been filed. (For more detail, see p. 25)

Amounts Owed to the U.S. Treasury

Finding 3	Receipt of Prohibited Contributions	\$486,803
Finding 4	Receipt of Contributions that Exceed the Limits	10,500
	Total Due U.S. Treasury	\$497,303

Part IV

Findings and Recommendations

Finding 1. Net Outstanding Campaign Obligations

Summary

A review of Sharpton 2004's financial activity indicated that as of March 15, 2004, it was in a debt position. As noted in the background section, the Candidate has repaid all of the matching funds received (\$100,000) to the U.S. Treasury. In response to the preliminary audit report (PAR), Sharpton 2004 submitted workpapers and a narrative that addressed the Statement of Net Outstanding Campaign Obligations (NOCO) as presented in the PAR. After further review and adjustments, it is the opinion of the Audit staff that as of March 15, 2004, Sharpton 2004 was in a deficit position of \$1,426,661

Legal Standard

Net Outstanding Campaign Obligations. 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).

Facts and Analysis

The Audit staff prepared a NOCO as of March 15, 2004, the Candidate's date of ineligibility. Sharpton 2004 did not include any estimated costs for winding down on its NOCO and had very little activity after the date of ineligibility. The audited statement was presented in the PAR and showed Sharpton 2004 to be in a deficit position of \$1,719,225.

In response to the PAR, Sharpton 2004 submitted a narrative and a worksheet disputing the \$735,314 in possible prohibited contributions included in the accounts payable section of the NOCO. Sharpton 2004 also contends that several of the companies that paid campaign expenses are solely owned entities of Reverend Al Sharpton and thus the money from them was in fact personal, not a prohibited contribution. No comments were made concerning the remainder of the NOCO. After further review of the workpapers and narrative submitted, the Audit staff adjusted the Accounts Payable figure for by \$54,554 (See Finding 2, Candidate Personal Spending Limit) and Amounts Payable to the U.S. Treasury by \$238,012 (See Finding 3, Receipt of Prohibited Contributions and Finding 4, Receipt of Contributions that Exceed the Limit).

The audited NOCO that appears on the next page was based on the audit of Sharpton 2004's financial activity through February 3, 2006.⁶

⁶ The NOCO is based upon incomplete documentation for 2005 and 2006. The Audit staff has requested missing bank statements, but to this date, they have not been received.

Sharpton 2004
Statement of Net Outstanding Campaign Obligations
 As of March 15, 2004
 Prepared on December 26, 2007

Assets

Cash on Hand	\$ 50	
Cash in Bank	110,703	[a]
Capital Assets	4,881	
	4,881	

Total Assets \$ 115,634

Liabilities

Accounts Payable for Qualified Campaign Expenses	\$ 844,037	[b]
Winding Down Costs:		
Paid 3/16/04 – 2/3/06	13,955	
Loans Payable at 3/15/04	187,000	[c]
Amounts Payable to U.S. Treasury for:		
Receipt of Prohibited Contributions	486,803	
Receipt of Contributions that Exceed the Limits	10,500	

Total Liabilities 1,542,295

Net Outstanding Campaign Obligations (Deficit) as of March 15, 2004 (\$ 1,426,661)

Footnotes to NOCO Statement:

- [a] Amount includes contributions dated before DOI but deposited after DOI.
- [b] Includes an additional \$326,392 in under-reported debt determined by the Audit staff to be owed by Sharpton 2004 for additional charges on the Candidate's Amex account. (See Finding 2, p.11)
- [c] Loans from banks, the Candidate and various individuals.

Finding 2. Candidate Personal Spending Limit

Summary

A review of Sharpton 2004's financial activity revealed that as of December 3, 2002, the Candidate had exceeded his personal spending limit of \$50,000. By the end of February 2004, the Candidate had exceeded the limit by \$500,980. The majority of the expenditures were related to expenses for travel charged to the Candidate's Amex account. In response to the PAR, Sharpton 2004 submitted its own breakdown of expenses from the Amex account, stating that it believed that \$338,743 in expenses were directly related to the Candidate's presidential campaign. Sharpton 2004 did not provide any documentation to support its breakdown. Sharpton 2004 indicated a willingness to amend its disclosure reports for those items that had not been previously reported; but to date, amended reports have not been filed. The Audit staff's revised analysis indicates that the Candidate exceeded his personal spending limit by \$446,426, a reduction of \$54,554 from the original amount.

Legal Standard

Limitation on expenditures from personal or family funds No candidate who has accepted matching funds shall knowingly make expenditures from his or her personal funds, or funds of his or her immediate family, in connection with his or her campaign for nomination for election to the office of President which exceed \$50,000, in the aggregate. 11 CFR §9035.2 (a) (1).

Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. 11 CFR §9035.2 (a)(2).

Allocation of Travel Expenditures For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure. For a trip which included campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related. Campaign activity includes soliciting, making, or accepting contributions, and expressly advocating the election or defeat of the candidate. Other factors, including the setting, timing and statements or expressions of the purpose of an event and the substance of the remarks or speech made, will also be considered in determining whether a stop is campaign-related.

For each trip, an itinerary shall be prepared and such itinerary shall be made available by the committee for Commission inspection. The itinerary shall show the time of arrival and departure and the type of event held. 11 CFR §9034.7 (b)(1)(2)&(3).

Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

Itemizing Debts and Obligations.

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

The Audit staff conducted two reviews prior to the start of audit fieldwork, and each review showed that the Candidate had exceeded his personal expenditure limit. The first review, based solely upon disclosure reports showed that the Candidate had exceeded his personal expenditure limit by \$51,802. The second review, based upon disclosure reports and partial documentation, comprised primarily of the Candidate's personal Amex account statements made available by Sharpton 2004 in response to subpoenas, showed that the limit had been exceeded by \$119,198 as of March 2, 2004. It should be noted that this review was hindered because documentation was incomplete. Credit card statements were incomplete. There were no credit card statements for the period before August 2003 and none after December 2003, thus the Audit staff was unable to determine if any additional amounts incurred before or after this period should have been included. In addition, there were relatively few invoices or receipts to support charges on the credit card summaries, no explanation of how payments to the Candidate were applied to outstanding amounts, and no expense reimbursement requests submitted by the Candidate. Without this documentation it was not possible to determine how the amounts listed on Sharpton 2004's disclosure reports were determined, or what campaign related expenses were incurred in 2004, although the disclosure reports reflect additional amounts had accumulated by the end of February 2004.

During fieldwork, the Audit staff reviewed additional documentation relating to disbursements and debts owed to the Candidate. Although a complete set of the Amex account statements was available for review, detailed documentation such as hotel receipts or travel itineraries were not provided.

Loans made to Sharpton 2004 by the Candidate, as well as unreported debt owed to the Candidate listed on budget documents; make up part of the amounts exceeding the limit. Any payments the Candidate received from Sharpton 2004 were deducted from this amount. The majority of expenses that exceeded the limit were charges to the Candidate's personal Amex account and were primarily for travel related expenses

starting in October 2002⁷ and running through the last statement covering February 2004. Comments obtained from a Sharpton 2004 staff person indicated that most, if not all of the travel expenses charged, were for presidential activity and thus, should have been reported. Other staff noted that NAN and presidential itineraries were often very blurred and it became increasingly difficult to separate the activity. Newspaper articles reported that often the Candidate would campaign during his NAN events. The final review of the expenditures to be applied to the Candidate's personal expenditure limit revealed that by December 3, 2002, the Candidate had exceeded the limit of \$50,000 and by the end of February 2004, the Candidate had exceeded the limit by \$500,980.

Debt Reporting

Sharpton 2004 reported some debt to the Candidate; however, based on the Audit Staff's review of the Candidate's Amex account, the debt to the Candidate was understated on disclosure reports filed in 2004 by \$380,947 to \$431,709. On its 2004 Year End Report, Sharpton 2004 disclosed debt of \$145,147; the Audit staff determined the debt to be \$526,093.

At the exit conference, the Audit staff informed Sharpton 2004's treasurer of these matters and supplied related workpapers, which included a schedule of debts and obligations that detailed amounts for the Amex account. At that time, Sharpton 2004's treasurer did not concur with the Audit staff's opinion that all Amex account travel charges were attributable to presidential activity and stated that he would submit information to prove his position. The treasurer also stated that they would not amend the reports to disclose the Audit staff's calculated amounts of debt for each report.

Preliminary Audit Report Recommendation and Committee Response

The Audit staff recommended that Sharpton 2004 submit documentation demonstrating that the Amex account charges are not presidential in nature and any additional comments it may have relating to the Candidate's personal spending limit. In addition, the Audit staff recommended that if Sharpton 2004 did not provide documentation to disprove the assessment of the Audit staff concerning the Amex account charges, it should amend its reports to correctly disclose the debt to the Candidate on Schedules D-P (Debts & Obligations excluding Loans).

In response to the PAR, Sharpton 2004 submitted a spreadsheet which listed by Amex statement period, each charge the Audit staff had noted as possible presidential expenses. To the side, it noted the category it had determined for each expense. Sharpton 2004 did not provide any documentation to support its categorization. The categories used and total amounts listed by Sharpton 2004 are summarized as follows:

⁷ The Commission determined that the Candidate was deemed to be running for President at least as early as October 2002. Based on this determination the Audit staff included expenses incurred from this date on.

Campaign [More than likely related to Sharpton 2004]	\$338,743
NAN [More than likely related to NAN]	\$132,877
Mixed [More than likely related to both NAN & Sharpton 2004]	\$27,768
Personal [More than likely related to Rev. Sharpton]	\$36,943
Canceled [Expenditures that were reversed or disallowed]	\$4,871
“?” [purpose of travel unknown to Sharpton 2004]	\$56,875
Totals	\$598,077 ⁸

Sharpton 2004 also submitted a written response in addition to the spreadsheet noted above, which stated in part, that it reviewed documents that it had provided to the Commission for the audit, matching fund inquiries and other issues to analyze expenses. It noted that problems had been encountered in the analysis due to the long lapse of time since the incurrence of the expenditures; and the fact that persons most familiar with the facts of individual trips were no longer available to provide assistance. Sharpton 2004 indicated that it was difficult to categorize Rev. Sharpton’s travel expenses on a case-by-case basis.

The response cited instances where travel categories could be confused or had combined activities such as traveling for rallies, church services, meetings and non-partisan addresses that Sharpton 2004 had not considered campaign related even though they may have had partisan consequences. The response cited examples such as attending an event to celebrate the release by the Navy, of Vieques Island to the people of Puerto Rico or preaching at a funeral for a soldier killed in the war in Iraq, a war on which political opinion is divided.

For cases such as these, Sharpton 2004 explained that all relevant factors were considered, including the event sponsor, whether the speech delivered by the Candidate was partisan or political in nature or whether it was a factual or advocacy presentation of NAN’s and/or the Candidate’s position as a civil rights or religious leader. Sharpton 2004’s response added that generally, if the purpose of the event during a trip was to promote Rev. Sharpton’s candidacy, then it would consider the expenses incurred as campaign related.

When allocating expenses, Sharpton 2004 stated that the analysis was decided in favor of charging NAN or Rev. Sharpton less and Sharpton 2004 more; if other than incidental campaign activity occurred, it considered the expense as campaign related. Sharpton 2004 contends that mixed travel (travel with campaign, NAN and Rev. Sharpton business/personal) trips ought to be allocated by percentage and mileage.

As for expenses for people traveling with the Candidate during his candidacy, Sharpton 2004 stated that it believes that employees and consultants of NAN accompanied the Candidate on trips in order to provide him those services which were essential to his

⁸ The actual amount of charges for Amex expenses per its review was \$604,476. The difference of \$6,398 is comprised of net charges the Audit staff did not consider in its evaluation and various charges through the period that Sharpton 2004 did not consider in its evaluation. The amount is considered immaterial.

NAN functions whether the trip was NAN related or non-NAN related. Therefore, Sharpton 2004 believes the allocation of NAN and consultant work for the Candidate while he was a candidate could be 100% allocable to NAN or his personal account if those persons did not perform campaign related activities on a trip. Sharpton 2004 did admit however, that it had, with certain trips, reimbursed Rev. Sharpton for the travel and expenses for several NAN employees and consultants, for example, Marjorie Harris, the Executive Director of NAN, Mr. Edward Harris and Rev. Divest Toon. Given that precedent and with an abundance of caution, Sharpton 2004 designated most of their travel and expenses as campaign related. Sharpton 2004 indicated a willingness to amend its disclosure reports for those items that had not been previously reported; but to date, amended reports have not been filed.

Audit Staff Assessment of Committee Response

In its response, Sharpton 2004 classified \$338,743 in Amex expenses as campaign related. As for items that Sharpton 2004 categorized as "Mixed," no documentation was supplied showing how it had made the determinations. As previously stated, Sharpton 2004 staff and consultants noted that NAN and presidential itineraries were often very blurred and it became increasingly difficult to separate the activity. Newspaper articles reported that often the Candidate would campaign during his NAN events. Given the above, the Audit staff believes 11 CFR §9034.7(1)(2) and (3) is applicable and considers the \$27,768 in "Mixed" travel as campaign related.

With respect to those items designated as "Canceled," the Audit staff has taken into consideration expenses that were credited on the Amex account. However, no adjustment has been made for related charges (baggage & travel insurance) which Sharpton 2004 states it "disallowed." No documentation was provided to demonstrate these were other than presidential campaign related expenses; the fact that the trip was cancelled does not change the nature of these associated expenses which remained on the Amex account.

Although Sharpton 2004 did not provide the documentation to support decisions on expenses, such as event sponsors or copies of speeches, the Audit staff attempted to verify the charges categorized as NAN, Personal or "?"(Unknown). The internet was utilized to search for news articles or information concerning the Candidate's location, the purpose of each trip or any possible comments the Candidate or his staff had made at the location.

The Audit staff was able to determine that \$25,152 in expenses marked as either NAN or Personal were not campaign related. Conversely, the Audit staff found that for \$18,730 in expenses marked as either NAN or Personal, the expenses were at best mixed.

Based upon the above, the Audit staff reduced expenditures subject to the Candidate's personal spending limit by \$54,554; \$25,152 for the NAN and Personal items noted above and the remaining \$29,402 for expenses that were credited on the Amex account not previously deducted.

As for the loans from the Candidate, Sharpton 2004 did not dispute the amounts, nor did it make any comments about other expenses applied to the limit.

The Audit staff's revised analysis indicates that the Candidate exceeded his personal spending limit by \$446,426 and under-reported debt owed to the Candidate.

Finding 3. Receipt of Prohibited Contributions

Summary

The PAR concluded that Sharpton 2004 received \$735,314 in possible prohibited contributions from three sources. In response to the PAR, Sharpton 2004 submitted a narrative which stated that payments to Amex should be prorated, that many of the payments had not cleared the bank and that Sharpton 2004 did not have any information to determine the sources of assets and income of the Sharpton's or NAN that were used to make payments on the account. The Audit staff's revised analysis indicated that Sharpton 2004 had received a minimum of \$486,803 in prohibited funds. As a result, Sharpton 2004 should pay \$486,803 to the U.S. Treasury.

Legal Standard

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.

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).

Facts and Analysis

During fieldwork, the Audit staff's review of Sharpton 2004 financial records indicated it received as much as \$735,314 in possible prohibited contributions from, at a minimum, three sources. Each of the three is discussed below.

1. National Action Network

As stated above, the Candidate established NAN in 1991, with the stated goal of fighting to empower people by providing extensive voter education, services aiding the poor, supporting economically small community businesses, as well as confronting racism and violations of civil and human rights. The Candidate is NAN's president. Funds raised by NAN appear to be from corporations, memberships, two annual fundraising dinners and Saturday morning rallies. NAN is a not for profit corporation.

Based upon a review of NAN bank records, the Candidate's Amex account statements, commentary by Sharpton 2004 staff and vendors associated with the campaign; it is the opinion of the Audit staff that the Candidate used money raised by NAN to promote his presidential campaign. As previously stated in Finding 2, the Candidate used his personal Amex account for travel. The Audit staff was able to identify a total of \$121,996 in payments from Sharpton 2004 for the Amex account, but the review also noted that NAN made payments on the Candidate's Amex account totaling \$268,076 either:

- directly in the form of NAN checks made payable to Amex,
- indirectly by NAN checks made payable to the Candidate annotated to indicate the purpose was for payment on the Amex account or
- indirectly by NAN checks made payable to cash, Rev-Als Production Inc., or Rev Al Entertainment Inc. with annotations such as "deposit on Amex overdue expense," "pay Amex travel" or "Amex charges."

In addition to payments to the Amex account, NAN paid other vendors for activity which appears related to the presidential campaign. A total of \$84,611 was paid for items such as voter registration services, fundraising and plane tickets. The Archer Group (Archer) received payments of \$45,266 for what appears to be voter registration activity. When questioned about the work Archer performed for NAN, a representative for the vendor stated NAN hired Archer to develop, write and implement a voter registration plan for NAN. In addition, Archer was to support NAN in "scheduling" and "advance" logistics. But according to a statement from the Executive Director of NAN, during this time frame, she was the only person who provided voter registration services for NAN. Based upon the Audit staff's analysis of the Amex account travel charges and the Executive Director's statement that Archer did not provide voter registration services to NAN, any scheduling and advance logistics services they provided would likely be presidential in nature.

Another \$11,100 was paid by NAN for a fundraising event on the Candidate's birthday. The event venue was paid for by Sharpton 2004, however, documentation reviewed indicated that NAN paid for birthday concert artists.

Other presidential expenses in the amount of \$21,765, such as travel to South Carolina and Washington D.C., for NAN's Executive Director, were noted. The Executive Director had previously stated that she had traveled there on behalf of the campaign.

Finally, a total of \$6,480 was paid by NAN for miscellaneous expenses in South Carolina.

2. Payments from Rev-Als Production Inc. and Other Unknown Sources

The Audit staff's review of the Candidate's Amex account statements noted that there were additional payments totaling \$343,127 for which the source was either unknown or appeared to be from prohibited sources.

There were two payments totaling \$29,928 from Rev-Als Production Inc. to NAN for Amex reimbursements. Very little is known about Rev-Als Production Inc., however, based on check copies, it appeared to be an incorporated entity⁹.

In addition, there is a payment in the amount of \$53,669 which was noted on the account statement as being a "Corporate Remittance Payment"¹⁰ for which the Audit staff has no further information. Also, there is a total of \$259,530 in payments on the Candidate's Amex account for which the Audit staff has no information concerning the source of the payments. Finally, the Audit staff noted numerous checks written on the NAN account made out to cash that were negotiated by the Candidate. As previously stated, in at least one instance, a check made out to cash was annotated to indicate that it was for an Amex credit card reimbursement. Therefore, the Audit staff believes it is probable that other NAN checks made payable to cash and negotiated by the Candidate could have been used to pay for campaign activity charged on the Candidate's Amex account. While the total is not known, the payments could represent prohibited contributions. The Audit staff requested information from Sharpton 2004 as to the source of all payments on the Amex account; but, as of the date of the PAR, that information had not been provided.

3. Loans from the Candidate

During the Audit staff's review, it was noted that the Candidate loaned \$39,500 to Sharpton 2004. Of this, \$10,000 came in the form of cashiers checks obtained from Amalgamated Bank of New York. There are several hand-written annotations on the deposit documentation that state either, "Rev.'s Cashiers Check" or "From Rev Al Sharpton." No information has been made available as to the source of these funds.

⁹ A search with the New York Secretary of State's office and other sources did not find any evidence that Rev-Als Production Inc. is a corporation. Subsequent to the PAR, Sharpton 2004 provided redacted copies of Rev. Sharpton's tax returns for 2003-2005, none of which specifically mention this entity.

¹⁰ This does not appear to be a charge reversal, which is easily distinguished on the Amex account statements. A representative from the corporate service center of American Express stated that a corporate remittance means that a payment was from a corporate source.

Another \$19,500 in loans was received in the form of a wire and a check from Rev-Als Production Inc., a company whose corporate status has not yet been confirmed.

In October of 2005, there appears to have been \$10,000 loaned or contributed to Sharpton 2004. Sharpton Media Group LLC appears to have loaned Sharpton 2004 \$5,000 on October 14, 2005. Another \$5,000 was deposited on October 21, 2005 from an unknown source. Although Sharpton 2004 has not filed disclosure reports for 2005 through 2007, the bank statement shows that four days after the deposit from Sharpton Media Group LLC, October 18, 2005, a principal and interest payment of \$4,000 was made on a loan with Amalgamated bank. Another check in the amount of \$5,500 cleared the account just five days after the second deposit on October 21, 2005, but no information is available concerning the payee or purpose of the payment.

At the exit conference, Sharpton 2004's treasurer was provided a list of possible prohibited contributions. At that time, the treasurer made no response.

Preliminary Audit Report Recommendation and Committee Response

The Audit staff recommended that Sharpton 2004 submit documentation to demonstrate that the source of funds noted by the Audit staff is not prohibited or refund \$735,314 to the U.S. Treasury. If funds are not available to make the necessary refund, the Audit staff recommended that the amount be disclosed on Schedules D-P (Debts and Obligations) until funds become available.

In its response to the PAR, Sharpton 2004 stated in part that its review of payments to the Candidate's Amex account indicates the payments were made to pay both Mrs. and Rev Sharpton's charges. Also, a substantial number of the payments to the Amex account were returned for insufficient funds. Sharpton 2004 believes that a portion of the charges remain unpaid and there is pending litigation over the unpaid charges. Sharpton 2004 stated that this makes it difficult to attach payments to transactions since the Sharpton's were continuously in arrears. Finally, the response notes that Sharpton 2004 does not have any information concerning the sources of the assets and income used by the Sharpton's or NAN to make payments on the account.

In addition to Sharpton 2004's response, Counsel for NAN submitted through the Commission's Office of General Counsel, a spreadsheet listing payments on the Candidate's Amex account for the time period in question. The spreadsheet notes that a total of \$167,717 was paid by NAN and \$335,327 was paid by Rev-Als Production Inc. With the exception of one payment of \$100,000 on April 19, 2004 the list appears complete. It should be noted that no documentation supporting payments made by Rev-Als Production Inc. has been provided to date.

Concerning NAN's payments to vendors for goods and services provided to the campaign, Sharpton 2004 states in part, that it does not have substantive knowledge about these payments. Further, it can neither confirm nor deny whether these payments were for activity related to the presidential campaign. For example, Sharpton 2004 states that

it believes Archer was hired by Rev. Sharpton to develop a written voter registration program for NAN. In conjunction with that program, Archer scheduled Rev. Sharpton for NAN activities. Sharpton 2004 contends that the program was separate and independent of the voter registration activities managed by the Executive Director of NAN, as discussed above. Sharpton 2004 also contends that Archer was contracted by Sharpton 2004 to conduct scheduling and other campaign related fieldwork. Sharpton 2004 is unsure if campaign related services were provided prior to when Sharpton 2004 retained Archer (from November 2003 – February 2004). Sharpton 2004 “cannot confirm or deny Archer Group’s services to [NAN] were ‘in-kind’ to the committee.”

With respect to loans from the Candidate, Sharpton 2004 states that upon information and belief, the \$39,500 of loans/contributions made by Rev. Sharpton to the committee came from his personal assets and income as defined by 11 CFR 100.33. The written response did not supply any documentation about \$15,000 of the \$39,500 in loans for which the Audit staff was unable to determine the source of funds.

Audit Staff Assessment of Committee Response

The PAR indicated that Sharpton 2004 had received \$735,314 in possible prohibited contributions. Based on information provided by Sharpton 2004, the Audit staff has reduced the amount of possible prohibited contributions from \$735,314 to \$486,803 as discussed below.

Payments to Amex

The Audit staff accepts Sharpton 2004’s statement that payments on the Amex account were for all expenses that comprise the balance, not just for presidential expenses. In order to allocate the payments on the Amex account, the percentage of presidential versus non-presidential charges on each monthly statement was determined and each payment was prorated based upon that percentage.

Concerning Sharpton 2004’s comments that a substantial number of the payments to the Amex account did not clear the bank, with one exception noted below, the Audit staff’s analysis only considered those payments that actually cleared.

However, payments on the Amex account included in the PAR analysis were adjusted for two payments made prior to the timeframe determined to include presidential activity and one additional payment that never cleared the bank. After these adjustments, \$603,044 in payments is prorated between presidential and non-presidential activity.

Of the \$603,044 in payments, \$167,717 is acknowledged and partially documented as having come from NAN, an incorporated entity. Of the remaining \$435,327, the spreadsheet from NAN’s Counsel implies that \$335,327 was paid by Rev-Als Production Inc. No information from any source is available concerning the source of funds for a \$100,000 payment on April 19, 2004 payment. Since no documentation was provided to support the source of funds for payments other than those made by NAN, the Audit staff considers the entire \$603,044 to have been made with prohibited funds.

By applying the percentages discussed above to the payments totaling \$603,044, it is concluded that \$387,192 of the payments are for presidential activity and the remaining \$215,852 are for non-presidential activity. Of this \$387,192, \$107,615 appears to have been paid by NAN. Of the remaining prorated amount, \$279,577, Counsel for NAN indicates \$209,577 was made by Rev-Als Production Inc. No information is available for the remainder.

Regardless of whether Rev-Als Production Inc. made the payments, a question arises concerning the source of the money used to fund them. During the Audit staff's review it discovered payments made by NAN to Rev-Als Production Inc. Inc. for Amex expenses (\$40,000). Also noted was a payment of \$21,000 to Rev. Al Sharpton which indicated on the memo line of the check that it was for "Rev-Als Production Inc. for Amex reimbursements." Additionally the Audit staff noted a NAN payment to cash (\$7,600) for Amex travel as well as an \$8,000 payment to Rev. Al Entertainment Inc.¹¹ for Amex charges on which Sharpton 2004 has made no comment.¹² The Audit staff contends that even if Rev-Als Production Inc. had made the payments, there is considerable evidence to question the acceptability of the funds used.

Finally, neither NAN's Counsel nor Sharpton 2004 have made any comment concerning \$121,996 in payments that Sharpton 2004 made for Amex reimbursements. Since these payments went directly to the Candidate¹³ the Audit staff is unable to determine if any of the money actually was used to make payments on the Amex account.

In conclusion, it is the opinion of the Audit staff that Sharpton 2004 accepted at least \$387,192 (\$107,615 – NAN, + \$279,577 – unknown source) in prohibited contributions in the form of payments for campaign expenses charged on the Candidate's Amex account.

Indirect Payments from NAN for Presidential Activity

Sharpton 2004 argues in its response that \$84,611 in payments by NAN primarily to Archer were for a voter registration program for NAN.

The Audit staff is not persuaded by Sharpton 2004's response. As stated above, the Audit staff had questioned the Executive Director of NAN concerning voter registration programs and had been assured that she was the only person who had conducted any such program. The contract language available for review indicates that the work performed by Archer could be construed as presidential activity. With respect to the remaining expenses for scheduling and traveling, campaign staff mentioned that NAN and presidential itineraries were often very blurred and it became increasingly difficult to

¹¹ Tax returns provided by Sharpton 2004 indicate this is a subchapter S corporation.

¹² These amounts were included in the preliminary audit report's table under NAN – Amex Payments (\$268,076). The Audit staff has removed them from that category and notes that they may have funded Amex account payments through Rev-Als Production Inc.

¹³ One payment, for \$30,000 was reported as a payment to the Candidate, but documentation suggests it went to Rev-Als production Inc. As such, it is unclear to the Audit staff who actually received the money

separate the activity. Newspaper articles reported that often the Candidate would campaign during his NAN events.

Given this information, it seems reasonable to conclude that the scheduling and travel expense included in the \$84,611 may have been mixed activity. However, under 11CFR §9034.7(1)(2) and (3) such expenses are considered entirely campaign.

Loans from the Candidate

Sharpton 2004's response states that the \$39,500 of loans/contributions made by Rev. Sharpton to his presidential campaign, came from his personal assets and income as defined by 11 CFR §100.33. Of the \$39,500, the Audit Staff notes that \$24,500 in loans appear to have come from Rev-Als Production Inc. and Sharpton Media Group LLC. No evidence was found to indicate that these companies are corporations and tax information provided indicates that Sharpton Media Group LLC is wholly owned by Rev Sharpton. It is therefore concluded the \$5,000 loan drawn on the Sharpton Media Group LLC is from the Candidate's personal funds.

However, for \$15,000 of the loans, no documentation as to the source of the funds has been provided. and the Audit staff continues to view this amount as impermissible funds.

In summation, as shown in the chart below, it is the opinion of the Audit staff that Sharpton 2004 has received at least \$486,803 in possible prohibited contributions.

NAN – Amex Payments	\$107,615
Unknown Source Amex Payments	279,577
NAN – Other Vendors	84,611
Unknown Source Loans	15,000
Total	\$486,803

Recommendation

The Audit staff recommends that, within 30 days of service of this report, Sharpton 2004 pay \$486,803 to the U.S. Treasury.

Finding 4. Receipt of Contributions that Exceed the Limits

Summary

A review of contributions from individuals indicated that Sharpton 2004 failed to resolve excessive contributions totaling \$10,500. Of these, only one was eligible for presumptive reattribution. No copy of a reattribution letter was provided and none of the contributions were refunded. In response to the PAR, Sharpton 2004 stated that it concurred with the finding and that it would implement the recommendations made in the report. To date, no evidence to show any corrective action regarding these excessive contributions has been provided. As a result, Sharpton 2004 should pay \$10,500 to the U.S. Treasury.

Legal Standard

Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person or \$5,000 per election from a multicandidate political committee. 2 U.S.C. §441a(a)(1)(A), (2)(A) and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).

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;
 - 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 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).

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 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).

Reattribution of Excessive Contributions. Commission regulations permit committees to ask donors 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:

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

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).

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, within 60 days of receipt, inform each contributor:

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

Facts and Analysis

The Audit staff's review of contributions from individuals noted that Sharpton 2004 received contributions from six individuals that exceeded the limitation by \$10,500. Sharpton 2004 presumptively reattributed five of the contributions, but failed to notify contributors of its actions by a written notification that offered a refund. Further, only one of those contributors was eligible for presumptive reattribution. For two of the contributions, there was a memo on a disclosure report which stated that a \$1,000 refund would be made. To date, Sharpton 2004 has neither provided evidence that a reattribution letter has been sent, nor that the refunds have been made.

At the exit conference, the Audit staff discussed the matter with Sharpton 2004's treasurer and provided a schedule of the excessive contributions. The treasurer had no comment at that time.

Preliminary Audit Report Recommendation and Committee Response

The Audit staff recommended Sharpton 2004:

- Provide evidence that the identified contributions were not excessive; or,
- For the one excessive contribution that could have been resolved by sending the notification specified at 11 CFR §110.1(k)(3)(ii)(B), Sharpton 2004 could have sent such a letter to inform the contributor how the contribution was attributed and offer a refund. That letter might have obviated the need for a contribution refund or payment to the U.S. Treasury. For the notification sent to the contributor, Sharpton 2004 should have provided a copy of the notification and evidence that it had been sent. Such notification should have demonstrated that both the contributor and the individual to whom the contribution was reattributed to were notified; or
- For any excessive contribution, Sharpton 2004 could have refunded the excess portion to the contributor in lieu of paying the amount to the U.S. Treasury. Sharpton 2004 should have provided evidence of the refunds (i.e. – copies of the front & back of the negotiated refund check). Such refunds would have reduced the payment required to the U.S. Treasury.
- If funds were not available to make the necessary refunds, Sharpton 2004 should have reported the amounts to be refunded as debts on Schedules D-P until funds became available to make the refunds.

In response to the PAR Sharpton 2004 states that it concurs with the finding and that it would implement the recommendations made in the report. Sharpton 2004 has provided no evidence to show any corrective action regarding these excessive contributions.

Recommendation

The Audit staff recommends that, within 30 days of service of this report, Sharpton 2004 pay \$10,500 to the U.S. Treasury.

Finding 5. Misstatement of Financial Activity**Summary**

A comparison of Sharpton 2004's reported activity to bank records revealed that receipts and disbursements, as well as ending cash on hand, had been materially misstated in calendar year 2004. Receipts were understated by \$110,279, due primarily to not reporting the receipt of \$100,000 in matching funds. Disbursements were understated by \$24,937 for the most part due to payroll and bank fees paid in March 2004 but not reported. Ending cash on hand was understated by \$96,537. In its response to the PAR, Sharpton 2004 concurred that its activity was misstated in 2004 and indicated amended reports would be filed. To date, such reports have not been filed.

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 ;
- The total amount of disbursements for the reporting period and for the election cycle; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4), and (5).

Facts and Analysis

The Audit staff reconciled the reported activity to the bank records and determined there was a misstatement of receipts and disbursements in calendar year 2004, as well as ending cash on hand. The following chart details the discrepancies between the totals on Sharpton 2004's disclosure reports and bank records. Succeeding paragraphs address the reasons for the misstatements.

2004 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance at January 1, 2004	\$ 7,535	\$ 7,548	\$ 13 Understated
Receipts	\$ 290,594	\$ 400,873	\$ 110,279 Understated
Disbursements	\$ 382,720	\$ 407,657	\$ 24,937 Understated
Ending Cash Balance at December 31, 2004 ¹⁴	\$ (95,773)	\$ 764	\$ 96,537 Understated

¹⁴ Sharpton 2004's ending cash on hand does not foot due to an unexplained change in beginning cash on hand for the March 2004 report period.

The understatement of receipts was the result of the following:

• Matching Funds Received, but not Reported	\$ 100,000
• Net Unreported Contributions	451
• Unreported Loans	9,500
• Unexplained Difference	<u>328</u>
• Understatement of Receipts	<u>\$ 110,279</u>

The understatement of disbursements was the net result of the following:

• March Payroll and Bank fees not Reported	\$ 16,886
• Miscellaneous Disbursements not Reported	9,150
• Reported Loan repayment not Supported by Check or Bank Debit	(3,500)
• Unexplained difference	<u>2,401</u>
• Understatement of Disbursements	<u>\$ 24,937</u>

Ending cash on hand was misstated by \$96,537, as a result of the errors noted above, as well as an unexplained \$11,182 decrease to the beginning cash on hand for the March 2004 report period.

The Audit staff provided Sharpton 2004's treasurer with a workpaper detailing the misstatement of financial activity. The treasurer stated that the person who had previously compiled and filed reports for Sharpton 2004 had left suddenly and that he had to take over filing the reports as of the 2004 April 20th report. He was still learning and had mistakenly not reported some amounts. As for the matching funds, the treasurer seemed surprised that they were not reported and asked how he would have known to report them. The treasurer made no comment on why Sharpton 2004 made the change to the March 2004 report's beginning cash on hand. Sharpton 2004's treasurer stated that he was willing to make the necessary changes and would file amended reports as needed.

Subsequent to the exit conference, the treasurer met with the Audit staff and made recommended adjustments to the Sharpton 2004 electronic records.

In addition, Sharpton 2004 has failed to file any disclosure reports from 2005 forward.

Preliminary Audit Report Recommendation and Committee Response

The Audit staff recommended that Sharpton 2004 amend its reports to correct the misstatements noted above; as well as file appropriate disclosure reports from 2005 forward. In response to the PAR, Sharpton 2004 states that it concurred with the finding that it misstated its receipts and disbursements in 2004 and was implementing the recommendations of the Audit Division to amend its disclosure reports. As noted above, a Sharpton representative met with the Audit staff on several occasions to work on amended reports and indicated a willingness to file them as well as disclosure reports from 2005 forward, but, these reports have not been filed.