



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 14, 2002

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

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

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
BOB FRANKS FOR U.S. SENATE, INC.

Attached please find a copy of the final audit report and related documents on the Bob Franks for U.S. Senate, Inc. that was approved by the Commission on May 2, 2002.

All parties involved have received informational copies of the report and the report may be released to the public on May 14, 2002.

Attachment as stated

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

**REPORT OF THE AUDIT DIVISION
ON THE
BOB FRANKS FOR U.S. SENATE, INC.**

Approved May 2, 2002



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

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

BOB FRANKS FOR U.S. SENATE, INC.

EXECUTIVE SUMMARY

The Bob Franks for U.S. Senate, Inc. (BFFS) registered with the Federal Election Commission on September 14, 1999, as the principal campaign committee for Robert D. Franks, Republican candidate for the U.S. Senate from the state of New Jersey.

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 three findings from the audit were presented to the Committee at the completion of fieldwork on August 17, 2001 and later in the interim audit report. The relevant parts of the Committee's response to these findings are included in the audit report.

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

RECEIPT OF CONTRIBUTIONS FROM INDIVIDUALS IN EXCESS OF THE LIMITATION — 2 U.S.C. §441a(a)(1)(A); 11 CFR 103.3(b). The audit identified contributions from 353 individuals that exceeded the contribution limitations by \$344,595. Of this amount, \$24,250 was transfers from the candidate's former congressional campaign and related to the primary election, \$101,978 related directly to the 2000 primary election and the remaining \$218,367 related to the 2000 general election.

BFFS did not dispute the Audit report finding and filed amended disclosure reports that correctly reflect the election designation of the contributions. In addition, the amended reports included schedules that disclose the excessive contributions as debts.

MISSTATEMENT OF FINANCIAL ACTIVITY — 2 U.S.C. §434(b)(4). A reconciliation of BFFS's reports and bank records revealed misstatements on reports covering September 10, through December 31, 1999. BFFS amended its reports to materially correct the misstatements.

FAILURE TO FILE 48 HOUR NOTICES — 11 CFR §104.5(f). BFFS did not file required 48 hour notices for 89 contributions totaling \$97,000.

In the response to the interim audit report, BFFS provided evidence that 48-hour notices were filed for fourteen of the items totaling \$22,000 however in the majority of the cases the names on the notices differed somewhat from records maintained by BFFS. BFFS also submitted an affidavit that states that eighteen of the contributions totaling \$18,000 were actually received prior to, but deposited during the 48 hour notice period.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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REPORT OF THE AUDIT DIVISION

ON

BOB FRANKS FOR U.S. SENATE, INC.

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of Bob Franks for U.S. Senate, Inc. (BFFS), 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 that 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 September 10, 1999 (the date of BFFS's initial deposit) through December 31, 2000. BFFS reported a beginning cash balance of \$ 0, total receipts for the audit period of \$6,428,218; total disbursements for the audit period of \$6,394,940; and an ending cash balance of \$33,528.¹

¹ These figures do not foot as the result of a \$250 error in carrying forward the ending cash on hand balance from the 1999 Year End report to the beginning cash on hand balance of the next report.

C. CAMPAIGN ORGANIZATION

BFFS registered with the Commission on September 14, 1999, as the principal campaign committee for Robert D. Franks (the Candidate), Republican candidate for the U.S. Senate from the state of New Jersey.

The Treasurer for BFFS from its inception through January 31, 2000, was Mr. Ronald Gravino. Mr. Brad E. Muniz, CPA replaced Mr. Gravino on February 1, 2000, as the Treasurer, and is currently serving in that capacity. BFFS maintains its headquarters in Bridgewater, New Jersey.

To manage its financial activity, BFFS maintained three bank accounts, one of which was closed in December 29, 2000. From these accounts, 1,147 disbursements were made totaling \$6,396,987. BFFS's receipts were comprised of 19,047 contributions from individuals totaling \$4,794,185; 749 contributions from other political committees and organizations totaling \$1,502,627; a loan from the candidate in the amount of \$5,000, and offsets totaling \$22,580. Accounting, recordkeeping and reporting functions were performed by paid campaign staff, utilizing commonly available computer software. The current treasurer did not attend any Commission seminars, and was unsure whether other campaign staff had.. BFFS did not file its disclosure reports electronically during the period covered by the audit.

D. AUDIT SCOPE AND PROCEDURES

In maintaining its disbursement records, BFFS satisfied the minimum recordkeeping requirements of 11 CFR §102.9; however, the Audit staff's testing of disbursements was limited by the lack of external documentation, such as invoices, for all 1999 disbursements. This lack of third party records limited the testing for the proper reporting of debts and obligations; as well as the adequacy of disclosure of information, such as payee, address and purpose for disbursements. 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. A.);
2. The receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. Proper disclosure of receipts from individuals, political committees and other entities, to include the itemization of

contributions or other receipts when required, as well as, the completeness and accuracy of the information disclosed;

4. Proper disclosure of disbursements, including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. Proper disclosure of debts and obligations;
6. The accuracy of total reported receipts, disbursements and cash balances as compared to bank records (see Finding II. B.);
7. Adequate recordkeeping for transactions; and
8. Other audit procedures that were deemed necessary in the situation (see Finding II. C.).

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue any of the matters discussed in this report in an enforcement action.

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. RECEIPT OF CONTRIBUTIONS FROM INDIVIDUALS IN EXCESS OF THE LIMITATIONS

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. Subsection (b) (2) and (6) of 11 CFR §110.1 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)(c) or (d), as appropriate, 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(1)(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.

BFFS's contribution records consisted of a database containing contributor information, deposit slips, batch control sheets, and copies of contributor checks. A sample review of contributions from individuals disclosed a material problem regarding BFFS's receipt of excessive contributions. A review of all contributors who made contributions in excess of \$1,000 revealed that BFFS designated contributions received in excess of contributors' limitations to another election or attributed the contributions to another individual without obtaining written authorization from the contributor. BFFS officials stated that written authorizations for redesignations and reattributions were not requested from the contributors; however, contributors were called and BFFS officials wrote designation information on the contributor's check. No records were maintained of the telephone calls. Following are the results of the review:

1. Transfers From Congressional Campaign

Prior to establishing BFFS the Candidate was a member of the United States House of Representatives and maintained a congressional campaign committee, Franks for Congress. Pursuant to 11 CFR §110.3(c)(5), BFFS received transfers totaling \$336,000 from Franks for Congress. Since the transfers were made in September 1999, December 1999 and March 2000, all prior to the date of the senatorial primary election, the contributions were considered contributions to the primary election. The transfers are allowed provided that the contributions making up the transfers do not cause a contributor's contribution limitation to be exceeded. The cash on hand from which the transfers were made was considered to consist of the funds most recently received by Franks for Congress. The contributions making up the cash on hand were reviewed to determine whether any would exceed the contributor's primary contribution limitation when transferred to BFFS. A review of the transferred contributions revealed that, in some cases, BFFS attributed the transferred contributions to the general election campaign without obtaining a written redesignation from the contributors. It was determined that 28 contributors had contributions transferred totaling \$25,659, which when aggregated with the contributor's contributions to BFFS's primary campaign, caused the contributor's primary contribution limitations to be exceeded. BFFS made refunds totaling \$1,409 to 6 of the contributors; however, 3 of the refunds (\$298) were made untimely. Taking into consideration timely refunds, the Audit staff determined that BFFS received contributions totaling \$24,548 in excess of the primary election contribution limitations.

2. Primary Election Contributions

BFFS received contributions from 111 individuals totaling \$108,628 in excess of the contribution limitation for the primary election. Most of these contributions were received prior to the primary election and were designated to the general election by BFFS without written authorization from the contributors. BFFS made refunds totaling \$6,900 to 10 of the contributors; however, 6 of the refunds (\$2,900) were made untimely. Taking into consideration timely refunds, the Audit staff determined that BFFS received contributions totaling \$104,628 in excess of the primary election contribution limitations.

3. General Election Contributions

BFFS received contributions from 234 individuals totaling \$219,442 in excess of the contribution limitation for the general election. The excessive contributions resulted from contributions received after the primary election being designated to the primary election by BFFS without written authorization from the contributors. BFFS made timely refunds totaling \$1,575 to 4 individuals. Taking into account these timely refunds, the Audit staff determined that BFFS received contributions totaling \$217,867 in excess of the general election contribution limitation.

A review of the refunded contributions discussed above revealed that a \$250 refund from the primary election and a \$500 refund from the general election had not cleared the bank by March 31, 2001.

BFFS did not maintain a separate account to deposit questionable contributions but did consistently, until around the time of the general election, maintain sufficient balances to cover the amounts deposited in excess of the limitations.² The Audit staff also performed an analysis of the contributions and disbursements to determine whether any of the contributions designated for the general election had been spent on primary election expenses. The analysis was performed using election designations for contributions and disbursements as entered by BFFS on its database. The analysis shows that contributions designated by BFFS for the general election were spent on primary related activity beginning approximately two weeks prior to the primary election with the largest amount, approximately \$100,000, being on the date of the primary.

At the exit conference, BFFS officials were informed of the excessive contributions discussed above. BFFS officials stated they would look into this matter. Subsequent to the exit conference, BFFS officials were provided schedules of the excessive contributions.

² On its latest disclosure report covering the period through December 31, 2001, BFFS reported cash on hand totaling \$11,863.

In the interim audit report, it was recommended that BFFS provide evidence demonstrating that the contributions in question are not excessive and that the refunds that it made were timely. In addition, BFFS was to provide evidence that the two refund checks that remained outstanding on March 31, 2001 have been cashed. Absent such a demonstration, it was recommended that BFFS refund \$344,595³ and provide evidence of the refunds (photocopies of the front and back of the negotiated refund checks) for review. If funds were not available to make the necessary refunds, those contributions requiring refund should be reported as debts until sufficient funds are available to make the refunds.

In response to the interim audit report, counsel for BFFS stated, "BFFS has reviewed its records and has been unable to find documentation that the contributions identified by the Audit staff satisfied the required written redesignation or reattribution requirements under Commission regulations. Moreover, BFFS has no documents to corroborate that specific refunds identified by the Audit staff were timely." BFFS did file amended reports that correctly reflect the election designation of the contributions noted above. In addition the amended reports included Schedules D (Debts and Obligations) disclosing debts owed to the above-mentioned contributors and provided copies of two reissued contributors' refund checks to replace the checks that had not cleared the bank at March 31, 2001.

B. MISSTATEMENT OF FINANCIAL ACTIVITY

Section 434(b)(4) of Title 2 of the United States Code states, in part, that each report shall disclose the total amount of all disbursements for the reporting period and calendar year.

The reconciliation of BFFS's reported financial activity to its bank records revealed that disbursements and ending cash on hand had been misstated for calendar year 1999. BFFS did not maintain records to show the derivation of its reported amounts. Absent such records, the Audit staff could not identify all differences between bank activity and the disclosure reports.

BFFS reported total disbursements of \$137,590. The correct amount was \$130,185, an overstatement of \$7,405. The misstatement resulted from a \$6,808 overstatement of payroll on the 1999 Year End disclosure report and an unexplained overstatement of disbursements of \$597.

The disbursement discrepancies noted above and a \$5,567 overstatement in receipts caused reported ending cash to be overstated by \$1,838. The reported cash on

³ This total is net of refunds that cleared BFFS bank accounts.

hand balance on December 31, 1999, was \$752,775. The correct cash balance was determined to be \$754,613.

At the exit conference, BFFS officials were informed of the misstatement noted above. Subsequent to the exit conference, BFFS was provided schedules detailing the errors stated above.

In the interim audit report, it was recommended that BFFS file comprehensive amendments for calendar years 1999 and 2000 to correct the misstatements noted above.

In response to the interim audit report BFFS filed amended reports, which materially corrected the misstatements for calendar years 1999 and 2000.

C. CONTRIBUTIONS SUBJECT TO 48 HOUR NOTIFICATION

Section 104.5(f) of Title 11 of the Code of Federal Regulations states, that if any contribution of \$1,000 or more is received by any authorized committee of a candidate after the 20th day, but more than 48 hours, before 12:01a.m. of the day of the election, the principal campaign committee of that candidate shall notify the Commission, the Secretary of the Senate and the Secretary of State, as appropriate, within 48 hours of receipt of the contribution. The notification shall be in writing and shall include the name of the candidate and office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be in addition to the reporting of these contributions on the post-election report.

The Audit staff reviewed all contributions greater than or equal to \$1,000 deposited from May 18, 2000, through June 3, 2000, for the primary election, and deposited from October 19, 2000, to November 4, 2000, for the general election. The review identified 169 contributions totaling \$189,000 that appeared to have been received within two and twenty days of the primary election, held on June 6, 2000, and 608 contributions totaling \$737,050 that appeared to have been received within two and twenty days of the general election, held on November 7, 2000.

BFFS did not file the required 48-hour notices for 89 contributions totaling \$97,000. Twenty-one of the contributions totaling \$21,000 related to the primary election, while 68 contributions totaling \$76,000 related to the general election. In addition, notices filed for one contribution of \$1,000 for the primary election and ten contributions totaling \$10,000 for the general election did not disclose the amount of the contribution.

At the exit conference, BFFS officials were informed of these discrepancies and did not make any comment. Subsequent to the exit conference, BFFS was provided schedules of the contributions noted above.

In the interim audit report, the Audit staff recommended that BFFS submit evidence that all required 48 hour notices were filed or submit evidence that these contributions were not received within two and twenty days of the primary and general elections.

In the response to the interim audit report, BFFS provided evidence that 48-hour notices were filed for fourteen of the above items, totaling \$22,000. For the majority of these contributions the names as reported on the 48 hour notices differed somewhat from the names on BFFS's contributor database. BFFS also submitted a signed affidavit from Laura J. Slomka, the Finance Director for BFFS during the 2000 election cycle, in which she states that eighteen of the contributions totaling \$18,000 were actually received prior to October 19, 2000 but were not deposited and entered into the contributor database until October 19, 2000 or later. BFFS filed amended reports changing the date of the eighteen contributions.⁴

⁴ Since BFFS did not record the receipt date of contributions, the Audit staff used the deposit date to determine whether contributions were received within the 48 hour notice period.



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 7, 2002

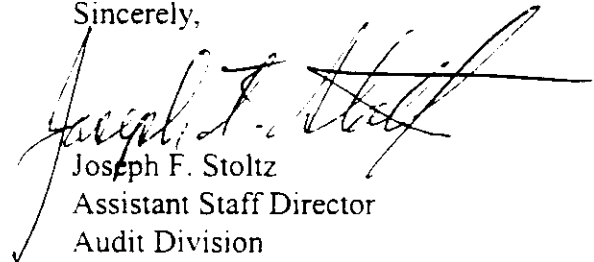
Mr. Brad E. Muniz, Treasurer
Bob Franks for U.S. Senate, Inc.
C/O Ms Laura Slomka
32 Bond Street
Bridgewater, NJ 08807

Dear Mr. Muniz:

Attached please find the Report of the Audit Division on Bob Franks for U.S. Senate, Inc. (Final Audit Report). The Commission approved the report on May 2, 2002.

The Commission approved Final Audit Report will be placed on the public record on May 14, 2002. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220. Any questions you have related to matters covered during the audit or in the report should be directed to Jim Miller or Ray Lisi of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,



Joseph F. Stoltz
Assistant Staff Director
Audit Division

cc: William J. McGinley, Counsel

Attachment as stated

CHRONOLOGY

BOB FRANKS FOR U.S. SENATE, INC.

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|--|----------------------------------|
| Audit Fieldwork | July 25, 2001 to August 17, 2001 |
| Interim Audit Report to the Committee | February 6, 2002 |
| Response Received to the Interim Audit Report | March 25, 2002 |
| Final Audit Report Approved | May 2, 2002 |

