



**FEDERAL ELECTION COMMISSION**

WASHINGTON, D.C. 20463

December 9, 1996

**MEMORANDUM**

**TO: Ron M. Harris  
Press Officer  
Press Office**

**FROM: Robert J. Costa** *RJC*  
Assistant Staff Director  
Audit Division

**SUBJECT: Public Issuance of the Final Audit Report on Dan Hamburg for Congress**

Attached please find a copy of the final audit report and related documents on Dan Hamburg for Congress which was approved by the Commission on November 25, 1996.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

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

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**REPORT OF THE AUDIT DIVISION**

**ON**

**Dan Hamburg for Congress**

**Approved November 25, 1996**



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

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

AR#95-04

**FINAL AUDIT REPORT  
ON  
DAN HAMBURG FOR CONGRESS**

**EXECUTIVE SUMMARY**

The Committee to Elect Dan Hamburg registered with the United States House of Representatives on August 1, 1991 as the principal campaign committee for Dan Hamburg, 1992 Democratic candidate for the U.S. House of Representatives from the state of California's 1st district. Dan Hamburg for Congress (the Committee) began filing reports with the Federal Election Commission on January 1, 1994, the beginning of the Candidate's campaign for re-election in 1994, and filed an amended Statement of Organization on April 18, 1994.

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 findings of the audit were presented to the Committee at the completion of fieldwork on May 10, 1996 and later in an interim audit report. The Committee's response to those findings is included in this final audit report.

The following is an overview of the findings contained in the final audit report. The Audit staff's testing of contributions, disbursements, and debts owed was limited due to a lack of records and incomplete computerized files. Subpoenas were issued and the documentation obtained via subpoena was materially complete.

**APPARENT PROHIBITED CONTRIBUTIONS - CORPORATE** - 2 U.S.C. §441b(a). The audit identified 28 apparent prohibited contributions from 19 entities, totaling \$4,950. In response to the interim audit report, the Committee submitted evidence which demonstrated that 13 of the 28 items were from permissible sources. The remaining 15 items totaled \$2,710. The Committee also filed amended Schedules D (Debts and Obligations) which disclosed all 28 contributions as debts owed by the Committee. The Committee Treasurer stated that there were no funds available to pay these debts.

**APPARENT EXCESSIVE CONTRIBUTIONS** - 2 U.S.C. 441(a). The audit identified apparent excessive contributions from individuals totaling \$5,985 and from political committees totaling \$3,700. In response to the interim audit report, the Committee filed amended Schedules D which disclosed all apparent excessive contributions as debts owed by the Committee. The Committee Treasurer stated that there were no funds available to pay these debts.

**ITEMIZATION OF DEBTS AND OBLIGATIONS** - 2 U.S.C. §434(b)(8) and 11 CFR §104.11.

The Committee disclosed debts owed to two vendors, totaling \$96,499, that were not reported correctly. Also, Committee reports indicated that disputed debts had been resolved which reduced the Committee's outstanding debts and obligations by \$36,000. No evidence was available in the Committee's files documenting the nature of the dispute and corresponding reduction in the amounts owed.

In response to the interim audit report, the Committee filed amended Schedules D which materially corrected the reporting errors. The Committee also submitted documentation which materially detailed its reduction in debts owed due to a settlement of certain disputed debts from the 1992 campaign.

**DISCLOSURE OF CONTRIBUTION AND DISBURSEMENT INFORMATION** - 2 U.S.C.

§§434(b)(3) and (b)(5)(A). The audit identified a material number of errors regarding the Committee's disclosure of contributions from individuals and political committees, as well as the disclosure of disbursement information. Also, the Committee disclosed three apparent contributions from unregistered committees which it disclosed as offsets to operating expenditures instead of as contributions.

In response to the interim audit report, the Committee provided evidence that it had recently attempted to obtain the required disclosure information from contributors. The Committee filed amended Schedules A (Itemized Receipts) which corrected several of the errors, however, a material number of errors still remain regarding the names and addresses of contributors, as well as the dates and aggregate year-to-date totals for contributions. Regarding the three apparent contributions disclosed as offsets to operating expenditures, the Committee was unable to clarify these items. The amended Schedules A correctly disclosed two of these items as contributions. The Committee also filed amended Schedules B (Itemized Disbursements) which corrected several of the incorrect disbursement entries, however, the error rate relative to the Committee's overall disclosure of disbursement information is still material.

**MISSTATEMENT OF FINANCIAL ACTIVITY** - 2 U.S.C. §§434(b)(1),(2) and (4). The

Audit staff's reconciliation of the Committee's reported financial activity to its bank activity revealed misstatements for 1993 and 1994. The Committee filed amended reports which materially corrected these misstatements.

**DOCUMENTATION FOR DISBURSEMENTS** - 2 U.S.C. §432(c)(5). The Audit staff

determined that the Committee did not satisfy the minimum recordkeeping requirements for a material number of its disbursements. Cancelled checks were maintained but these checks did not detail the purpose of the disbursement and/or contain the payee's address. The Committee did not respond to this finding.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20461

**REPORT OF THE AUDIT DIVISION  
ON  
DAN HAMBURG FOR CONGRESS**

**I. BACKGROUND**

**A. AUDIT AUTHORITY**

This report is based on an audit of Dan Hamburg for Congress (the Committee) undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of the 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 January 1, 1993 through December 31, 1994. The Committee reported a beginning cash balance of \$5,058; total receipts for the period of \$834,453; total disbursements for the period of \$834,612; and an ending cash balance on December 31, 1994 of \$2,020.<sup>1</sup>

**C. CAMPAIGN ORGANIZATION**

The Committee to Elect Dan Hamburg - U.S. Congress registered with the Clerk of the U.S. House of Representatives on August 1, 1991 as the principal campaign committee for Dan Hamburg, Democratic candidate for the U.S. House of Representatives from the state of California, 1st District, in 1992. The Committee began filing reports as Dan Hamburg for Congress on January 1, 1994, the beginning of the Candidate's

<sup>1</sup> The Committee overstated its reported receipts and disbursements (see Finding II.F.).

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campaign for re-election in 1994; however, an amended Statement of Organization was not filed until April 18, 1994. The Treasurer of the Committee from January 1, 1993 to April 18, 1994 was Mr. Antonio Andrade. The Treasurer from April 18, 1994 to the present is Mr. Ted Loring, Jr. The Committee maintains its headquarters in St. Helena, California.

To handle its financial activity, the Committee used three bank accounts and purchased one certificate of deposit. The Committee made 791 disbursements from its main operating account, totaling approximately \$798,000. The Committee received approximately 3,512 contributions from individuals, totaling \$359,000, and approximately 411 contributions from political committees, totaling \$425,000.

**D. AUDIT SCOPE AND PROCEDURES**

As detailed below, the audit included such tests as verification of total reported receipts and expenditures; review of required supporting documentation, and analysis of Committee debts and obligations and such other audit procedures as deemed necessary under the circumstances.

The Audit staff performed an inventory of the Committee's records which identified three bank accounts (2 checking and 1 certificate of deposit), in a depository that was not disclosed on the Committee's Statement of Organization. Based on our review, we determined that a material portion of the financial activity in the three accounts was not reported on the Committee's disclosure reports. The Audit staff also determined that the receipt and disbursement records for the activity in the Committee's main operating account was materially incomplete, as well as documentation relative to a loan made by the candidate.

The Audit staff made several requests for the missing documentation including two written requests on June 21, 1995 and June 27, 1995, respectively. It should be noted that a portion of the missing contributor records was provided in response to the June 21st request, however, the Committee's receipt records were still materially incomplete. The Committee was informed that if at the conclusion of a ten day period ending July 13, 1995, the items requested had not been provided, the Commission would issue subpoenas for the production of the records. The Committee did not respond to the June 27th request.

In a memorandum dated September 6, 1995, the Audit Division requested that the Office of General Counsel prepare subpoenas requesting the production of missing documentation. In a memorandum dated November 14, 1995, the Office of General Counsel recommended that subpoenas be issued to Mr. Loring, several banks and various vendors. The subpoenas were approved by the Commission on November 22, 1995.

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Several responses to the subpoenas were received between December 31, 1995 and March 11, 1996. The documentation received in response to the subpoenas was considered in preparing this report. Further, it should be noted that the documentation received in response to the subpoenas was materially complete.

The Audit staff's review of the undisclosed bank accounts (2 checking and 1 certificate of deposit) was limited to bank statements. Apparently, the accounts were opened during the 1991-1992 campaign and were closed during 1993.

Further, the scope of the Audit staff's testing of contributions received from individuals was limited. The Committee's records included an incomplete computerized file of contributions and copies of a portion of the contributor checks deposited into the Committee's account. Although the Committee satisfied the minimum recordkeeping requirements of 11 CFR §102.9 in maintaining its contribution records for the items tested, these records were not maintained in a manner which would have allowed the Audit staff to perform the substantive testing normally undertaken when reviewing contributions.

The scope of the Audit staff's testing regarding the Committee's disbursements and the debts owed by the Committee was also limited. The Committee did not satisfy the recordkeeping requirements of 11 CFR §102.9 in maintaining its disbursements records (see Finding II.G.). Nonetheless, the Audit staff was able to test a limited number of disbursements regarding the debt reporting requirements of 11 CFR §104.11 using the documentation received in response to the subpoenas (see Finding II.C.).

The audit included testing of the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding II.B.);
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations (see Finding II.A);
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.D.);
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.E.);
5. proper disclosure of Committee debts and obligations (see Finding II.C.);

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6. the accuracy of total reported receipts, disbursements and cash balances as compared to Committee bank records (see Finding II.F.);
7. adequate recordkeeping for Committee transactions (see Finding II.G.); and
8. other audit procedures that were deemed necessary in the situation.

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

## **II. AUDIT FINDINGS AND RECOMMENDATIONS**

### **A. APPARENT PROHIBITED CONTRIBUTIONS - CORPORATE**

Section 441b(a) of Title 2 of the United States Code states, in relevant part, that it is unlawful for any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any primary election or political convention or caucus held to select candidates for any political office.

Section 103.3(b)(1) and (2) of Title 11 of the Code of Federal Regulations states, in part, that the treasurer shall be responsible for examining all contributions received for evidence of illegality.

Further, contributions that present genuine questions as to whether they were made by corporations, labor organizations, foreign nationals, or Federal contractors may be, within ten days of the treasurer's receipt, either deposited into a campaign depository or returned to the contributor. If any such contribution is deposited, the treasurer shall make at least one written or oral request for evidence of the legality of the contribution. Such evidence includes, but is not limited to, a written statement from the contributor explaining why the contribution is legal, or a written statement by the treasurer memorializing an oral communication explaining why the contribution is legal. If the contribution cannot be determined to be legal, the treasurer shall, within thirty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

In addition, if the treasurer in exercising his or her responsibilities determined at the time a contribution was received and deposited, it did not appear to be made by a corporation, labor organization, foreign national or Federal contractor, or made in the name of another, but later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered.

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Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal 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.

The Audit staff's review of contributions identified 28 apparent prohibited contributions from 19 entities, totaling \$4,950. The Audit staff verified the corporate status of the entities with the appropriate Secretaries of State. It should be noted that the Committee did not maintain a separate account to deposit the questionable contributions nor did it maintain sufficient funds to make such refunds as required by 11 CFR §103.3(b)(4).

According to a Committee representative, contributions were reviewed upon receipt and any questionable contributions were noted. He added that the Committee contacted the contributor and refunded the prohibited contributions, when necessary.<sup>2</sup> It should be noted that none of the refunds disclosed by the Committee were for the apparent prohibited contributions identified by the Audit staff.

On May 10, 1996, the Committee was presented with a schedule of the prohibited contributions. The Committee made no related comments at that time.

In the interim audit report, the Audit staff recommended that the Committee provide evidence that the contributions in question were not prohibited. If unable to provide such evidence, it was further recommended that the contributions be refunded to the contributors and evidence of such refunds (copies of the front and back of the negotiated refund checks) were to be submitted to the Audit staff. The report further noted that if funds were not available to make the necessary refunds, the contributions should be disclosed as debts owed by the Committee on Schedules D (Debts and Obligations) until such time that funds were available and the debts extinguished.

In the Committee's response to the interim audit report, the Committee submitted evidence which demonstrated that 13 of the 28 items were from permissible sources. The remaining 15 items totaled \$2,710.<sup>3</sup>

<sup>2</sup> During the period covered by the audit, the Committee reported refunds of prohibited, excessive and other questionable contributions totaling \$2,685

<sup>3</sup> The Committee filed amended Schedules D which disclosed all 28 contributions as debts owed by the Committee. The Committee Treasurer stated that there were no funds available to pay these debts and that even though some of them may have been legitimate contributions, he "...decided to err on the side of caution..." and disclose them as debts of the campaign

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**B. APPARENT EXCESSIVE CONTRIBUTIONS**

Sections 441a(a)(1)(A) and (a)(2)(A) of Title 2 of the United States Code state, 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 and that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states, in part, that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. The term "anything of value" includes all in-kind contributions.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that any contributions which on their face exceed the contribution limitation set forth in 11 CFR 110.1 or 110.2 and contributions which do not appear to be excessive on their face, but which exceed the contribution limits set forth in 11 CFR 110.1 or 110.2 when aggregated with other contributions from the same contributor, and contributions which cannot be accepted under the net debts outstanding provisions of 11 CFR 110.1(b)(3) and 110.2(b)(3) may be either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. 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), 110.1(k), or 110.2(b) 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 part, that any contribution which appears to be illegal 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, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer 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

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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.

The Audit staff's review of contributions identified apparent excessive contributions from individuals totaling \$5,985 and apparent excessive contributions from other political committees (PACs) totaling \$3,700. We did not find any evidence that the Committee attempted to contact contributors for the purpose of obtaining reattributions or redesignations of the contributions pursuant to 11 CFR 110.1(k)(3) or 110.1(b)(5). It should be noted that the regulatory period in which the Committee may seek and obtain proper reattributions or redesignations has expired. Further, the Committee did not maintain a separate account to deposit the questionable contributions nor did it maintain sufficient funds to make refunds of such contributions.

According to a Committee representative, contributions were aggregated by reviewing previous disclosure report entries and by using a computerized database.<sup>4</sup> He added that the Committee noted any excessive contributions, contacted the contributor to obtain a redesignation or reattribution or, if necessary, made a refund of the excessive portion of the contribution.<sup>5</sup> It should be noted that none of the reported refunds were for the apparent excessive contributions identified by the Audit staff.

The Audit staff identified several factors that resulted in the Committee receiving excessive contributions. In several instances, individuals made contributions from both their personal accounts and business accounts; the contributions were not aggregated correctly. For example, the contributions from the individual's business were either recorded in the Committee's database under the business name or were omitted from the database. The Audit staff viewed such contributions as having been made by the signatory on the check, when available, or by the apparent owner of the business as recorded in the Committee's receipt documentation.

In other instances contributions were attributed to individuals and/or spouses without the required signatures. The Audit staff considered the contributions to be made by

<sup>4</sup> As discussed in Section I.D of this report, the Committee's database was incomplete and, as a result, the Audit staff was unable to use it for testing purposes

<sup>5</sup> During the period covered by the audit, the Committee reported refunds of prohibited, excessive and other questionable contributions totaling \$2,685

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the individual who signed the contributor check unless documentation to the contrary was made available for review.

Further, it appears that the Committee aggregated for limitation purposes certain contributions from other political committees (PACs) on a calendar year basis, as opposed to, on a per election basis. According to FEC Disclosure Reports filed by the PACs, the contributions noted as excessive by the Audit staff were designated by the PACs as contributions to the General election; however, the Committee attributed the contributions to the Primary election. It should be noted that in instances where no documentation containing the contributor's election designation was made available for review or when there was a conflict between the contributor's and the Committee's reports, the Audit staff compared the date of the contribution to the date of the Primary Election to determine whether a contribution was for the Primary or General Election. (See 11 CFR §110.1).

On May 10, 1996, the Committee was presented with a schedule of the apparent excessive contributions. The Committee made no related comments at that time.

In the interim audit report, the Audit staff recommended that the Committee provide evidence that the contributions in question were not in excess of the limitations. If unable to provide such evidence, it was further recommended that the contributions be refunded to the contributors and evidence of such refunds (copies of the front and back of the negotiated refund checks) were to be submitted to the Audit staff. The report further noted that if funds were not available to make the necessary refunds, the contributions should be disclosed as debts owed by the Committee on Schedules D (Debts and Obligations) until such time that funds were available and the debts extinguished.

In the Committee's response to the interim audit report, the Committee filed amended Schedules D which disclosed all apparent excessive contributions from individuals and PACs noted above as debts owed by the Committee. The Committee Treasurer stated that there were no funds available to pay these debts.

### C. ITEMIZATION OF DEBTS AND OBLIGATIONS

Section 434(b)(8) of Title 2 of the United States Code states, in part, that each report filed under this section shall disclose the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor.

Sections 104.11(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. These debts and obligations

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shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt or obligation was incurred or extinguished. A debt or obligation, the amount of which is over \$500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other reoccurring administrative expense shall not be reported as a debt before the payment due date.

As noted in the Scope section of this Report, the Audit staff's testing of the Committee's reporting of debts and obligations was limited. The Committee did not maintain documentation from its vendors (i.e., invoices and/or receipted bills) that detailed when expenses were incurred for a material number of its disbursements. (See Finding II.G.) Thus, the Audit staff was unable to determine whether or not the Committee was accurately reporting its debts.

Nonetheless, the Audit staff tested for compliance with the debt reporting requirements of the Act by reviewing documentation received in response to a Commission subpoena relative to a limited group of disbursements. The testing identified debts incurred, totaling \$96,499, related to two vendors that were not reported correctly.

Further, in its Mid-Year 1993 disclosure reports, the Committee indicated that disputed debts were resolved which reduced the Committee's outstanding debts and obligations by \$36,000. No evidence was found in the Committee's records which explained the nature of the dispute and corresponding reduction in the amounts owed. It should be noted that the Committee's 1992 disclosure reports indicated that the Committee made payments to these vendors during the 1992 campaign.

A schedule of the debt reporting errors was presented to the Committee on May 10, 1996. The Committee made no related comments at that time.

In the interim audit report, the Audit staff recommended that the Committee provide documentation which detailed the circumstances surrounding the disputed debts, including, but not limited to, a copy of any correspondence relating to the resolution of the disputed amounts. The Audit staff further recommended that the Committee file amended Schedules D (Debts and Obligations) to disclose the amount of debts outstanding, additional amounts incurred, and related payments for the reports filed during the period January 1, 1993 through December 31, 1994.

In the Committee's response to the interim audit report, the Committee submitted documentation which materially detailed its reduction in debts owed due to the settlement of certain disputed debts from the 1992 campaign. In addition, the Committee filed amended Schedules D which materially corrected the debt and obligation omissions noted above.

#### D. DISCLOSURE OF CONTRIBUTION INFORMATION

Section 434(b)(3) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution.

Further, each report shall disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

Section 431(13) of Title 2 of the United States Code states, in part, that the term "identification" means in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and in the case of any other person, the full name and address of such person.

Section 104.7(a) and (b) of Title 11 of the Code of Federal Regulations states, in part, that if best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act. With regard to reporting the identification of each person whose contribution(s) to the political committee and its affiliated committees aggregate in excess of \$200 in a calendar year, the treasurer and the committee will only be deemed to have exercised best efforts if all of the following are present: all written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer; the treasurer makes at least one effort, in either a written request or a documented oral request, within thirty days of the receipt of the contribution, to obtain the information; and, the treasurer reports all contributor information not provided by the contributor, but in the committee's possession, including information in contributor records, fundraising records and previously filed reports, in the same two year election cycle. (The effective date of this regulation was March 3, 1994.<sup>6</sup>)

As noted in Section I.D. of this report, the Committee's contribution records were not maintained in a manner which would have allowed the Audit staff to perform the substantive testing normally undertaken when reviewing contributions. However, the Audit

<sup>6</sup> This regulation also includes the provision that to demonstrate best efforts, the written solicitations must contain a statement that the requested contributor information is required by Federal law. However, on February 20, 1996, the Court of appeals for the D.C. Circuit invalidated the mandatory statement provision. [Republican National Committee v. FEC, 76 F.3d 400 (D.C. Cir. 1996)] The court provided that the following language appears to satisfy the best efforts requirement: "Federal law requires us to use our best efforts to collect the information." [RNC, 76 F.3d at 406]

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staff was able to use the available copies of contributor checks and the Committee's disclosure reports to reconcile the Committee's database to the bank activity. It should be noted that the database contained duplicate entries, inaccurate contribution amounts, and other errors involving the data recorded. In addition, several contributions were omitted from the database.

The Audit staff's review of contributions received from individuals revealed a material number of errors regarding the disclosure of contributor names, contribution dates, aggregate year-to-date totals, contributor addresses and earmarked contributions.

With respect to disclosure of occupation and name of employer information, the Audit staff's testing also revealed a material number of errors. In many instances the words "Best Efforts" were included in the Name of Employer field on Schedules A (Contributions from Individuals). It should be noted that the Committee did provide a few solicitation devices to the Audit staff, some of which contained a request for the contributor's occupation and name of employer, while others did not.

Nonetheless, the Committee was unable to demonstrate that it had exercised best efforts to obtain, maintain and submit the required occupation and name of employer information. The Committee did not provide any evidence of a second written or oral request to obtain the missing information as required by 11 CFR §104.7.<sup>7</sup>

Further, the Audit staff's testing of contributions from other political committees (PACs) revealed a material number of errors involving disclosure of contributor addresses and aggregate year-to-date totals.

Included in the Audit staff's review of contributions was a \$500 receipt from an unregistered political committee, Napa County Democratic Caucus (NCDC). The Committee reported this contribution as an offset to operating expenditures. Specifically, the Committee disclosed the contribution as a "Rental Deposit Refund" in its 1993 Mid-Year report. The Audit staff found a letter from the treasurer of the NCDC which stated:

"At its regular meeting on February 6, 1993, our membership voted to contribute \$500 to your committee. Since them [sic] I have been in contact with the California FPPC Consultants for guidance in the procedure we are obligated to follow when such contributions have been made. They suggested that we would be responsible for making reports to the FEC.

<sup>7</sup> The majority of the errors involved contributions dated after the effective date of the change to 11 CFR §104.7. The Committee did not satisfy the best efforts provision of either the current or former regulation with respect to the contributions in question.

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"I also called your 800 number and requested your ID# as well as any guidance you may be able to provide. We hoped to complete this business prior to our next meeting, and, since I have not heard from you to date I have decided to identify this contribution as a 'refund of rent paid to our Headquarters during the campaign.'

"Perhaps, that may eliminate the necessity for making whatever FEC reports would be required. I repeat, we welcome any guidance from your committee in our obligations according to FEC requirements."

In our review of the available disbursement documentation, the Audit staff did not find any evidence of payments made from the Committee's accounts to the NCDC.

Further, the Committee reported receiving \$1,000 from Ukiah Valley Democratic Club (one \$500 check on October 12, 1994 and another \$500 check on October 20, 1994) as "Offsets to Operating Expenditures". These receipts were disclosed as a "Refund" and "Refund of Rent", respectively; however, the Committee's disbursement records indicate that a single payment of \$356 on December 12, 1994 was made to the Ukiah Valley Democratic Club for "Rent."

Based on the information made available during fieldwork, it appears that the \$500 received from the NCDC was a contribution and not a "Rental Deposit Refund" as disclosed by the Committee. Further, the correspondence from the NCDC treasurer, wherein he "decided to identify this contribution as a 'refund of rent paid to our Headquarters during the campaign'"[emphasis added], raises the question as to whether the Committee knowingly misreported the transaction at issue.

As for the \$1,000 received from Ukiah Valley Democratic Club, the disclosure of these transactions as offsets, rather than contributions, is questionable.

A schedule of the disclosure errors was presented to the Committee on May 10, 1996. The Committee made no related comments at that time.

In the interim audit report, the Audit staff recommended that the Committee provide the following documentation or corrective amendments:

- Evidence which demonstrated that best efforts had been used to obtain, maintain, and submit the required disclosure information and any evidence of follow up written or oral requests to contributors for this information; or,

- Absent such demonstration, the Committee was requested to make an effort to contact those individuals whose contributions aggregated in excess of \$200 in a calendar year and whose required information was missing, incomplete, or designated "Best Efforts" in the reports. These contributors were to be requested to submit this information and to be informed that Federal law required the Committee to disclose such information;
- Documentation of any such contacts;
- Copies of any contributor responses; and
- Amended Schedules A (Itemized Receipts) to disclose any information obtained from these contacts and/or to correct information originally reported incorrectly.

The Audit staff further recommended that the Committee provide an explanation of the circumstances surrounding the receipt of apparent contributions from various sources that it disclosed as Offsets to Operating Expenditures.

In the Committee's response to the interim audit report, the Committee submitted the following: a photocopy of a form letter, dated July 25, 1996, from the Treasurer to individuals requesting missing contributor information; a listing of contributors to whom the letter was sent; and, written responses from some of the recipients of the form letter. The Committee also filed amended Schedules A which corrected the disclosure of several of the contributions from individuals and PACs. Although the Committee provided information on these amendments, a material number of errors still remain regarding the names and addresses of contributors, as well as the dates and aggregate year-to-date totals for contributions.

Regarding the three items, totaling \$1,500, disclosed by the Committee as offsets to operating expenditures, but noted by the Audit staff as contributions, the Treasurer stated that in an effort to clarify these transactions, he searched the campaign files and talked with ex-campaign staff but was unable to determine why these items were disclosed in this manner. He added that as a result, he re-characterized them as contributions on the amended disclosure reports. The Audit staff notes that the disclosure of the \$500 item from Napa County Democratic Caucus did not change - it was still disclosed as an offset to operating expenditures. The two items from Ukiah Valley Democratic Club, totaling \$1,000, originally disclosed as offsets were disclosed as contributions on the amended Schedules A.

#### **E. DISCLOSURE OF DISBURSEMENT INFORMATION**

Section 434(b)(5)(A) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the name and address of each person to whom an

expenditure in aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

Section 104.3(b)(3)(i)(A) and (B) of Title 11 of the Code of Federal Regulations states, in part, that purpose means a brief statement or description of why the disbursement was made. Examples of statements or descriptions which meet the requirements include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote and voter registration would not meet the requirements of 11 CFR 104.3(b)(3) for reporting the purpose of an expenditure.

As noted in the Scope section of this report, the Audit staff's testing of disbursements was limited. The Committee did not maintain documentation from its vendors (i.e., invoices and/or receipted bills) that detailed the addresses and/or the purposes disclosed on its Schedules B for a material number of its disbursements. Thus, the Audit staff was unable to determine whether the addresses and purposes disclosed on the reports were accurate.

The Audit staff's testing of disbursements itemized on Schedules B of the Committee's reports revealed a material error rate for the required disclosure information. The errors involved inadequate purposes, incomplete or omitted addresses and combining two separate disbursements into a single itemized entry.

The Audit staff notified the Committee of the reporting problems on May 10, 1996. The Committee made no related comments at that time.

In the interim audit report, the Audit staff recommended that the Committee file amended Schedules B (Itemized Disbursements) providing complete and accurate information for the itemized disbursements.

In the Committee's response to the interim audit report, the Committee filed amended Schedules B which corrected several of the errors noted above. However, the error rate relative to the Committee's overall disclosure of disbursement information is still material.

#### **F. MISSTATEMENT OF FINANCIAL ACTIVITY**

Section 434(b)(1), (2) and (4) of Title 2 of the United States Code require a political committee to disclose the amount of cash on hand at the beginning of each reporting

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period and the total amount of all receipts and disbursements for each reporting period and the calendar year.

The Audit staff's reconciliation of the Committee's reported financial activity to its bank activity revealed misstatements for 1993 and 1994.

A Committee representative indicated that he had essentially prepared the disclosure reports using only the Committee's bank statements, canceled checks, and incomplete deposit tickets forwarded to him by campaign personnel. He also indicated that the reported totals for the unitemized receipts and unitemized disbursements were derived in an attempt to reconcile the reported activity to the bank activity. The Committee did not maintain records that detailed the calculation of its reported activity for the entire audit period. Absent such records, and given the unitemized amounts were used as reconciling items, the Audit staff could not identify all differences between the reported activity and bank activity.

1. 1993 Misstatement

The Audit staff's 1993 bank reconciliation determined that the Committee's reported beginning cash balance of \$5,058 was understated by \$1,381; reported receipts of \$114,142 were understated by \$2,820; reported disbursements of \$101,200 were understated by \$4,172; and reported ending cash balance of \$19,708 was understated by \$2,493.

The beginning cash misstatement relates to an unexplained prior period adjustment. It is likely that the Committee did not report the beginning cash balance of one of its accounts.

The understatement of receipts was the result of unreported receipts totaling \$700, unreported interest of \$55 (credited to the Committee's certificate of deposit), and an apparent understatement of unitemized receipts totaling \$2,065.

The understatement of disbursements was the result of unreported disbursements totaling \$4,118 and unreported bank charges of \$54.

The ending cash misstatement was the net result of the receipts and disbursements differences, along with an error of \$2,464 in the amount recorded as the 1993 Year-End Beginning Cash on Hand.

2. 1994 Misstatement

The Audit staff's 1994 bank reconciliation determined that the Committee's reported beginning cash balance of \$19,292 was understated by \$2,909; reported

receipts of \$720,311 were overstated by \$28,475; reported disbursements of \$737,584 were overstated by \$25,677; and reported ending cash of \$2,020 balance was understated by \$110.

The beginning cash misstatement was the result of prior period adjustments totaling \$2,493 and an error in the amount recorded as the April 15th Quarterly Beginning Cash on Hand of \$416.

The overstatement of receipts was the net result of overstated PAC contributions of \$1,500, unreported PAC contributions of \$10,625, duplicate reporting of PAC contributions totaling \$3,000, and an apparent overstatement of unitemized receipts totaling \$34,600.

The overstatement of disbursements was the net result of unreported disbursements totaling \$720, disbursements that were reported twice of \$8,292, and an apparent overstatement of unitemized disbursements totaling \$18,105.

The ending cash misstatement was the net result of the receipts and disbursements differences.

It should be noted that the Audit staff made an adjustment to the 1994 bank activity in the amount of \$28,649 to account for Committee checks that were debited from the Committee's account, redeposited and then debited from the account a second time. The checks were payments to the same vendor (Erickson & Company) who, apparently, was not endorsing the checks before depositing them into its account. The vendor's bank returned the checks to the Committee's bank because of lack of proper endorsement. These payments were correctly reported (only once) as itemized disbursements by the Committee. However, it appears that the unitemized receipts and disbursements totals were derived without considering the effects of these transactions on the bank activity totals; thus, the reported unitemized receipts and disbursements totals were overstated.

On May 10, 1996, the Committee was presented with a copy of the Audit staff's 1993 and 1994 reconciliation workpapers. The Committee made no related comments at that time.

In the interim audit report, the Audit staff recommended that the Committee file amended Summary and Detailed Summary Pages and accompanying schedules for the 1993 and 1994 calendar years to correct the misstatement of financial activity noted above. The Committee filed amended reports which materially corrected these misstatements.

#### **G. DOCUMENTATION FOR DISBURSEMENTS**

Section 432(c)(5) of Title 2 of the United States Code requires the treasurer of a political committee to keep an account of the name and address of every person to whom

any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or canceled check for each disbursement in excess of \$200.

Section 102.9(b)(1) and (2), of Title 11 of the Code of Federal Regulations states, in part, that an account shall be kept of all disbursements made by or on behalf of the political committee. Such account shall consist of a record of the name and address of every person to whom any disbursement is made and the date, amount and purpose of the disbursement. In addition, a receipt or invoice from the payee or a canceled check to the payee shall be obtained and kept for each disbursement in excess of \$200 by or on behalf of, the committee.

Section 104.3(b)(4)(i)(A) of Title 11 of the Code of Federal Regulations defines "purpose" as a brief statement or description of why the disbursement was made.

The Audit staff reviewed the Committee's disbursements on a sample basis and determined that the Committee did not satisfy the minimum recordkeeping requirements for a material number of its disbursements. The Committee did maintain canceled checks for most of its disbursements, however, the checks did not detail the purpose of the disbursement and/or contain the payee's address.<sup>8</sup>

The Committee was notified on May 10, 1996 that it did not satisfy the minimum recordkeeping requirements. The Committee made no related comments at that time.

In the interim audit report, the Audit staff recommended that the Committee obtain and submit documentation which provided the addresses and purposes for its disbursements or provide evidence of its efforts to obtain such documentation. The Committee did not respond to this finding.

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<sup>8</sup> As noted in the Scope section of this report, the Commission had to issue subpoenas to the Committee's treasurer and financial institutions for production of certain documents including several canceled checks

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FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

December 2, 1996

Mr. Ted Loring, Jr., Treasurer  
Dan Hamburg for Congress  
c/o SERA Group  
710 E Street, Suite 230  
Eureka, CA 95502

Dear Mr. Loring:

Attached please find the Final Audit Report on Dan Hamburg for Congress. The Commission approved the report on November 25, 1996.

The Commission approved Final Audit Report will be placed on the public record on December 9, 1996. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 219-4155 or toll-free at (800) 424-9530. Any questions you have related to matters covered during the audit or in the report should be directed to Brian Dehoff or Marty Favin of the Audit Division at (202) 219-3720 or at the above toll free number.

Sincerely,

Robert J. Costa  
Assistant Staff Director  
Audit Division

Attachment as stated

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**CHRONOLOGY**

**DAN HAMBURG FOR CONGRESS**

<b>Audit Fieldwork</b>	<b>6/5/95 - 6/27/95</b>
<b>Interim Audit Report to the Committee</b>	<b>6/18/96</b>
<b>Response Received to the Interim Audit Report</b>	<b>9/3/96</b>
<b>Final Audit Report Approved</b>	<b>11/25/96</b>

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