

**AGENDA DOCUMENT NO. 12-15**



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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November 29, 2011

**MEMORANDUM**

**AGENDA ITEM**

To: The Commission

Through: Alec Palmer *AP*  
Staff Director

For Meeting of 3-1-12

From: Patricia Carmona *PC*  
Chief Compliance Officer

Thomas Hintermister *TH*  
Assistant Staff Director  
Audit Division

Alex Boniewicz *AB*  
Audit Manager

By: Kendrick Smith *KS*  
Lead Auditor

Subject: Audit Division Recommendation Memorandum on Chris Dodd for  
President, Inc. (CDFP)

Discussed below are revisions to the attached Draft Final Audit Report (DFAR) as well as the Audit Division's recommendations. The revisions and recommendations are based on CDFP's response to the DFAR and the audit hearing. The Office of General Counsel reviewed this memorandum, concurs with the recommendations and provided the attached comments.

CDFP submitted its response to the DFAR and requested an audit hearing on July 26, 2011. On August 31, 2011, CDFP presented certain matters at an audit hearing before the Commission.

**Finding 1. Net Outstanding Campaign Obligations**

CDFP did not mention this matter in its response to the DFAR or during the audit hearing. The Audit staff recommends that the Commission find that the Candidate did not receive matching fund payments in excess of his entitlement.

## **Finding 2. Receipt of Prohibited Contribution and Contributions that Exceed Limits**

### **A. Receipt of Prohibited Contribution**

In its response to the DFAR and during the audit hearing, CDFP stated there was no sound basis for a finding that it received a prohibited contribution from the International Association of Firefighters (IAFF). CDFP stated the following factors for the Commission's consideration.

First, CDFP believes the amount in question should be \$12,088, not \$15,423, since this was the amount billed to CDFP. Second, CDFP contends the billing was actually not from the union itself, but rather the union's separate segregated fund, FIREPAC. Although it is uncertain, CDFP suggested that the invoice may have been printed on the IAFF's letterhead and presented as an agreement between the union and CDFP because the union handled the administrative functions of its separate segregated fund. Third, CDFP noted that it eventually overpaid FIREPAC out of an abundance of caution and that FIREPAC appropriately reported a debt owed by CDFP and subsequently deposited CDFP's payment into its account. Finally, CDFP took exception to language in the DFAR that CDFP "did not consider the resolution of the contribution a high priority obligation."

The Audit staff offers the following concerning CDFP's response to the DFAR and comments presented at the audit hearing. The Audit staff maintains that the amount of the prohibited contribution is \$15,423. At the time the RV rental costs were incurred, the IAFF paid for the RV rental cost on behalf of CDFP, thereby giving something of value to CDFP, namely, the RV rental cost that CDFP should have paid. CDFP eventually repaid the IAFF for the RV rental cost, more than a year and a half from the invoice date. Therefore, the value of the prohibited contribution should be the ordinary market cost of renting the RV and not the pro-rata amount of \$12,088.

With respect to the question of whether the union or FIREPAC billed CDFP, the Audit staff provides the following information. First, the IAFF billed CDFP for use of the RV. The invoice was printed on the IAFF's letterhead and includes language that indicates an agreement between the IAFF and CDFP for the RV's usage. The only mention of FIREPAC is regarding payment. As such, in subsection "1. Facts" of section "A. Receipt of Prohibited Contribution" (page 10); more detail regarding the invoice from the IAFF will be included in the audit report. Specifically, the Proposed Final Audit Report (PFAR) will state that the invoice was printed on the IAFF's letterhead and include CDFP's explanation presented at the audit hearing that the invoice was printed on the IAFF's letterhead since it handled the administrative functions of FIREPAC.

Concerning CDFP's payment to FIREPAC for use of the RV, the Audit staff notes that the DFAR clearly acknowledges that CDFP eventually overpaid \$32,233 to FIREPAC for the rental and wrapping associated with the RV and further details FIREPAC's reporting of the debt, as well as the timing of CDFP's payment (DFAR, p. 11). It is the Audit staff's opinion that CDFP accepted a contribution from a labor organization and repaid the amount more than a year and a half after the invoice date.

Finally, in regard to the language that CDFP “did not consider the resolution of the contribution a high priority obligation,” (DFAR, p. 12), the Audit staff concurs with CDFP and the sentence in question will be removed from the PFAR.

The Audit staff recommends that the Commission find that CDFP received a prohibited contribution of \$15,423 from the IAFF.

#### **B. Apparent Excessive Contributions from Other Political Committees**

CDFP did not offer any comments in its response to the DFAR or at the audit hearing regarding this portion of the finding.

The Audit staff recommends that the Commission find that CDFP received excessive contributions from other political committees totaling \$44,300.

#### **C. Receipt of Excessive General Election Contributions**

In its response to the DFAR and during the audit hearing, CDFP maintained that the audit report should make clear that, for the bulk of the excessive contributions, CDFP timely obtained redesignations and issued refunds. CDFP continued to assert that this finding arose from an audit error and this resulted in language being removed from the DFAR, which previously had been included in the Preliminary Audit Report.

CDFP stated that it transferred all its general election contributions to the Candidate’s Senate campaign, Friends of Chris Dodd (FOCD). In addition, CDFP stated that the DFAR incorrectly stated (1) that it had not provided the required redesignation letters necessary to transfer the excessive contributions, (2) that it resolved excessive contributions of \$160,050 in an untimely manner and (3) that contributions of \$173,210 have not been transferred to FOCD.

The Audit staff agrees that the disposition of the excessive contributions could have been presented in a more precise manner in the DFAR. As such, in the PFAR, the Audit staff will modify the summary on page 4 (Part III - Summaries) and page 9 (Part IV - Findings and Recommendations) to provide a more precise presentation of excessive contributions that have been resolved by CDFP and of excessive contributions that still require resolution. Specifically, the Audit staff will clarify that of the \$51,000 in excessive contributions from other political committees, \$4,800 remains unresolved and of the \$244,050 in excessive general election contributions received by CDFP, only \$7,100 remains unresolved. Also, the Audit staff will remove footnote 10 (DFAR, p.13) in the PFAR.

CDFP took exception to the Audit staff’s statement that certain documentation “was not previously available.” Although the Audit staff made copies of the documentation provided during audit fieldwork, it is acknowledged that the language in the DFAR may not be a fair representation of CDFP’s efforts to respond to the Preliminary Audit Report recommendations. Therefore, the Audit staff will remove the language in the PFAR.

Regarding CDFP’s assertion that the DFAR incorrectly presented excessive contributions of \$160,050 as resolved in an untimely manner, the Audit staff has modified the finding to more accurately reflect CDFP’s resolution of some excessive

contributions. Specifically, excessive contributions totaling \$144,950 previously categorized as resolved in an untimely manner have been re-categorized as resolved in a timely manner. The Audit staff and OGC concur that CDFP's action with respect to these refunds was made in accordance with guidelines outlined in Advisory Opinion 2008-04.

CDFP also claims that the DFAR incorrectly states that contributions of \$173,210 have not been transferred to FOCD. CDFP has provided the necessary redesignation letters for these contributions and, as a result, the Audit staff will remove footnote 11 (DFAR, p.14) from the PFAR.

The Audit staff recommends that the Commission find that CDFP received excessive general election contributions of \$241,950 (\$244,050 less a contribution of \$2,100 that CDFP demonstrated was not excessive), of which all but \$7,100 have been resolved.

### **Finding 3. Misstatement of Financial Activity**

After consideration of CDFP's response to the DFAR and its comments during the audit hearing, the Audit staff will clarify in the PFAR that CDFP's net realized losses of \$150,370 should be reported on Schedule A-P (Itemized Receipts), Line 21 (Other Receipts) as a negative receipt.

The Audit staff recommends that the Commission find that CDFP misstated its financial activity for 2008.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

Should an objection be received, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Kendrick Smith or Alex Boniewicz at 694-1200.

#### **Attachments:**

- Draft Final Audit Report on Chris Dodd for President, Inc.
- Office of General Counsel Analysis (ADRM) Received on November 18, 2011
- Office of General Counsel Analysis (DFAR) Received on May 24, 2011

cc: Office of General Counsel



# Draft Final Audit Report of the Audit Division on Chris Dodd for President, Inc. January 24, 2007 – September 30, 2008

## 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.<sup>1</sup> The audit determines whether the candidate was entitled to all of the matching funds received, whether the campaign used the matching funds in accordance with the law, whether the candidate is entitled to additional matching funds, and whether the campaign otherwise complied with the limitations, prohibitions, and disclosure requirements of the election law.

## Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

## About the Committee (p. 2)

Chris Dodd for President, Inc. is the principal campaign committee of Christopher J. Dodd, a candidate for the Democratic Party's nomination for the office of President of the United States. The Committee is headquartered in West Hartford, Connecticut. For more information, see chart on the Campaign Organization, p. 2.

## Financial Activity (p. 3)

|   |                      |
|---|----------------------|
| • Receipts  |                      |
| ○ Contributions from Individuals                        | \$ 9,848,996         |
| ○ Contributions from Political Committees               | 750,402              |
| ○ Transfers from Affiliated Committees                  | 4,632,357            |
| ○ Loans Received  | 1,302,811            |
| ○ Matching Funds Received                               | 1,961,742            |
| ○ Offsets to Operating Expenditures                     | 127,012              |
| ○ Other Receipts  | 47,506               |
| <b>Total Receipts</b>                                   | <b>\$ 18,670,826</b> |
| • Disbursements   |                      |
| ○ Operating Expenditures                                | \$ 14,978,850        |
| ○ Loan Repayments                                       | 1,302,811            |
| ○ Transfers to Other Authorized Committees <sup>2</sup> | 507,910              |
| ○ Contribution Refunds                                  | 1,365,901            |
| <b>Total Disbursements</b>                              | <b>\$ 18,155,472</b> |

## Findings and Recommendations (p. 4)

- Net Outstanding Campaign Obligations (Finding 1)
- Receipt of Prohibited Contribution and Contributions that Exceed Limits (Finding 2)
- Misstatement of Financial Activity (Finding 3)

<sup>1</sup> 26 U.S.C. §9038(a).

<sup>2</sup> This represents the transfer of general election contributions redesignated to the Candidate's Senate committee, Friends of Chris Dodd.

# **Draft Final Audit Report of the Audit Division on Chris Dodd for President, Inc.**

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January 24, 2007 – September 30, 2008



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# Part I

## Background

### Authority for Audit

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

### Scope of Audit

This audit examined:

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

### Inventory of Campaign Records

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



## Part II

### Overview of Campaign

#### Campaign Organization

|  |  |
|--|--|
| <b>Important Dates</b>                           |  |
| • Date of Registration                           | January 11, 2007                                   |
| • Eligibility Period                             | November 26, 2007 - January 3, 2008 <sup>3</sup>   |
| • Audit Coverage                                 | January 24, 2007 – September 30, 2008 <sup>4</sup> |
| <b>Headquarters</b>                              |  |
|  | West Hartford, Connecticut                         |
| <b>Bank Information</b>                          |  |
| • Bank Depositories                              | Two  |
| • Bank Accounts                                  | One checking, two investment                       |
| <b>Treasurer</b>                                 |  |
| • Treasurer When Audit Was Conducted             | Kathryn Damato                                     |
| • Treasurer During Period Covered by Audit       | Kathryn Damato                                     |
| <b>Management Information</b>                    |  |
| • Attended FEC Campaign Finance Seminar          | Yes  |
| • Who Handled Accounting and Recordkeeping Tasks | Paid staff   |

<sup>3</sup> The period during which the candidate was eligible for matching funds began on the date of certification of his matching fund eligibility and ended on the date the candidate announced his withdrawal from the campaign. See 11 CFR §9033.

<sup>4</sup> Limited reviews of receipts and expenditures were performed after September 30, 2008, to determine whether the candidate was eligible to receive additional matching funds.

## Overview of Financial Activity (Audited Amounts)

|   |                           |
|---|---------------------------|
| <b>Cash-on-hand @ January 24, 2007</b>    | <b>\$ 0</b>               |
| o Contributions from Individuals          | \$ 9,848,996 <sup>5</sup> |
| o Contributions from Political Committees | 750,402                   |
| o Transfers from Affiliated Committees    | 4,632,357                 |
| o Loans Received                          | 1,302,811                 |
| o Matching Funds Received                 | 1,961,742 <sup>6</sup>    |
| o Offsets to Operating Expenditures       | 127,012                   |
| o Other Receipts                          | 47,506                    |
| <b>Total Receipts</b>                     | <b>\$ 18,670,826</b>      |
| o Operating Expenditures                  | \$ 14,978,850             |
| o Loan Repayments                         | 1,302,811                 |
| o Transfers to Other Authorized Committee | 507,910 <sup>7</sup>      |
| o Contribution Refunds                    | 1,365,901                 |
| <b>Total Disbursements</b>                | <b>\$ 18,155,472</b>      |
| <b>Cash-on-hand @ September 30, 2008</b>  | <b>\$ 515,354</b>         |

<sup>5</sup> Approximately 25,000 contributions from more than 19,200 individuals.

<sup>6</sup> As of September 30, 2008, CDFP had made four matching fund submissions totaling \$1,999,514 of which \$1,961,742 was certified by the Commission and paid to CDFP. This represents 9 percent of the maximum entitlement (\$21,025,000) a 2008 Presidential candidate could receive.

<sup>7</sup> This represents the transfer of general election contributions redesignated to the Candidate's Senate committee, Friends of Chris Dodd.

## **Part III**

### **Summaries**

#### **Findings and Recommendations**

##### **Finding 1. Net Outstanding Campaign Obligations**

As part of audit fieldwork, the Audit staff reviewed CDFP's financial activity through December 31, 2010. The review indicated that the Candidate did not receive matching fund payments in excess of his entitlement. In response to the Preliminary Audit Report, Counsel for CDFP (Counsel) did not dispute this finding, but noted that, in regard to the general election contributions maintained in an investment account, the basis value of the investment account, not the fair market value, should have been utilized in valuation.

(For more detail, see p. 6)

##### **Finding 2. Receipt of Prohibited Contribution and Contributions that Exceed Limits**

During audit fieldwork, Audit staff reviewed all contributions from other political committees. The review identified a prohibited contribution of \$15,423 from the International Association of Firefighters (IAFF), as well as \$51,000 in excessive contributions from other political committees. The prohibited contribution from the IAFF resulted from the rental of a bus/recreational vehicle (RV) decorated to identify Senator Dodd's Presidential campaign. The RV was provided to CDFP for its use just prior to the Iowa caucus. CDFP resolved this prohibited contribution, but in an untimely manner. The excessive contributions from other political committees were unresolved.

In addition, a review of general election contributions indicated that CDFP received contributions totaling \$244,050 for which it has not obtained the required redesignation letters necessary to transfer these funds to the Candidate's Senatorial Committee, Friends of Chris Dodd (FOCD). CDFP did not make appropriate refunds, either.

In its response to the Preliminary Audit Report, Counsel maintained that:

- CDFP had not received a prohibited contribution from the IAFF;
- regarding the \$51,000 in excessive contributions from other political committees, Counsel demonstrated that contributions totaling \$6,700 were not excessive, provided copies of negotiated refund checks for excessive contributions totaling \$39,500, and provided non-negotiated refund checks for the remaining \$4,800; and,
- with respect to the \$244,050 in general election excessive contributions, documentation that Counsel provided demonstrated excessive contributions totaling \$234,850 had been resolved, a contribution of \$2,100 was not excessive and excessive contributions totaling \$7,100 remain unresolved. (For more detail, see p. 8)



## Part IV

# Findings and Recommendations

### Finding 1. Net Outstanding Campaign Obligations

#### Summary

As part of audit fieldwork, the Audit staff reviewed CDFP's financial activity through December 31, 2010. The review indicated that the Candidate did not receive matching fund payments in excess of his entitlement. In response to the Preliminary Audit Report, Counsel for CDFP (Counsel) did not dispute this finding, but noted that, in regard to the general election contributions maintained in an investment account, the basis value of the investment account, not the fair market value, should have been utilized in valuation.

#### Legal Standard

- A. Net Outstanding Campaign Obligations (NOCO).** Within 15 days after the candidate's date of ineligibility, 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).
- B. Entitlement to Matching Payments after Date of Ineligibility.** If, on the date of ineligibility, a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments provided that he or she still has net outstanding campaign debts on the day when the matching payments are made. 11 CFR §9034.1(b).

#### Facts and Analysis

##### A. Facts

The Candidate's date of ineligibility (DOI) was January 3, 2008. As part of audit fieldwork, the Audit staff reviewed CDFP's financial activity through December 31, 2010, and prepared the Statement of Net Outstanding Campaign Obligations that appears on the next page.

**Chris Dodd for President, Inc.**  
**Statement of Net Outstanding Campaign Obligations**  
As of January 3, 2008  
Prepared through December 31, 2010

**Assets**

|                               |              |
|-------------------------------|--------------|
| Primary Election Cash in Bank | \$ 271,389   |
| General Election Cash in Bank | 1,706,575    |
| Accounts Receivable           | 46,899       |
| Capital Assets                | <u>8,407</u> |

**Total Assets** \$2,033,270

**Liabilities**

|  |                  |
|--|------------------|
| Primary Election Accounts Payable                  | \$ 542,065       |
| General Election Accounts Payable                  | 1,706,575 [a]    |
| Loans Payable                                      | 1,302,811        |
| Winding Down Costs:                                |                  |
| Actual 1/4/08 – 12/31/10                           | 1,301,910 [b]    |
| Amounts Payable to U.S. Treasury for:              |                  |
| Unresolved Excessive Contributions (See Finding 2) | <u>4,800 [c]</u> |

**Total Liabilities** 4,858,161

**Net Outstanding Campaign Obligations (Deficit) as of January 3, 2008** (\$2,824,891)

**Footnotes to NOCO Statement:**

- [a] To ensure that the need to refund general election contributions had no impact on matching fund entitlement, the Audit staff adjusted this payable to match the general election cash in bank amount. Prior to DOI, CDFP received general election contributions of \$1,749,670; however, at DOI, the fair market value of the investment account in which these contributions were maintained was \$1,706,575, a loss of \$43,095.
- [b] Estimated winding down costs are not included above because this would only increase the deficit. It is likely that CDFP is still incurring minimal salary and legal expenses.
- [c] This amount does not include \$7,100 in unresolved excessive general election contributions.

Shown below are adjustments for funds received after January 3, 2008, through July 17, 2008 (the date of the last matching fund payment):

|  |               |
|--|---------------|
| Net Outstanding Campaign Obligations (Deficit) as of 1/3/08              | (\$2,824,891) |
| Private Contributions and Other Receipts Received 1/4/08 through 7/17/08 | 503,712       |
| Matching Funds Received 1/4/08 through 7/17/08                           | 1,961,741     |
| Remaining Net Outstanding Campaign Obligations (Deficit) as of 7/17/08   | (\$359,438)   |

As presented above, CDFP has not received matching fund payments in excess of its entitlement.

#### **B. Preliminary Audit Report & Audit Division Recommendation**

The Audit staff presented the NOCO to CDFP representatives at the exit conference. In response, CDFP did not address the NOCO.

In the Preliminary Audit Report, the Audit staff recommended that CDFP demonstrate whether an adjustment(s) was required to any component of the NOCO statement or provide any other comments it desired.

#### **C. Committee Response to Preliminary Audit Report**

In response to the Preliminary Audit Report, Counsel did not dispute the NOCO but stated that incorrect amounts were presented for "General Election Cash in Bank" and "General Election Accounts Payable" because these figures were generated using the fair market value instead of the basis value of the account. They further added that "While this error does not affect the Committee's net financial position, it is significant in light of Findings 2 and 3..."

In accordance with 11 C.F.R. §9034.5(a)(2)(i), the Audit staff presented the general election investment account at fair market value as of the Candidate's DOI.

### **Finding 2. Receipt of Prohibited Contribution and Contributions that Exceed Limits**

#### **Summary**

During audit fieldwork, Audit staff reviewed all contributions from other political committees. The review identified a prohibited contribution of \$15,423 from the International Association of Firefighters (IAFF), as well as \$51,000 in excessive contributions from other political committees. The prohibited contribution from the IAFF resulted from the rental of a bus/recreational vehicle (RV) decorated to identify Senator Dodd's Presidential campaign. The RV was provided to CDFP for its use just prior to the Iowa caucus. CDFP resolved this prohibited contribution, but in an untimely manner. The excessive contributions from other political committees were unresolved.

In addition, a review of general election contributions indicated that CDFP received contributions totaling \$244,050 for which it has not obtained the required redesignation letters necessary to transfer these funds to the Candidate's Senatorial Committee, Friends of Chris Dodd (FOCD). CDFP did not make appropriate refunds, either.

In its response to the Preliminary Audit Report, Counsel maintained that:

- CDFP had not received a prohibited contribution from the IAFF;
- Regarding the \$51,000 in excessive contributions from other political committees, Counsel demonstrated that contributions totaling \$6,700 were not excessive, provided copies of negotiated refund checks for excessive contributions totaling \$39,500, and provided non-negotiated refund checks for the remaining \$4,800; and,
- With respect to the \$244,050 in general election excessive contributions, documentation that Counsel provided demonstrated excessive contributions totaling \$234,850 had been resolved, a contribution of \$2,100 was not excessive and excessive contributions totaling \$7,100 remain unresolved.

### **Legal Standard**

**A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,300 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.

**B. 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:
  - o Keep enough money in the account to cover all potential refunds;
  - o Keep a written record explaining why the contribution may be illegal;
  - o Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
  - o Seek a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanation of redesignation); and
  - o If the committee does not receive a proper redesignation within 60 days of receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5).

**C. Redesignation of Excessive Contributions.** When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

1. The redesignation must be signed by the contributor;
2. The redesignation must be received by the committee within 60 days of the committee's receipt of the original contribution; and
3. The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).



Within 60 days of receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

**D. General Election Contributions.** If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors or redesignated in accordance with 11 CFR §§110.1(b)(5) or 110.2(b)(5), as appropriate.

**E. Unreimbursed Value of Transportation.** The unreimbursed value of transportation provided to any campaign traveler is an in-kind contribution from the service provider to the candidate committee on whose behalf the campaign traveler traveled. 11 CFR §100.93(b)(2).

**F. Payment of Transportation.** If a campaign traveler uses any other means of transportation, with the exception of an airplane, the campaign committee on whose behalf the travel is conducted, must pay the service provider within 30 calendar days of the date of receipt of the invoice for such travel, but not later than 60 calendar days after the date the travel began. 11 CFR §100.93(d).

**G. Receipt of Prohibited Contribution from Labor Organizations.** Political campaigns may not accept contributions made from the general treasury funds of labor organizations. 2 U.S.C. §441b.

## **Facts and Analysis**

### **A. Receipt of Prohibited Contribution**

#### **1. Facts**

During audit fieldwork, the Audit staff noted that CDFP was billed \$12,088 on February 12, 2008, by the International Association of Fire Fighters for a share of the rental cost of an RV. The RV was rented for a period of 48 days from November 18, 2007 to January 4, 2008. It was decorated to identify Senator Dodd's Presidential campaign. The invoice from the IAFF indicated that CDFP used the RV for 18 days in December 2007, through the date of ineligibility. The cost was prorated using a daily rate. The total cost of the rental for the 48 days was \$32,233, with \$15,423 attributed to the cost of the vehicle and \$16,810 to the cost of "wrapping" it to identify the campaign. The invoice requested that payment of \$12,088 be made within 60 days to the International Association of Firefighters Interested in Registration and Education PAC (FIREPAC), a separate segregated fund of the IAFF.

In its December 2007 monthly report, FIREPAC disclosed making an independent expenditure<sup>8</sup> on November 28, 2007, in support of Dodd for "RV Art & Wrapping" in the amount of \$16,810. When questioned, CDFP representatives stated that the IAFF initially paid for the RV to use as transportation to events involving communications with the IAFF's restricted class. They stated that FIREPAC paid to wrap the RV because it

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<sup>8</sup> FIREPAC reported independent expenditures of approximately \$374,000 in support of CDFP.

was a communication expressly advocating Senator Dodd's presidential candidacy, which had not been coordinated with CDFP. CDFP later sought to determine whether it could obtain the use of the wrapped RV from the IAFF for its own purposes. The IAFF made the RV available and CDFP used it just prior to the Iowa caucus. As mentioned above, the invoice was for a portion of the cost (\$12,088); however, CDFP paid the entire RV rental and wrapping cost of \$32,233. It should also be noted that CDFP's payment occurred more than one-and-a-half years after the invoice date. After reporting the independent expenditure, FIREPAC disclosed a debt owed by CDFP in its March 2008 monthly report for the full cost of the RV (\$32,233) and continued to report this debt until it reported the reimbursement in its December 2009 monthly report<sup>9</sup>.

## **2. Preliminary Audit Report & Audit Division Recommendation**

In response to a discussion of this issue at the exit conference, CDFP representatives provided a copy of a reimbursement check, dated October 21, 2009, to IAFF FIREPAC for \$32,233. CDFP representatives stated that CDFP paid both for the use of the bus and the cost of the wrap to avoid receiving an in-kind contribution. In response to other inquiries from the Audit staff, CDFP representatives stated that it was their understanding that the IAFF paid the rental cost of the bus; that the same bus wrapping was utilized by both the IAFF and CDFP; and, that they are not aware of any other expenses that were paid by FIREPAC relating to the use or wrap of the bus after CDFP acquired its use.

The Audit staff acknowledges that the payment of \$32,233 by CDFP was an attempt to rectify this matter. However, the rental portion of the RV cost (\$15,423), apparently paid by the IAFF, appears to be a prohibited contribution. Labor organizations are prohibited from making contributions to political campaigns. The contribution was resolved in an untimely manner by CDFP as a result of the reimbursement made to FIREPAC, noted above.

In the Preliminary Audit Report, the Audit staff recommended that CDFP provide documentation demonstrating that it did not receive a prohibited contribution of \$15,423 from the IAFF, including documentation to verify that the IAFF did not pay for the rental portion of the RV.

## **3. Committee Response to Preliminary Audit Report**

CDFP's response did not include any additional documentation. However, Counsel maintained that CDFP cannot be found to have received a prohibited contribution when it was directed (on the IAFF's invoice) to pay FIREPAC and it simply complied. In addition, Counsel stated that even if CDFP should have paid the IAFF, the 60-day timetable in 11 CFR §100.93 should not apply because it applies only to non-commercial forms of transportation. Counsel maintained that "the primary purpose of the wrapped bus was not to transport people from place to place, but rather to serve as an unusual form of campaign visibility, like the C-SPAN bus or the Ron Paul blimp." Analyzed in this manner, Counsel believed the proper question was whether the campaign paid for the use of the bus within a commercially reasonable time (Counsel cited 11 CFR §114.9(d) -

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<sup>9</sup> A reimbursement from CDFP was inadvertently deposited into its non-federal account. The subsequent transfer was reflected on the year-end report.

Use or rental of corporate or labor organization facilities by other persons). Counsel further added that the circumstances that led to the delay in payment were not adequately considered. The response stated that while the payment remained outstanding, CDFP was in a deficit position with many competing obligations that it sought to manage as best it could. Counsel maintained that CDFP chose to pay the full cost of the bus rental and wrap, in an abundance of caution, even though there was a strong argument that it could have paid less.

Regardless of whether the payment for the use of the RV is considered under 11 CFR §100.93 - use of non-commercial forms of transportation or 11 CFR §114.9(d) - use of corporate or labor organization facilities, reimbursement was not made within a commercially reasonable time.

CDFP's possible financial difficulty after the campaign does not excuse its acceptance of the contribution or explain why CDFP did not consider resolution of the contribution a high-priority obligation.

Finally, CDFP's decision to pay the entire rental cost of the RV does not negate the fact that CDFP received a contribution from a labor organization that it failed to resolve timely.

## **B. Apparent Excessive Contributions from Other Political Committees**

### **1. Facts**

During audit fieldwork, the Audit staff identified \$51,000 in apparent excessive contributions from other political committees, which remained unresolved. The contributions included:

- Three totaling \$8,000 that had been timely refunded by CDFP; however, the refund checks never cleared CDFP's bank account. As such, these remained unresolved excessive contributions.
- One for \$4,000 for which CDFP presented a timely, completed redesignation letter. However, CDFP neither transferred the contribution to FOCD, nor refunded it. It was noted that transferring the funds to FOCD would have resolved this issue, but because the candidate was no longer seeking re-election to the Senate, the transfer may not be plausible. The Audit staff considered this an unresolved excessive contribution.
- Thirteen excessive contributions totaling \$39,000 for which CDFP had failed to provide any evidence of a refund or redesignation.

### **2. Preliminary Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff provided a listing of these excessive contributions. Counsel did not address these contributions in its response.

In the Preliminary Audit Report, the Audit staff recommended that CDFP provide documentation demonstrating that it did not receive excessive contributions. Such documentation was to include evidence of a transfer to FOCD for the contribution that had been redesignated but not transferred, copies of refund checks negotiated in a timely

manner, or redesignation letters signed and dated in a timely manner. Absent such documentation, the Audit staff recommended that CDFP make appropriate refunds to contributors and provide evidence of such actions (copies of the front and back of negotiated refund checks) or make a payment of \$51,000 to the U.S. Treasury.

### **3. Committee Response to Preliminary Audit Report**

In response to the Preliminary Audit Report, Counsel provided documentation demonstrating that three contributions totaling \$6,700 were not excessive. For the remaining 14 contributions totaling \$44,300, refund checks dated November 30, 2010, were submitted.

After consideration of CDFP's response, the Audit staff noted that three contributions totaling \$6,700 did not exceed the limits, 12 totaling \$39,500 were refunded in an untimely manner, and two totaling \$4,800 remain unresolved until evidence is provided that the refund checks have been negotiated. If CDFP is unable to provide such evidence, the Audit staff recommends that any unresolved excessive contributions be disgorged to the U.S. Treasury.

## **C. Receipt of Excessive General Election Contributions**

### **1. Facts**

During audit fieldwork, the Audit staff identified contributions designated for the General election totaling \$244,050<sup>10</sup> for which CDFP did not provide the required redesignation letters necessary to transfer the funds to FOCD. In accordance with Advisory Opinion 2008-04 (AO), CDFP had six days from the receipt of the AO (dated September 2, 2008) to obtain redesignations or make refunds. Even if CDFP had obtained the required redesignation letters, it lacked the funds to complete the transfer or refund at the time. The Audit staff considered these unresolved excessive contributions until CDFP provided such letters.

### **2. Preliminary Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff provided CDFP representatives with a schedule outlining these excessive contributions. In its response, Counsel maintained that CDFP had properly refunded all its general election contributions. In the Preliminary Audit Report, the Audit staff recommended that CDFP provide documentation demonstrating that these contributions were not excessive. Such documentation was to include copies of timely negotiated refund checks or timely signed and dated redesignation letters. Absent this documentation, the Audit staff directed CDFP to make appropriate refunds to contributors and provide evidence of such actions (copies of the front and back of negotiated refund checks) or make a payment of \$244,050 to the U.S. Treasury.

### **3. Committee Response to Preliminary Audit Report**

In its response to the Preliminary Audit Report, Counsel maintained that, upon receipt of the Preliminary Audit Report, of the \$244,050 in asserted unredesignated and unrefunded

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<sup>10</sup> The Audit staff also noted that CDFP transferred general contributions (\$67,800) to FOCD for which redesignation letters were not provided and has redesignation letters for \$98,410 in contributions to be transferred, but insufficient funds to do so.

contributions, only \$14,900 awaited refund or disgorgement. The documentation provided by Counsel included:

- a. Copies of 30 redesignation letters, for contributions totaling \$74,800, which were all completed and signed by the contributors. All the letters requested redesignation to the FOCD 2010 primary or general election and were dated prior to May 2008.
- b. A copy of an email confirmation from its receipts processing vendor demonstrating that it had processed a refund of a \$2,300 contribution on September 13, 2007.
- c. A copy of a negotiated disgorgement check for a contribution of \$5,000 and a letter sent to the Bureau of Public Debt on November 25, 2008. Other documentation stated that the political action committee, which made the original contribution, no longer existed.
- d. A copy of a negotiated disgorgement check to the U.S. Treasury for \$144,950 and dated November 30, 2010. Counsel stated that this check was for 82 stale-dated refund checks. Counsel provided check stubs for all the refund checks. From the check stubs, it appears that nearly all the refund checks were written on August 21, 2008. Counsel also added that, "While the Committee agrees that the stale-dated refund checks must be disgorged, many do not provide an appropriate basis for a finding of excessive contributions, in that they were lawfully received and timely refunded."
- e. Web page verification from its receipts processing vendor demonstrating that a \$2,100 contribution was returned for non-sufficient funds.
- f. Copies of a negotiated refund check for \$5,000, four refund checks totaling \$7,100, and a negotiated disgorgement check of \$2,800 to the U.S. Treasury for contributions that Counsel stated CDFP lacked evidence of refund or timely redesignation. All refund checks were dated November 26, 2010, and the disgorgement check was dated November 30, 2010.

As a result of the documentation presented by Counsel in response to the Preliminary Audit Report, which was not previously available, the \$244,050 of general election contributions discussed in the Preliminary Audit Report are categorized in the following manner:

- Excessive contributions totaling \$160,050 were resolved in an untimely manner;
- Excessive contributions totaling \$74,800<sup>11</sup> were resolved in a timely manner;
- A contribution of \$2,100 was not excessive, as it had been returned for non-sufficient funds; and,
- Excessive contributions totaling \$7,100 remain unresolved. Cancelled check copies (front and back) and/or other documentation demonstrating that these

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<sup>11</sup> Based on its response to the Preliminary Audit Report, there are contributions of \$173,210 (\$74,800 + \$98,410) for which CDFP provided redesignation letters, but has not transferred to FOCD. As of March 31, 2011, CDFP's reported ending cash is \$14,289.

remaining refunds were negotiated should be provided or the amount should be disgorged to the U.S. Treasury.

### **Finding 3. Misstatement of Financial Activity**

#### **Summary**

During audit fieldwork, a comparison of reported figures with bank records revealed that CDFP understated its receipts by \$355,240 and overstated its disbursements by \$190,935 in 2008. In response to the Preliminary Audit Report, CDFP amended its reports, but excluded an adjustment relating to net realized investment losses. As a result, receipts for 2008 remain misstated.

#### **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**

##### **A. Facts**

As a part of fieldwork, the Audit staff reconciled reported activity with bank records for 2008. The following chart outlines the discrepancies for the beginning cash balances, receipts, disbursements, and the ending cash balances. The succeeding paragraphs explain why the differences occurred, if known.

| <b>2008 Committee Activity</b>              |                          |                     |                           |
|---|--------------------------|---------------------|---------------------------|
|   | <b>Reported</b>          | <b>Bank Records</b> | <b>Discrepancy</b>        |
| Opening Cash Balance @<br>January 1, 2008   | \$ 2,489,560             | \$ 2,456,875        | \$ 32,685<br>Overstated   |
| Receipts                                    | \$ 1,910,177             | \$ 2,265,417        | \$ 355,240<br>Understated |
| Disbursements                               | \$ 4,397,873             | \$ 4,206,938        | \$ 190,935<br>Overstated  |
| Ending Cash Balance @<br>September 30, 2008 | \$ 515,970 <sup>12</sup> | \$ 515,354          | \$ 616<br>Overstated      |

<sup>12</sup> The reported ending cash balance is incorrect because CDFP decreased its beginning cash-on-hand by \$12,949 in its August 2008 Monthly Report and increased beginning cash-on-hand by \$527,055 in its October 2008 Monthly Report. The unexplained changes in cash may have been an attempt to correct the cash discrepancies that resulted from the misstatements of receipts and disbursements. Absent these incorrect adjustments by CDFP, the reported ending cash balance at September 30, 2008 would have been \$1,864.

The overstatement of opening cash-on-hand (\$32,685) resulted from discrepancies that occurred in the previous year, 2007.

The understatement of receipts resulted from the following:

|   |                          |
|---|--------------------------|
| • Matching fund payment received 7/17/08, not reported                  | \$ 514,173               |
| • Net realized losses (investment accounts), not reported <sup>13</sup> | (150,370)                |
| • Vendor refund, not reported   | 5,876                    |
| • Offsets to operating expenditures, not reported                       | 23,954                   |
| • Political committee contributions, not reported                       | 16,100                   |
| • Unexplained difference  | (54,493)                 |
| <b>Net understatement of receipts</b>                                   | <u><u>\$ 355,240</u></u> |

The overstatement of disbursements resulted from the following:

|   |                            |
|---|----------------------------|
| • Loan repayment, over-reported   | \$ (144,757)               |
| • Disbursements and investment fees, not reported                           | 239,950                    |
| • Net errors in reporting payroll and fees                                  | 41,733                     |
| • Transfer to the Candidate's Senate committee, over-reported <sup>14</sup> | (351,210)                  |
| • Reported disbursements that actually cleared bank in Dec. '07             | (3,300)                    |
| • Unexplained difference  | 26,649                     |
| <b>Net overstatement of disbursements</b>                                   | <u><u>\$ (190,935)</u></u> |

The overstatement of ending cash-on-hand (\$616) resulted from the misstatements described above.

### **B. Preliminary Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff discussed the misstatement and provided CDFP representatives with copies of the Audit staff's bank reconciliation. In its response to the exit conference, regarding the over reporting of transfers to the Candidate's Senate committee (totaling \$351,210), CDFP representatives stated that CDFP had instructed its broker to transfer the funds to the FOCD account, and the broker's delay in making the transfer caused the reporting discrepancy. The reporting error could have been avoided if CDFP had not reported the transfer until the funds were actually transferred. Regarding the reporting of operating expenditures, CDFP representatives stated that many operating expenditures were not reported because they were unaware of the data processing requirements for entering debts and obligations. Thus, many debt payments were not disclosed in CDFP's reports. CDFP representatives did not address any other discrepancies (noted above).

In the Preliminary Audit Report, the Audit staff recommended that CDFP amend its reports to correct the misstatements for 2008.

<sup>13</sup> It should be noted that this relates to realized gains and losses disclosed by the brokerage firm as such in its monthly statements, which were not reported by CDFP. These net realized losses resulted from the decline in the stock market.

<sup>14</sup> CDFP reported this transfer in September 2008, when it actually occurred in October of 2008. The Audit staff's bank reconciliation was done through September 2008. As such, it was recommended that CDFP amend its reports to correctly disclose the transfer in October 2008.

### **C. Committee Response to Preliminary Audit Report**

In response to the Preliminary Audit Report, Counsel stated that, after the date of ineligibility, CDFP had some difficulty in preparing its reports. Counsel maintained this was due mainly to problems experienced in the use of the financial database. Counsel added that this is why, for example, CDFP failed to disclose a matching fund payment received on July 17, 2008, and over-reported a \$144,757 loan repayment. Counsel concluded that CDFP is complying with the Preliminary Audit Report's recommendations by filing amendments to correct these misstatements.

Counsel further added that the Preliminary Audit Report does not correctly present the level of misstatement, mainly because of its incorrect treatment of CDFP's brokerage account. Counsel argued that the Preliminary Audit Report "appears to confuse fluctuations in the account's fair market value, which do not need to be reported, with the actual sale of the portfolio assets." Counsel contended that the Preliminary Audit Report's treatment of the \$351,210 transfer of general election contributions and the \$150,370 in net realized losses resulted from this incorrect treatment.

In response to the Preliminary Audit Report, CDFP filed amended reports for calendar years 2008 and for a portion of 2009. CDFP did not accept the Audit staff's assessment of its investment accounts and, as such, included only a portion of the adjustments relating to the investment accounts in its amended reports. Specifically, those reports did not include net realized losses of \$150,370 (see section A. above). However, by not amending its reports for the adjustment arising from net realized losses, receipts remain misstated for 2008. CDFP materially corrected disbursements.





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 18, 2011

**MEMORANDUM**

**TO:** Patricia Carmona  
Chief Compliance Officer

Thomas Hintermister  
Assistant Staff Director  
Audit Division

**FROM:** Christopher Hughey *pch*  
Deputy General Counsel

Lawrence L. Calvert, Jr. *LC*  
Associate General Counsel

Lorenzo Holloway *LH*  
Assistant General Counsel  
For Public Finance and Audit Advice

Delanie DeWitt Painter *DDP*  
Attorney

Remington Johnson *RJ*  
Law Clerk

**SUBJECT:** Audit Division Recommendation Memorandum and Draft Final Audit Report for Chris Dodd for President, Inc. (LRA 744)

**I. INTRODUCTION**

The Office of General Counsel has reviewed the proposed Audit Division Recommendation Memorandum (“ADRM”) and accompanying proposed Draft Final Audit Report (“DFAR”) on Chris Dodd for President, Inc. (“the Committee”). We have also reviewed the Committee’s response to the DFAR (“DFAR Response”) and considered the Committee’s comments at the audit hearing on August 31, 2011. We generally concur with the ADRM but suggest language changes. We address two issues that the Committee raised in its DFAR response and at the hearing concerning stale-dated refund checks of excessive contributions (Finding 2) and the misstatement of realized investment losses (Finding 3). We have already addressed the other issues that the Committee raises in its response in our earlier comments on the Audit Division’s proposed DFAR dated May 24, 2011. We understand that the Audit Division will attach our

earlier comments to the ADRM. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this audit.

## **II. RECEIPT OF PROHIBITED CONTRIBUTION AND CONTRIBUTIONS THAT EXCEED LIMITS (FINDING 2.)**

We generally concur with the ADRM and the proposed changes to Finding 2 Receipt of Prohibited Contributions and Contributions that Exceed Limits. We comment specifically on the stale-dated excessive contribution refund checks issue and suggest several other changes to the ADRM.

We concur with the proposed change on page 4 of the ADRM to categorize \$144,950 in refunded excessive contributions as timely resolved. We agree that the Committee issued the excessive refund checks within the time period specified in AO 2008-04.

The excessive contributions from individuals relate to general election contributions totaling \$244,050. In response to the PAR, the Committee provided documentation to demonstrate that excessive contributions totaling \$234,850 had been resolved and a contribution of \$2,100 was not excessive. Based on the documentation, the auditors concluded in the DFAR that excessive contributions totaling \$160,050 were resolved untimely; excessive contributions totaling \$74,800 were resolved timely; and a \$2,100 contribution was not excessive because it was returned for non-sufficient funds. The amount of excessive contributions that remains unresolved is \$7,100.

The Committee received general election contributions during the primary election period under the conditions set forth in AO 2007-03 (Obama) and deposited them into an investment account.<sup>1</sup> See AO 2008-04 (Dodd). In AO 2008-04, the Commission concluded that the Committee may issue refunds, or obtain redesignations and transfer contributions received for the general election to the candidate's Senate committee, and that costs associated with doing so were winding down costs and thus, qualified campaign expenses. The Commission further stated that the Committee had six days after the date of receipt of the opinion to obtain redesignations and make refunds. AO 2008-04. The contributions the auditors described as untimely resolved in the DFAR relate primarily to refund checks that were not negotiated within the time period for resolving contributions set forth in AO 2008-04. The Committee provided a check to the United States Treasury for \$144,950 dated November 30, 2010, more than two years after the refunds, for refund checks that were never negotiated by the contributors.

The Committee contends that the DFAR incorrectly states that excessive contributions totaling \$160,050 were resolved untimely. The Committee argues that the DFAR should clarify that the Committee issued refund checks for the bulk of the excessive individual contributions

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<sup>1</sup> After Senator Dodd withdrew from the primary race on January 3, 2008, he was no longer a potential general election candidate, and the Committee was required to refund the general election contributions or obtain redesignations to another election or reattributions to another contributor. See 11 C.F.R. § 102.9(e)(3); AO 2008-04; AO 2007-03; AO 2003-18 (Smith).

before the deadline of AO 2008-04. The Committee asserts that there is no dispute that it issued timely refund checks; the only issue is the fact that some of the refund checks were stale-dated. The Committee argues that these contributions should be considered resolved timely, based on the timing of the original refund checks, rather than untimely, based on the payment to the United States Treasury.

We conclude that the excessive contributions related to the stale-dated refund checks are timely resolved. It is unclear whether the Commission intended in AO 2008-04 to treat the Committee's refund checks as timely resolved as long as the Committee issued them before the deadline of six days after receipt of the opinion, regardless of whether the refund checks were ever negotiated by the contributors. However, we think using the date the Committee issued the refund checks to determine if they were timely under AO 2008-04 is the best approach. The Committee could not control whether the contributors cashed the refund checks, it could only ensure that it issued the checks during the time period prescribed by the Commission in AO 2008-04. The regulation that governs refunds, 11 C.F.R. § 103.3, indicates that a Committee should refund an excessive contribution to the contributor within 60 days, but is silent on whether the timeliness of such refunds is based only on the date the committee issues the refund check or also requires that the check be negotiated by the contributor. In distinguishing between when contributions are "returned" or "refunded" in the regulations, the Commission has stated that contributions are refunded "when the recipient committee sends the contributor a check for the amount of the contribution which had been previously deposited." Explanation and Justification for 11 C.F.R. §103.3, 52 Fed. Reg. 768 (Jan. 9, 1987). Similarly, we conclude that the date of the refund for purposes of timeliness under AO 2008-04 should be the date the Committee sent the refund checks, not the date that the checks were negotiated or paid to the Treasury as stale-dated checks under 11 C.F.R. § 9038.6.

We acknowledge that refund checks for excessive contributions that are never cashed by the contributor create a problem because the excessive funds remain in the recipient committee's accounts, but cannot be used for other purposes. To resolve this problem, the Commission's regulations require publicly-funded committees to submit a check for the total amount of outstanding checks to "creditors or contributors" that have not been cashed to the United States Treasury. 11 C.F.R. § 9038.6. The Commission stated in promulgating the stale-dated check regulations that committees may not use the funds for stale-dated checks written to creditors or contributors for other purposes "because to do so could result in the receipt of a prohibited or excessive contribution from the original payee." Explanation and Justification for 11 C.F.R. §§ 9007.6 and 9038.6, 52 Fed. Reg. 20668 and 20674 (June 3, 1987). If a committee fails to submit the payment for stale-dated refund checks, the Commission can pursue an enforcement action for receipt of excessive or prohibited contributions. See MUR 5192, Buchanan for President, Inc. (Commission found reason to believe Buchanan committee accepted excessive and prohibited contributions in violation of 2 U.S.C. §§ 441a(f) and 441b when it did not pay stale-dated checks after the audit process. The committee agreed to pay the \$27,431 in stale-dated checks to the Treasury.) The conciliation agreement for MUR 5192 states that if a "committee fails to issue payment for outstanding checks for excessive contribution refunds . . . this will result in a violation" for receipt of excessive contributions. MUR 5192 Conciliation Agreement (approved Jul. 26, 2001). But here, the Committee paid the Treasury the amount of the stale-dated

refund checks in November 2010, so its accounts no longer contain the excessive contributions. While the payment for the Treasury for the stale-dated checks was made more than two years after the refunds, Section 9038.6 specifies no time frame within which the payment must be made; the Buchanan matter indicates only that if the payment is not made by the end of the audit process, the committee is liable to be referred for enforcement action.

Because all of the refunds at issue were made within six days of the Commission's issuing AO 2008-04, we concur that the refunds should be considered timely.

We also suggest several changes to this finding. First, page 2 of the ADRM discusses the amount of the apparent prohibited contribution from a union for a bus and states that the amount of \$15,423 "more accurately reflects the usage" of the bus than the pro rata amount billed on the invoice of \$12,088. The ADRM states that the \$15,423 amount was calculated based on "total usage information provided on the invoice." We suggest these sentences be revised to clarify that the Committee paid the rental costs of the bus a year and a half late. At the time the rental costs were incurred, the union paid for the rental cost on behalf of the Committee thereby giving something of value to the Committee, namely, the rental cost that the Committee should have paid. 11 C.F.R. § 100.52 (a). Therefore, the value of the apparent prohibited contribution should be the ordinary market cost of renting the bus and not the pro-rata amount of \$12,088. 11 C.F.R. § 100.52 (d)(1), (2).

Second, we suggest that you delete the sixth paragraph on page 3 of the ADRM, which begins "CDFP continued to argue that this finding arose from audit error." We also suggest you delete the second sentence in the second paragraph on page 4 beginning "CDFP has not provided any documentation." The paragraph and sentence both address the transfer of funds from the Committee's investment account. As we discussed, this matter is not at issue in the report and continuing to address it in the ADRM or the report could create unnecessary confusion. We concur with the ADRM that footnotes 10 and of the DFAR, which also discussed the investment account, should be deleted.

### **III. MISSTATEMENT OF BROKERAGE ACCOUNT LOSSES (FINDING 3)**

We concur with the auditors' conclusion in the ADRM that the report should be revised to clarify that the Committee should have reported net realized investment losses as a negative receipt. The DFAR concludes that the Committee misstated receipts, disbursements, and opening and ending cash on hand balances in 2008. The Committee understated receipts by \$355,240. The Committee contests the understatement of receipts. The Committee amended its reports but did not make an adjustment relating to net realized investment losses; thus, the receipts remain misstated. The misstatement of receipts finding is based on the Committee's failure to report a number of different transactions. One of those is the Committee's failure to report \$150,370 in net realized investment losses, which the DFAR states should be a negative entry receipt.

This part of the misstatement finding reflects the accumulated net realized losses resulting from activity in the Committee's general election investment account from January 1, 2008 through September 30, 2008, which were identified as net realized losses on the broker statements.

The Committee also failed to report receipts representing matching fund payments, vendor refunds, offsets to operating expenditures, and political committee contributions, and another negative receipt for an unexplained difference. The total of these unreported items, both positive and negative entries, resulted in the misstatement of receipts figure of \$355,240. Thus, the failure to report the realized investment losses was, in the auditors' accounting, an overstatement of receipts, but combined with the other adjustments to receipts the net result is an understatement of receipts.

The Committee argues that the statute and regulations provide no clear guidance on how to report losses from a brokerage account. The Committee notes that the DFAR states that the undisclosed losses resulted in an understatement of receipts, but this Office's legal comments on the DFAR, at page 4, state that "realized capital losses must be reported as 'other disbursements' in the reporting period when they are realized." The Committee argues that the Commission should not find the Committee violated the law on "such an ambiguous question, when the auditors changed the legal standard in the middle of the audit, and when there is still no clear agreement about how the Committee specifically should have reported this activity."

The statute and regulations do not specifically address how to report realized investment losses; however, they do require committees to accurately report all receipts and disbursements. The Commission's Campaign Guides provide guidance on how to report investment losses as negative entries in the "Other Receipts" category of the detailed Summary Page. *See Campaign Guide for Political Party Committees* at 86; *Campaign Guide for Congressional Candidates and Committees* at 110. According to the Reports Analysis Division, they would advise committees to report realized losses as a negative "Other Receipt" entry.

However they are reported, the Committee failed to report these realized losses *at all*. Reporting a realized loss is necessary to ensure that the Committee's cash on hand is not artificially inflated and that its reports are accurate. We think it would have been acceptable for the Committee to either report the realized loss as a negative entry "other receipt" as the Campaign Guides advise, or as an "other disbursement." Both approaches would accurately reflect that there was a loss. But the Committee failed to report the realized investment loss as either a negative "other receipt" or as an "other disbursement." Therefore, the Committee's reports remain inaccurate. There is no way for the public to know from the reports the Committee filed that the Committee had any realized investment losses, and the reports overstate the Committee's cash on hand during the reporting periods in which realized investment losses were greater than realized investment gains.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

May 24, 2011

**MEMORANDUM**

**TO:** Joseph F. Stoltz  
Assistant Staff Director

**FROM:** Christopher Hughey *pch*  
Acting General Counsel

Lawrence L. Calvert, Jr. *LJC*  
Associate General Counsel

Lorenzo Holloway *LH*  
Assistant General Counsel  
For Public Finance and Audit Advice

Delanie DeWitt Painter *DDP*  
Attorney

**SUBJECT:** Draft Final Audit Report for Chris Dodd for President, Inc. (LRA 744)

The Office of the General Counsel has reviewed the Draft Final Audit Report (“DFAR”) for Chris Dodd for President, Inc. (“Committee”). We generally concur with the findings in the DFAR and have specific comments on Finding 2: Receipt of Prohibited Contribution and Contributions that Exceed Limits and Finding 3: Misstatement of Financial Activity. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this audit.

**I. COMMITTEE RECEIVED APPARENT PROHIBITED IN-KIND CONTRIBUTION FROM IAFF (Finding 2)**

We concur that the Committee received an apparent prohibited in-kind contribution of \$15,423 from the International Association of Firefighters (“IAFF”), a labor organization. The IAFF apparently paid \$15,423 for the rental of a bus that the Committee used between December 17, 2007 and January 4, 2008, at the end of the Iowa campaign. The Committee explained that the IAFF initially paid for the bus rental for transportation to IAFF events, and the Committee later obtained use of the bus for its campaign. The IAFF sent the Committee a February 12, 2008 invoice for the bus, which stated that “as advised by our election law legal counsel the campaign has 60 days from the conclusion of the Iowa caucus to reimburse the IAFF for the rental cost as it is considered a transportation cost.” The invoice continued that the Committee should reimburse the IAFF’s separate segregated fund, IAFF FIREPAC (“FIREPAC”)

by March 4, 2008.<sup>1</sup> But the Committee did not pay FIREPAC for the bus rental until October 21, 2009, more than a year and a half later, when it paid \$32,233.<sup>2</sup>

The Committee has not demonstrated that it did not receive a prohibited in-kind contribution or that the IAFF did not pay for the bus rental. *See* 2 U.S.C. § 441b. In response to the Preliminary Audit Report (“PAR”), the Committee contends that the 60 day timetable for reimbursement of other means of transportation in 11 C.F.R. § 100.93 should not apply because the bus was primarily a form of advertising. It argues that since the “primary purpose of the wrapped bus was not to transport people from place to place, but rather to serve as an unusual form of campaign visibility, like the C-Span bus or the Ron Paul blimp,” the question should be whether the campaign paid for the bus within a commercially reasonable time, and it cites 11 C.F.R. § 114.9(d). The Committee asserts that it did not receive a prohibited contribution because the invoice instructed it to pay FIREPAC, not IAFF. Finally, it contends that the payment was delayed because it was in a deficit position with competing obligations and that it paid the full cost of the bus rental and decoration “in an abundance of caution.”

The Committee’s arguments are not persuasive. The Committee paid for the bus more than a year and a half after both the invoice date and the payment due date listed on the invoice. This delayed payment was neither within the section 100.93 standard for reimbursement of other means of transportation nor within a commercially reasonable time. Because the bus was used, at least in part, for transportation, there would have been no contribution if the Committee had timely reimbursed IAFF for the bus rental cost. The Committee could have properly paid the cost of the bus rental as an other means of transportation not operated for commercial passenger service within 30 days of receipt of the invoice or 60 days after the travel began. *See* 11 C.F.R. § 100.93(d). The Committee’s failure to make timely reimbursement resulted in a prohibited in-kind contribution. *See* 11 C.F.R. § 100.93 (b)(2). Alternatively, if the bus rental cost is considered a form of campaign advertising like a blimp or rolling billboard that was provided by a vendor or as a labor organization facility used by the Committee, the Committee should have paid for the bus rental cost within a commercially reasonable time. *See* 11 C.F.R. § 114.9(d), *see also* 11 C.F.R. § 116.3. Yet it failed to do so. The invoice directed the Committee to pay by March 4, 2008, but the Committee paid a year and half later. The fact that the Committee was in a deficit position and had other debts does not make the delayed payment of this debt commercially reasonable. Moreover, the amount at issue relates only to the cost of bus rental and not to the decoration of the bus, which would be more clearly related to an advertising purpose. Further, the fact that the Committee was instructed to pay FIREPAC rather than IAFF does not change the fact

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<sup>1</sup> The IAFF billed the Committee \$12,087.54 for 18 days of the 48 day total that the IAFF and the Dodd campaign used the bus. The Committee, however, paid the \$32,233 total cost of the bus rental and decoration. We note that the \$16,810 cost of decorating the bus was apparently paid by FIREPAC and is not at issue in the DFAR.

<sup>2</sup> Both the Committee and FIREPAC disclosed the full \$32,233 cost of the bus as a debt owed by the Committee to FIREPAC beginning with the March 2008 reports and continuing until the Committee paid the debt in full in October 2009. The Committee provided a copy of a check to FIREPAC, dated October 21, 2009, for \$32,233.

that the IAFF, a union, paid for the bus rental cost. Therefore, the Committee received a prohibited in-kind contribution from the IAFF.

While we concur with your conclusion, we suggest that the discussion at page 12 of the DFAR be revised to delete the references to 11 C.F.R. § 103.3 in the second and third paragraphs. We do not think a 30 day standard based on section 103.3 is appropriate here. Section 103.3 contains the rules for deposit and refund of contributions like checks rather than an in-kind contribution that results from a bus rental.

## **II. CLARIFY IMPACT OF INVESTMENT ACCOUNT LOSSES ON EXCESSIVE CONTRIBUTIONS AND MISSTATEMENT (Findings 2 and 3)**

We concur with the Audit staff's analysis of excessive contributions (Finding 2) and misstatement of financial activity (Finding 3) but suggest several revisions to clarify these findings in the DFAR.<sup>3</sup> The Audit staff should clarify the impact of the Committee's investment account on these findings. The Committee had an investment account ("General Account") with a brokerage for general election contributions received during the primary election period under the conditions set forth in AO 2007-03 (Obama), which lost a substantial amount of value during the audit period because of the decline in the stock market.<sup>4</sup> See AO 2008-04 (Dodd). In response to the PAR, the Committee made numerous arguments about why the General Account's losses should not result in excessive contributions. However, these arguments are irrelevant to the draft you have asked us to review. Instead, they seem to refer to a potential issue raised by the auditors at a previous stage in the audit about whether the Committee properly valued assets transferred from the General Account to Senator Dodd's Senate committee. At an earlier stage in the audit, the Audit Division believed that the value of those transferred assets, which were intended to cover redesignations of presidential general election contributions to the Senate committee, could potentially have raised excessive contribution issues. The DFAR, however, does not contain any finding of excessive contributions arising from a loss in value of the General Account assets transferred to the Senate committee. Most of the contributions from the General Account are considered either timely or untimely resolved based on the Committee's response to the PAR. For the Committee's benefit, the DFAR should make clear that the two references to the investment account in the misstatement finding are not related to the value of the assets transferred from the General Account to the Senate committee and that the excessive contributions finding is not now based on the value of the General Account assets transferred to the Senate committee.

The DFAR should provide additional explanation to clarify the misstatement finding (Finding 3). The misstatement finding refers to the Committee's failure to report \$150,370 in net realized investment losses. This has nothing to do with the transfer of any assets from the General

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<sup>3</sup> In addition to these changes, we suggest that the discussion of apparent excessive contributions from other political committees at pages 12-13 be revised to clarify how the specific contributions identified in the bullet points on page 12 were resolved by the Committee's response to the PAR.

<sup>4</sup> After Senator Dodd withdrew from the primary race on January 3, 2008, he was no longer a potential general election candidate, and the Committee was required to refund or redesignate the general election contributions. See 11 C.F.R. § 102.9(e)(3); AO 2008-04; AO 2007-03; AO 2003-18 (Smith).



Account to the Senate committee, because that transfer took place in October 2008, after the close of the audit coverage period on September 30, 2008. Nor, contrary to the Committee's contention, does it reflect any unrealized losses, which are not required to be reported. Rather, this part of the misstatement finding simply reflects the accumulated net *realized* losses resulting from activity in the investment accounts from January 1, 2008 through September 30, 2008, which were identified as net realized losses on the broker statements. Realized capital losses must be reported as “other disbursements” in the reporting period in which they are realized. *See* Memorandum to Wanda J. Thomas, Audit Report on Friends of Weiner (Mar. 4, 2009) (This Office concluded that the committee was not required to report unrealized gains and losses as cash on hand under 11 C.F.R. § 104.3(a)(1), but the report should be clarified to reflect that the Audit Division’s view was that the committee failed to report realized gains and losses.) The Committee failed to report these net realized losses, which, in part, resulted in the misstatement.

The misstatement finding also states that the Committee overreported \$351,210 in transfers to the Senate committee. Although this amount relates to the transfer of assets from the General Account to the Senate committee, the overreporting finding is based on the timing of that transfer, not on the appropriate value of the assets. The Committee reported that the transfer occurred in September 2008, but in fact it did not occur until October 2008. The transfer should not have been reported on the report covering September 2008. More to the point, the misreporting of the transfer results in an overstatement of disbursements for the audit coverage period because the transfer did not in fact take place during the audit coverage period as originally reported. We understand that the Committee has amended its reports to correct this misstatement.

The excessive contributions finding (Finding 2) should clarify that the excessive contribution finding is not based on the value of the assets moved from the General Account to the Senate committee for redesignated contributions, and that these contributions are considered resolved. In several places (text and footnote 10 on page 13, footnote 11 on page 15) the DFAR states that the Committee had redesignation letters for moving general contributions to the Senate Committee, but it had insufficient funds to make the transfers. Footnote 11 states that there is \$173,210 in contributions for which the Committee provided redesignation letters but has not provided evidence that it actually moved the funds to the candidate’s Senate Committee. Because the excessive contributions finding is not based, as we understand it, on any lack of funds or failure to move the funds for redesignated contributions, we question the need for these references.

In addition, we suggest several other changes throughout the DFAR to clarify that the valuation of assets moved from the General Account to the Senate committee has no impact on the findings in the DFAR. We suggest you delete the last sentence of footnote (a) of the Statement of Net Outstanding Campaign Obligations on page 7, which states “This loss and subsequent losses are the basis for the excessive contributions of \$244,050 identified during audit fieldwork discussed in finding 2.” We also suggest you delete the last sentence in the last paragraph of Finding 1 on page 8, which states “The valuation of the investment account has no impact here, but is discussed further in Findings 2 and 3.” These sentences could create confusion because the \$244,050 in excessive contributions related to the General Account identified in the PAR was

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based on lack of documentation of redesignations or other resolution of those contributions, not on the loss of value of the General Account.