Nader'08 Gonzalez

SENT VIA U.S. MAIL, E-MAIL, AND HAND DELIVERY

July 11, 2011

Mr. Joseph F. Stolz
Assistant Staff Director
Audit Division
Federal Election Commission

Dear Mr. Stolz:

The Nader for President 2008 Committee submits the attached response to the Audit Division's Draft Final Audit report.

If you have any questions concerning this response, please contact Assistant Treasurer Neil Crossan at 610-613-1783 or myself at 404-585-8748.

Sincerely,

Nathan Coppernoll
General Counsel

cc: Ms. Sheraline L. Thomas, MS
Mr. Martin Favin
Mr. Carl Mayer
Mr. Neil Crossan
Ms. Theresa Amato
Mr. Bruce Afran, Esq.

The Nader for President 2008 Committee (the "Committee" or "NFP") submits the following response to the Audit Division's Draft Final Audit Report ("DFAR").

I. Title 2 Issues – Findings 2 and 3 of the DFAR

The Title 2 issues raised in the DFAR, Findings 2 and 3, reflect that there are no new issues or recommended amendments raised by the Audit staff that were not already covered by the Audit staff's Preliminary Audit Report ("PAR"). Thus, NFP's responses to Findings 2 and 3 have not changed and NFP reiterates and incorporates by reference its response to the PAR. With respect to Finding 2, NFP reports that it complied with all recommended amendments by the Audit staff or demonstrated where those amendments were unwarranted. With respect to Finding 3, NFP notes that it had originally disclosed the three lines of credit draws in its Schedule C-P, and filed the Schedule C-P-1 and a copy of the line of credit agreement as soon as NFP was made aware of its inadvertent omission. As the FEC is aware, the Nader campaign has been scrupulous in its efforts to comply with filings and we believe the immediate correction of this inadvertent omission on this one occasion should bring this particular issue to a close. For a further discussion of these issues NFP respectfully refers the Commission to its response to the Audit staff's PAR.

II. Title 26 Issues – Finding 1 of the DFAR

A. *31-day and DOI rules*

With respect to the Title 26 issues raised in the DFAR, Finding 1, NFP reiterates and incorporates by reference its response to the Preliminary Audit Report's recommendation regarding the operations of the FEC's regulations concerning both the 31-day post-election and the bright line Date of Ineligibility rules. NFP raises these issues to inform the Commission of the practical effect that the 31-day and DOI rules and regulations have on efficient small-budget campaigns, like NFP, that seek to complete their audits quickly. As a result, had these expenses or a portion thereof been credited, there would likely be no matching funds repayment issue at all. Since NFP sought to expedite the audit ahead of the 31-day trigger, we believe that it would be appropriate for that credit to have been applied so as to encourage other small-budget campaigns to expedite audits and more efficiently use the FEC's resources.

B. *Allocation post-December 5, 2008*

With respect to the winding down allocation used after December 5, 2008, both the Audit staff and attorneys in the Office of General Counsel stated that the Commission could consider a different winding down allocation than the 70/30 Primary to General allocation that was used by the Audit staff for all winding down expenses after the 31-day rule applied. The Audit staff invited NFP to submit further documentation to support a different allocation than originally used for the period following the 31-day rule.

On page 14 of the DFAR, the Audit staff stated:

> If NFP can demonstrate a reasonable allocation method, pursuant to 11 CFR §

9034.11(c), for winding down costs incurred after December 5, 2008, that results in a higher percentage than the 70 percent primary allocation agreed upon during audit field work, the Commission will consider allowing a larger winding down total for NFP.

...

Documentation should be provided that demonstrates a change to the allocation percentages. Such documentation could include a description of NFP activity after December 5, 2008 related to primary winding down costs, an explanation of which staff worked on primary winding down compared to those who worked on the general winding down, and a list of winding down costs explaining why they were related to the primary rather than the general.

Furthermore, on Page 5 of the Memorandum to Assistant Staff Director Joseph F. Stolz from the Office of General Counsel, the Memorandum found that 11 C.F.R. § 9034. 11 permits the Commission to "consider whether to increase the percentage of primary winding down expenses after December 5, 2008." Citing precedent from the Audit Report of Nader 2000 Primary, Inc., the Memorandum noted that "the Commission has previously allocated 100% of expenses to a primary committee after the date when the general committee's winding down process is completed." The Memorandum concluded that the Committee has not provided documentation but that it could "include a description of Committee activity during this period related to the primary wind down, an explanation of which staff worked on primary winding down compared to those who worked on general wind down and a list of winding down expenses explaining why they were related to the primary rather than the general."

In response to the framework proposed by the Office of General Counsel, NFP provided documentation to the Audit staff that for the time period post December 5, 2008 to date the appropriate allocation of winding down costs is (1) a winding down ratio of 70/30 Primary to General from December 5, 2008 until the end of December 2008 and (2) a winding down ratio of 95/5 of Primary to General activity from January 1, 2009 to date. The combined allocation from the period of December 5, 2008 until to date/termination, supports a winding down ratio of 85/15 of Primary to General.

In support of this position, as of January 1, 2009, the Committee had no offices or field offices left to close. NFP's personnel was devoted to winding down the primary election by responding to FEC audit matters. There was no General financial activity with the exception of a few dozen minor accounts payable check transactions. Of those, nearly half were monthly assessments of *de minimis* bank account fees. The remaining skeletal personnel activity responded to the FEC's audit and compliance matters. Only two people received compensation since the first quarter of 2009 -- NFP's accountant and records manager – with no additional employment compensation for more than a year to-date (although some additional legal and accounting fees are anticipated by NFP as the audit winding-down/termination process remains ongoing).

NFP reiterates that because of the operation of the 31-day rule, NFP received *zero* credit for any Primary winding down costs incurred when the auditors were on NFP's premises conducting their field work. The Office of General Counsel's Memorandum acknowledges "that as a practical matter, it is likely that the Committee incurred some expenses between November 5, 2008 and December 5, 2008, that it would not have incurred until later (or not at all) but for the unusually early audit fieldwork." (Memorandum at p. 3.) An adjusted Primary to General allocation for the winding down expenses in the post-December 5, 2008 time period is both warranted and supported by the actual expenses submitted to the Audit staff. NFP also reiterates that as a policy matter the FEC should credit NFP with such expenses so as to continue to encourage early audits by small-budget campaigns. These early audits allow the FEC staff to resolve smaller audits promptly to focus on larger-budget campaign audits later in the campaign year; it seems inequitable that NFP's early cooperation with the audit process should deprive it of expenses for which it would have been credited if NFP had hosted a later audit.

In light of the foregoing, NFP does not view that its participation in an oral hearing concerning the Title 2 issues is necessary but will make itself available through counsel if the Commission requests otherwise. NFP does preserve its rights to a Title 26 repayment hearing pursuant to 11 CFR 9038.2(c)(ii) on this matter if any outstanding issues remain following the issuance of the Final Audit Report.

To: **Ms. Sheraline L. Thomas, Mr. Martin Favin**

From: **Neil Crossan, Assistant Treasurer, Nathan Coppernoll, General Counsel, Nader for President**

Date: **July 11, 2011**

Re: **Winding Down Allocation**

Thank you for the opportunity to submit additional information in support of Nader for President 2008's ("NFP" or the "Committee") response to the Preliminary Audit Report (PAR) and in response to the Draft Final Audit Report DFAR.

On page 14 of the DFAR for Nader for President 2008, the Audit Staff states:

> If NFP can demonstrate a reasonable allocation method, pursuant to 11 CFR §9034.11(c), for winding down costs incurred after December 5, 2008, that results in a higher percentage than the 70 percent primary allocation agreed upon during audit field work, the Commission will consider allowing a larger winding down total for NFP. ...
>
> Documentation should be provided that demonstrates a change to the allocation percentages. Such documentation could include a description of NFP activity after December 5, 2008 related to primary winding down costs, an explanation of which staff worked on primary winding down costs explaining why they were related to the primary rather than the general winding down, and a list of winding down costs explaining why they were related to the primary rather than the general.

In response, NFP provides in the body of this supplemental Audit submission a description of NFP activity after December 5, 2008 related to primary winding down costs and an explanation of which staff worked on primary winding down costs explaining why they were related to the primary rather than the general winding down. NFP also provides an updated version of the post-December 5, 2008 spreadsheet showing a list of winding down costs and explains why they were related to the primary rather than the general. These three items of documentation, as requested by the Audit staff, support NFP's position that an allocation of 85:15 of primary to general winding down expenses should be adopted for the post-December 5, 2008 time period.

In examination of the post-December 5, 2008 spreadsheet NFP arrives at this allocation analysis by the following:

First, winding down for NFP began before the general election concluded as records were submitted to the FEC beginning in August 2008. The Audit staff completed its field work and the exit interview occurred before the end of the year 2008. By December 31, 2008 NFP sold all of its HQ assets that were unnecessary for the audit and placed all of its records and remaining assets in storage. Thus, as of December 31, 2008, NFP virtually completed its winding down for the General election. As the spreadsheet reflects, only a few dozen transactions were recorded thereafter with nearly half of them *de minimis* monthly bank fees.

Second, the remaining expenses from December 5, 2008 to December 31, 2008 are overwhelmingly primary winding down expenses. Those expenses reflect the following with respect to personnel:

I. **Expenses from December 6- December 31, 2008 Reflect the vast majority of expenses were for winding down the Primary.**

Personnel involved December 5 to until December 31, 2008 included the core audit response team:

- Neil Crossan, Head of Finance/Assistant Treasurer;
- Amy Carberg, Head of Compliance;
- Nathan Coppernoll, General Counsel;
- Matt Zawisky, "Office" Manager on site in DC to handle records/storage/mail/paperwork
- Theresa Amato, manager of Amato & Main, LLC was paid for compliance expertise, to travel to Washington, DC to oversee the exit interview with audit staff and the audit response.

Additional personnel between December 5, 2008 and December 31, 2008 included individuals who were paid during both Primary and General cycles and assisted in shutting down both Primary and General with respect to the physical office, preparing and maintaining records, or returning home. These individuals were:

- Loralynne Krobetzky (records/office shut down);
- Mike Welch (asset sales/office shut down);
- Christina Tobin, Mike Richardson, Steve Conn (wind down/return);
- John Wade (office shut down);
- Jason Kafoury (records archival);
- David Holmquist (IT shut down/records);
- Nick Bygon (electronic archival);

II. Expenses after January 1, 2009 Reflect Winding Down Exclusively for Primary Activities/the Audit.

After January 1, 2009 NFP did not have any offices in the District of Columbia or elsewhere. The only people on payroll were the core audit response team, Neil Crossan, Amy Carberg, Nathan Coppernoll, and Matt Zawisky. A consulting fee was paid to Amato & Main, LLC, for Ms. Amato's compliance expertise to respond to audit requests and guide the remainder of the audit process.

As of March 1, 2009, the only people remaining on payroll were Neil Crossan, the Assistant Treasurer, and Matt Zawisky, the records/"office" manager on site in DC. Presently, no one has been on payroll for more than a year. Some expenses, however, are anticipated for the preparation of audit responses and through termination.

All other expenses reflect expenses for the audit/compliance, including records storage, the records database, and routine fees for copying/"office supplies"/ postage to respond to audit requests and storage. If it were not for the audit, NFP would have terminated in early Q1 2009.

III. For both time periods, post December 5, 2008 - To Date, a single overall allocation of 85:15 is appropriate.

Total expenses (excluding general accounts payable and credits) from December 6, 2008 to December 31, 2008, amount to $65,625.20. Also, total expenses from January 1, 2009 to date amount to $100,907.27. Accordingly, total winding down expenses post December 5, 2008 amount to $166,532.47.

Seventy percent of December 6 to December 31, 2008 ($65,625(.70)) totals $45,937.64. Ninety-five percent from January 1, 2009 to date (not yet including expenses accrued for the ongoing audit responses) results in ($100,907.27(.95)) or $95,861.91. Thus, a total of Primary wind down expenses of 85% of $166,532.47, or $141.799.55 to date is appropriate.

Nader for President 2008

Actual Expenses per reports

Using 70/30 allocation

		Primary	General
	Actual Expenses	[redacted]	
Dec M 2008	$ 65,625.20	$ 45,937.64	$ 19,687.56
Apr Q 2009	49,324.17	34,526.92	14,797.25
July Q 2009	$ 14,537.15	10,176.01	4,361.15
Oct Q 2009	14,725.98	10,308.19	4,417.79
YE 2009	8,038.98	5,627.29	2,411.69
		60,638.40	
Apr Q 2010	3,060.00	2,142.00	918.00
Jul Q 2010	$ 4,455.91	3,119.14	1,336.77
Oct Q 2010	3,118.58	2,183.01	935.57
YE 2010	1,110.00	777.00	333.00
		8,221.14	
Apr Q 2011	1,411.50	988.05	423.45
	$ 165,407.47	$ 115,785.23	$ 49,622.24
Q2 2011	$ 1,125.00	$ 787.50	$ 337.50
Total Actuals thru 6/30/2011	$ 166,532.47		

[redacted]