Preliminary Report of the Audit Division on Nader for President 2008

January 4, 2008 – August 31, 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.[1] The audit determines whether the candidate was entitled to all of the matching funds received, whether the campaign used the matching funds in accordance with the law, whether the candidate is entitled to additional matching funds, and whether the campaign otherwise complied with the limitations, prohibitions, and disclosure requirements of the election law.

Future Action

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

About the Campaign (p. 2)

Nader for President 2008 is the principal campaign committee for Ralph Nader, a candidate for the Independent Party's nomination for the office of the President of the United States. The committee is headquartered in Washington, DC. For more information, see the chart on the Campaign Organization, p. 2.

Financial Activity (p. 3)

- **Receipts**

Contributions from Individuals	$1,761,530
Matching Funds Received	753,535
Candidate Contributions	40,000
Loans Received	300,000
Offsets to Operating Expenditures	4,339
Total Receipts	**$ 2,859,404**

- **Disbursements**

Operating Expenditures	$ 2,058,691
Transfers to Nader General	103,408
Fundraising Disbursements	85,606
Loan Repayments	300,000
Refunds of Contributions	13,485
Total Disbursements	**$ 2,561,190**

Findings and Recommendations (p. 4)

- Net Outstanding Campaign Obligations (Finding 1)
- Misstatement of Financial Activity (Finding 2)
- Disclosure of Loans (Finding 3)

[1] 26 U.S.C. §9038(a).

Preliminary Report of the Audit Division on Nader for President 2008

January 4, 2008 – August 31, 2008

Table of Contents

Part I
Background

Authority for Audit
This report is based on an audit of Nader for President 2008 (NFP), 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. NFP records were materially complete and the fieldwork began immediately.

Part II
Overview of Campaign

Campaign Organization

Important Dates	Nader for President 2008
• Date of Registration	March 4, 2008
• Eligibility Period[2]	July 15, 2008 – September 4, 2008
• Audit Coverage	January 4, 2008 - August 31, 2008
Headquarters	Washington, DC
Bank Information	
• Bank Depositories	Four
• Bank Accounts	Seven checking accounts
Treasurer	
• Treasurer When Audit Was Conducted	Carl J. Mayer
• Treasurer During Period Covered by Audit	Carl J. Mayer
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid staff

[2] The period during which the Candidate was eligible for matching funds, beginning on the date of certification of eligibility and ending on the date the Candidate announced his withdrawal from the campaign. See 11 CFR §9033.

Overview of Financial Activity
(Audited Amounts)

Cash on hand @ January 4, 2008	**$ 0**
o Contributions from Individuals	1,761,530
o Matching Funds Received	753,535[3]
o Candidate Contributions	40,000
o Loans Received	300,000
o Offsets to Operating Expenditures	4,339
Total Receipts	**$ 2,859,404**
o Operating Expenditures	$ 2,058,691
o Transfers to Nader General	103,408
o Fundraising Disbursements	85,606
o Loan Repayments	300,000
o Refunds of Contributions	13,485
Total Disbursements	**$ 2,561,190**
Cash on hand @ August 31, 2008	**$ 298,214**

[3] NFP received an additional $127,959 after September 4, 2008 for a total of $881,494. This represents 4% of the maximum entitlement ($21,025,000) a Presidential candidate was eligible to receive in 2008.

Part III
Summaries

Findings and Recommendations

Finding 1. Net Outstanding Campaign Obligations

The Audit staff's review of NFP's financial activity through August 31, 2008, and estimated winding down costs, indicated that the Candidate received matching funds of $62,698 in excess of his entitlement. The Audit staff recommends that NFP provide evidence that the Candidate did not receive matching fund payments in excess of entitlement. Absent this evidence, the Audit staff will make a recommendation that the Commission determines that $62,698 is repayable to the U.S. Treasury.
(For more detail, see p. 5)

Finding 2. Misstatement of Financial Activity

A comparison of NFP's reported figures to its bank records revealed that from January 4, 2008 through August 31, 2008, receipts were overstated by $17,106; disbursements were understated by $74,599; and, ending cash was overstated by $91,705. The majority of the disbursements understatement was due to transfers NFP made to its General committee which were not reported. The Audit staff recommends that NFP amend its disclosure reports to correct the misstatements.
(For more detail, see p. 11)

Finding 3. Disclosure of Loans

NFP secured a line of credit in the amount of $500,000 on June 25, 2008, but did not file the required Schedule C-P-1, or a copy of the line of credit agreement, until November 21, 2008, after the Audit staff made NFP officials aware of this omission. The Audit staff recommends that NFP provide any relevant comments it has on this issue.
(For more detail, see p. 13)

Summary of Amounts Owed to the U.S. Treasury

Finding 1	Federal Funds Received in Excess of Entitlement	$62,698
	Total Due U.S. Treasury	**$62,698**

Part IV
Findings and Recommendations

Finding 1. Net Outstanding Campaign Obligations

Summary
The Audit staff's review of NFP's financial activity through August 31, 2008, and estimated winding down costs, indicated that the Candidate received matching funds of $62,698 in excess of his entitlement. The Audit staff recommends that NFP provide evidence that the Candidate did not receive matching fund payments in excess of entitlement. Absent this evidence, the Audit staff will make a recommendation that the Commission determines that $62,698 is repayable to the U.S. Treasury.

Legal Standard
A. Net Outstanding Campaign Obligations (NOCO). Within 15 days after the candidate's date of ineligibility (see definition below), the candidate must submit a statement of "net outstanding campaign obligations." This statement must contain, among other things:

- The total of all committee assets including cash on hand, amounts owed to the committee and capital assets listed at their fair market value;
- The total of all outstanding obligations for qualified campaign expenses; and
- An estimate of necessary winding-down costs. 11 CFR §9034.5(a).

B. Date of Ineligibility. The date of ineligibility is whichever of the following dates occur first:

- The day on which the candidate ceases to be active in more than one state;
- The 30th day following the second consecutive primary in which the candidate receives less than 10 percent of the popular vote;
- The end of the matching payment period, which is generally the day when the party nominates its candidate for the general election; or
- In the case of a candidate whose party does not make its selection at a national convention, the last day of the last national convention held by a major party in the calendar year. 11 CFR §§9032.6 and 9033.5.

C. Qualified Campaign Expense. Each of the following expenses is a qualified campaign expense.

- An expense that is:
  - o Incurred by or on behalf of the candidate (or his or her campaign) during the period beginning on the day the individual becomes a candidate and continuing through the last day of the candidate's eligibility under 11 CFR §9033.5;
  - o Made in connection with the candidate's campaign for nomination; and
  - o Not incurred or paid in violation of any federal law or the law of the state where the expense was incurred or paid. 11 CFR §9032.9.

- An expense incurred for the purpose of determining whether an individual should become a candidate, if that individual subsequently becomes a candidate, regardless of when that expense is paid. 11 CFR §9034.4.
- An expense associated with winding down the campaign and terminating political activity. 11 CFR §9034.4(a)(3).

D. Value of Capital Assets. The fair market value of capital assets is 60% of the total original cost of the assets when acquired, except that assets that are received after the date of ineligibility must be valued at their fair market value on the date received. A candidate may claim a lower fair market value for a capital asset by listing the asset on the NOCO statement separately and demonstrating, through documentation, the lower fair market value. 11 CFR §9034.5(c)(1).

E. Entitlement to Matching Payments after Date of Ineligibility. If, on the date of ineligibility (see above), 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).

F. Allocation of Primary and General Election Winding Down Costs. A candidate who runs in both the primary and general election may divide winding down expenses between his or her primary and general election committees using any reasonable allocation method. An allocation method is reasonable if it divides the total winding down costs between the primary and general election committees and results in no less than one third of total winding down costs allocated to each committee. A candidate may demonstrate that an allocation method is reasonable even if either the primary or the general election committee is allocated less than one third of the total winding down costs. 11 §CFR 9034.11(c)

G. Primary Winding Down Costs During the General Election Period. A primary election candidate who does not run in the general election may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention. A primary election candidate who runs in the general election, regardless of whether the candidate receives public funds for the general election, must wait until 31 days after the general election before using any matching funds for winding down costs related to the primary election. No expenses incurred by a primary election candidate who runs in the general election prior to 31 days after the general election shall be considered primary winding down costs. 11 CFR §9034.11(d).

Facts and Analysis

The Candidate registered with the Commission on March 4, 2008 and received his first matching funds payment on July 17, 2008. The Candidate's date of ineligibility (DOI) was September 4, 2008.[4] After becoming ineligible due to the application of 11 CFR §9033.5(b), the Candidate continued to campaign for the general election. For purposes of determining Net Outstanding Campaign Obligations (NOCO), the Audit staff only considered winding down costs incurred after December 5, 2008, the end of the general expenditure report period, 31 days after the general election, in which NFP was eligible to use matching funds for winding down costs related to the primary election, as specified at 11 CFR §9034.11(d). Winding down costs were allocated between NFP (Primary Committee) and Nader for President 2008 General Committee (Nader General) using a 70/30 ratio, respectively, as proposed by NFP and verified for reasonableness by the Audit staff. The Audit staff reviewed NFP's financial activity through March 31, 2009, analyzed estimated winding down costs and prepared the Statement of Net Outstanding Campaign Obligations that appears on the next page:

[4] This was the last day of the last national convention held by a major party.

Nader for President 2008
Statement of Net Outstanding Campaign Obligations
As of September 4, 2008
Prepared on December 31, 2009

Assets

Cash on Hand	$ 893	[a]	
Cash in Bank	123,908		
Accounts Receivable	8,921		
Capital Assets	10,298		
Inventory – Merchandise	500		
Total Assets			$144,520

Liabilities

Accounts Payable for Qualified Campaign Expenses @ 9/4/08	$ 98,884		
Winding Down Costs (9/5/08 – 12/4/08)	0	[b]	
Actual Winding Down Costs (12/5/08 – 12/31/09)	77,898		
Estimated Winding Down Costs (1/1/10 – 9/30/10)	36,665	[c]	
Total Liabilities			$ 213,446

Net Outstanding Campaign Obligations (Deficit) as of September 4, 2008 ($68,926)

Footnotes to NOCO Statement:

[a] Amount includes contributions dated prior to DOI and deposited after DOI.

[b] Winding down costs were not allowed during this time period because a candidate running in the general election must wait until 31 days after the general election (12/5/08) before using any matching funds for winding down costs related to the primary election, pursuant to 11 CFR §9034.11(d).

[c] Estimated winding down costs will be compared to actual winding down costs and adjusted accordingly.

Shown below are adjustments for funds received after September 4, 2008, through December 31, 2009, based on the most current financial information available at the close of fieldwork:

Net Outstanding Campaign Obligations (Deficit) as of 9/4/08	($68,926)
Private Contributions and Other Receipts Received 9/5/08 through 10/3/08	3,665
Matching Funds Received on 10/3/08	127,959
Federal Funds Received in Excess of Entitlement	**$62,698**

As presented above, NFP received matching funds totaling $62,698 in excess of the amount which the Candidate was entitled.

The Audit staff prepared a Statement of Net Outstanding Campaign Obligations and provided it to NFP at the exit conference. In response, the NFP Counsel stated that NFP takes issue with the NOCO statement because of how the Commission currently interprets the winding down rules as applied to a candidate who receives primary matching funds, goes on to the general election, but does not receive general election public funding. He noted that the bright line cut-off rule regarding post-DOI expenditures does not count primary expenditures from DOI through the end of the general expenditure report period (December 5, 2008) was unfair to a minor party candidate who received primary matching funds and who had to go through ballot access hurdles, even after the major parties held their nominating conventions. Counsel added that primary-related expenses incurred after DOI are disqualified solely on when they were incurred but that state-determined ballot access requirements for minor party candidates result in the incurrence of indisputably primary-related expenses, i.e. ballot access expenditures, after the nomination date of the last major party to hold its convention.

Counsel points out that the Nader 2000 Primary Committee argued this issue in its response to the Preliminary Audit Report, which the Commission rejected in part at the time, but that if the Commission were to reconsider its bright line rule, NFP can identify and submit documentation for expenses that were incurred during the period September 5 through November 4 that should be considered primary expenses.

As noted in the Legal Standard section above, the Commission's regulations specify that qualified campaign expenses must be incurred between the date the individual becomes a candidate and the last day of the candidate's eligibility under 11 CFR §9033.5. In Mr. Nader's case, he has been given the benefit of the longest possible primary period. Therefore, expenses between September 5, and November 4, 2008, cannot be considered primary election expenses.

Counsel also notes that NFP followed 11 CFR 9034.11(d), and as a result, no primary matching funds or private monies were used for any expenses incurred in the "general election" period through December 5 but that "clearly-identifiable primary winding down expenses were incurred during this period, especially after November 4 and through December 5." He stated that even if NFP is not given credit for any primary expenses through November 4, it should be given credit for obvious winding down expenses incurred November 5 through December 5, 2008 and that the expenses incurred related to the Commission's audit on NFP's premises from November 13 through December 9, 2008 were undeniably primary winding down expenses.

NFP calculated at least $88,137 in winding down expenses from November 5 through December 5, 2008 which it believes should be considered legitimate winding down expenses and apart from its request for the Commission to reconsider the bright line rule in NFP's situation, proposed two solutions to adjust the NOCO: (1) Apply full credit in the amount of $88,137 for the period November 5 through December 5, 2008 for expenses NFP can document as primary winding down expenses, due to the timing of the audit. And at a minimum, 70%, or $61,696, should be allowed. (2) If proposal #1 is not accepted, then all actual expenses from December 5 through termination should be credited on the NOCO 100% as primary expenses, as opposed to the 70/30% Primary/General allocation. Counsel states that based on 11 CFR 9004.11(c) [note: identical to 11 CFR 9034.11(c)], the Audit staff has the flexibility to allow a candidate who runs in both the primary and general to divide winding down expenses between the primary and general using any reasonable allocation method and there is nothing in 11 CFR 9034.11(d) that prohibits crediting NFP as having its general election winding down costs during the post-general election period within 31 days of the general election. He adds that the regulation solely refers to not using primary matching funds for winding down costs related to the primary election.

The Audit staff notes that the Explanation and Justification for 11 CFR 9034.11(d) – *Candidates Who Run in Both Primary and General Elections* states that:

> ...a candidate who runs in the general election must wait until the day following the date 30 days after the general election before using matching funds for primary winding down costs, regardless of whether the candidate receives public funds for the general election. This rule clarifies that no expenses incurred prior to 31 days after the general election by candidates who run in the general election may be considered primary winding down costs or paid with matching funds.

The Explanation and Justification also notes the following:

> Although this revised rule may result in general election campaigns incurring a small amount of administrative costs related to terminating the primary campaign during the general election period, in practice, these expenses are offset by general election start up costs that are incurred and paid by the primary committee prior to the candidate's DOI. This approach is also consistent with the Commission's bright line rules for allocating expenses between primary and general campaigns at 11 CFR 9034.4(e), which allow some primary related expenses to be paid by the general election committee and *vice versa*.

With respect to the 70% primary 30% general election allocation ratio, it is already less than the suggested minimum ratio in the regulation and was the allocation suggested by the Audit staff. It recognizes that the primary wind down effort was the major share of the effort, but also recognizes that there was a general election campaign that required attention at the same time.

Counsel's final point was that "...public policy should not penalize a political committee through the application of the FEC's regulations for being extraordinarily efficient, for being prepared for immediate audit, for paying its bills in a timely fashion, and for being able to terminate quickly." Both NFP Counsel and the Audit staff agree that applying the regulations as written to NFP's situation, allowing no primary winding down costs until December 6, 2008, and considering all expenses incurred after September 4, 2008, to be general election expenses, produce the result shown on the NOCO presented above.

Preliminary Audit Report Recommendation

The Audit staff recommends that, within 60 days of service of this report, NFP provide evidence that it did not receive matching fund payments in excess of entitlement. Absent such evidence, the Audit staff will make a recommendation that the Commission determines that $62,698 is repayable to the U.S. Treasury.

Finding 2. Misstatement of Financial Activity

Summary

A comparison of NFP's reported figures to its bank records revealed that from January 4, 2008 through August 31, 2008, receipts were overstated by $17,106; disbursements were understated by $74,599; and, ending cash was overstated by $91,705. The majority of the disbursements understatement was due to transfers NFP made to its General committee which were not reported. The Audit staff recommends that NFP amend its disclosure reports to correct the misstatements.

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

Facts and Analysis

The Audit staff reconciled NFP's reported financial activity to its bank records and determined that there was a misstatement of cash on hand, receipts, and disbursements. The following chart outlines the discrepancies and succeeding paragraphs explain, to the extent possible, the reasons for the misstatements.

2008 Activity			
	Reported	**Bank Records**	**Discrepancy**
Opening Cash Balance @ January 4, 2008	$0	$0	$0
Receipts	$2,977,570	$2,960,464	$17,106 Overstated
Disbursements	$2,587,452	$2,662,051	$74,599 Understated
Ending Cash Balance @ December 31, 2008	$390,118	$298,413	$91,705 Overstated

The overstatement of receipts resulted from the following:

• Earmarked contributions double-counted in receipts total	(13,725)
• Over reported receipts	(4,225)
• In-kind contributions not reported on Schedules A	838
• Unexplained difference	6
Net Overstatement of Receipts	$(17,106)

The overstatement of disbursements resulted from the following:

• Unreported transfers to Nader General	101,391
• Net reported bank debit adjustments, never adjusted (voided checks; contributions returned for insufficient funds; stop payments; over/under reported items)	(15,306)
• In-kind contributions not reported on Schedules B	251
• Unexplained difference	(11,737)
Net Understatement of Disbursements	$ 74,599

The overstatement of ending cash on hand in the amount of $91,705 resulted from the misstatements described above.

NFP did not report the majority of transfers of contributions in excess of the limitations it made to the Nader General committee, in the amount of $101,391. These transfers were mainly contributions to NFP where the contributors had exhausted their contribution limitation to NFP and the excessive portion of the contribution was properly redesignated to the Nader General.

At the exit conference the Audit staff explained the misstatements and subsequently provided NFP representatives with schedules detailing these discrepancies. In response, the NFP representatives agreed to amend its reports.

Preliminary Audit Report Recommendation

The Audit staff recommends that, within 60 calendar days of service of this report, NFP:

- Amend its 2008 reports to correct the misstatements; and

- Amend the cash balance on its most recently filed report with an explanation that it resulted from audit adjustments from a prior period. It is further recommended that NFP reconcile the cash balance on its most recent report to identify any subsequent discrepancies that may impact adjustments recommended by the Audit staff.

Finding 3. Disclosure of Loans

Summary

NFP secured a line of credit in the amount of $500,000 on June 25, 2008, but did not file the required Schedule C-P-1, or a copy of the line of credit agreement, until November 21, 2008, after the Audit staff made NFP officials aware of this omission. The Audit staff recommends that NFP provide any relevant comments it has on this issue.

Legal Standard

Loans. When a political committee obtains a loan from, or establishes a line of credit at, a lending institution as described in 11 CFR 100.82(a) through (d) and 100.142(a) through (d), it shall disclose in the report covering the period when the loan was obtained, the following information on Schedule C-1 or C-P-1:

(i) The date and amount of the loan or line of credit;
(ii) The interest rate and repayment schedule of the loan, or of each draw on the line of credit;
(iii) The types and value of traditional collateral or other sources of repayment that secure the loan or the line of credit, and if that security interest is perfected;.
(iv) An explanation of the basis upon which the loan was made or the line of credit established, if not made on the basis of either traditional collateral or the other sources of repayment described in 11 CFR 100.82(e)(1) and (2) and 100.142(e)(1) and (2); and
(v) A certification from the lending institution that the borrower's responses to paragraphs (d)(1)(i)-(iv) of this section are accurate, to the best of the lending institution's knowledge; that the loan was made or the line of credit established on terms and conditions (including interest rate) no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness; and that the lending institution is aware of the requirement that a loan or a line of credit must be made on a basis which assures repayment and that the lending institution has complied with Commission regulations at 11 CFR 100.82(a) through (d) and 100.142(a) through (d). 11 CFR §104.3(d)(1).

In addition, a political committee shall submit: (1) a copy of the loan or line of credit agreement which describes the terms and conditions of the loan or line of credit when it files Schedule C-1 or C-P-1; and, (2) a Schedule C-1 or C-P-1 each time a draw is made on a line of credit. 11 CFR §104.3(d)(2) and (3)

Facts and Analysis
NFP secured a line of credit totaling $500,000 on June 25, 2008. The loan agreement stipulated that repayment was due by September 3, 2008. A total of $300,000 was drawn against this line of credit, and disclosed on Schedules C-P, in amounts of: $200,000 on June 27, 2008; $50,000 on July 10, 2008; and, $50,000 on August 22, 2008. The first two draws were repaid with interest on July 18, 2008 and the third draw was repaid with interest on August 29, 2008.

NFP filed Schedules C-P for each of the three line of credit draws but did not file the required Schedule C-P-1, or a copy of the line of credit agreement, until November 21, 2008, after the Audit staff made NFP officials aware of this omission. No further amendments will be necessary for the line of credit disclosure.

Preliminary Audit Report Recommendation
The Audit staff recommends that, within 60 calendar days of service of this report, NFP provide any relevant comments it has on this issue.