




FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

November 7, 1989

MEMORANDUM

TO: FRED EILAND
CHIEF, PRESS OFFICE

FROM: ROBERT J. COSTA 
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON LENORA B.
FULANI'S COMMITTEE FOR FAIR ELECTIONS

Attached please find a copy of the Final Audit Report on Lenora B. Fulani's Committee for Fair Elections which was approved by the Commission on November 2, 1989.

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

Attachment as stated

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

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FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

REPORT OF THE AUDIT DIVISION
ON LENORA B. FULANI'S
COMMITTEE FOR FAIR ELECTIONS

I. BackgroundA. Overview

This report is based on an audit of Lenora B. Fulani's Committee for Fair Elections ("the Committee") to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Presidential Primary Matching Payment Account Act. The audit was conducted pursuant to 26 U.S.C. § 9038(a) which states that "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 payments under section 9037."

In addition, 26 U.S.C. § 9039(b) and 11 C.F.R. § 9038.1(a)(2) state, in relevant parts, that the Commission may conduct other examinations and audits from time to time as it deems necessary.

The Committee registered with the Federal Election Commission on July 2, 1987. The Committee maintains its headquarters in New York, New York.

The audit covered the period from the Committee's inception, July 9, 1987, through December 31, 1988. During this period the Committee reported an opening cash balance of \$-0-, total receipts of \$2,184,674.17, total disbursements of \$2,162,581.55, and a closing cash balance of \$22,332.62^{*}/ on December 31, 1988. In addition, data relating to the Statement of Net Outstanding Campaign Obligations (NOCO) were reviewed through July 31, 1989. Under 11 C.F.R. § 9038.1(e)(4) additional audit work may be conducted and addenda to the report issued as necessary.

This report is based upon documents and workpapers which support each of the factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to Commissioners and appropriate staff for review.

^{*}/ These figures do not foot due to mathematical errors made by the Committee.

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B. Key Personnel

From the inception of the Committee to May 12, 1988 the Treasurer of the Committee was Francis X. Zuback. Since May 13, 1988, the Treasurer has been Deborah A. Green.

C. Scope

The audit included such tests as verification of total reported receipts, disbursements and individual transactions; review of required supporting documentation; analysis of Committee debts and obligations; review of contribution and expenditure limitations; and such other audit procedures as deemed necessary under the circumstances; except that the Committee's recordkeeping with respect to currency contributions, the aggregate amount of which represented a significant portion of total contributions received from individuals, appears to be in compliance with 2 U.S.C. §432(c), although sufficient documentation was not available with which to perform any substantive testing.

II. Finding and Recommendation Related to Title 2 of the United States Code

Failure to Disclose Matching Fund Payment Received

Section 434 (b)(2)(K) of Title 2 of the United States Code states, in relevant part, that each report filed under this section by an authorized committee of a candidate for the office of President shall disclose the total amount of all Federal funds received under chapter 96 of title 26.

The Audit staff's review of matching fund payments received by the Committee indicated that the receipt of \$79,482.19 for Letter Request Number 2 ("LR-02"), certified by the Commission on June 29, 1988, was not disclosed properly on reports filed by the Committee. The Audit staff determined that LR-02 was deposited into a Committee bank account on July 5, 1988 and reported as part of unitemized contributions from individuals on the Committee's 1988 report covering the period July 1 through July 31, 1988.

The Committee representative stated during the exit conference that an amendment would be filed.

On March 13, 1989, the Committee filed amendments correcting the above noted discrepancy.

Recommendation #1

The Audit staff recommends that no further action be taken on this matter.

III. Findings and Recommendations Related to Title 26 of the United States Code

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A. Stale-dated Committee Checks

Section 9038.6 of Title 11 of the Code of Federal Regulations states that if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks payable to the United States Treasury.

During reconciliation of Committee bank accounts, the Audit staff identified 18 checks totaling \$1,766.93, dated prior to July 30, 1988 and which remained outstanding as of December 31, 1988.

At the exit conference, the Committee representative was provided a schedule detailing the stale-dated checks. The Committee representative stated that efforts were currently being made to clear the outstanding checks and the Audit staff would be informed of the outcome.

In the interim audit report, the Audit staff recommended that within 30 calendar days after service of the report the Committee (1) inform the Commission of its efforts to encourage the payees to cash the outstanding checks or provide evidence documenting the Committee's efforts to resolve these items; and (2) submit a check payable to the United States Treasury for the total amount of such checks which are still outstanding at the conclusion of the response period.

The Committee's response to the interim audit report, received August 18, 1989, documented its efforts to resolve \$1,573.62 in stale-dated checks.

On October 20, 1989, the Committee submitted a check payable to the United States Treasury in repayment of unresolved stale-dated checks (\$193.31).

Recommendation #2

On November 2, 1989, the Commission made an initial determination that \$193.31 in stale-dated checks is repayable to the United States Treasury pursuant to Section 9038.6 of Title 11 of the Code of Federal Regulations. The repayment has been received by the United States Treasury.

B. Matching Funds Received in Excess of Entitlement

Section 9038(b)(1) of Title 26 of the United States Code states, in part, that payments made to a candidate from the matching payment account in excess of the candidate's entitlement shall be repaid to the Secretary upon notification by the Commission.

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Section 9038.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that a candidate who has received payments from the matching payment account shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section.

Section 9038.2(b)(1)(i) of Title 11 of the Code of Federal Regulations states that the Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Included are payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 C.F.R. § 9034.5.

As presented in Finding III.E., the candidate's audited NOCO statement reflected a deficit on August 18, 1988, the candidate's date of ineligibility. The Audit staff determined that contributions received from individuals and matching funds received after the date of ineligibility resulted in the deficit being eliminated on December 13, 1988, the date on which the payment relative to Matching Fund Request #12 (the last matching fund request made by the Committee) was received. The Audit staff calculated the Committee's remaining entitlement (deficit) on December 5, 1988 to be \$17,989.79. By applying the next deposit made by the Committee (Matching Fund Request #12 for \$33,054.29) to this deficit, the Audit staff determined that \$15,064.50 of this matching fund payment was in excess of the amount to which the candidate was entitled.

The Committee representative was provided with the Audit staff's revised figures. On October 20, 1989, the Committee submitted a check payable to the United States Treasury in repayment of matching funds received in excess of entitlement.

Recommendation #3

On November 2, 1989, the Commission made an initial determination that \$15,064.50 in matching funds received by the Committee on December 13, 1988 represents matching funds received in excess of entitlement and that an equal amount must be repaid to the United States Treasury pursuant to 26 U.S.C. §9038(b)(1). The repayment has been received by the United States Treasury.

C. Calculation of Repayment Ratio

Section 9038(b)(2)(A) of Title 26 of the United States Code states that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than to defray the qualified campaign expenses with respect to which such payment was made it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

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The Regulations at 11 C.F.R. § 9038.2(b)(2)(iii) state that the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility.

On August 24, 1988, the Commission determined Dr. Fulani's date of ineligibility to be August 18, 1988.

The formula and the appropriate calculation with respect to the Committee's receipt activity is as follows:

Total Matching Funds Certified through
the Date of Ineligibility - 8/18/88
 Numerator plus Private Contributions Received
 through 8/18/88

$$\frac{\$771,415.98}{\$1,852,417.96} = .416437$$

Thus, the repayment ratio for non-qualified campaign expenses is 41.6437%.

D. Apparent Non-Qualified Campaign Expenses

Section 9038.2(b)(2) of Title 11 of the Code of Federal Regulations states, in relevant part, that the Commission may determine that amounts of any payments made to a candidate from the matching payment account were used for purposes other than to defray qualified campaign expenses.

Section 9032(9) of Title 26, United States Code, and Section 9032.9 of Title 11, Code of Federal Regulations, in part, define a qualified campaign expense as a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by a candidate or his authorized committee in connection with his campaign for nomination for election from the date the individual became a candidate through the last day of the candidate's eligibility.

The Audit staff identified 41 payments totaling \$3,520.85, which upon examination of the supporting documentation, appear to be for other than qualified campaign expenses.

During the exit conference, the Committee representative was supplied with a schedule detailing these items. The Committee representative made no comment with respect to this matter. By letter dated March 7, 1989, the Committee stated that it does not wish to dispute these disbursements identified as non-qualified campaign expenses.

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The following recommendation was presented to the Commission on July 11, 1989:

"The Audit staff recommends that within 30 calendar days after service of this report the Committee submit evidence demonstrating that the payments in question are qualified campaign expenses. Absent such a showing, the Audit staff will recommend that the Commission make an initial determination that the pro rata portion of \$1,466.21 ($\$3,520.85 \times .416437$) be repaid to the United States Treasury."

During the Commission's consideration of this recommendation, the Commission could not reach a conclusive decision. The discussion related to the recommendations involved the appropriateness of seeking a repayment under 26 U.S.C. § 9038(b)(1) as found at Finding III.B., pps. 3-4; while at the same time seeking a repayment under 26 U.S.C. § 9038(b)(2) for a portion of the total non-qualified campaign expenses. The Commission focused on the question of whether or not a "double counting" existed since as part of the calculation of the Committee's remaining entitlement, non-qualified campaign expenses were not recognized for purposes of determining the Candidate's deficit in accordance with 11 C.F.R. § 9034.5(b) (refer to NOCO statement at page 7). Also, a pro rata repayment was being sought for the amount of non-qualified campaign expenses paid with matching funds but not permitted to be recognized for NOCO purposes.

A motion was made to approve the recommendation provided the full original amount ($\$3,520.85$) of non-qualified campaign expenses be reduced by $\$76.64$, which represents the value of non-qualified campaign expenses paid with matching funds after the candidate's date of ineligibility and also deducted from the NOCO statement at page 7 of this report. The pro rata portion to be repaid to the United States Treasury would in turn decrease to $\$1,434.30$. This motion failed by a vote of 3-3 [Commissioners McDonald, McGarry and Thomas voting in the affirmative and Commissioners Aikens, Elliott and Josefiak voting against.]

A second motion was made to approve the recommendation as written; that motion failed by a vote of 3-3 [Commissioners Aikens, Elliott and Josefiak voting in the affirmative and Commissioners McDonald, McGarry and Thomas voting against].

A third motion was made to require repayment under 26 U.S.C. § 9038(b)(2) with respect to all but $\$76.64$ in non-qualified campaign expenses and to add language in the report to explain the issue on which the Commission did not reach a majority decision. This motion passed by a vote of 6-0.*

*/ In accordance with this motion, revised language which appears on page 6 of this report was circulated for a tally vote. The vote was 5-1, Commissioner Aikens dissenting.

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In response to the interim audit report, the Committee presented a check for \$1,434.30 payable to the United States Treasury.

Recommendation #4

On November 2, 1989, the Commission made an initial determination that the pro rata portion of \$1,434.30 [(\$3,520.85 - \$76.64) x .416437] is repayable to the United States Treasury. The repayment has been received by the United States Treasury.

E. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that the candidate submit a Statement of Net Outstanding Campaign Obligations (NOCO) which contains, among other items, the total for all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs within 15 days of the candidate's date of ineligibility.

On August 24, 1988, the Commission determined Dr. Fulani's date of ineligibility to be August 18, 1988. The Committee filed a NOCO Statement on September 7, 1988, which reflected the Committee's estimated NOCO as of the date of ineligibility. The Audit staff reviewed the Committee's financial activity through July 31, 1989 and their estimates of winding down costs. The NOCO Statement, as adjusted by the Audit staff, appears below:

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LENORA B. FULANI'S COMMITTEE
FOR FAIR ELECTIONS
Audit Analysis of August 18, 1988 NOCO Statement
Determined as of July 31, 1989

Assets

Cash in Bank	\$49,421.97	
Accounts Receivable	38,145.27	
Capital Assets	<u>7,918.16</u>	
Total Assets		\$95,485.40

Obligations

Accounts Payable - Qualified Campaign Expenses		\$ 278,404.55
Actual Winding Down		
Costs (8/19/88 - 7/31/89)	\$97,077.03	
Less: NOCE included above	<u>(76.64)</u> ^{1/}	97,000.39
Estimated Winding Down		
Costs (post 7/31/89)		
Express Mail	25.00	
Legal and Accounting Fees	250.00	
Moving	50.00	
Storage	<u>150.00</u>	
Total Estimated Winding Down Costs		<u>475.00</u>
Total Obligations		<u>375,879.94</u> ^{2/}
Net Outstanding Campaign Obligations (Deficit) as of August 18, 1988		<u>\$ (280,394.54)</u>

^{1/} Under 11 C.F.R. §9034.4(b)(3), any expenses incurred after a candidate's date of ineligibility, as determined under 11 C.F.R. §9035.5, are not qualified campaign expenses except to the extent permitted under 11 C.F.R. §9034.4(a)(3).

^{2/} Since estimates were used in computing this amount, the Audit staff will review the Committee's reports and records to compare the actual figures with the estimates and prepare adjustments as necessary.

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Shown below is an adjustment for private contributions and matching funds received after August 18, 1988, based on the most current financial information available at the close of fieldwork.

Net Outstanding Campaign Obligations (Deficit) as of 8-18-88 \$(280,394.54)

Net Private Contributions Received (through 12-13-88) 128,076.57

Matching Funds Received (through 12-13-88) 167,382.47

Matching Funds Received in Excess of Entitlement as of December 13, 1988 (See Finding III.B.) \$15,064.50

Additional fieldwork may be required to assess the impact of future financial activity on the NOCO Statement.

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