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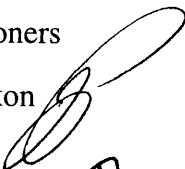
October 18, 2004

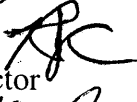
MEMORANDUM

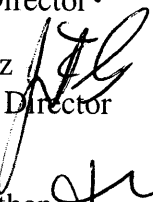
AGENDA ITEM


For Meeting of: 10-28-04


To: The Commissioners

Through: James A. Pehrkon 
Staff Director

Robert J. Costa 
Deputy Staff Director

From: Joseph F. Stoltz 
Assistant Staff Director
Audit Division

Thomas J. Nurthen 
Audit Manager

Mary Moss 
Lead Auditor

Subject: Report of the Audit Division on the Conservative Leadership Political Action Committee

Attached for your approval is the subject report as well as a legal analysis provided by the Office of General Counsel (OGC). The legal analysis examines two questions; first, does the contract between CLPAC and American Targeted Advertising, Inc., a fundraising firm, as originally written result in a contribution and, second, if the answer to the first question is no, does the way the contract was executed and amended represent a contribution. The conclusion is that at least the second question should be answered in the affirmative. That is, because the contract was not followed and then amended to guarantee CLPAC a cash flow after it became obvious that the program was losing money, the funds that CLPAC received were contributions from the vendor.

The more difficult question is whether the original contract was, per se, a contribution given the no risk provisions contained therein. OGC provides a detailed discussion of relevant Advisory Opinions, but notes that this history does not provide a definitive answer. The contract in this instance provides that CLPAC could be liable for no more than the amount raised. Similar contracts have been permitted in the past as long as there were sufficient safeguards. There are a number of factors that may bear on this question including the timing of the contract, CLPAC's fundraising history, and the

vendors experience with such contracts. First, the vendor in its response to the interim audit report acknowledges that this was a high risk arrangement and that prospect mailings commonly lose money while a housefile is assembled. It is the housefile that tends to make a profit and eventually cover the development costs. The contract as originally written requires that a \$1,000,000 positive balance was to be accumulated prior to the distribution of any funds to CLPAC. Second, and related to the first, is the timing of the contract. This contract covered a short period of time, beginning in July of 2000 and ending on or immediately before the election.¹ That appears to be little time to develop and capitalize on a housefile. The vendor explains that it has been in the fundraising business for nearly 40 years. It would seem that in that time not many fundraising efforts could have been misjudged as badly as the CLPAC program and the company remain in business. The proceeds fell in excess of \$3 million short of fundraising billings, and returned only about 60 cents on the dollar billed for the fundraising effort. The other no risk contracts that the vendor points to appear to anticipate a much longer relationship between the vendor and the client, therefore, provide a better chance that the contract would be profitable. CLPAC's fundraising history also does not suggest that a program of this dimension could expect to be profitable in a short time period. Between 1997 and 2004 CLPAC generally raised between \$22,000 and \$107,000 per year. That suggests that it had a very limited contributor base. The exceptions are calendar years 2000 and the first half of 2001. Based on the reports filed by CLPAC it appears that additional mailings were done during early 2001 perhaps in an attempt to recover some of the losses incurred during the later part of 2000. Many of the same vendors used during 2000 received payments in 2001 and once again expenses (\$449,478) exceeded revenues (\$363,140). No debts are reported in 2001.

The audit staff concluded that this contract was sufficiently speculative that the unrecovered costs should be viewed as contributions. As suggested by OGC, the final audit report is being forwarded as written for your consideration.

Recommendation

The Audit staff recommends that the report be approved.

This report is being circulated on a tally vote basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session. If you have any questions, please contact Mary Moss or Tom Nurthen at 694-1200.

Attachments:

Report of the Audit Division on the Conservative Leadership Political Action Committee Legal Analysis dated October 15, 2004.

¹ There is a provision for debt reduction mailings after the election, but the vendor explains that due to the recount of the 2000 Presidential election vote, the debt retirement mailings could not be done in the post election period. Based on a review of the mid-year 2001 disclosure reports it appears that some additional mailings were undertaken in the first half of 2001. However those mailings were apparently unsuccessful.



Report of the Audit Division on the Conservative Leadership Political Action Committee

January 1, 1999 – December 31, 2000

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

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. 3)

The Conservative Leadership Political Action Committee is a multicandidate committee headquartered in Arlington, VA. For more information, see chart on the Committee Organization, p. 3.

Financial Activity (p. 3)

- **Receipts**
 - Contributions from Individuals \$ 4,761,574
 - **Total Receipts** \$ 4,761,574
- **Disbursements**
 - Operating Expenditures \$ 4,268,965
 - Independent Expenditures 355,667
 - Contributions to Federal Candidates 18,250
 - Refund of Contributions to Individuals 5,653
 - **Total Disbursements** \$ 4,648,535

Findings and Recommendations (p.4)

- Receipt of Apparent Impermissible Contributions (Finding 1)
- Extensions of Credit by Commercial Vendors (Finding 2)
- Impermissible Contributions (Finding 3)
- Disclosure of Outstanding Debts (Finding 4)
- Disclosure of Occupation/Name of Employer (Finding 5)
- Disclosure of Disbursements (Finding 6)
- Undisclosed Depository (Finding 7)

¹ 2 U.S.C. §438(b).

Report of the Audit Division on the Conservative Leadership Political Action Committee

January 1, 1999 – December 31, 2000



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Part I

Background

Authority for Audit

This report is based on an audit of the Conservative Leadership Political Action Committee (CLPAC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

History and Scope of Audit

Initial Attempts to Obtain Records

On January 18, 2002, the Commission voted to audit CLPAC and the Audit staff notified CLPAC by letter dated January 31, 2002. The audit notification letter outlined the scope of the audit and described the records necessary for the audit. On February 8, 2002, the President of CLPAC represented that preliminary records would be sent to the Commission. On April 15, 2002, after changing the estimated schedule of record production several times, and after being advised of the subpoena process, the President stated that the records would be couriered to the Commission no later than April 18, 2002. No records were produced on that date and subsequent efforts by the Audit staff to reach the President were unsuccessful.² The Treasurer was reached on April 24, 2002, and a copy of the audit notification letter was faxed to him, so that he could expedite the provision of records. On May 1, 2002, the President left a message stating that he anticipated securing documentation by May 15, 2002. No documents were provided.

Records Obtained through Subpoenas

On June 3, 2002, the Commission issued subpoenas to the President of CLPAC and to the Treasurer, through Counsel for the production of records. Subsequent to the issuance of subpoenas, all communication has been through Counsel. On June 19, 2002, Counsel produced five diskettes purported to contain disbursement data, but actually containing only the file structure for CLPAC's campaign management software. On July 12, 2002, the Audit staff obtained an incomplete database of receipts. In response to the subpoena, on August 20, 2002, Counsel submitted bank statements for one account, incomplete receipt tallies, disbursement reports for one account, and some unpaid invoices. On October 8, 2002, Counsel was advised that CLPAC had not produced the documents or provided the written answers required by the subpoena. Major omissions included but were not limited to, bank statements and enclosures; source documents for contributions;

² CLPAC was initially provided extra time to produce records because it planned to move its offices in late February or March.

receipts, invoices and other source documents for disbursements, and computer files for disbursements. Between December 17, 2002, and April 3, 2003, Counsel made piecemeal submissions of invoices, check copies, and bank statements. Also provided was an electronic file of disbursements from one account, a duplicate database of receipts from one account, some duplicate invoices, copies of wire transfer advices, copies of some deposit tickets, loose copies of some contributor checks, and solicitation materials. The electronic file was apparently maintained by American Targeted Advertising, Inc. (ATA), CLPAC's direct mail fundraising vendor, who also controlled one of CLPAC's checking accounts. Into this account, contributions totaling \$4,666,695 were deposited and disbursements totaling \$4,150,574 were made.

Review of Receipts and Disbursements

The review of receipts was limited to an electronic file and very few contributor check copies. The file and the check copies together satisfied minimum recordkeeping requirements for 91% of the total deposits. CLPAC provided no source documents (such as check copies attached to deposit tickets), whereby contributions could be traced to bank deposits.

The review of disbursements was limited to bank statements, copies of checks and wire transfer advices, contemporaneous memoranda to support some disbursements, and an electronic file that included data for 89% of the disbursements made during the Audit period. Invoices were available for only 11% of the total dollar amount of disbursements. Thus, the Audit staff could not verify the information contained in the electronic files provided.

Response to the Interim Audit Report

CLPAC submitted a limited response to the interim report. ATA, however, made a separate and more extensive response including examples of other clients who were provided similar services and extensions of credit, background on the CLPAC contract, and documentation concerning the settlements between ATA and a number of its subcontractors. Much of the information included below is from ATA's response.

To the extent possible the audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions and other receipts.
4. The disclosure of disbursements, debts, and obligations.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

Changes to the Law

On March 27, 2002, President Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA contains many substantial and technical changes to the federal campaign finance law. Most of the changes became effective November 6, 2002. The period covered by this audit pre-dates these changes. Therefore, the statutory and regulatory requirements cited in this report are those that were in effect during the audit period.

Part II

Overview of Committee

Committee Organization

Important Dates	Conservative Leadership PAC
• Date of Registration	September 11, 1972
• Audit Coverage	January 1, 1999 – December 31, 2000
Headquarters	
	Arlington, VA
Bank Information	
• Bank Depositories	2
• Bank Accounts	3 Federal and 1 Non-Federal Accounts
Treasurers	
• Treasurer When Audit Was Conducted	Mr. David Fenner
• Treasurer During Period Covered by Audit	Mr. Loren Smith (June 19, 2000 to June 29, 2001) Mr. Howard P. Estes, Jr. (January 1, 1999 to June 19, 2000)
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	CLPAC Staff and a paid accountant

Overview of Financial Activity

(Audited Amounts)

Cash on hand @ January 1, 1999	\$ 2,519
Receipts	
○ Contributions from Individuals	4,761,574
Total Receipts	\$ 4,761,574
Disbursements	
○ Operating Expenditures	4,268,965
○ Independent Expenditures	355,667
○ Contributions to Federal Candidates/Committees	18,250
○ Refunds of Contributions to Individuals	5,653
Total Disbursements	\$ 4,648,535
Cash on hand @ December 31, 2000	\$ 115,558

Part III

Summaries

Findings and Recommendations

Finding 1. Receipt of Apparent Impermissible Contributions

Three individuals and a corporation billed CLPAC \$1,835,335 for postage, list rental, and interest. However, they did not provide any services that required the use of postage and/or list rental. It appears that the individuals and corporation that advanced postage and list rental fees on behalf of CLPAC made impermissible contributions in the form of loans to cover fundraising expenses. The Audit staff recommended that CLPAC provide evidence that demonstrates that the advances did not represent impermissible contributions. In response, both CLPAC's attorney (Counsel) and ATA's President of Corporate and Legal Affairs (ATA's President) argued that these advances were made to ATA, not CLPAC, and that such advances are common practice in the direct mail industry. CLPAC did not demonstrate that the advances were not prohibited and/or excessive contributions. (For more detail, see p. 6)

Finding 2. Extensions of Credit by Commercial Vendors

The audit revealed that eight incorporated vendors and two limited liability companies may have extended credit to CLPAC outside their normal course of business by allowing invoices to remain outstanding for a considerable length of time. In the interim audit report the Audit staff concluded that these vendors did not appear to make commercially reasonable attempts to collect \$3,766,914 for services rendered, thereby making apparent prohibited contributions. In response to the interim audit report recommendation, Counsel stated the debts were not CLPAC's but rather obligations of ATA. ATA's President provided documentation that demonstrated steps taken by certain vendors, including litigation, to collect the outstanding balances. (For more detail, see p. 10)

Finding 3. Impermissible Contributions

On July 6, 2000, CLPAC entered into an agreement with ATA to perform direct mail fundraising services. CLPAC received proceeds (\$465,000) not provided for in the original agreement and vendor credits and/or payments against outstanding invoices (\$3,202,709). These transactions appear to represent impermissible contributions totaling \$3,677,709. The Audit staff recommended that CLPAC demonstrate that it did not receive impermissible contributions from ATA and other vendors associated with the direct mail fundraising effort. In response, both Counsel and ATA's President contended that the agreement contains a no risk provision so that any shortfall in fundraising proceeds as compared to cost is the responsibility of ATA and thus does not represent a contribution to CLPAC. It was further stated that such contracts are common in the

direct mail industry. CLPAC failed to demonstrate that it did not receive impermissible contributions. (For more detail, see p. 13)

Finding 4. Disclosure of Outstanding Debts

CLPAC's disclosure reports covering the last four reporting periods of calendar year 2000, as originally filed, disclosed approximately \$9,938,000 in debts owed to vendors. However, on June 8, 2001, and July 30, 2001, CLPAC amended these reports and deleted all debts reported. The Audit staff determined that CLPAC failed to report approximately \$13,896,000 in debts owed to vendors during this same period. In response to the interim audit report recommendation, Counsel stated the debts were not CLPAC's but rather obligations of ATA. CLPAC did not file amended disclosure reports. (For more detail, see p. 19)

Finding 5. Disclosure of Occupation/Name of Employer

Contributions from individuals were reviewed on a sample basis. The review indicated that CLPAC failed to disclose the contributor's occupation and/or name of employer for 93% of the contributions tested that required the disclosure of that information. In response to the interim audit report recommendation, Counsel stated CLPAC made every effort to obtain the necessary documents from its vendors, but was unsuccessful. CLPAC neither provided documentation that demonstrated its attempt to obtain the information from its contributors nor filed amended reports. (For more detail, see p. 21)

Finding 6. Disclosure of Disbursements

For disbursements requiring itemization, the Audit staff identified 56 disclosure errors, totaling \$1,848,416, all of which related to the purpose disclosed. In response to the interim audit report recommendation, Counsel stated CLPAC made every attempt to obtain the necessary documents from its vendors, but was unsuccessful. CLPAC neither provided documentation that demonstrated its attempt to obtain the disclosure information nor filed amended reports. (For more detail, see p. 22)

Finding 7. Undisclosed Depository

CLPAC opened a new depository at The Huntington National Bank in August 2000 but failed to disclose it as a depository on a Statement of Organization. In response to the exit conference, CLPAC filed an amended Statement of Organization disclosing this depository. The Audit Staff recommended no further action on this matter. (For more detail, see p. 24)

Part IV

Findings and Recommendations

Finding 1. Receipt of Apparent Impermissible Contributions

Summary

Three individuals and a corporation billed CLPAC \$1,835,335 for postage, list rental, and interest. However, they did not provide any services that required the use of postage and/or list rental. It appears that the individuals and corporation that advanced postage and list rental fees on behalf of CLPAC made impermissible contributions in the form of loans to cover fundraising expenses. The Audit staff recommended that CLPAC provide evidence that demonstrates that the advances did not represent impermissible contributions. In response, both CLPAC's attorney (Counsel) and ATA's President of Corporate and Legal Affairs (ATA's President) argued that these advances were made to ATA, not CLPAC, and that such advances are common practice in the direct mail industry. CLPAC did not demonstrate that the advances were not prohibited and/or excessive contributions.

Legal Standard

A. Contribution: The term contribution includes: a gift, subscription, loan (except for a loan made in accordance with 11 CFR 100.7(b)(11)), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. 11 CFR §100.7(a)(1).

B. Exempt Loans: Loans made from a lending institution that are subject to applicable banking laws and regulations regarding its charter and insurance of deposits are exempt from the definition of a contribution provided the loan is made in the ordinary course of business. Such loans must: bear the customary rate of interest; be evidenced by a written instrument; be made on a basis which insures repayment; and be subject to a due date or amortization schedule. 11 CFR §100.7(b)(11).

C. Contribution Limits: No individual or group (other than a multi-candidate committee) may contribute more than a total of \$5,000, per year, to any non-connected PAC. 2 U.S.C. §441a (a)(1)(C).

D. Advances by Individuals from Personal Funds: When an individual uses his or her personal funds, including a personal credit card, to pay for goods or services used by or on behalf of a candidate or political committee that payment is a contribution unless the payment falls under certain exceptions for travel. 11 CFR §§100.7(b)(8) and 116.5(b).

E. Corporate Contributions Impermissible. A corporation is prohibited from making any contribution in connection with a federal election. 2 U.S.C. §441b(a).

Facts and Analysis

Accounting records provided by CLPAC included 63 charges, totaling \$1,835,335, apparently related to invoices received from three individuals and one business entity. There were 31 disbursements associated with this activity; the purposes for these disbursements recorded in CLPAC's accounting records were postage and list rental. The purposes disclosed on CLPAC's disclosure reports were postage lender and postage. CLPAC's records also reflect interest charges relative to the billings. Each of the entities is discussed below:

Edward J. Adams, Jr. (Adams)

Between August 31, 2000, and December 20, 2000, Adams billed CLPAC a total of \$180,325 and received 6 payments totaling \$148,888. CLPAC's accounting records record these payments as postage, list rental and interest. As of December 31, 2000, Adams was owed \$31,437. This balance was paid-in-full as of January 31, 2001.

Although the letterhead on the two invoices available bears Adams' name and presents the appearance of a business, a Dunn and Bradstreet report did not reveal any associated business entity. However, Adams is apparently associated with CLPAC, as he approved the payment of several telemarketing invoices received by CLPAC from American Target Advertising.

Adams advanced funds to other business entities that provided direct mail or telemarketing services to CLPAC. It is not clear, from the records made available, to which entities postage advances were made. However, invoices from Mail America Communications, Inc. and RST Marketing Associates, Inc. indicate that each may have received an advance from Adams. These advances, in the form of short-term loans, represent excessive contributions from Adams in the amount of \$175,325 (\$180,325 - \$5,000 limitation).

Marc Roffman (Roffman)

An accounting entry on July 26, 2000, indicates that Roffman billed CLPAC \$75,480; the recorded purpose was postage, program number "001P." There was no invoice made available for this transaction. Roffman was paid in full on August 15, 2000. The purpose disclosed on CLPAC's reports was "postage lender."

Roffman is the Chief Executive of the Premier Printing Company LLC (PPC). On September 30, 2000, Premier Services at the same address and phone number as PPC, invoiced CLPAC for printing services in connection with program number 014P. However, another entity provided the postage for the 014P program (see Mail Fund, Inc. below).

Roffman advanced funds for postage on behalf of CLPAC. These advances, in the form of short-term loans, represent an excessive contribution by Roffman in the amount of \$70,480 (\$75,480 - \$5,000 limitation).

Ben Hart (Hart)

Between September 21, 2000, and November 2, 2000, Hart billed CLPAC a total of \$135,681 for postage and interest expense. There were no invoices available for review. Hart was paid in full as of November 15, 2000. The purpose disclosed for the payments was "postage lender."

Hart is the Manager of the Ben Hart Co. The nature of this business is described as direct mail advertising services. Neither this entity nor Hart provided any other service to CLPAC.

Hart advanced funds for postage on behalf of CLPAC. These advances, in the form of short-term loans, represent an excessive contribution by Hart in the amount of \$130,681 (\$135,681 - \$5,000).

Mail Fund, Inc.

Between July 20, 2000, and December 31, 2000, Mail Fund, Inc. billed CLPAC a total of \$1,443,849. The billings were for postage (\$1,274,010), list rental (\$123,242), interest (\$46,114) and administrative expenses (\$483). CLPAC made 20 payments totaling \$1,379,112. The balance outstanding on December 31, 2000, was \$64,737.

Only five invoices were made available for review. These invoices describe the services provided as "Advance (List Prepay)" or "Advance (Postage)." There was also a fee charged which amounted to 3% of the amount advanced. According to a Dunn and Bradstreet report, Mail Fund, Inc. was incorporated on October 9, 1990. The nature of this business is described as funding direct marketing programs for non-profit organizations.

Mail Fund, Inc. advanced funds for direct mail programs on behalf of CLPAC. These advances, in the form of short-term loans, represent prohibited contributions in the amount of \$1,443,849.

It should be noted that the three individuals and the Mail Fund, Inc. appear to have been subcontracted by ATA. ATA is an entity co-owned and operated by Richard J. Viguerie.

The Commission has addressed this issue (postage loans) in MURS 3027 and 5173. In MUR 3027, the Public Affairs Political Action Committee contracted with The Viguerie Company (TVC), an entity that provides direct mail fundraising services. TVC then subcontracted with Direct Marketing Finance & Escrow, Inc. (DMFE) for a postage loan in the amount of \$11,375. The Commission found reason to believe that DMFE violated 2 U.S.C. §441b(a). MUR 5173 also involved DMFE. DMFE made payments directly to vendors on behalf of a committee for postage and list rental in excess of \$657,000. The Commission found probable cause to believe that DMFE and its President violated 2 U.S.C. §441b(a). DMFE and its President signed a Conciliation Agreement and paid a civil penalty.

Mail America Communications, Inc. (Mail America)

When the interim audit report was prepared it appeared that Mail America may have also advanced postage on behalf of CLPAC. Although postage advances were not recorded in CLPAC's accounting records, interest charges were recorded similar to the interest charges noted for the above postage lenders.

The interim audit report concluded that the advances from the corporation and the three individuals represent prohibited and/or excessive contributions totaling \$1,820,335 (\$175,325 + \$70,480 + \$130,681 + \$1,443,849).

Interim Audit Report Recommendation

The Audit staff recommended that CLPAC provide evidence demonstrating that the advances did not represent impermissible contributions; to include an explanation of how these transactions can be distinguished from those considered in MURs 3027 and 5173. In addition, CLPAC was to provide a detailed explanation of the interest charges recorded for Mail America, to include the total amount advanced, the recipient of each advance, and explain why any amount advanced should not be considered an impermissible contribution. Finally, invoices and other records not previously supplied were to be provided for all related transactions.

Committee's Response to Recommendations and the Audit Staff's Assessment

In response to the interim audit report, Counsel restated many of the arguments made with respect to Finding 3 below. Counsel concluded that because ATA could not incur debts in CLPAC's name any advances or short term loans should be attributed solely to ATA and that such advances or short term loans were on behalf of ATA, not CLPAC. For these reasons, Counsel believes the transactions at issue are distinguishable from those addressed in MURS 3027 and 5173. ATA's President stated ATA has limited capital; its ordinary course of business is to rely on lenders who advance funds for postage. He further confirmed that Adams, Hart and Mail Fund, Inc. made postage loans on behalf of the CLPAC program, each charging between 2% and 3% interest monthly.

The response was silent with respect to Roffman and interest charges recorded for Mail America. However, other documents provided by ATA indicate that Mail America charged interest on outstanding invoices for services, unrelated to postage loans, provided to CLPAC through ATA. Finally, invoices supporting the above loans were not provided as recommended.

The advances/short term loans are indistinguishable from the circumstances considered in MUR 3027. As stated above, in MUR 3027 a committee's direct mail vendor obtained postage loans (from another vendor) for the committee's direct mail program. MUR 5173 addressed similar circumstances. A committee contracted with a direct mail firm that provided postage loans directly to the vendor.

It is the opinion of the Audit staff that CLPAC failed to demonstrate that the advances by Adams, Hart, Roffman, and Mail Fund, Inc. did not represent prohibited and/or excessive contributions totaling at least \$1,820,335.

Finding 2. Extensions of Credit by Commercial Vendors

Summary

The audit revealed that eight incorporated vendors and two limited liability companies may have extended credit to CLPAC outside their normal course of business by allowing invoices to remain outstanding for a considerable length of time. The Audit staff concluded that these vendors did not appear to make commercially reasonable attempts to collect \$3,766,914 for services rendered, thereby making apparent prohibited contributions. In response to the interim audit report recommendation, Counsel stated the debts were not CLPAC's but rather obligations of ATA. ATA's President provided documentation that demonstrated steps taken by certain vendors, including litigation, to collect the outstanding balances.

Legal Standard

A. Corporate Contributions Impermissible. A corporation is prohibited from making any contribution in connection with a federal election. 2 U.S.C. §441b(a).

B. Definition of Commercial Vendor. A commercial vendor is any person who provides goods or services to a candidate or political committee and whose usual and normal business involves the sale, rental, lease or provision of those goods or services. 11 CFR §116.1(c).

C. Extension of Credit by Commercial Vendor. A commercial vendor, whether or not it is a corporation, may extend credit to a candidate or political committee provided that:

- The credit is extended in the vendor's ordinary course of business (see below); and
- The terms of the credit are similar to the terms the vendor observes when extending a similar amount of credit to a nonpolitical client of similar risk. 11 CFR §§116.3(a) and (b)

Facts and Analysis

The audit revealed that eight incorporated vendors and two limited liability companies may have extended credit to CLPAC outside the normal course of business by allowing invoices to remain outstanding for a considerable length of time. Outstanding balances to seven of the vendors were eventually paid by ATA, TVC, Mail Fund Inc. and Edward J. Adams, Jr. (see Finding 3.). At the time of the interim audit report, there was no evidence that the 10 vendors made commercially reasonable attempts to collect \$3,766,914 for services rendered, thereby making apparent prohibited contributions.

Each vendor questioned in the interim audit report and the amounts billed for services provided to CLPAC, the amounts paid against those billings, other credits posted to the accounts, and the outstanding balance are shown in the chart below.

Vendor	Total Billings to CLPAC	Payments By CLPAC	Prohibited amount shown in the Interim Audit Report	Paid by other Vendors	Credits issued by vendor	Outstanding Balance
American Target Advertising (ATA)	1,562,001	404,169	1,157,832		1,157,832	0.00
The Viguerie Company (TVC)	524,481	23,829	500,652		500,652	0.00
Mail America Communications, Inc. (Mail America)	1,310,073	653,200	656,873	50,000	199,726	407,147
Chester Mailing List Consultants, Inc. (CMLC)	868,634	382,964	485,670	208,069	277,601	0.00
Fisher Group	745,162	374,345 ³	370,817	370,817		0.00
REO Packaging Company (REO Direct)	179,406	33,103	146,303	146,303		0.00
RST Marketing Associates, Inc. (RST Marketing)	259,098	132,486	126,612	74,266		52,346
United Envelope Co., LLC (United Envelope)	121,743	4,500	117,243	117,243		0.00
Premier Printing Company LLC (Premier Services)	127,838	10,000	117,838	10,384		107,454
Pro Tech Direct, Inc. (Pro Tech)	121,579	34,770	86,809		35,591	51,217

The interim audit report concluded that the significant outstanding balances, the length of time that the balances had gone unpaid, and the lack of evidence of collection efforts by the vendors established that the outstanding balances represented contributions by the vendors.

Interim Audit Report Recommendation

The Audit staff recommended that CLPAC provide documentation, to include statements from the vendors, that demonstrated the credit extended was in the normal course of the vendor's business and did not represent a prohibited contribution by the vendors. The information provided was to include examples of other non-political customers and clients of similar size and risk for which similar services have been provided and similar billing arrangements have been used. Also, information was to be provided concerning billing policies for similar non-political clients and work, advance payment policies, debt collection policies, and billing cycles.

³ Includes miscellaneous documented credits of \$6,762.

Committee's Response to Recommendations and the Audit Staff's Assessment

In response, Counsel states that these debts do not represent an extension of credit to CLPAC because these debts are obligations of ATA. Additional documentation made available by ATA's President demonstrates that all vendors (except ATA and TVC) made efforts to collect from ATA. Five vendors filed suit against ATA while the remaining three vendors entered into settlement agreements.

American Target Advertising

ATA, an incorporated vendor, performed telemarketing services and served as a Direct Mail vendor and consultant for CLPAC. During the period, July 28, 2000, through December 31, 2000, ATA billed CLPAC \$1,510,470; received payments totaling \$391,964; leaving a balance owed of \$1,118,506. On December 31, 2000, a credit of \$492,304 was applied, leaving a balance of \$626,202. Subsequent to the audit period, ATA billed CLPAC an additional \$51,531 and received payments totaling \$12,205; leaving an unpaid balance as of June 6, 2001, of \$665,528.

This balance was not paid by CLPAC. ATA issued credits against its own billings on September 27, 2001 (\$665,528).

For a discussion of ATA's contributions to CLPAC resulting from the handling of the CLPAC fundraising effort, see Finding 3 below.

The Viguerie Company

TVC, an incorporated vendor, provided list rental services for CLPAC. During the period July 28, 2000, to December 31, 2000, TVC billed CLPAC \$524,481; received payments totaling \$23,829; leaving a balance of \$500,652.

The balance was not paid by CLPAC. According to CLPAC's accounting records, on December 31, 2000, and September 27, 2001, TVC issued credits against its own billing eliminating the outstanding balance

Again, the contributions resulting from these and other transactions are discussed in Finding 3 below.

As previously stated, the remaining eight vendors⁴ either sued ATA or entered into settlement agreements. The documentation demonstrated that the credits issued by Mail America, CMLC and Pro Tech were part of the settlement agreements with ATA. However, as the chart shows four vendors had outstanding balances totaling \$618,164. These balances were paid by ATA and TVC. These additional payments by ATA and TVC represent contributions to CLPAC and are included in Finding 3.

⁴ The vendors are Mail America, CMLC, Fisher Group, REO Direct, RST Marketing, United Envelope, Premier Services and Pro Tech.

It is the opinion of the Audit staff that the extensions of credit by the eight vendors did not represent prohibited contributions. The credits issued by ATA and TVC are addressed in Finding 3.

Finding 3. Impermissible Contributions

Summary

On July 6, 2000, CLPAC entered into an agreement with ATA to perform direct mail fundraising services. CLPAC received proceeds (\$465,000) not provided for in the original agreement and vendor credits and/or payments against outstanding invoices (\$3,202,709). These transactions appear to represent impermissible contributions totaling \$3,677,709. The Audit staff recommended that CLPAC demonstrate that it did not receive impermissible contributions from ATA and other vendors associated with the direct mail fundraising effort. In response, both Counsel and ATA's President contended that the agreement contains a no risk provision so that any shortfall in fundraising proceeds as compared to cost is the responsibility of ATA and thus does not represent a contribution to CLPAC. It was further stated that such contracts are common in the direct mail industry. CLPAC failed to demonstrate that it did not receive impermissible contributions.

Legal Standard

A. Corporate Contributions Impermissible. A corporation is prohibited from making any contribution in connection with a federal election. 2 U.S.C. §441b(a).

B. Commercial Vendors. A commercial vendor, either incorporated or unincorporated, may only forgive or settle a debt incurred by a candidate, a political committee or another person on behalf of a candidate or political committee for less than the entire amount owed on the debt if —

- The amount forgiven is exempted from the definition of contribution per 11 CFR 100.7(b); or
- The commercial vendor has treated the debt in a commercially reasonable manner and the requirements of 11 CFR 116.8, including the submission of the information specified and Commission review, are satisfied. 11 CFR §116.4(b).

C. Reasonable Efforts by a Political Committee. A debt or obligation owed by a political committee may be totally forgiven (see 11 CFR 116.8), provided that—

- The amount forgiven is exempted from the definition of contribution per 11 CFR 100.7(b); or
- The political committee has undertaken all reasonable efforts to satisfy the outstanding debt and the requirements of 11 CFR 116.8, including the submission of the information specified and Commission review, are satisfied. 11 CFR §116.4(c).

D. Commercially Reasonable. The Commission will determine that a debt settlement between a political committee and a commercial vendor is commercially reasonable if—

- The initial extension of credit was made in accordance with 11 CFR 116.3

- The political committee has undertaken all reasonable efforts to satisfy the outstanding debt. Such efforts may include, but are not limited to the following—
 - i. Engaging in fundraising efforts
 - ii. Reducing overhead and administrative costs
 - iii. Liquidating assets
- The commercial vendor has pursued its remedies as vigorously as it would pursue its remedies against a nonpolitical debtor in similar circumstances. Such remedies may include, but are not limited to the following—
 - i. Oral and written requests for payment
 - ii. Withholding delivery of additional goods or services until overdue debts are satisfied
 - iii. Imposition of additional charges or penalties for late payment
 - iv. Referral of debts to a commercial debt collection service; and
 - v. Litigation. 11 CFR §116.4(d).

E. Reporting. The political committee shall continue to report the debt in accordance with 11 CFR §§104.3(d) and 104.11 until the Commission has completed a review of the request to forgive the debt pursuant to 11 CFR §116.8, or until the political committee pays the debt, whichever occurs first. 11 CFR §116.4(f).

Facts and Analysis

On July 6, 2000, CLPAC entered into an agreement with ATA to perform direct mail fundraising services. The agreement was subsequently amended on September 20, 2000, and again on October 11, 2000. ATA is an incorporated entity co-owned and operated by Richard A. Viguerie, who is also chairman of The Viguerie Company.

The original agreement, among other things, specifically stated that “[a]ll third-party invoices will be incurred in ATA’s name. CLPAC will be responsible for payment of costs incurred hereunder only to the extent of the amount of moneys raised under this Agreement (emphasis added).”

Further, the original agreement stated that income from prospect mailing will be disbursed to pay the costs of the respective prospect mailing first, then losses from prior prospect mailings and then held for future prospect mailings. However, any net income in excess of \$1,000,000 will be distributed to CLPAC. This section was subsequently amended. The amendment, in part, states, income from prospect mailing shall be disbursed to CLPAC from time to time before the net income reaches \$1,000,000 to enable CLPAC to make expenditures for its general purposes.

According to both Counsel and ATA’s President, the agreement contained a “no risk” provision for fundraising through direct mail in that CLPAC has no direct obligations for services and goods ATA contracted for in the provision of direct mail services. All sub-vendor invoices were to be incurred in the name of ATA.

An escrow account was maintained for all the deposit of all receipts and for the subsequent payment of expenses. CLPAC disclosed receipt and disbursement activity

from the escrow account on its disclosure reports filed with the Commission. A total of \$4,666,695 was deposited into the escrow account and \$4,150,574 was disbursed to vendors. CLPAC received \$465,000 from the escrow account.⁵ However, as detailed in the paragraph below, vendors who provided direct mail services on behalf of CLPAC were owed in excess of \$3,000,000. If the terms of the Agreement were followed, CLPAC should have been responsible for, at a minimum, expenses totaling \$4,666,695. Therefore, based on the amount deposited into the escrow account and the apparent losses by ATA,⁶ the distribution of \$465,000 to CLPAC represents a contribution from ATA.

Finally, entries in CLPAC's accounting records indicate that in addition to the amounts paid from the escrow account, expenses totaling \$3,202,709 were incurred with 10 vendors who apparently provided services to ATA in connection with CLPAC's direct mail fundraising. Many of the invoices that were available for review were addressed to CLPAC in care of ATA. Information in the accounting records indicate that CLPAC benefited from credits, settlements, and/or payments made by third parties for these expenses. For the most part, the credits and payments originated from ATA and The Viguerie Company. These two entities either paid other vendors directly or wrote-off their own billings. When the interim audit report was prepared a total amount of \$2,653,491 had been identified

There were notations in CLPAC's accounting records indicating why some of the credits were issued. However, there was no documentation made available to support these notations. Further, ATA, The Viguerie Company, Mail Fund, Inc., and Edward Adams made payments against billings by other vendors.

During the response period following the exit conference, CLPAC provided the above mentioned agreement and amendments thereto. A declaration of Mark J. Fitzgibbons, ATA's President was also provided. He stated the agreement contained a "no risk" provision for direct mail fundraising services. At the end of ATA's fundraising services on CLPAC's behalf, ATA is fully responsible under the agreement for any cost for services or goods used in the mailing on behalf of CLPAC that are not otherwise paid out of the proceeds of the direct mail campaign during the term of the contact. Finally, he stated ATA enters into agreements containing these, or similar no-risk provisions, with its political and non-political clients. ATA's standard practice for its non-political direct marketing and fundraising clients is to provide services using substantially similar no-risk contracts under which ATA is ultimately responsible to pay third party vendors where the fundraising proceeds are insufficient to cover all costs incurred in the direct mail program.

In the interim audit report, the Audit staff expressed the opinion that the proceeds received by CLPAC from the escrow account (\$465,000), undocumented credits (\$2,113,721) and the payments (\$1,088,988) by other entities on behalf of CLPAC

⁵ A second escrow account was opened. The cash balance for the escrow accounts at the end of the audit period was \$51,121.

⁶ A client list analysis report provided by ATA, as of October 30, 2000, indicated that mailings (both prospect and house files) lost in excess of \$2,000,000.

represent the receipt of impermissible contributions totaling \$3,667,709. It was also observed that it is unlikely that in the normal course of ATA's business it enters into contracts that result in multimillion dollar losses and continues to operate.

Interim Audit Report Recommendation

The Audit staff recommended that CLPAC provide documentation that demonstrates that the above transactions do not represent impermissible contributions. Such documentation should have included:

- For distributions of fundraising proceeds, a written statement from ATA explaining why funds were disbursed when it was obvious that mailings were losing in excess of \$2,000,000 and an explanation why such distributions did not represent an impermissible contribution to CLPAC.
- For credits issued against billings, copies of all invoices detailing the service provided, the amount(s) billed and copies of subsequent invoices for each credit. A written explanation describing the nature of the credits and an explanation as to why the credits did not represent an impermissible contribution to CLPAC.
- For payments made for CLPAC obligations, copies of all invoices detailing services provided and the amount billed. A written explanation stating the reason(s) why certain amounts were paid by another vendor(s) and why such payments did not represent impermissible contributions to CLPAC.
- Examples of non-political customers with whom ATA has had similar agreements; the amounts that were paid or forgiven on those contracts; and, the client list analysis report (including gross and net proceeds) for the related fundraising efforts.

Committee's Response to Recommendations and the Audit Staff's Assessment

In response to the interim audit report, ATA's President explained that ATA has been in business for 39 years and over that time some direct mail efforts have been successful while others have not. He suggested that the fact that ATA has been in business as long as it has is evidence that more succeed than fail. The CLPAC program is one that did not fare well financially. ATA's President explained that ATA goes into each program with the professional confidence of 39 years experience. Knowing in advance which programs will succeed financially is perhaps more art than science. It was further explained that early in a direct mail program, when a housefile mailing list is being developed, losses are anticipated, but over time, as contributors make repeated contributions, a profit is usually expected. It is further noted that building housefiles is one of ATA's specialties. New and some other non-profit organizations that lack the capital and expertise to build their organizations rely on both ATA's professional experience and its ability to build programs at no financial risk.⁷

⁷ Subsequent to receipt of the interim audit report response, Commission staff met with ATA's President. His initial response was supplemented on March 25th, 29th, 31st and April 1, 2004

ATA's President represented that ATA's client base over the last 10 years consisted of less than 10 percent political clients⁸ and that over 95 percent of its contracts have been of the no risk nature. Thus the majority of ATA's business consisted of mostly non-political clients under no-financial-risk contracts. To recognize the potential for loss on no-risk contracts, ATA represents that it charges about one-third more under a no-risk arrangement than it would for a pay as you go arrangement. ATA further represents that given the high risk nature of the CLPAC agreement, it charged CLPAC more than its standard no-risk fee. ATA's President further stated that ATA entered into the contract with CLPAC based on the success of two recent direct mail programs (a nonprofit client and a senatorial campaign).⁹

Information was provided on three other clients, all nonprofit organizations that, like CLPAC, have received proceeds from their fundraising programs while the costs of the programs exceeded the revenue. The third was terminated early with ATA assuming a portion of the unpaid balance. The others eventually made a profit. Unlike CLPAC, each of the three examples appeared to be multi-year contracts.

It was further stated that ATA believed that CLPAC's direct mail program was unquestionably poised to generate large sums of money. However, the program was hurt by "late and botched mailings caused by certain vendors." These delays in meeting mail dates and other mistakes resulted in ATA's waiving some of its fees. He concludes by stating ATA assumes client debt, pays vendors, and issues credits to the client direct mail programs in its ordinary course of business. ATA's President also states that even though a direct mail program may lose money on one side of the ledger, ATA receives a mailing list and the exclusive right to market that list in addition to the amounts that are paid by the client."

ATA's President provided documents relating to the "late and botched mailings." The three vendors involved were the Fisher Group, REO Direct and United Envelope. However, our review of these documents cast doubt on who was at fault for the failed mailings. Further, ATA and TVC (the parent company of ATA) entered into agreements recognizing, and paying, the full amount as being owed to these vendors.

The interim audit report concluded that undocumented credits (\$2,113,721) and the payments (\$1,088,988) by other entities on behalf of CLPAC represent the receipt of impermissible contributions. However, the response to Finding 2 documents the credits issued by the Chester Mailing List Consultants, Inc. (\$274,134) and Mail America Communications, Inc. (\$70,234). Therefore, these amounts have been removed from the total undocumented credits of \$2,113,721.

The response to Finding 2 also documented that ATA and TVC made additional payments to vendors on behalf of CLPAC in settlement of many of the outstanding

⁸ The term "political" as used by ATA appears to refer to political committees. Non-political clients appear to include political organizations that are not political committees.

⁹ ATA's President explained that senatorial campaign did not choose a no-risk contract.

balances. As a result, payments by ATA increased from \$884,007 to \$1,195,024; payments by TVC increased from \$111,000 to \$418,147.

The following chart incorporates the above changes:

Vendor Name	Undocumented Credits Recorded for Vendors	Payments Made to Other Vendors	Total Credits and/or Payments Made
American Target Advertising	\$1,157,832	\$1,195,024	\$2,352,856
The Viguerie Company	500,652	418,147	918,799
ConservativeHQ.com	77,425		77,425
Mail Fund, Inc.		68,254	68,254
Edward Adams		25,727	25,727
SMS Direct Printing	17,000		17,000
American Business Information Systems	8,770		8,770
American Automated Mailing	7,674		7,674
Totals	\$1,769,353	\$1,707,152	\$3,476,505

American Target Advertising apparently made payments, totaling \$1,195,024, on behalf of CLPAC to the following vendors:

Fisher Group	\$ 370,817
Mail America Communications, Inc.	150,000
REO Packaging Company	146,303
RST Marketing Associates, Inc.	126,612
Premier Printing	117,838
United Envelope	117,243
Mail Fund, Inc	77,001
Pro Tech	51,217
American Automated Mailing	17,905
SMS Direct Printing	17,000
Chester Mailing List Consultants, Inc	3,088
Total	\$1,195,024

Although ATA may routinely enter into no-risk contracts with its clients, in the political committee setting the payment of large amounts of CLPAC's fundraising costs while at the same time forwarding proceeds of the fundraising efforts must be viewed as a contribution under the Act. Postage loans by third party lenders may also be a normal practice in the direct mail industry; however, when the beneficiary of a postage loan is a federal committee, a violation of the Act occurs (MUR 3027).

It remains the opinion of the Audit staff that the proceeds received by CLPAC from the escrow account (\$465,000), undocumented credits (\$1,769,353) and the payments by other entities (\$1,707,152) on behalf of CLPAC represent the receipt of impermissible contributions totaling \$3,941,505.

Finding 4. Disclosure of Outstanding Debts

Summary

CLPAC's disclosure reports covering the last four reporting periods of calendar year 2000, as originally filed, disclosed approximately \$9,938,000 in debts owed to vendors. However, on June 8, 2001, and July 30, 2001, CLPAC amended these reports and deleted all debts reported. The Audit staff determined that CLPAC failed to report approximately \$13,896,000 in debts owed to vendors during this same period. In response to the interim audit report recommendation, Counsel stated the debts were not CLPAC's but rather obligations of ATA. CLPAC did not file amended disclosure reports.

Legal Standard

A. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. Separate Schedules. A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

As previously stated, CLPAC originally reported outstanding debts totaling approximately \$9.9 million over the last four reporting in calendar year 2000. These reports were subsequently amended and all reported debts were deleted. Using data contained in CLPAC accounting records, the Audit staff generated an accounts payable report through December 31, 2000, for all vendors. From this report, accounts payable balances for each vendor were calculated at the close of each of the four reporting periods (October Quarterly, Pre-General, Post-General and Year-End 2000). However, the lack of vendor invoices prevented the verification of much of the recorded information.

The following table illustrates the amount of reportable outstanding debts:

	October Quarterly	Pre-General	Post-General	Year-End 2000	Totals
Recorded payables	2,601,416	2,895,282	4,278,803	3,168,301	12,943,802
Amount of undocumented credits	65,872	0.00	0.00	886,285	952,157
Recorded accounts payable with credits added back	2,667,288	2,895,282	4,278.803	4,054,586	13,895,959

As indicated above, CLPAC failed to report approximately \$12.9 million in debts owed to 26 vendors over the four relevant reporting periods. In addition, the elimination of the undocumented credits (\$952,157) from the outstanding balances as of December 31, 2000 increases the unreported debt figure to approximately \$13.9 million.

This matter was discussed at the exit conference. In the response period that followed, representatives stated that the original reporting was in error and when they realized that the obligations were the responsibility of ATA, the disclosure reports were amended. CLPAC provided copies of letters sent to 17 vendors explaining that ATA, not CLPAC, was responsible for payment.

The available invoices for these obligations were addressed to CLPAC at ATA's address. All payments to the vendors made by CLPAC or authorized by ATA from the CLPAC escrow account are reported by CLPAC as disbursements. Further, as noted in Finding 3 above, the "no risk" contract entered into by CLPAC and ATA does not relieve CLPAC of these obligations or the attendant reporting obligation.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CLPAC demonstrate that these obligations were not its obligations. Absent such a demonstration, file amended Schedules D disclosing the above outstanding debts. As previously stated, CLPAC believes the obligations were ATA's.

The above debts were owed to 26 vendors, including ATA and the TVC. The outstanding balances owed the 15 vendors were discussed in Findings 2 and 3. The balances owed to the remaining 11 vendors were actually paid by CLPAC.

The outstanding debts paid by CLPAC should have been continuously disclosed as debts on Schedule D for each reporting period the debt remained outstanding, including the reporting period in which the debt was eventually paid. The amounts owed to sub-vendors of ATA, either paid by ATA or settlement agreements reached, should have been reported as a debt owed to ATA. Any debt settlements should have been approved by the Commission.

Finding 5. Disclosure of Occupation/Name of Employer

Summary

Contributions from individuals were reviewed on a sample basis. The review indicated that CLPAC failed to disclose the contributor's occupation and/or name of employer for 93% of the contributions tested that required the disclosure of that information. In response to the interim audit report recommendation, Counsel stated CLPAC made every effort to obtain the necessary documents from its vendors, but was unsuccessful. CLPAC neither provided documentation that demonstrated its attempt to obtain the information from its contributors nor filed amended reports.

Legal Standard

A. Required Information for Contributions from Individuals. For each itemized contribution from an individual, the committee must provide the following information:

- The contributor's full name and address (including zip code);
- The contributor's occupation and the name of his or her employer;
- The date of receipt (the date the committee received the contribution);
- The amount of the contribution; and
- The aggregate year-to-date total of all contributions from the same individual. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A).

B. Best Efforts Ensures Compliance. When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 2 U.S.C. §432(h)(2)(i).

C. Definition of Best Efforts. The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
 - A clear request for the contributor's full name, mailing address, occupation, and name of employer; and
 - The statement that such reporting is required by Federal law.
- Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b)

Facts and Analysis

Contributions from individuals were reviewed on a sample basis. The review indicated that CLPAC failed to disclose the contributor's occupation and/or name of employer for 93% of the contributions tested. CLPAC provided samples of several types of solicitations sent to potential contributors, most of which requested occupation and name of employer. However, contributor response devices were not available to determine if

some of the information had been provided, but not recorded. Furthermore, CLPAC did not provide any evidence that letters were sent or contributors were contacted in an effort to obtain the missing information. As a result, CLPAC has not demonstrated best efforts to obtain, maintain and submit the required information.

At the exit conference, representatives stated that another entity may have maintained the contributor information. They agreed to file the necessary amendments to disclose the necessary contributor information.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CLPAC take the following actions:

- Provide documentation such as phone logs, returned contributor letters, completed contributor contact sheets or other materials which demonstrate that best efforts were used to obtain, maintain, and submit the required disclosure information; or
- Absent such a demonstration, make an effort to contact those individuals for which required information is missing; and
- Provide documentation of such contacts, such as copies of letters to the contributors and/or phone logs; and,
- File amended reports to disclose any information obtained from those contacts.

In response, Counsel stated that CLPAC made every effort to obtain the necessary documents from its vendors¹⁰. However, such information was not maintained. Therefore, CLPAC is unable to file amended reports.

If one or more of CLPAC's fundraising vendors was in possession of the necessary information, obtaining it from the vendors and filing the necessary amended reports would be an acceptable response to the recommendation. However, the duty to gather the information, or to make best efforts to gather it, is CLPAC's not one of its vendors. Thus, CLPAC did not comply with the recommendation.

Finding 6. Disclosure of Disbursements

Summary

For disbursements requiring itemization, the Audit staff identified 56 disclosure errors, totaling \$1,848,416, all of which related to the purpose disclosed. In response to the interim audit report recommendation, Counsel stated CLPAC made every attempt to obtain the necessary documents from its vendors, but was unsuccessful. CLPAC neither provided documentation that demonstrated its attempt to obtain the disclosure information nor filed amended reports.

¹⁰ In referring to vendors, we believe Counsel is stating that CLPAC attempted to obtain the contributor information from ATA.

Legal Standard

A. Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 in a calendar year, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee; and
- Purpose (a brief description of why the disbursement was made—see above).
2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(3)(i)(A).

B. Examples of Purpose

- **Adequate Descriptions.** Examples of adequate descriptions of “purpose” include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, catering costs, loan repayment, or contribution refund. 11 CFR §104.3(b)(3)(i)(B).
- **Inadequate Descriptions.** The following descriptions do not meet the requirement for reporting “purpose”: advance, election day expenses, other expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3(b)(3)(i)(B).

Facts and Analysis

The Audit staff’s review of disbursements requiring itemizations identified 56 disclosure errors totaling \$1,848,416, all of which related to the purpose disclosed. They include the following: failure to disclose any purpose (\$177,603); incorrect purpose (\$1,075,098); and, inadequate or incomplete purpose (\$595,715).

This matter was discussed at the exit conference. CLPAC representatives were provided a schedule of the above disclosure errors and agreed to file the necessary amended reports.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that amended reports be filed to disclose the correct purposes.

In response, Counsel stated that CLPAC made every effort to obtain the necessary documents from its vendors. However, such information was not maintained. Therefore, CLPAC was unable to file amended reports.

CLPAC did not provide any documentation of its efforts to obtain the necessary information from its vendors. As with the previous finding the duty to maintain documentation and file complete disclosure reports is CLPAC’s not its vendors. However, as stated above, CLPAC was provided a schedule of the disclosure errors. This schedule would have allowed CLPAC to file the necessary amended reports. CLPAC did not comply with the recommendation.

Finding 7. Undisclosed Depository

Summary

CLPAC opened a new depository at The Huntington National Bank in August 2000 but failed to disclose it as a depository on a Statement of Organization. In response to the exit conference, CLPAC filed an amended Statement of Organization disclosing this depository. The Audit Staff recommended no further action on this matter.

Legal Standard

Depositories. Each political committee shall designate one or more State banks, federally chartered depository institutions (including a national bank), or depository institutions the depository accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, as its campaign depository or depositories. One or more depositories may be established in one or more States. Each political committee shall maintain at least one checking account or transaction account at one of its depositories. Additional accounts may be established at each depository. 11 CFR §103.2.

Facts and Analysis

CLPAC opened a new depository at The Huntington National Bank in August 2000 but failed to disclose this depository on its Statement of Organization. The account at this depository was used for CLPAC direct mail fundraising program conducted by ATA. Into this account CLPAC deposited \$4,666,696 and disbursed \$4,150,574 to vendors between August 5, 2000, and December 31, 2000.

At the exit conference, a representative agreed to file an amended Statement of Organization. On August 22, 2003, CLPAC filed an amended Statement of Organization disclosing this depository.

Interim Audit Report Recommendation

The Audit staff recommended no further action on this matter.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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October 15, 2004

MEMORANDUM

TO: Joseph F. Stoltz
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon
Staff Director

FROM: James A. Kahl
Deputy General Counsel

Thomasenia P. Duncan
Associate General Counsel

Lorenzo Holloway
Assistant General Counsel for
Public Financing and Audit Advice

Michelle E. Abellera
Attorney

SUBJECT: Report of the Audit Division on Conservative Leadership Political
Action Committee (LRA #615)

I. INTRODUCTION

The Office of General Counsel reviewed the proposed Report of the Audit Division ("Proposed Report") on Conservative Leadership Political Action Committee ("CLPAC") that you submitted to this Office on June 3, 2004. This memorandum summarizes our comments on the Proposed Report.¹ Our comments focus on the findings related to contributions and extensions of credit. We concur with the other findings that we do not specifically discuss in this memorandum. If you have any questions, please contact Michelle E. Abellera, the attorney assigned to the Proposed Report.

¹ The Office of General Counsel recommends that the Commission consider this document in open session since the Report does not include matters exempt from public disclosure. See 11 C.F.R. § 2.4.

II. IMPERMISSIBLE CONTRIBUTIONS AND EXTENSIONS OF CREDIT (Findings 1-3)

A. Factual Background

The Proposed Report concludes that CLPAC received contributions as a result of its contract with American Target Advertising (ATA). On July 6, 2000, CLPAC contracted with ATA to perform direct mail fundraising services from July 2000 through November 2000. ATA and its vendors ("third-party vendors") advanced the costs of the direct mail program through loans and extensions of credit to CLPAC. However, the agreement between CLPAC and ATA provided that all invoices would be incurred in ATA's name. Furthermore, the agreement included a provision which stated that "CLPAC [would] be responsible for payment of costs incurred...only to the extent of the amount of moneys raised under [the] agreement." Thus, CLPAC had limited liability with respect to its obligation to pay vendor advances and other costs of the direct mail program. The agreement also provided that CLPAC would not receive any disbursements of fundraising proceeds until the income from the fundraising program reached a specific amount.²

ATA raised \$4,666,695 through the direct mail program. ATA disbursed \$465,000 to CLPAC from the proceeds of the program. However, the program incurred costs totaling \$7,627,079. ATA used the proceeds to pay the third-party vendors \$4,150,574 on behalf of CLPAC. Therefore, an additional \$3,476,505 (\$7,627,079 - \$4,150,574) was owed for the fundraising program. ATA did not pay these outstanding debts from the proceeds of the direct mail program. Instead, the third-party vendors issued credits for outstanding CLPAC program debt totaling \$1,769,353, and ATA and other vendors made payments to third-party vendors on CLPAC's behalf totaling \$1,707,152. Furthermore, ATA distributed \$465,000 to CLPAC when total program costs exceeded revenue and in contravention of the agreement. The Audit Division concludes that the \$465,000 in distributions and \$3,476,505 (\$1,769,353 + \$1,707,152 = \$3,476,505) in vendor credits and payments constitute contributions to CLPAC.

B. CLPAC Uses Limited Risk Contract for Direct Mail Fundraising

The Audit Division's conclusion with respect to the amount of the contribution rests on the theory that CLPAC was responsible for the total cost of \$7,627,079 resulting from the direct mail program and not just the \$4,666,695, as limited by the written

² ATA would disburse income from each prospect and housefile mailing to pay the costs of the respective mailing first, then any losses from prior mailings. Remaining funds from prospect mailings would be reserved to pay future program costs, and any net income in excess of \$1,000,000 would be distributed to CLPAC. After October 20, 2000, all net income (after payment of all expenses) from prospect mailings would be disbursed to CLPAC. For housefile mailings, ATA would disburse 70% of the remaining net income to CLPAC and 30% to prospect costs. ATA and CLPAC amended the agreement in September 2000 to allow disbursements of prospect income before the \$1,000,000 level, and a 50-50 split of housefile income.

contract. The auditors believe that CLPAC was responsible for the entire cost of the direct mail program because ATA paid a significant amount of the fundraising costs at the same time that it forwarded proceeds of the fundraising to CLPAC. We understand the auditors' concern: corporations could enter into contracts with committees and, by operation of the limited risk arrangements, infuse committees with vast amounts of funds, goods, services and other items of value. However, CLPAC and ATA have an agreement that limits CLPAC's financial exposure and, thus, CLPAC may not be legally "responsible" for the payment of the total costs of the direct mail campaign.

This office believes that the issue to be addressed is whether contracts that limit the risk of committees to pay fundraising costs advanced by the vendor automatically result in a contribution to the committee when expenses exceed receipts. The Commission has addressed the issue of vendors advancing the costs of goods or services for fundraising in several advisory opinions. Although the advisory opinions are instructive, they are not definitive, and the Commission has not recently opined on a factual scenario similar to the limited risk contract between CLPAC and ATA. Therefore, the Commission may want to revisit this issue. To allow the Commission to address this issue, we recommend that you maintain the Proposed Report as drafted, but raise the issue in the cover memorandum to the Commission. We address the issue in a two-pronged approach. First, we analyze the contract as written. Second, we analyze the contract as the parties executed it. The contract as written may not result in contributions, but as executed it results in contributions to CLPAC.

1. Limited Risk Contract as Written May Not Result in Contributions

We begin our discussion of the issue with an analysis of the most analogous advisory opinion (AO), AO 1979-36. In AO 1979-36, the Commission concluded that the arrangement would not result in a contribution to the Committee, but the Commission noted several limitations to its decision. The Commission further refined these limitations and addressed additional concerns in subsequent advisory opinions. We end our discussion under this section by addressing the subsequent advisory opinions.

In AO 1979-36, three-quarters of the fundraising proceeds were deposited in the committee's account and designated to cover the company's cost and profits on a monthly basis, and the remaining proceeds were available for other committee uses. The company incurred initial expenses in the earliest mailings. However, if the company determined during the initial test period that the program was less successful than anticipated, all the funds raised would be available to the company and none available to the committee until the company's costs and fees were paid. The agreement in AO 1979-36 also placed a limitation on the committee's liability, stating that *irrespective of the actual amount of fees and expenses, the committee would only be required to pay a maximum of ¾ of the total amount of contributions received from the direct mail program*. The Commission concluded that the fundraising agreement in AO 1979-36 would not result in a contribution. However, the Commission noted three limitations to its decision. The agreement would not result in a contribution provided that: 1) the

financing arrangement is of a type which is normal industry practice; 2) the type of credit which is extended is in the company's ordinary course of business, with terms substantially similar to those given to nonpolitical debtors of similar risk and obligation; and 3) the costs charged for the services are the normal charge for services of that type.

Similar to the agreement in AO 1979-36, the agreement between CLPAC and ATA had safeguards to ensure ATA and the third-party vendors were properly compensated. The agreement provided for payment to ATA and the third-party vendors before distribution of funds to CLPAC. Instead of an initial test period like the vendor used in AO 1979-36, ATA's disbursement schedule dictated that CLPAC would not receive any funds until total income reached a certain level. Furthermore, ATA provided documentation which appears to satisfy the factors that the Commission discussed in AO 1979-36. The documentation shows that: 1) ATA routinely enters into limited liability agreements with other direct mail clients; 2) ATA and the third-party vendors provided extensions of credit and postage loans to other non-political clients; and 3) ATA provided fundraising services to CLPAC at its usual and normal charge.

Although the fundraising agreement between CLPAC and ATA appears to meet the minimum requirements set forth in AO 1979-36, there are other considerations. In subsequent advisory opinions, the Commission set forth some overarching concerns about fundraising arrangements in which vendors advance costs. *See* AOs 1990-1 and 1989-21. The Commission was concerned that regardless of the degree of success of the effort to raise funds, the committee would retain contribution proceeds while giving up little, or the committee would assume little or no risk with the vendor bearing all, or nearly all, the risk. The Commission was also concerned that some fundraising programs would result in a shortfall of funds, and it expressed the need for the committee to pay for all of the costs of fundraising programs. *See* AO 1991-18, 1990-14 and 1990-1. The Commission concluded that these types of financing arrangements would not result in a contribution to the committees if the companies had safeguards in place to ensure that the committees did not receive anything of value without proper compensation paid to the companies and/or third-party vendors.³ *See* AO 1995-34, 1990-1 and 1979-36.

The agreement between CLPAC and ATA included mechanisms to ensure that CLPAC properly compensated ATA and the third-party vendors. *See* AO 1995-34, 1990-1 and 1979-36. As previously noted, the agreement provided for payment to ATA and the third-party vendors before distribution of funds to CLPAC. Also, ATA's disbursement schedule dictated that CLPAC would not receive any funds until total income reached a certain level. ATA charged CLPAC higher fees, and received rights to and a copy of CLPAC's housefile in exchange for its fundraising services. The

³ In recent advisory opinions, the Commission focused its inquiry on whether: 1) the amount of upfront costs advanced by the company was low; 2) the company was guaranteed adequate profit; and 3) the company received adequate compensation (*e.g.*, committee paid a deposit or made other assurances that all expenses would be paid). *See* AOs 2004-19 and 1994-33; *see also* AO 1991-32 and 1991-20. These advisory opinions involved fundraising through the internet, personalized phone cards, 900-phone lines and telemarketing. The Commission approved those financial arrangements which were consistent with the principles of adequate safeguards and compensation.