



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 11, 2012

MEMORANDUM

To: Anthony Herman
General Counsel

Through: Alec Palmer
Staff Director

From: Patricia Carmona
Chief Compliance Officer

Tom Hintermister
Assistant Staff Director
Audit Division

Alex Boniewicz
Audit Manager

Alex R
Boniewicz

By: Ken Smith
Lead Auditor/Audit Manager

Alex R
Boniewicz

Subject: Chris Dodd for President, Inc. - Referral Matter

AUDIT REFERRAL # 12-02

Digitally signed by Patricia Carmona
DN: cn=Patricia Carmona,
ou=Federal Election Commission,
email=Patricia.Carmona@fec.gov, o=FEC
Date: 2012.04.11 15:57:51 -0400

Digitally signed by Thomas Hintermister
DN: cn=Thomas Hintermister,
ou=Federal Election Commission,
email=Thomas.Hintermister@fec.gov, o=FEC
Date: 2012.04.11 15:58:59 -0400

Digitally signed by Alex R Boniewicz
DN: cn=Alex R Boniewicz,
ou=Federal Election Commission,
email=Alex.Boniewicz@fec.gov, o=FEC
Date: 2012.04.11 15:59:07 -0400

On April 9, 2012, the Commission approved the Final Audit Report of the Commission on Chris Dodd for President, Inc. This report includes the following matter that is referable:

Misstatement of Financial Activity (Receipts Only)

All work papers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Ken Smith or Alex Boniewicz at 694-1200.

Attachment: Finding 3 - Misstatement of Financial Activity - (Receipts Only)

13044331009

Finding 3. Misstatement of Financial Activity

Summary

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

The Commission approved a finding that CDFP misstated financial activity for 2008.

Legal Standard

Contents of Reports. Each report must disclose:

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

Facts and Analysis

A. Facts

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

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

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

The understatement of receipts resulted from the following:

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

• Matching fund payment received 7/17/08, not reported	\$ 514,173
• Net realized losses (brokerage accounts), not reported ²	(150,370)
• Vendor refund, not reported	5,876
• Offsets to operating expenditures, not reported	23,954
• Political committee contributions, not reported	16,100
• Unexplained difference	(54,493)
Net understatement of receipts	<u>\$ 355,240</u>

The overstatement of disbursements resulted from the following:

• Loan repayment, over-reported	\$ (144,757)
• Disbursements and brokerage fees, not reported	239,950
• Net errors in reporting payroll and fees	41,733
• October Transfer to FOCD reported in September ³	(351,210)
• Reported disbursements that actually cleared bank in Dec. '07	(3,300)
• Unexplained difference	26,649
Net overstatement of disbursements	<u>\$ (190,935)</u>

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

B. Preliminary Audit Report & Audit Division Recommendation

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

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

² It should be noted that this relates to realized gains and losses disclosed by the brokerage firm in its monthly statements, which were not reported by CDFP. These net realized losses resulted from the decline in the stock market.

³ CDFP reported this transfer in September 2008, while it actually occurred in October 2008. The Audit staff's bank reconciliation was done through September 2008. As such, it was recommended that CDFP amend its reports to correctly disclose the transfer in October 2008.

C. Committee Response to Preliminary Audit Report

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

However, Counsel further added that the Preliminary Audit Report did not correctly present the "level of misstatement", mainly because of its treatment of CDFP's brokerage account. Counsel argued that the Preliminary Audit Report "...appears to confuse fluctuations in the account's fair market value, which do not need to be reported, with the actual value of the portfolio assets."

In response to the Preliminary Audit Report, CDFP filed amended reports for 2008 and a portion of 2009. CDFP did not accept the assessment of its brokerage accounts presented in the Preliminary Audit Report and therefore did not make all the recommended adjustments relating to the brokerage accounts in its amended reports. Specifically, the amended reports did not include net realized losses of \$150,370 (see section A above), and as a result, receipts remained misstated for 2008. CDFP materially corrected disbursements for 2008.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged the amendments filed by CDFP but noted that receipts remained materially misstated for 2008 as a result of CDFP's decision to not disclose the realized losses from the brokerage accounts.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, Counsel disagreed with the Audit staff's treatment of CDFP's brokerage account losses. Counsel contended that this finding stemmed from a misunderstanding of the law and made comparisons to the treatment of unrealized gains and losses in the audit of Friends of Anthony Weiner for the 2003-2004 election cycle.

Counsel further stated that the statute and regulations provided no explicit guidance on how realized losses must be reported. Counsel asserted that neither explicitly required the disclosure of losses, especially within a brokerage account.

Counsel expressed that the Draft Final Audit Report also demonstrated the lack of clarity on this issue. Counsel pointed to the different means of disclosing the realized losses presented in the Draft Final Audit Report (in "Other Receipts") and the Office of General Counsel's legal analysis of the Draft Final Audit Report (in "Other Disbursements").

F. Audit Hearing

At the audit hearing, Counsel reiterated CDFP's position that the statute and regulations lack guidance on the reporting of realized losses. Counsel also stated that they did not believe there was legal authority that required CDFP to disclose realized losses on a brokerage account.

Subsequent to the audit hearing, the Audit staff clarified to Counsel that CDFP's net realized losses of \$150,370 should be reported on Schedule A-P (Itemized Receipts), Line 21 (Other Receipts) as a negative receipt.

13044331012

Commission Conclusion

On March 1, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that CDFP misstated its financial activity for 2008 by understating its receipts by \$355,240 and overstating its disbursements by \$190,935.

The Commission approved the Audit staff's recommendation.

13044331013