



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2002 NOV 12 P 3:29

November 12, 2002

**MEMORANDUM**

**TO:** The Commissioners

**THROUGH:** James A. Pehrkon  
Staff Director

**FROM:** Robert J. Costa  
Deputy Staff Director

Joseph F. Stoltz  
Assistant Staff Director  
Audit Division

Wanda J. Thomas  
Audit Manager

Zuzana Parrish  
Lead Auditor

**SUBJECT:** Final Audit Report – Nader 2000 Primary Committee, Inc. (NPC)

Attached for your approval is the subject final audit report. Also attached is the legal analysis provided by the Office of General Counsel and NPC's response to the Preliminary Audit Report. We have conformed the report to OGC's recommendations.

**Recommendation**

The Audit staff recommends that the report be approved. It is requested that this matter be placed on the Open Session agenda for November 14, 2002. If you have any questions, please contact Zuzana Parrish or Wanda Thomas at extension 1200.

**Attachments:**

Proposed Audit Report on Nader 2000 Primary Committee, Inc.  
Legal Analysis, dated November 8, 2002  
Committee's Response to the Preliminary Audit Report

**AGENDA ITEM**

For Meeting of: 11-14-02

**SUBMITTED LATE**

**REPORT OF THE AUDIT DIVISION  
ON  
NADER 2000 PRIMARY COMMITTEE, INC.**

**I. BACKGROUND**

**A. AUDIT AUTHORITY**

This report is based on an audit of the Nader 2000 Primary Committee, Inc. (NPC). The audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section states, "After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037." Also, Section 9039(b) of Title 26 of the United States Code and Section 9038.1(a)(2) of Title 11 of the Code of Federal Regulations state that the Commission may conduct other examinations and audits from time to time, as it deems necessary.

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if the campaign has materially complied with the limitations, prohibitions, and disclosure requirements of the Federal Election Campaign Act of 1971 (the Act), as amended.

**B. AUDIT COVERAGE**

The audit covered the period from NPC's first bank transaction, February 8, 2000 through December 31, 2000. NPC reported an opening cash balance of \$-0-, total receipts of \$3,691,792, total disbursements of \$3,368,307 and a closing cash balance of \$323,485<sup>1</sup>. In addition, a limited review of NPC's financial activity and disclosure reports for the period from January 1, 2001, through June 30, 2002, was conducted to determine its matching fund entitlement based on its financial position.

**C. CAMPAIGN ORGANIZATION**

NPC registered with the Federal Election Commission (the Commission) on February 18, 2000 as the principal campaign committee for Ralph Nader (the Candidate), a candidate for nomination for the office of President of the United States.

---

<sup>1</sup> The amounts were calculated from amended reports filed by NPC.

NPC currently maintains its headquarters in Washington, D.C. NPC's Treasurer from inception until June 9, 2000 was Patrick Alia. On June 9, 2000, Harvey Jester became Treasurer and continues to serve in that capacity.

NPC maintained depositories in Washington, D.C. To handle its financial activity, NPC utilized four bank accounts. From these accounts the campaign made approximately 1,550 disbursements. In addition, NPC received contributions totaling \$2,424,433 from approximately 26,900 contributors. NPC also received a loan of \$500,000, offsets to expenditures of \$64,229, and interest and other receipts of \$10,082<sup>2</sup>.

In addition to the above, the Candidate was determined eligible to receive matching funds on June 30, 2000. NPC made four matching fund requests totaling \$888,763 and received \$723,308 from the United States Treasury. This amount represents 4.28% of the \$16,890,000 maximum entitlement that any candidate could receive. For matching fund purposes, the Commission determined that Mr. Nader's candidacy ended on August 17, 2000, the last day of the matching payment period. On October 2, 2000, NPC received its final matching fund payment to defray expenses and to help defray the cost of winding down the campaign.

#### **D. AUDIT SCOPE AND PROCEDURES**

In addition to a review of the expenditures made by NPC to determine if they were qualified or non-qualified campaign expenses, the audit covered the following general categories:

1. the receipt of contributions or loans in excess of the statutory limitations;
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as the completeness and accuracy of the information disclosed;
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. proper disclosure of campaign debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records (see Finding II.);

---

<sup>2</sup> See Finding II – Misstatement of Financial Activity

7. adequate recordkeeping for campaign transactions;
8. accuracy of the Statement of Net Outstanding Campaign Obligations filed, to disclose its financial condition and to establish continuing matching fund entitlement;
9. compliance with spending limitations; and,
10. other audit procedures that were deemed necessary in the situation.

As part of the Commission's standard audit process, an inventory of campaign records was conducted prior to the audit fieldwork. This inventory was conducted to determine if NPC's records were materially complete and in an auditable state. Based on our review of records presented, fieldwork began immediately.

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue further any of the matters discussed in the audit report in an enforcement action.

## **II. AUDIT FINDING AND RECOMMENDATION - NON-REPAYMENT MATTER**

### **MISSTATEMENT OF FINANCIAL ACTIVITY**

Sections 434(b)(1), (2) and (4) of Title 2 of the United States Code state, in part, that a political committee shall disclose the amount of cash on hand at the beginning of the reporting period and the total amount of all receipts and all disbursements for the reporting period and the calendar year.

Section 434(b)(5)(A) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

Section 104.18(d) of Title 11 of the Code of Federal Regulations states, in part, if a committee files an amendment to a report that was filed electronically, it shall also submit the amendment in an electronic format. The committee shall submit a complete version of the report as amended, rather than just those portions of the report that are being amended.

The Audit staff compared NPC's reported figures to its bank records and found that for calendar year 2000, NPC materially misstated its receipts, disbursements, and ending cash-on-hand.

NPC's reported receipts of \$3,691,792 were understated by a net amount of \$30,259. The misstatement resulted from NPC's failure to report \$55,332 in receipts from the Nader 2000 General Committee (the General Committee). In addition, NPC had miscellaneous reporting errors in a net amount of (\$25,073). The correct amount of reportable receipts was \$3,722,051.

NPC's reported disbursements of \$3,368,307 were understated by a net amount of \$367,684. NPC was not aware that the General Committee's payroll for the period August through December 2000 was erroneously paid by the payroll processor, from NPC's account. Consequently, disbursements totaling \$495,888 that should have been reported by NPC were reported instead by the General Committee. In addition, NPC reported some disbursements twice (\$93,648) and misreported miscellaneous items in a net amount of (\$34,557). The correct amount of reportable disbursements was \$3,735,990.

The misstatements in reported receipts and disbursements, caused cash-on-hand at December 31, 2000 to be overstated by \$337,424.

At the exit conference, the Audit staff provided NPC with documentation explaining the misstatements. The Audit staff also provided a schedule of the payroll disbursements that were required to be itemized on Schedule B-P (Itemized Disbursements). NPC representatives agreed to file amended reports.

In the Preliminary Audit Report, the Audit staff recommended that NPC file amended reports for calendar year 2000 to correct the misstatements and itemize, on Schedule B-P, the \$495,888 in payroll disbursements discussed above.

NPC filed the necessary amendments.

### **III. AUDIT FINDING AND RECOMMENDATION — AMOUNT DUE TO THE U.S. TREASURY**

#### **A. DETERMINATION OF NET OUTSTANDING CAMPAIGN OBLIGATIONS**

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 calendar days after the candidate's date of ineligibility (DOI), the candidate shall submit a statement of net outstanding campaign obligations (NOCO)<sup>3</sup> which reflects the total of all outstanding obligations for qualified campaign expenses plus estimated necessary winding down costs.

---

<sup>3</sup> The NOCO statement indicates whether, on the date of ineligibility, a committee has a surplus of funds (and therefore has to make a repayment to the U.S. Treasury) or has a net outstanding debt (and may be eligible for additional matching funds). The NOCO statement also determines whether the committee can keep the primary matching funds it received after the candidate's date of ineligibility or whether it must return some of those funds.

Section 9034.1(b) of Title 11 of the Code of Federal Regulations states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

In addition, Section 9034.4(b)(3) of the Title 11 of the Code of Federal Regulations states that any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR 9034.4(a)(3). The section states, in part, that any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility, or for property, services, or facilities used to benefit the candidate's general election campaign, are not qualified campaign expenses.

The NOCO statement prepared by the Audit staff and an analysis of cash received subsequent to the statement date indicated that NPC had a deficit (net outstanding debt). Therefore the Audit staff concluded that the Mr. Nader had not received matching funds in excess of the amount to which he was entitled and no repayment to the United States Treasury is required.

Mr. Nader's date of ineligibility was August 17, 2000<sup>4</sup>. However, he continued to campaign as a candidate for the general election. The Audit staff reviewed NPC's financial activity through June 30, 2002 and analyzed winding down costs. In determining NPC's financial position at DOI, the Audit staff only included winding down costs incurred after December 7, 2000, the end of the expenditure report period described in 11 CFR §9002.12 and these were allocated between NPC and the General Committee.<sup>5</sup> The audited Net Outstanding Campaign Obligations statement appears below:

---

<sup>4</sup> The Commission determined that Ralph Nader's date of ineligibility was the last day of the last national convention held by a major party (in this case, the Democratic Party) in the calendar year. 11CFR §§9032.6 and 9033.5.

<sup>5</sup> In a statement provided to the Audit staff subsequent to the Exit Conference, NPC recommended that certain winding down costs be allocated 70% to NPC and 30% to the General Committee. The Audit staff agreed that this ratio was reasonable.

STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS (NOCO)  
As of August 17, 2000  
As determined at June 30, 2002

**ASSETS**

Cash on Hand	1,156	
Cash in Bank	155,293	
Accounts Receivable	110,249	
Due From General Committee	180,852	
Capital Assets (60% of cost)	19,536	
<b>Total Assets</b>		<b>467,086</b>

**OBLIGATIONS**

Loan Payable	500,000	
Bank Interest due on Loan	5,960	
Accounts Payable for Qualified Campaign Expenses	139,973	
Winding Down Expenses (12/8/00 – 6/30/02)	365,410(a)	
Estimated Winding Down Costs Post 6/30/02	78,924(b)	
Due To General Committee	75,025	
Excess Transfer of Holding Account Balance to General Committee	16,489(c)	
Amount Due US Treasury - Stale Dated Checks	11,398	
<b>Total Obligations</b>		<b>1,193,180</b>
<b>Net Outstanding Campaign Obligations (Deficit)</b>		<b>(726,094)</b>

FOOTNOTES TO NOCO

- (a) This amount represents 70% of identified winding down costs; 30% was attributed to the general campaign. This amount does not include winding down costs of \$54,753 incurred between 8/18/00 and 12/7/00, the end of the expenditure report period (11 CFR §9002.12).
- (b) The estimated winding down costs will be monitored throughout the calendar year 2002. Any differences between the actual and estimated costs will be adjusted on the NOCO accordingly.
- (c) The Holding Account ceased to exist for primary election purposes on 7/31/00. Beginning 8/1/00 the General Committee used the account which had an existing balance of \$96,038. To compensate for this, the General Committee reimbursed NPC \$112,527. The excess amount reimbursed, \$16,489, is payable to the General Committee.

NOCO (Deficit) as of 8/17/00	(\$726,094)
Net Private Contributions 8/18/00 to 9/1/00	90,868
Matching Funds Received on 9/1/00	<u>385,523</u>
Remaining Net Outstanding Campaign Obligations at 9/1/00	(\$249,703)
Net Private Contributions 9/2/00 to 10/2/00	106,999
Matching Funds Received on 10/2/00	<u>59,157</u>
Remaining Net Outstanding Campaign Obligations (Deficit)	(\$83,547)

The audited NOCO statement as well as the calculation of remaining entitlement was presented to NPC representatives at the exit conference. Subsequently, NPC provided documentation that clarified certain components of the statement and to dispute the inclusion and/or exclusion of other components.

The above NOCO statement and calculation of remaining entitlement have been updated based on a review of NPC's response to the preliminary audit report as well as a review of additional financial records, as discussed below.

#### Accounts Receivable

The value of accounts receivable has been reduced by \$16,105. NPC presented documentation showing that the Audit staff double counted a refund received from the Verizon Company.

#### Bank Interest Due on Loan

NPC's response stated that the total interest paid on the loan to Amalgamated Bank was \$7,373. However, according to the records obtained by NPC for the Audit staff from Amalgamated Bank, the interest rate has been adjusted twice, decreasing the total interest due by \$1,413. Thus, the actual interest payment was \$5,960. Therefore, the amount of loan interest due as presented on the NOCO statement, remains unchanged.

#### Accounts Payable for Qualified Campaign Expenses

NPC stated that the NOCO statement presented in the preliminary audit report significantly understated NPC's accounts payable at August 17, 2000. NPC disputed 20 expenses, totaling \$27,064, it says were incurred prior to the Candidate's date of ineligibility and should have been included in accounts payable. Three of the expenses, totaling \$15,630, were payments for legal representation; 16 payments totaling \$3,799 represented reimbursed expenses to NPC's contractors; and one payment of \$7,635 represented the purchase of office supplies.

The Audit staff's review of relevant disbursement records showed that the legal services were rendered and the corresponding payments for those services occurred

after DOI. Similarly, NPC did not demonstrate that the payments to contractors in Alabama totaling \$3,799 were for expenses incurred prior to the Candidate's DOI. Further, without a vendor invoice indicating a date of incurrence prior to DOI, the October 2000 payment of \$7,635 for the purchase of office supplies is not a payable.

These expenses have been treated as general election expenses consistent with other expenses incurred between DOI and the end of the expenditure report period. Therefore, the Audit staff made no adjustment to accounts payable regarding these disbursements.

#### Winding Down Expenses – August 18, 2000 through December 7, 2000

In the preliminary audit report, \$54,753 in winding down expenses between August 18, 2000 and December 7, 2000, were excluded from the calculation of net outstanding campaign obligations pursuant to 11 CFR §9034.4(e)(3) and 11 CFR §9002.12.

In its response to the preliminary audit report, NPC disagreed with this exclusion stating that the cited regulations do not support the Audit staff's conclusion. Further, NPC asserted that a note in the Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing<sup>6</sup> that states that salaries and overhead expenses between the date of nomination and the end of the expenditure period (December 7, 2000) are general election expenses that may not be charged to exempt compliance for the purposes of winding down the primary campaign, is limited to federally funded candidates who go on to receive federal funds for the general election. Mr. Nader did not receive federal funds for the general election.

The Audit staff's treatment of winding down expenses for this period is based on the premise that candidates who obtain primary election public funding can only use those funds for their primary campaigns and to pay the costs associated with winding down the primary campaigns. (11 CFR §9034.4(a)). Candidates, like Mr. Nader, who continue on to the general election, are not winding down their campaigns prior to the general election but are incurring costs associated with campaigning for the general election. These costs are not qualified campaign expenses for the primary campaign (11CFR §9034.4(b)(3)).

#### Winding Down Expenses – December 8, 2000 through June 30, 2002

The preliminary audit report identified \$287,956 in winding down expenses for the period December 8, 2000 through January 25, 2002<sup>7</sup>. NPC disagreed with the 70/30% allocation of winding down costs between the primary and general committees. They maintain that the entire amount should be attributed to NPC.

<sup>6</sup> April 2000, p. 54, note 19.

<sup>7</sup> This is actual winding down expenses through January 25, 2002, the day of the Exit Conference.

Using disclosure reports filed as of June 30, 2002 the Audit staff updated the NOCO statement to reflect actual winding down expenses through that date. Consequently, the value of the expenses paid during the period December 8, 2000 through June 30, 2002 is \$365,410. This amount is the sum of expenses for three periods during which winding down expenses were calculated as follows:

1. December 8, 2000 – May 31, 2001 – The total amount of winding down expenses incurred during this period was \$194,759. NPC's portion, \$136,331, represents 70% of this amount. The remaining \$58,428, or 30%, was attributed to the General Committee. Based on the relative financial activity of both committees through May 2001, the Audit staff determined that the 70/30 cost allocation, which was initially proposed by NPC, was reasonable.
2. June 1, 2001 – December 31, 2001 - \$150,155 (100%) of the winding down expenses was attributed to NPC by the Audit staff because the General Committee's winding down process had been completed.
3. January 1, 2002 – June 30, 2002<sup>8</sup> - \$78,924 (100%) of the winding down expenses was attributed to NPC by the Audit staff because the General Committee's winding down process had been completed.

#### Private Contributions Deposited After the Date of Ineligibility

According to the preliminary audit report, private contributions totaling \$294,611 were deposited into NPC's account between August 18, 2000 and October 2, 2000. These contribution checks included many that were made payable to "Nader," "Nader for President," "Nader 2000" and other names that did not indicate whether they were intended for NPC or the General Committee. These ambiguous checks were deposited into NPC's checking account after DOI, although many were dated prior to DOI. NPC claims that these contributions were intended for the general election and that they were erroneously deposited in NPC's account. To document that these contributions were intended for the General Committee, NPC in its response to the preliminary audit report, provided copies of 1,855 checks totaling \$122,910<sup>9</sup>. In some cases, solicitation devices accompanied the contribution checks. Some of the devices appeared to be solicitations for contributions to the general campaign; other devices did not identify the intended recipient.

---

<sup>8</sup> NPC's disclosure reports were reviewed to determine the actual value of the winding down expenses for the period.

<sup>9</sup> Twenty-six contribution checks totaling \$1,468 were excluded from the review because they were either illegible or duplicates.

According to 11 CFR §110.1(b)(2)(ii) and (b)(4)(i) and (ii), in the case of a contribution not designated in writing by the contributor for a particular election, the contribution is deemed designated for the next election for that Federal office after the contribution is made. Contributions are considered to be designated in writing if they are made by a negotiable instrument that clearly indicates the election for which they are intended or they are accompanied by a writing signed by the contributor that clearly indicates the election. In the case of these ambiguous checks, the copies of solicitation devices provided with some checks did not contain the signatures of the contributor. For such items, the Audit staff considered checks that were dated prior to August 18, 2000 as contributions for NPC and any dated after August 17, 2000 as contributions for the General Committee.

As a result of our review, the Audit staff determined that 1,550 contributions totaling \$96,744 intended for the General Committee were erroneously deposited to NPC's account between August 18 and October 2, 2000<sup>10</sup>. Accordingly, these contributions were not included in the Audit staff's calculation of entitlement remaining after DOI.

#### **B. STALE-DATED 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.

The Audit staff identified 38 stale-dated checks totaling \$18,346 issued by NPC from its Main Primary Account. The checks were dated between May 24, 2000 and January 17, 2001 and had not been cashed by the recipients as of May 31, 2001. Eighteen of the stale-dated checks were issued to refund excessive contributions.

At the exit conference, the Audit staff provided NPC representatives with a schedule of the stale-dated checks and advised them that they might contact the contributors or vendors and request that they cash the checks.

In the preliminary audit report, the Audit staff recommended that the NPC provide evidence that:

- The checks were not outstanding, by providing copies of the front and back of the negotiated checks; or
- The outstanding checks were void by providing statements from the vendors indicating that they have been paid in full or an account reconciliation showing that no obligation exists.

---

<sup>10</sup> Eighty contributions totaling \$4,737 were erroneously deposited to NPC's account between 8/18/00 and 9/1/00; 1,470 contributions totaling \$92,007 were deposited in error between 9/2/00 and 10/2/00.

Absent such evidence, the Audit staff would recommend that the Commission determine that NPC had to pay the United States Treasury \$18,346 to cover the total of stale-dated checks.

NPC provided documentation that it voided and subsequently re-issued 14 checks totaling \$6,948. NPC further demonstrated that as of May 31, 2002 the recipients had cashed all 14 reissued checks. Twenty-four stale-dated checks totaling \$11,398 (\$18,346 - \$6,948) remained.

**Recommendation**

The Audit staff recommends that the Commission determine that NPC pay the United States Treasury \$11,398 to cover the total of the outstanding stale-dated checks.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
AUDIT DIVISION

2002 NOV -8 P 3: 06

November 8, 2002

**MEMORANDUM**

TO: Robert J. Costa  
Deputy Staff Director

THROUGH: James A. Pehrkon *JAP*  
Staff Director

FROM: Lawrence H. Norton *LHN*  
General Counsel

Gregory R. Baker *GRB*  
Acting Associate General Counsel

Peter G. Blumberg *PGB*  
Acting Assistant General Counsel

Delanie DeWitt Painter *DDP*  
Attorney

SUBJECT: Proposed Audit Report on Nader 2000 Primary Committee, Inc. (LRA #588)

The Office of General Counsel has reviewed the proposed Audit Report on Nader 2000 Primary Committee, Inc. (the "Committee") submitted to this Office on August 23, 2002. This memorandum summarizes our comments on the proposed report.<sup>1</sup> Our comments focus on the issue of the Committee's net outstanding campaign obligations, specifically the calculation of winding down costs and accounts payable. Generally we concur with any findings not specifically addressed in these comments. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this audit.

I. **NOCO - WINDING DOWN COSTS AND ACCOUNTS PAYABLE (III. A.)**

A. **WINDING DOWN COSTS**

The proposed Report raises the novel issue of how to calculate the winding down costs for a candidate who ran in both the primary and general elections but only received public funds for the primary election. This Office concurs with the Audit Division's exclusion of purported

<sup>1</sup> 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.

primary wind down costs between the candidate's date of ineligibility and the end of the general election expenditure report period.<sup>2</sup> We agree with your conclusion that these expenses should be treated as general election expenses rather than primary winding down costs. Several provisions of the regulations and the regulatory history support allocating expenses incurred between the date of nomination and the end of the expenditure report period as general election expenses. As discussed more fully below, this approach is consistent with the regulations governing the attribution of expenses between the primary and general election campaigns, the regulations governing winding down costs and the regulations defining qualified campaign expenses. Moreover, this approach treats the winding down expenses of this candidate in a manner consistent with those of other general election candidates who received matching funds during the primary period.

Ralph Nader qualified for matching funds for his primary election campaign and became ineligible on August 17, 2000. He also ran in the general election but did not qualify for public funds. The Committee contended that certain expenses between the candidate's date of ineligibility and the end of the general expenditure report period, December 7, 2000, should be allocated 70% to the primary election as winding down costs and 30% to the general election as operating expenditures.<sup>3</sup> In the Preliminary Audit Report, the Audit Division considered none of the expenses incurred between August 18, 2000 and December 7, 2000 to be primary winding down expenses. The Committee argued in response that there is no legal authority for this conclusion and that it continued to incur primary-related winding down expenses during this period. The Audit staff was not convinced by these arguments and the proposed Report excludes \$35,324 in costs incurred during this period from the calculation of the Committee's primary winding down costs.<sup>4</sup>

Essentially, the issue here is how to allocate these expenses between the candidate's primary and general election campaigns. The regulations governing the attribution of expenditures between the primary and general expenditure limitations apply to "candidates who receive public funding in either the primary or general election, or both."<sup>5</sup> 11 C.F.R.

---

<sup>2</sup> For purposes of this discussion, we are assuming that all of the expenses at issue would have been qualified primary winding down costs if the candidate had not run in the general election.

<sup>3</sup> For general election candidates who received public funds, the expenditure report period began on the date they received their parties' nomination and ended on December 7, 2000, 30 days after the general election. See 11 C.F.R. § 9002.12.

<sup>4</sup> The Audit Division also attributed 70% of expenses from December 8, 2000 through May 31, 2001 as primary winding down expenses and 30% as general winding down expenses based on the financial activity of both committees. Because the general committee's winding down process was completed by May 31, 2001 while the audit of the Committee continued, you attributed 100% of expenses from June 1, 2001 through June 30, 2002 to the Committee as primary election wind down costs. We agree that these attributions are reasonable.

<sup>5</sup> The Commission revised the bright line rules in 1999 to clarify that section 9034.4(e) "applies to Presidential campaign committees that accept federal funds for either election." 64 Fed. Reg. 49,359. The Commission explained that not all candidates receive public funds for both elections and that "candidates accepting federal financing for only the general election will also need guidance in attributing their expenditures" between the

§ 9034.4(e). Since Ralph Nader received public funds for the primary election (but not for the general election) these rules apply to him. The general rule is that expenditures, other than certain listed categories of expenses, "for goods and services that are used for the primary election campaign" are attributed to the primary expenditure limitation and expenditures "for goods or services that are used for the general election campaign" are attributed to the general election expenditure limitation. 11 C.F.R. § 9034.4(e)(1). The regulation provides specific "bright line" expenditure attribution rules that generally focus on the timing of the activity for polling, state or national campaign offices, campaign materials, media production costs, campaign communications and travel costs. 11 C.F.R. § 9034.4(e)(2)-(7). Thus, section 9034.4(e) supports attributing all expenses incurred during Nader's general election campaign (between his date of ineligibility and the end of the expenditure report period) as general election expenses.

The regulations governing winding down costs also support treating all expenses of a general election candidate between his date of ineligibility and the end of the expenditure report period as general election expenditures rather than primary winding down costs. The bright line attribution rule for state and national offices provides that "overhead and payroll costs associated with winding down the campaign and compliance activities shall be governed by" 11 C.F.R. § 9034.4(a)(3). 11 C.F.R. § 9034.4(e)(3). Winding down costs are "costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies."<sup>6</sup> 11 C.F.R. § 9034.4(a)(3)(i). Thus, the regulatory definition of winding down costs supports excluding purported primary winding down costs during the general election period because a candidate who is actively campaigning for the general election is not generally terminating political activity and winding down his campaign.<sup>7</sup> *See id.* Since Nader's presidential campaign did not terminate until after the general election, expenditures incurred during his general election campaign should not be treated as winding down costs.

Several other provisions of the regulations also support attributing expenses of a general election candidate during the expenditure report period as general election expenses. Candidates

---

primary and general elections. *Id.* Thus, the Commission considered the possibility that candidates would only receive public funds for the general election, but did not appear to focus on the reverse situation. In 1999, it appeared likely that at least one candidate might forgo primary matching funds but accept general election public funds. Although the Commission did not focus on the reverse situation, there is no indication it intended different rules to apply to candidates who run in both elections but only receive primary matching funds.

<sup>6</sup> Winding down costs are qualified campaign expenses and a candidate may receive and use matching funds for them after his date of ineligibility. *Id.*

<sup>7</sup> Some administrative costs paid by a general election candidate may be related to terminating the primary campaign; however, identifying which costs incurred during the general election campaign are primary winding down costs would consume the time and resources of both the Commission and audited committees. Such an in-depth review of winding down costs would be contrary to the Commission's intent in establishing the "bright line" rules for allocating expenses between primary and general campaigns. *See infra* at 5, note 10.

who receive public funds for their primary election campaigns can use those funds only for their primary campaigns. See 11 C.F.R. §§ 9032.9(a)(1), 9034.4(a), (b) and (e). The regulations define qualified campaign expenses for a primary candidate as, *inter alia*, expenses incurred "from the date the individual becomes a candidate through the last day of the candidate's eligibility" and made "in connection with his or her campaign for nomination." 11 C.F.R. § 9032.9(a)(1). Non-qualified primary campaign expenses include: expenses incurred before the candidate's date of ineligibility for goods or services to be used after the date of ineligibility; expenses incurred for property, services or facilities used to benefit the candidate's general election campaign; and expenses incurred after the candidate's date of ineligibility other than winding down costs. 11 C.F.R. § 9034.4(b). These regulations indicate that expenses of a general election campaign generally would be non-qualified primary campaign expenses because they are not "in connection with" the campaign for nomination; they are incurred and used after the date of ineligibility, and they benefit the candidate's general election campaign. See 11 C.F.R. §§ 9032.9(a)(1), 11 C.F.R. 9034.4(b). Thus, excluding purported primary winding down costs while the candidate is running for the general election would prevent the possible use of primary matching funds for non-qualified expenses that may benefit the general election campaign.

The regulatory history also supports attributing expenses during the expenditure report period as general election expenses rather than primary wind down expenses for candidates who run in both the primary and general elections. The attribution of expenses between the primary and general campaigns of publicly-financed candidates who ran in both elections raised difficult and contentious issues in previous election cycles. The Commission addressed these issues in a 1995 rulemaking that created the bright line rules discussed above, at 11 C.F.R. § 9034.4(e), for the attribution of certain expenditures that may benefit both the primary and the general election campaign, including costs of state or national offices. A 1999 revision to the bright line rules considered whether primary wind down costs incurred after the candidate's nomination should be attributed to the general election. See Explanation and Justification, "Public Financing of Presidential Primary and General Election Candidates," 64 Fed. Reg. 49,355, 49,358-59 (September 13, 1999). The Commission sought comments on a draft revised rule providing "that for candidates who win their parties' nominations, no salary and overhead expenses may be treated as winding down costs until after the end of the expenditure report period." 64 Fed. Reg. 49,358.

Instead of the approach outlined in the draft rules, the final rules approved by the Commission revised section 9034.4(a)(3)(iii), which allows committees to treat all salary, overhead and computer costs after a certain date as compliance costs exempt from the expenditure limitations.<sup>8</sup> Revised section 9034.4(a)(3)(iii) provides that "a candidate who does not receive public funding for the general election" may treat 100% of salary, overhead and computer expenses incurred after the candidate's date of ineligibility as exempt legal and accounting compliance expenses for purposes of the expenditure limitations beginning with the

---

<sup>8</sup> Section 9034.4(a)(3)(iii) is a sub-section of the rules governing winding down costs at 9034.4(a)(3). Salary, overhead and computer expenses generally constitute a large portion of winding down costs.

first full reporting period after the date of ineligibility. 11 C.F.R. § 9034.4(a)(3)(iii). It further states, "candidates who receive public funding for the general election must wait until the end of the expenditure report period" (i.e., 30 days after the general election) before they may treat 100% of salary, overhead and computer expenses as exempt compliance costs for the purposes of the expenditure limitations. *Id.* The Commission noted that the issue needed to be clarified and observed that "[d]uring the general election campaign, there are significant distinctions between the winding down activities of candidates who win their parties' nominations and those who do not, particularly with regard to legal and accounting compliance expenses." 64 Fed. Reg. 49,359. The Commission stated that the revised rules provide that "a publicly funded primary candidate who does not run in the general election" may treat all salary and overhead expenses as compliance after the date of ineligibility, but "federally financed primary candidates who continue on to the general election . . . must wait until after the end of the expenditure report period before they may begin treating all salary and overhead expenses as compliance expenses."<sup>9</sup> *Id.* Although this revision did not explicitly preclude party nominees from treating salary and overhead expenses as winding down costs before the end of the expenditure report period, the regulation is consistent with attributing salary and overhead expenses of general election candidates as general election expenses rather than primary wind down expenses during the expenditure report period. The compliance exemption would not apply to salary and overhead costs before the end of the expenditure report period if those costs are considered general election expenses that would not count against the primary expenditure limitation.

Moreover, one of the motivating factors for promulgating the bright line rules for attributing primary and general expenses was to avoid consuming time and resources to delineate between primary and general expenses in particular cases.<sup>10</sup> The Commission recognized that

---

<sup>9</sup> This Office recognizes that the language of 11 C.F.R. § 9034.4(a)(3)(iii), and in particular the first sentence, is confusing. We believe that the most logical interpretation of 9034.4(a)(3)(iii) is that primary candidates who receive primary matching funds, but who do not run in the general election may exempt salary, overhead and computer costs (which are types of winding down costs) as compliance expenses after their date of ineligibility. However, candidates like Nader who receive primary matching funds but who go on to run in the general election without public funding must wait until the end of the expenditure report period to exempt these categories of costs as compliance expenses. This reading is based on the relatively clear intent expressed in the regulatory history of this section. Under our reading, the language of this section does not appear to contemplate the possibility of a publicly funded primary candidate who runs in the general election without public funds. The Committee correctly notes that the *2000 Financial Control and Compliance Manual for Presidential Candidates Receiving Public Funding* at page 54, footnote 19, refers to candidates "who go on to receive public funds in the general election" and does not discuss candidates who run in the general election but do not receive public funds. Alternatively, section 9034.4(a)(3)(iii) could be read to allow primary candidates like Nader who run in the general election to exempt certain costs as compliance expenses after their date of ineligibility so long as they do not receive general election public funds. However, this alternative interpretation seems contrary to the regulatory scheme created by section 9034.4 and the regulatory history.

<sup>10</sup> A "major factor" the Commission considered in the 1995 rulemaking was "the desire to complete the audits more quickly and using fewer agency resources" by avoiding the "extremely time and labor intensive" examination of "thousands of individual expenditures" where "both the timing and the purpose of each expenditure is at issue." Explanation and Justification, "Public Financing of Presidential Primary and General Election Candidates," 60 Fed. Reg. 31,854, 31,866 (June 16, 1995).

the bright line rules might not always "accurately reflect the relative impact of particular expenditures" but considered that the "differences should balance themselves out over the course of a lengthy campaign." 60 Fed. Reg. 31,867. Under the bright line rules, candidates like Nader who receive primary matching funds may use those public funds prior to their date of ineligibility for some expenses that may benefit their general election effort; however, those expenses would be balanced under the rules by expenses that may have a primary winding down component but are considered general election expenses. When the Commission sought comments on revising the regulations concerning winding down costs, it observed that this "clarification would recognize that under the 'bright line rules,' the costs incurred for winding down the primary campaign during the general election period will be offset by pre-convention general election expenses." Notice of Proposed Rulemaking, "Public Financing of Presidential Primary and General Election Candidates," 63 Fed. Reg. 69,524, 69,526 (December 16, 1998).

Furthermore, there is no indication in the regulations or regulatory history that the Commission intended to exempt candidates who run in both the primary and general elections but receive public funds only for the primary election from the rules applicable to other candidates. Indeed, the regulatory history indicates that the Commission intended to encompass candidates who "continue on to the general election." 64 Fed. Reg. 49,359. The "significant distinctions between the winding down activities of candidates who win their parties' nominations and those who do not" are the same regardless of whether those candidates receive public funds for the general election. *Id.* Moreover, the potential problem that public funds received for the primary campaign could be used for non-qualified expenses related to the general election exists whether or not the candidate receives public funds for the general election. Finally, Nader's winding down expenses should be treated consistently with those of other general election candidates who received matching funds during the primary period. It would be inconsistent to allow one general election candidate to fund overhead during the general election campaign with primary matching funds while other general election candidates cannot do so.

## B. ACCOUNTS PAYABLE

This Office disagrees with the adjustment of the Statement of Net Outstanding Campaign Obligations ("NOCO Statement") in the proposed Report to include \$19,429 in expenses incurred and paid after the candidate's date of ineligibility as accounts payable for "Other Primary Expenses." This attribution is inconsistent with the exclusion from the NOCO Statement of primary winding down costs during the same period. The Committee has not demonstrated that these expenses were incurred prior to the candidate's date of ineligibility. Therefore, we recommend that these expenses be treated as general election expenses consistent with other expenses incurred after the date of ineligibility.

The Committee's assertions that these expenses were incurred prior to the date of ineligibility are not persuasive. Documentation provided by the Audit staff indicates that most, if not all, of these expenses were both incurred and paid after the date of ineligibility. Indeed, the Committee admits that the legal services for a lawsuit concerning Illinois ballot access were

rendered after August 25, 2000 and that some work by Alabama ballot access workers may have occurred after the date of ineligibility.<sup>11</sup> Ballot access costs may be primary qualified campaign expenses but are also inherently related to the general election.<sup>12</sup> In addition, the Committee contends that a payment of \$7,500 to a law firm on September 11, 2000 for legal expenses to defend a trademark infringement suit was incurred prior to the date of ineligibility because the advertisement at issue in the lawsuit aired prior to that date.<sup>13</sup> However, a letter from the law firm dated September 8, 2000 states that the firm was beginning *pro bono* representation of the Committee in the case and that the \$7,500 was an advance for out of pocket expenses and any work by non-volunteers. Further, the advertisement at issue in the trademark infringement suit could have benefited both the candidate's primary and general election campaigns. Since these expenses were incurred after the candidate's date of ineligibility, they should be treated as general election expenses consistent with other expenses incurred between the candidate's date of ineligibility and the end of the general election expenditure report period.

Therefore, we concur with the calculation of winding down costs but disagree with the treatment of certain expenses as primary accounts payable in the proposed Audit Report. Finally, we note that these issues have no repayment consequences. The candidate is in a deficit position under the Audit Division's calculations and did not receive matching fund payments in excess of his entitlement.

---

<sup>11</sup> Although the available documentation does not clarify when the activity by the Alabama ballot access workers occurred, the e-mail requesting payment was dated October 11, 2000 and the payments were made on October 23, 2000, two months after the date of ineligibility.

<sup>12</sup> The cover memorandum to the proposed Report refers to an Advisory Opinion ("AO") as support for treating general election ballot access expenses as primary qualified campaign expenses and accounts payable. In AO 1984-25 and AO 1995-45, the Commission concluded that disbursements during the matching payment period by a minor party primary candidate to obtain ballot access for the general election were qualified campaign expenses. Most of the ballot access expenses here, however, were incurred after the candidate's date of ineligibility and the end of the matching payment period.

<sup>13</sup> Press accounts indicate that the advertisement first aired in August 2000 and that Mastercard filed suit against the Committee on August 17, 2000, the date of ineligibility. One article stated that Mastercard sought a preliminary injunction "to get the ad off the air" in October 2000. See Valerie Sieminski, *First Amendment: Priceless Mastercard is Still Trying to Get Nader Ad Off the Air* NAT'L L. J. October 2, 2000 at B12. Thus, it is not clear whether the Committee planned to air the advertisement after the date of ineligibility.

LAW OFFICES  
**LICHTMAN, TRISTER, SINGER & ROSS**  
1666 CONNECTICUT AVENUE, N.W., SUITE 600  
WASHINGTON, D.C. 20009

ELLIOTT C. LICHTMAN  
MICHAEL B. TRISTER  
LINDA R. SINGER  
GAIL E. ROSS  
ELEANOR NACE<sup>\*</sup>  
B. HOLLY SCHADLER

PHONE: (202) 328-1666  
FAX: (202) 328-9162

LAURA A. POSSESSKY<sup>\*</sup>  
SARAH M.M. DUCKHAM<sup>\*</sup>  
RICHARD L. THOMAS<sup>\*</sup>

MICHAEL K. LEWIS  
OF COUNSEL

<sup>\*</sup>ALSO ADMITTED IN MD.

June 4, 2002

**By Hand Delivery**

Mr. Joseph F. Stoltz  
Assistant Staff Director  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

Re: Nader 2000 Primary Committee

Dear Mr. Stoltz:

Pursuant to 11 C.F.R. § 9038.1(c)(2), the Nader 2000 Primary Committee ("Primary Committee") submits the following response to the Preliminary Audit Report ("PAR") approved by the Federal Election Commission on April 2, 2002.

The Primary Committee agrees with the overall finding of the PAR that there was no material non-compliance by the Primary Committee. We also agree with the conclusion set forth in the PAR that the Primary Committee did not receive matching fund payments in excess of its entitlement. Finally, amended reports for the first eight months of calendar year 2000 have been filed in accordance with Recommendation No. 1 in the PAR. The remaining amended reports have been delayed due to the resignation of the employee responsible for this activity and the absence of the responsible individual from the Committee's vendor; we expect to file these amended reports early in the week of June 10. Recommendation No. 2 is discussed below.

The Primary Committee continues to believe that the Statement of Net Outstanding Campaign Obligations (NOCO) as of August 17, 2000, as determined at January 18, 2002, as well as the adjustments for funds received after August 17, 2000, are not correct and should be revised in a number of material respects, as set forth below. Although these changes do not effect the Primary Committee's liability for any overpayment to the U.S. Treasury, we believe it is important that the final NOCO and related calculations correctly reflect the Primary Committee's financial activity.

1. **Accounts Payable for QCE.** The Revised NOCO significantly understates the Primary Committee's accounts payable at August 17, 2000. 11 C.F.R. § 9032.9(a) defines qualified campaign expenses as those "incurred" prior to the candidates's date of ineligibility. Many of the expenses paid by the Primary Committee after August 17, 2000 were incurred prior to that date and should have been included as accounts payable by the Primary Committee. Specifically, the following expenses were incurred prior to August 17, 2000 but not included in the schedule of accounts payable for the Revised NOCO: (i) \$7,500 paid on September 11, 2000 to Fish & Richardson for legal expenses incurred in connection with a trademark infringement lawsuit filed against the Primary Committee as the result of certain media advertisements run by the Primary Committee prior to August 17, 2000; <sup>1</sup>(ii) two payments of \$4,065 each made to Andrew Spiegel, a lawyer in Illinois, for legal services in connection with Mr. Nader's efforts to get on the ballot in that state;<sup>2</sup> (iii) payments on October 23, 2000 totaling \$ 1,932 to fieldworkers in Alabama in connection with Mr. Nader's

---

<sup>1</sup> This payment was included as a winding down expense for which the Primary Committee received no credit because it was paid in the period between August 18 and December 6, 2000. Expenses related to the Mastercard litigation, however, relate only to the primary campaign since the alleged infringement took place in connection with advertisements run by the Primary Committee. Therefore, whether these expenses are characterized as accounts payable or winding down expenses, they should be credited in their entirety to the Primary Committee. Other expenses relating to ballot access work, such as a \$616 payment to Elizabeth Frazer, \$31.43 to Sherry Stanley, and \$1,288.97 of a \$3,089.39 payment to the Brennan Center for Justice, should similarly be treated either as accounts payable or included in their entirety as winding down expenses for the Primary Committee.

<sup>2</sup> The first of these payments dated September 13, 2000 was included as winding down expenses during the period from August 18 to December 6, but the PAR does not appear to have included the second payment, dated October 5, 2000, as accounts payable or winding down expenses. Both payments are properly treated as accounts payable because the decision of the Illinois State Board of Elections which necessitated the filing of a lawsuit occurred on July 18, 2000. Although Mr. Spiegel's services were rendered after the court's decision on August 25, 2000, this work would not have been necessary but for the illegal prior action of the Board of Elections striking Mr. Nader's name from the ballot. Moreover, even if the Commission decides that these expenses should be included as winding down expenses, rather than accounts payable, they should be included in their entirety as expenses of the Primary Committee, as is the case with other ballot access expenditures.

efforts to get on the ballot in that state;<sup>3</sup> (iv) a payment of \$1,866.91 to Mark Lewis on August 30, 2000 to reimburse him for expenses incurred in June, 2000 in connection with the nominating convention of the Green Party;<sup>4</sup> and (v) \$7,635.27 for office expenses incurred prior to August 17, 2000. Although the Primary Committee offered to make available documentation to support each of these expenses upon request, the audit staff rejected these claims in the PAR without explanation or justification. The correct total of accounts payable is \$168,446.96, a difference of \$28,473.96 over the amount on the Revised NOCO (\$139,973).

2. **Bank Interest Due on Loan.** The total interest due on the loan to Amalgamated Bank was \$7,372.72, not \$5960.00 as listed on the Revised NOCO. The Primary Committee submitted documentation reflecting the correct amount in Exhibit C to its letter to the Auditor dated February 8, 2002. However, the Revised NOCO continues to reflect the incorrect amount without explanation or justification.
3. **Winding Down Expenses - August 18, 2000 through December 6, 2000.** Note (a) to the Revised NOCO states that no winding down expenses for this period were included even though at least \$54,753 in such expenses were incurred by the Primary Committee during this period. We strongly disagree with this conclusion and have found no legal authority for it.<sup>5</sup> The Primary Committee was under

---

<sup>3</sup> Although the payments to some of the Alabama fieldworkers were included as accounts payable, others were excluded. Moreover, even if some portion of the services performed by these individuals occurred after August 17, it is clear that they should be included in their entirety as winding down expenses of the Primary Committee, as is the case for other ballot access expenditures.

<sup>4</sup> Although another payment to Mr. Lewis was included in accounts payable, this payment was not. Documentation relating to the second payment was previously submitted as Exhibit B to the Primary Committee's letter dated February 8, 2002.

<sup>5</sup> The Financial Control and Compliance Manual For Presidential Primary Candidates Receiving Public Financing (April 2000) states at page 54, note 19 that salary and overhead expenses between the date of nomination and the end of the expenditure report period are general election expenses, and therefore salary and overhead costs may not be charged to exempt compliance for the purpose of winding down the primary campaign until after the end of the expenditure report period. However, this note specifically is limited to federally funded candidates "who go on to receive federal funds for the general election," which was not the case for the Nader campaign. Moreover, the regulation cited in the note, 11 C.F.R. § 9034.4(e)(3), does not include any reference to the rule it purports to support. The only authority cited in the PAR, 11 C.F.R. § 9002.12, similarly does not address the issue presented here.

continuing reporting, record-keeping and other compliance obligations during this period, and it continued to incur various expenses having no relation to the general campaign, including bank and credit card charges. Therefore, in addition to the expenses described in point 1 that were identified by the audit staff as winding down expenses but should have been treated as accounts payable, see notes 1-3, *supra*, the Primary Committee identified in its letter to the auditor dated February 8, 2002 three categories of expenditures during this period for which the Primary Committee should receive credit as winding down costs, either in their entirety or based on a reasonable allocation between the Primary and General Committees<sup>6</sup>: Specifically, Exhibit D to that letter lists \$16,085.70 of winding down expenses for which the Primary Committee received no credit. Exhibit E to the letter lists \$46,172.15 in overhead expenses incurred during this period that may reasonably be allocated between the Primary and General Committees on a 30/70 basis, including the rent paid for the headquarters office for the months of September through December, 2000 and payroll expenditures of Theresa Amato, Megan Case, the bookkeeper, data entry clerk and temporaries hired to assist with filing and data entry. Exhibit F lists a number of contribution refunds and bank charges totaling \$11,326.50 which should be credited as winding down expenses of the Primary Committee in their entirety.<sup>7</sup>

4. **Winding Down Expenses - December 7, 2000 through January 18, 2002.** The PAR allocated \$287,956 of winding down expenses to this period based on a 30/70 allocation between the general and primary committees. See page 6, note (a). The Primary Committee strongly disagrees with the conclusion that these expenses should be allocated between the two committees on a 30/70 basis for the entire period. By December 7, 2000, thirty days after the general election, most

---

<sup>6</sup> These lists are not complete. For example, Exhibit E does not include expenses for utilities, telephone and other similar overhead items which should also be allocated on a 30/70 basis, and payroll charges and employment taxes are not included in Exhibit E even though they are properly allocated between the Primary and General Committees. If you agree with our position with respect to the expenses listed in Exhibits D-F, the Primary Committee will identify which of these additional expenses should be covered by the same principle. In addition, as noted in the footnotes relating to point 1, certain ballot access expenses which the Primary Committee has included in its list of accounts payable should, alternatively, be included in their entirety as winding down expenses for this period.

<sup>7</sup> Although these refunds were classified as winding down expenses, the Primary Committee received no credit because they were made during the period from August 18 to December 6. The entire amount of these refunds should be credited as winding down expenses because the contributions to which they relate were credited to the Primary Committee and the refunds were paid entirely from the Primary Committee account.

winding down activities for the General Committee had been completed and it was no longer necessary to maintain a headquarters office or to pay staff to perform this function. Instead, almost all of the expenses incurred after December 7, 2000 involved steps taken to prepare the records of the Primary Committee for the audit, as well as legal and other expenses associated with the audit. Expenses relating to the General Committee were paid directly by the General Committee and are not included in this amount. Accordingly, the full amount of the winding down expenses incurred by the primary committee during this period should be included in the Revised NOCO.

5. **Accounts Receivable.** The amount listed as accounts receivable in the Revised NOCO is overstated by \$16,104.68 due to an error by the auditor in failing to recognize that Bell Atlantic and Verizon are the same company. As a result, refund checks received from Verizon on January 4, 2001 totaling \$16,104.68 were already included in the \$30,000 deposit paid to Bell Atlantic and should not have been double counted.
6. **Contributions Received - August 18, 2000 through September 1, 2000.** Based on documentation submitted to the auditor following the exit conference, the adjustment for net private contributions received by the Primary Committee during this period was reduced to \$95,605. We understand, however, that the auditor continued to credit to the Primary Committee a large number of contributions deposited erroneously into the account of the Primary Committee even though they were received in response to solicitations that made it clear that the donor intended to make a contribution to the General Committee. Because the instructions in the Financial Control And Compliance Manual are unclear on this question, the campaign assigned 100% of these contributions to the Primary Committee, even though evidence submitted with the contributions, such as solicitation materials, makes it clear that the intent of the donors was to contribute to the General Committee. In addition, some of these contributions were collected at events sponsored by the General Committee. Exhibit I to the Committee's letter dated February 8, 2002 includes documents demonstrating that these contributions should not have been included as contributions to the Primary Committee.
7. **Contributions Received - September 2, 2000 to October 2, 2002.** The PAR also includes an adjustment for net private contributions received by the Primary Committee between September 2, 2000 and October 2, 2002 in the amount of \$199,006. Since this amount was not included in the draft Revised NOCO provided at the time of the exit conference, the Primary Committee did not provide documentation, similar to that provided for the period August 18, 2002 to September 2, 2002, to demonstrate that many of these contributions should have

Mr. Joseph F. Stoltz  
June 4, 2002  
Page 6

been credited to the General Committee and not to the Primary Committee. We stated in our letter of February 8, 2002 that we were prepared to submit such information upon request, and we are submitting it under separate cover with this letter. This documentation demonstrates that \$122,910 in contributions received during the period have been erroneously credited to the Primary Committee account and the adjustment for net private contributions should therefore be reduced in this amount.

8. **Stale Dated Checks.** The Revised NOCO includes stale dated checks totaling \$18,346. As documented in Exhibit A to this letter, the Primary Committee has located many of the individuals involved in these transactions so that the amount of stale checks has been reduced to \$ 8,322.72 . In accordance with Recommendation No. 2 of the PAR, the Primary Committee will pay this amount to the U.S. Treasury upon issuance of the final audit report setting forth the final, agreed amount of stale checks.

We are prepared to meet with you or your staff to discuss the issues set forth in this letter prior to the preparation of the final audit report, if this would be helpful.

Sincerely,



Michael B. Trister

Enclosures

cc: Ms. Theresa Amato