



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 8, 2012

MEMORANDUM

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Director of Alternative Dispute Resolution

THROUGH: Alec Palmer
Staff Director

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SUBJECT: Friends of Todd Young (A11-06) – Referral Matter

On August 3, 2012, the Commission approved the Final Audit Report of the Commission (FARC) on the Friends of Todd Young. The report will be released to the public on August 13, 2012. In accordance with the Materiality Thresholds for Authorized Committees, the FARC includes a matter that meets the criteria for referral to Alternative Dispute Resolution:

Receipt of Contributions in Excess of the Limit

It should also be noted that another matter (Failure to File 48-Hour Notices) was referred to the Administrative Fines Program through the Reports Analysis Division.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Robert Morcomb or Kendrick Smith at 694-1200.

Attachment: Finding 2 – Receipt of Contributions in Excess of the Limit

cc: Reports Analysis Division

Finding 2. Receipt of Contributions in Excess of the Limit

Summary

During audit fieldwork, the Audit staff reviewed contributions from individuals. This review indicated that FOTY had received apparent excessive contributions totaling \$94,854. These errors occurred as a result of FOTY not resolving the excessive portion of contributions either by forwarding a presumptive letter to its contributors or by issuing a refund in a timely manner.

In response to the Interim Audit Report recommendation, FOTY representatives provided documentation demonstrating that FOTY had materially resolved the excessive contributions, albeit in an untimely manner.

The Commission approved a finding that FOTY received \$94,854 in excessive contributions.

Legal Standard

A. Authorized Committee Limits. For the 2010 election, an authorized committee may not receive more than a total of \$2,400 per election from any one person.

2 U.S.C. §441a(a)(1)(A), 11 CFR §§110.1(a) and (b) and 110.9.

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable check to the donor; or
- Deposit the contributions and keep enough money on hand to cover all potential refunds until the legality of the contribution is established. If deposited, the committee must seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation). If the committee does not receive a proper reattribution or redesignation within 60 days of receiving the excessive contribution, refund the excessive portion to the donor.

11 CFR §103.3(b)(3), (4) and (5).

C. Joint Contributions. Any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order or other negotiable instrument or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

D. Reattribution of Excessive Contributions. Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to another contributor. The committee must inform the contributor that:

1. The reattribution must be signed by both contributors;
2. The reattribution must be received by the committee within 60 days of the committee's receipt of the original contribution; and
3. The contributor may instead request a refund of the excessive amount.

11 CFR §110.1(k)(3).

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Within 60 days of receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Notwithstanding the above, any excessive portion of a contribution that was made on a written instrument imprinted with the names of more than one individual may be attributed among the individuals listed, unless instructed otherwise by the contributor(s). The committee shall notify each contributor:

1. How the contribution was attributed; and
2. That the contributor may instead request a refund of the excessive amount.
11 CFR §110.1(k)(3)(ii)(B).

E. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

1. The redesignation must be signed by the contributor;
2. The redesignation must be received by the committee within 60 days of the committee's receipt of the original contribution; and
3. The contributor may instead request a refund of the contribution.
11 CFR §110.1(b)(5)(ii)(A).

Within 60 days of receiving the excessive contribution, the committee must either receive the proper redesignation or refund the contribution to the donor. 11 CFR §§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

1. Is made before that candidate's primary election;
2. Is not designated in writing for a particular election;
3. Would be excessive if treated as a primary election contribution; and
4. As redesignated, does not cause the contributor to exceed any other contribution limit.

The committee is required to notify the contributor of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead. 11 CFR §110.1(b)(5)(i)(D)(ii).

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Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff utilized a combination of sample testing and focused reviews to identify apparent excessive contributions from individuals totaling \$94,854. This total is comprised of \$94,554¹, the projected dollar value of the sample errors, and \$300, the result of a focused review of the remaining contributions. These apparent excessive contributions resulted from FOTY not resolving the excessive portion of contributions by forwarding a presumptive letter to its contributors, informing them of how their contribution had been redesignated/reattributed or refunding the excessive contribution. FOTY resolved excessive contributions totaling \$11,820 in an untimely manner, by issuing refunds, prior to audit notification.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided FOTY representatives with a schedule of the apparent excessive contributions. The representatives asked general questions about presumptive letters and issuance of refunds.

In response to the exit conference, FOTY representatives submitted documentation relative to the apparent excessive contributions. The Audit staff received copies of three refund checks, dated in August 2011 and totaling \$550; two of these checks were not negotiated. The Audit staff also received copies of presumptive letters dated August 5, 2011, for excessive contributions totaling \$21,450.

As a result of the refunds issued prior to audit notification (\$11,820), the refunds issued in response to the exit conference (\$550) and the presumptive letters sent to contributors in response to the exit conference (\$21,450), the remaining apparent excessive contributions FOTY did not address totaled \$61,034 (\$94,854 - \$11,820 - \$550 - \$21,450).

The Interim Audit Report recommended that FOTY provide documentation demonstrating that contributions totaling \$61,034 were not excessive. Absent such a demonstration, FOTY should have resolved these apparent excessive contributions by either (1) sending presumptive redesignation/retribution letters informing contributors about how the excessive portion of their contributions had been resolved and offering a refund, (2) refunding the excessive portion of each contribution and providing evidence of such refunds, (3) disclosing the contributions requiring refund on Schedule D if funds were not available to make the necessary refunds, or (4) making a payment of \$61,034 to the U.S. Treasury and providing evidence of such payment.

C. Committee Response to the Interim Audit Report

In response to the Interim Audit Report, FOTY provided copies of presumptive redesignation and/or presumptive retribution letters sent subsequent to receiving the Interim Audit Report. The Audit staff concluded that of the \$94,854 in excessive contributions, FOTY demonstrated

¹ The sample error amount was projected using a Monetary Unit Sample with a 95 percent confidence level plus the result of a focused review of contributions not included in the sample population. The sample estimate could be as low as \$53,689 or as high as \$135,419.

that it had resolved contributions totaling \$77,896 (\$21,450 + \$11,820 + \$550 + \$44,076) in an untimely manner. FOTY materially complied with the Interim Audit Report recommendation.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that FOTY materially resolved the excessive contributions, albeit in an untimely manner. FOTY's response to the Draft Final Audit Report did not address this matter.

Commission Conclusion

On June 21, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that FOTY received \$94,854 in excessive contributions.

The Commission approved the Audit staff's recommendation.

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