



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 26, 2007

MEMORANDUM

To: Thomasenia P. Duncan
General Counsel

Through: Patrins M. Clark
Staff Director

From: John D. Gibson
Chief Compliance Officer

AUDIT REFERRAL # 07-08

Joseph F. Stoltz
Assistant Staff Director
Audit Division

Thomas J. Nurthen
Audit Manager

By: Brenda E. Wheeler
Lead Auditor

Subject: Craig Romero for Congress, Inc. (A05-07) - Referral Matters

On October 3, 2007, the Commission approved the audit report on Craig Romero for Congress, Inc. The audit report was released to the public on October 18, 2007. In accordance with the Commission approved materiality thresholds, the attached findings from the audit report are being referred to your office.

Finding 1 -

Audit Division policy dictates if one matter is referred to your office, other matters shall also be referred to your office.

Finding 2 - Receipt of Excessive Contributions meets the criteria for referral to your office. The Committee has not complied with the recommendations contained in the interim audit report.

29044252327

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions, please contact Brenda Wheeler or Tom Nurthen at 694-1200.

Attachments:

Finding 1 – Receipt of Prohibited Contributions

Finding 2 – Receipt of Excessive Contributions

29044252328

Finding 1. Receipt of Prohibited Contributions

Summary

CRC received contributions from limited liability companies (LLCs) and apparent corporate entities totaling \$63,195. CRC refunded \$30,903 of the contributions, leaving \$32,292 in unresolved apparent prohibited contributions. The Audit staff recommended that CRC provide documentation demonstrating the contributions were not from prohibited sources or refund \$32,292 and provide copies of all negotiated refund checks. In response, CRC demonstrated that \$22,900 was from permissible sources and \$9,292 was refunded; leaving only \$100 unresolved.

Legal Standard

A. Receipt of Prohibited Contributions – General Prohibition. Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Labor Organizations;
 - National Banks;
 - Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and
 - Foreign Nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence; foreign governments and foreign political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b)). 2 U.S.C. §§441b, 441c, 441e, and 441f.

B. Definition of Limited Liability Company. A limited liability company (LLC) is a business entity recognized as an LLC under the laws of the state in which it was established. 11 CFR §110.1(g)(1).

C. Application of Limits and Prohibitions to LLC Contributions. A contribution from an LLC is subject to contribution limits and prohibitions, depending on several factors, as explained below:

1. **LLC as Partnership.** The contribution is considered a contribution from a partnership if the LLC chooses to be treated as a partnership under Internal Revenue Service (IRS) tax rules, or if it makes no choice at all about its tax status. A partnership contribution may not exceed \$2,000 per candidate, per election, and it must be attributed to each lawful partner. 11 CFR §110.1(a), (b), (e) and (g)(2).
2. **LLC as Corporation.** The contribution is considered a corporate contribution—and is barred under the Act—if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are traded publicly. 11 CFR §110.1(g)(3).

3. LLC with Single Member. The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1(g)(4).

Facts and Analysis

The Audit staff determined that CRC received \$63,195 in apparent prohibited contributions. The contributions were received from limited liability companies and corporate entities. CRC refunded \$20,403 of the prohibited contributions, although the refunds were not made timely.

Limited Liability Companies are permitted to contribute to political committees; however, it is the responsibility of the LLC to affirm eligibility. No documentation regarding the permissibility of the contributions from the LLCs was made available for review. With respect to the contributions received from the apparent corporate entities, the Audit staff verified the corporate status with the Louisiana Office of the Secretary of State. The prohibited contributions were not deposited into a separate bank account but CRC maintained sufficient funds to make the necessary refunds.

At the exit conference, the Audit staff presented CRC with a schedule of the apparent prohibited contributions. In response to their questions, the Audit staff advised CRC of the documentation required from the LLCs. Subsequent to the exit conference, CRC refunded an additional \$10,500 and provided copies of refund checks (front only).

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CRC demonstrate that the remaining prohibited contributions, totaling \$32,292 (\$63,195 – \$20,403 – \$10,500), were not from prohibited sources. Absent such demonstration, CRC was to refund \$32,292 and provide copies of the negotiated refund checks. Additionally, it was recommended that CRC provide copies of the negotiated checks, totaling \$10,500, supporting the refunds made subsequent to the exit conference. If funds were not available to make the necessary refunds, CRC was advised to disclose the contributions requiring refund on Schedule D (Debts and Obligations) until funds become available to make such refunds.

In response to the interim audit report, CRC contacted contributors by fax, letter or telephone to determine if the contributions were from permissible sources. CRC made available copies of signed statements from representatives of the LLC's regarding source of funds. As a result of its efforts, CRC demonstrated that contributions totaling \$22,900 was from permissible sources; \$9,292 was from impermissible sources; leaving only \$100 unresolved. CRC provided copies of bank statements and negotiated refund checks supporting refunds totaling \$19,792 (\$9,292 + \$10,500).

29044252330

Finding 2. Receipt of Excessive Contributions

Summary

A review of contributions from individuals revealed that CRC received \$116,208 in potential excessive contributions. Of this amount \$46,989 was refunded, however the refunds were not timely. The Audit staff recommended CRC demonstrate that the remaining contributions (\$69,219) were not excessive. Absent such evidence, the Audit staff recommended CRC send notices to the contributors informing them of the presumptive redesignation/retribution of their contributions and offer a refund of the excessive portion. If any contributors could not be located, or if any refund check was not negotiated by the contributors, it was recommended that the sum of those excessive contributions be paid to the United States Treasury. In response, CRC described the procedures implemented to ensure compliance with contribution limitations, but took none of the recommended actions.

Legal Standard

A. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person. 2 U.S.C. §441a(a)(1)(A) and 11 CFR §110.1(a) and (b).

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

- Return the questionable contribution to the donor; or
- Deposit the contribution and keep enough money on hand to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

The excessive portion may also be redesignated to another election or reattributed to another contributor as explained below.

C. 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, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- Refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and

- **As redesignated, does not cause the contributor to exceed any other contribution limit.**

Also, the committee may presumptively redesignate the excessive portion of a general election contribution back to the primary election if the amount redesignated does not exceed the committee's primary net debt position.

The committee is required to notify the contributor in writing 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. For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

D. Reattribution of Excessive Contributions. When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- **The committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by all contributors; or**
- **Refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).**

Notwithstanding the above, any excessive contribution that was made on a written instrument that is 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 must inform each contributor:

- **Of how the contribution was attributed; and**
- **That the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).**

For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(l)(4)(ii).

E. Contributions to candidates; designations and redesignations. A contribution shall be considered to be designated in writing for a particular election if:

- **The contribution is made by check, money order or other negotiable instrument which clearly indicates the particular election with respect to which the contribution is made;**
- **The contribution is accompanied by writing, signed by the contributor, which clearly indicated the particular election with respect to which the contribution was made. 11 CFR §110.1(b)(4)(i) and (ii).**

F. Advisory Opinion 1990-30. In the advisory opinion, the Commission stated that, "the contributor would be able to effectuate a designation by returning a preprinted form supplied by the soliciting committee that clearly states the election to which the contribution will be applied, provided that the contributor signs the form and sends it to the committee together with the contribution."

Facts and Analysis

The Audit staff determined that CRC received \$116,208 in potentially excessive contributions. All excessive contributions were received before the primary election. CRC designated the excessive portions to the general election and subsequent run-off election based on its opinion concerning the contributors' intent. It should be noted that the Candidate was not in the run-off election.

Included with each solicitation was a "fact sheet," that informed the contributor that the contribution limitation was \$2,000 per individual per election and provided the dates of the primary, general and run-off elections. The fact sheet also contained the following statement: "This will allow an individual donor to make a contribution of \$6,000 before August 6, 2004,¹ designating \$2,000 to each of the three election cycles." The fact sheet provided space for the required contributor information but it neither requested nor provided space for the contributor's signature. It is CRC's opinion that the fact sheet was an implicit designation by the contributor.

The Audit staff analyzed 37 fact sheets made available for the excessive contributors. The contributor's name on 12 of the fact sheets is completed in a cursive writing and printed on the remaining 25 fact sheets. When comparing the cursive writing of the contributor's name to the contributor's contribution check, it is apparent that the contributor did not complete the name section on the fact sheet. Further, based on the writing on the fact sheets it appears that the 37 fact sheets may have been completed by a limited number of individuals. If it is determined that the information contained on the fact sheet was not completed by the contributor, the contributions are not considered designated to the general and/or run-off elections; but rather excessive primary election contributions.

As previously stated CRC refunded \$46,989.² If the excessive portion of the refunded contributions were properly designated to the run-off election by the contributors, CRC had 60 days from the date of the general election to make the refunds. Given that the refunds were made shortly after the general election they would be timely. However, if the refunded contributions were not properly designated to the run-off election by the contributor, the refunds were required to be made within 60 days of receipt of the contribution and therefore, would not be timely.

The excessive contributions were not deposited into a separate bank account but CRC maintained sufficient funds to make the necessary refunds. This matter was discussed at the exit conference. CRC was provided a schedule of the excessive contributions. CRC maintains that the contributor's intent was apparent.

¹ August 6th was the last day to qualify for the general election ballot in the state of Louisiana. The regulation considers this date to be the primary election date. (11 CFR §100.2(c)(4)(i))

² The refunds represented contributions received before the primary election and designated by CRC for the run-off election. The candidate did not participate in the run-off election.

29044252333

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended CRC provide evidence demonstrating that the contributions were not excessive. Such evidence should include copies of any fact sheets that were not made available during the audit, and documentation that demonstrates that the contributor entered the information on the fact sheets. Absent such evidence, it was recommended that CRC send notices to the contributors informing them of the presumptive redesignation/retribution of their contributions and offer a refund of the excessive portion. For notices sent to contributors, CRC was to provide a copy of each notice and evidence that it was sent. Absent a request for a refund by the contributor, these notices would avoid the need for a refund. If any contributors could not be located, or if any refund check was not negotiated by the contributors, the sum of those excessive contributions would be paid to the United States Treasury.

In response to the interim audit report CRC stated:

"As part of the initial fundraising for CRC, procedures were established to be able to collect funds from contributors that were within the guidelines for contribution limitations on a per election cycle basis. CRC personnel used a fact sheet that alerted potential contributors of the dollar limitations by date and asked them to acknowledge this when making a contribution in excess of the \$2,000 election cycle limit. CRC maintained extra bank accounts to accommodate single check contributions in excess of \$2,000." CRC continued, "When this entire issue is looked at from beginning to end, no excessive contributions were retained by CRC. Donors were notified in advance about the limitations, they were routinely offered the fact sheet to fill out and the third cycle amounts were refunded. CRC feels that it was in basic compliance with the intent of this law."

CRC has not complied with the recommendations set forth in the interim audit report. CRC neither provided copies of fact sheets that were not available during the audit or demonstrated that the contributors completed the information on the fact sheets that were available. Absent the above, CRC could have provided copies of presumptive redesignation/retribution letters sent to each contributor.

29044252334