



Final Audit Report of the Commission on Paul Tonko for Congress

(January 1, 2009 - December 31, 2010)

Why the Audit Was Done

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

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Campaign (p. 2)

Paul Tonko for Congress is the principal campaign committee for Paul David Tonko, Democratic candidate for the U.S. House of Representatives from the state of New York, 21st District, and is headquartered in Albany, New York. For more information, see the chart on Campaign Organization, p. 2.

Financial Activity (p. 2)

• Receipts		
○ Contributions from Individuals	\$	511,122
○ Contributions from Political Committees		476,034
○ Other Receipts		318
Total Receipts	\$	987,474
• Disbursements		
○ Operating Expenditures	\$	816,435
○ Other Disbursements		13,654
Total Disbursements	\$	830,089

Commission Findings (p. 3)

- Receipt of Prohibited Contributions (Finding 1)
- Misstatement of Financial Activity (Finding 2)

¹ 2 U.S.C. §438(b).

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Part I

Background

Authority for Audit

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

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of excessive contributions;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other committee operations necessary to the review.

Audit Hearing

TFC declined the opportunity for an audit hearing before the Commission.

Part II

Overview of Campaign

Campaign Organization

Important Dates	
• Date of Registration	May 6, 2008
• Audit Coverage	January 1, 2009 – December 31, 2010
Headquarters	Albany, New York
Bank Information	
• Bank Depositories	One
• Bank Accounts	One
Treasurer	
• Treasurer When Audit Was Conducted	Mr. Patrick J. Bulgaro
• Treasurer During Period Covered by Audit	Mr. Patrick J. Bulgaro
Management Information	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2009	\$ 2,012
Receipts	
○ Contributions from Individuals	511,122
○ Contributions from Political Committees	476,034
○ Other Receipts	318
Total Receipts	\$ 987,474
Disbursements	
○ Operating Expenditures	816,435
○ Other Disbursements	13,654
Total Disbursements	\$ 830,089
Cash-on-hand @ December 31, 2010	\$ 159,397

Part III

Summaries

Commission Findings

Finding 1. Receipt of Prohibited Contributions

During audit fieldwork, a sample review of contributions from individuals identified contributions received from apparent prohibited sources. The projected amount of apparent prohibited contributions received by TFC totaled \$6,705.

In response to the Interim Audit Report, TFC refunded 14 impermissible contributions totaling \$5,450 and disgorged the balance of \$1,255 to the United States Treasury.

The Commission approved a finding that TFC received \$6,705 in prohibited contributions. (For more detail, see p. 4.)

Finding 2. Misstatement of Financial Activity

During audit fieldwork, a comparison of TFC's reported activity with its bank records revealed a misstatement of disbursements and ending cash-on-hand in 2009. TFC understated disbursements by \$9,286 and overstated ending cash-on-hand by \$10,259.

In response to the Interim Audit Report, TFC amended its disclosure reports to correct the misstatements.

The Commission approved a finding that TFC had misstated its financial activity for calendar year 2009. (For more detail, see p. 6.)

Part IV

Commission Findings

Finding 1. Receipt of Prohibited Contributions

Summary

During audit fieldwork, a sample review of contributions from individuals identified contributions received from apparent prohibited sources. The projected amount of apparent prohibited contributions received by TFC totaled \$6,705.

In response to the Interim Audit Report, TFC refunded 14 impermissible contributions totaling \$5,450 and disgorged the balance of \$1,255 to the United States Treasury.

The Commission approved a finding that TFC received prohibited contributions.

Legal Standard

A. Receipt of Prohibited Corporate Contributions. Political campaigns may not accept contributions made from the general treasury funds of corporations. This prohibition applies to any type of corporation, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative. 2 U.S.C. §441b.

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. For the 2010 election, a partnership contribution could not exceed \$2,400 per candidate, per election, and it should have been 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).

D. Limited Liability Company's Responsibility to Notify Recipient Committee. At the time it makes a contribution, an LLC must notify the recipient committee:

- that it is eligible to make the contribution; and
- how the contribution should be attributed among the LLC's members in the case of an LLC that considers itself a partnership (for tax purposes). 11 CFR §110.1(g)(5).

E. Questionable Contributions. If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below.

1. Within 10 days of the treasurer's receipt of the questionable contribution, the committee must either:
 - return the contribution to the contributor without depositing it; or
 - deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must, therefore, maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
 - confirm the legality of the contribution; or
 - refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1) and (5).

F. Refund or Disgorge Questionable Contributions. If the identity of the original contributor is known, the committee must either refund the funds to the source of the original contribution or pay the funds to the U.S. Treasury. AO 1996-5.

Facts and Analysis

A. Facts

During audit fieldwork, a sample review of contributions from individuals identified contributions received from apparent prohibited sources. The contributions were made on checks imprinted with Inc, LLC or PC. The projected amount of apparent prohibited contributions received by TFC totaled \$6,705.² TFC refunded four contributions identified in the sample totaling \$2,400 and 10 other prohibited contributions totaling

² The error amount was projected using a Monetary Unit Sample program with a 95% confidence level. The sample estimate of \$6,705 (midpoint of range) could be as low as \$3,047 or as high as \$14,385.

\$3,050.³ TFC had not addressed the remaining \$1,255 (\$6,705 - \$2,400 - \$3,050) from the sample projection.

B. Interim Audit Report & Audit Division Recommendation

Audit staff discussed this matter with TFC representatives at the exit conference and provided them with a schedule of the apparent prohibited contributions.

The Interim Audit Report recommended that TFC (1) provide evidence demonstrating that the contributions in question were made with permissible funds, (2) make the necessary refunds or (3) disgorge the impermissible amount to the U.S. Treasury.

C. Committee Response to Interim Audit Report

TFC Counsel noted that the Interim Audit Report does not associate the remaining amount of \$1,255 with any particular contributions, making it impossible for TFC to demonstrate that the contributions were made with permissible funds. TFC's Counsel further noted that the true impermissible amount may have been lower than the sample projection suggested.

TFC disgorged the remaining balance of \$1,255 to the U.S. Treasury.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that TFC disgorged the remaining balance of \$1,255 to the U.S. Treasury.

Commission Conclusion

On September 11, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that TFC received prohibited contributions.

The Commission approved the Audit staff's recommendation.

Finding 2. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of TFC's reported activity with its bank records revealed a misstatement of disbursements and ending cash-on-hand in 2009. TFC understated disbursements by \$9,286 and overstated ending cash-on-hand by \$10,259.

In response to the Interim Audit Report, TFC amended its disclosure reports to correct the misstatements.

The Commission approved a finding that TFC had misstated its financial activity for calendar year 2009.

³ TFC's Counsel provided copies of the front and back for only two of the 14 refund checks.

Legal Standard

Contents of Reports.

- Each report must disclose:
- the amount of cash-on-hand at the beginning and end of the reporting period;
 - the total amount of receipts for the reporting period and for the election cycle;
 - the total amount of disbursements for the reporting period and for the election cycle; and
 - certain transactions that require itemization on Schedule B. 2 U.S.C. §434(b)(1), (2), (4) and (5).

Facts and Analysis

A. Facts

During audit fieldwork, a reconciliation of TFC's reported financial activity with bank records for 2009 indicated that TFC misstated disbursements and the ending cash balance. TFC understated disbursements were by \$9,286 and overstated ending cash by \$10,259. The following chart outlines the discrepancies for 2009 and provides explanations for the misstated activity.

2009 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash @ January 1, 2009	\$2,021	\$2,012	\$9 Overstated
Receipts	\$251,202	\$250,238	\$964 Overstated
Disbursements	\$150,456	\$159,742	\$9,286 Understated
Ending Cash @ December 31, 2009	\$102,767	\$92,508	\$10,259 Overstated

The understatement of disbursements was the result of the following:

- | | |
|--|-----------------|
| • Disbursements not reported | \$ 9,179 |
| • Unexplained difference | 107 |
| Understatement of Disbursements | \$ 9,286 |

In 2009, TFC overstated ending cash by \$10,259 due to the differences noted above.

B. Interim Audit Report & Audit Division Recommendation

Audit staff discussed this matter with the TFC representatives after the exit conference.

The Interim Audit Report recommended that TFC amend its reports to correct the misstatements for 2009 and amend its most recently filed report to correct the cash-on-hand balance with an explanation that the change resulted from a prior period audit adjustment.

C. Committee's Response to Interim Audit Report

TFC filed amended reports to materially correct the misstatement.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that TFC had filed amended reports for 2009 that materially corrected the misstatements.

Commission Conclusion

On September 11, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that TFC misstated its financial activity for calendar year 2009.

The Commission approved the Audit staff's recommendation.