



Preliminary Audit Report of the Audit Division on Gary Johnson 2012, Inc

(April 1, 2011 – May 31, 2014)

Why the Audit Was Done

Federal law requires the Commission to audit every political committee established by a candidate who receives public funds for the primary campaign.¹ The audit determines whether the candidate was entitled to all of the matching funds received, whether the campaign used the matching funds in accordance with the law, whether the candidate is entitled to additional matching funds, and whether the campaign otherwise complied with the limitations, prohibitions, and disclosure requirements of the election law.

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. 3)

Gary Johnson 2012, Inc (GJ2012) is the principal campaign committee for Gary Johnson; a candidate for the Libertarian Party nomination for the office of President of the United States. The Committee is headquartered in Salt Lake City, Utah. For more information, see the chart on the Campaign Organization, p. 3.

Financial Activity (p. 4)

• Receipts		
○ Contributions from Individuals	\$ 2,241,318	510,261
○ Matching Funds Received		8,000
○ Contributions from the Candidates		\$ 2,759,579
Total Receipts		
• Disbursements		
○ Operating Expenditures	\$ 2,534,497	
○ Fundraising Disbursements	153,019	
○ Exempt Legal and Accounting Disbursements	28,130	
Total Disbursements		\$ 2,715,646

Findings and Recommendations (p. 5)

- Net Outstanding Campaign Obligations (Finding 1)
- Amounts Owed to the U.S. Treasury (Finding 2)
- Use of General Election Contributions for Primary Election Expenses (Finding 3)
- Reporting of Debts and Obligations (Finding 4)
- Extension of Credit by a Commercial Vendor (Finding 5)

¹ 26 U.S.C. §9038(a).

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Table of Contents

	Page
Part I. Background	
Authority for Audit	1
Scope of Audit	1
Inventory of Campaign Records	1
Committee Structure	1
Part II. Overview of Campaign	
Campaign Organization	3
Overview of Financial Activity	4
Part III. Summaries	
Findings and Recommendations	5
Amounts Owed to the United States Treasury	7
Part IV. Findings and Recommendations	
Finding 1. Net Outstanding Campaign Obligations	8
Finding 2. Amounts Owed to the U.S. Treasury	11
Finding 3. Use of General Election Contributions for Primary Election	
Expenses	16
Finding 4. Reporting of Debts and Obligations	17
Finding 5. Extension of Credit by a Commercial Vendor	19

Part I

Background

Authority for Audit

This report is based on an audit of Gary Johnson 2012, Inc (GJ2012), undertaken by the Audit Division of the Federal Election Commission (the Commission) as 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 [matching] payments under section 9037." Also, Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

Scope of Audit

This audit examined original and amended reports filed by GJ2012 before the audit notification letter was sent on December 3, 2012². The audit also examined the original filings of the 2012 30 Day Post-General and Year-End reports. The following areas were covered by this audit:

1. the campaign's compliance with limitations for contributions and loans;
2. the campaign's compliance with the limitations for candidate contributions and loans;
3. the campaign's compliance with the prohibition on accepting prohibited contributions;
4. the disclosure of contributions received;
5. the disclosure of disbursements, debts and obligations;
6. the consistency between reported figures and bank records;
7. the accuracy of the Statement of Net Outstanding Campaign Obligations;
8. the campaign's compliance with spending limits;
9. the completeness of records; and
10. other campaign operations necessary to the review.

Inventory of Campaign Records

The Audit staff routinely conducts an inventory of campaign records before it begins audit fieldwork. GJ2012's records were materially complete and fieldwork commenced immediately.

Committee Structure

GJ2012 was the only campaign committee authorized by Gary Johnson, the Candidate, for the 2012 Presidential election. This committee conducted both primary and general election activity for the Candidate. GJ2012 opened two bank accounts: a primary account and a general account. In practice, GJ2012 deposited nearly all contributions

² Amendments filed after December 3, 2012, were given a limited review to determine if issues noted in the Preliminary Audit Report were corrected by GJ2012.

received before the Candidate's nomination in the primary account, and most contributions received after the nomination in the general account. GJ2012 received matching funds for the primary campaign and this audit covers committee activity and information obtained to determine whether expenses were or were not qualified campaign expenses defrayed in connect with the primary election.

Part II

Overview of Campaign

Campaign Organization

Important Dates	
• Date of Registration	April 22, 2011
• Date of Ineligibility ³	May 5, 2012
• Audit Coverage	April 1, 2011 - May 31, 2014 ⁴
Headquarters	Salt Lake City, Utah
Bank Information	
• Bank Depositories	One
• Bank Accounts	One primary checking account and one general checking account
Treasurer	
• Treasurer When Audit Was Conducted	Chet Goodwin
• Treasurer During Period Covered by Audit	Elizabeth Hepworth (4/22/11 – 1/4/12) Chet Goodwin (1/5/12 – Present)
Management Information	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

³ A threshold submission was submitted on April 26, 2012, and the Commission certified the Candidate as eligible to receive matching funds on May 24, 2012. The period during which the Candidate was eligible for matching funds ended on May 5, 2012, his date of ineligibility (DOI). However, GJ2012 submitted contributions for matching funds it had received before DOI. Due to the campaign's outstanding debt, GJ2012 was able to submit primary election contributions received after DOI for matching as well.

⁴ The Audit staff conducted limited reviews of receipts and expenditures after December 31, 2012 to determine whether the Candidate was eligible to receive additional matching funds.

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ April 1, 2011	\$ 0
Receipts	
○ Contributions from Individuals ⁵	2,241,318
○ Matching Funds Received ⁶	510,261
○ Contributions from the Candidates	8,000
Total Receipts	\$ 2,759,579
Disbursements	
○ Operating Expenditures	2,534,497
○ Fundraising Disbursements	153,019
○ Exempt Legal and Accounting Disbursements	28,130
Total Disbursements	\$ 2,715,646
Cash-on-hand @ December 31, 2012	\$ 43,933

⁵ GJ2012 received approximately 24,500 contributions from more than 1,400 individuals.

⁶ As of the Candidate's DOI (May 5, 2012), GJ2012 had received no matching funds. GJ2012 received 6 payments totaling \$632,017 as of January 8, 2013.

Part III

Summaries

Findings and Recommendations

Finding 1. Net Outstanding Campaign Obligations

The Audit staff's review of GJ2012's financial activity through May 31, 2014, and estimated winding down costs indicated that the Candidate did not receive matching fund payments in excess of his entitlement. (For more detail, see p. 8.)

Finding 2. Amounts Owed to the U.S. Treasury

During audit fieldwork, the Audit staff's review of GJ2012's receipts and disbursements identified that primary election funds were spent on non-qualified campaign expenses and that matching funds were received for contributions that were not eligible to be matched. The Audit staff recommends that GJ2012 demonstrate that primary election contributions were not spent on non-qualified campaign expenses, and that matching funds were received for only eligible contributions. Absent evidence to the contrary, the Audit staff will recommend that the Commission make a determination that \$336,030 is payable to the United States Treasury. (For more detail, see p. 11.)

Finding 3. Use of General Election Contributions for Primary Election Expenses

During audit fieldwork, the Audit staff's review of GJ2012's receipts and disbursements during the pre-DOI period indicated that GJ2012 spent \$12,396 in General election receipts on Primary election expenses prior to the Candidate's DOI. The Audit staff recommends that GJ2012 provide documentation to show that this did not occur, or provide additional explanation about the situation. (For more detail, see p. 16.)

Finding 4. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff's review of GJ2012's disbursements indicated that debts from six vendors totaling \$407,455 were not disclosed on Schedule D-P (Debts and Obligations) as required. The Audit staff recommends that, absent documentation demonstrating that these expenditures did not require reporting on Schedule D-P, GJ2012 amend its disclosure reports to properly disclose these debts. (For more detail, see p. 17.)

Finding 5. Extension of Credit by a Commercial Vendor

During audit fieldwork, the Audit staff's review of GJ2012's disbursements suggested that NSON, Inc. (NSON)⁷ made a prohibited contribution to GJ2012 by extending credit beyond its normal course of business and not making commercially reasonable attempts to collect \$1,752,032 from GJ2012 for services rendered. The Audit staff recommends that GJ2012 provide documentation demonstrating that the credit extended to GJ2012

⁷ See footnote 14 on page 19.

was in the vendor's ordinary course of business and that the vendor made reasonable attempts to collect these debts. (For more detail, see p. 19.)

Summary of Amounts Owed to the United States Treasury

• Finding 2.A. (p. 13)	Payment of Non-Qualified Expenses with Primary Election Funds	\$ 334,780
• Finding 2.B. (p. 15)	Receipt of Matching Funds Based on Ineligible Contributions	1,250
	Total Due U.S. Treasury	\$ 336,030

Part IV

Findings and Recommendations

Finding 1. Net Outstanding Campaign Obligations

Summary

The Audit staff's review of GJ2012's financial activity through May 31, 2014, and estimated winding down costs indicated that the Candidate did not receive matching fund payments in excess of his entitlement.

Legal Standard

A. Net Outstanding Campaign Obligations (NOCO). Within 15 days after the candidate's date of ineligibility (see definition below), the candidate must submit a statement of "net outstanding campaign obligations." This statement must contain, among other things:

- The total of all committee assets including cash on hand, amounts owed to the committee and capital assets listed at their fair market value;
- The total of all outstanding obligations for qualified campaign expenses; and
- An estimate of necessary winding-down costs. 11 CFR §9034.5(a).

B. Date of Ineligibility. The date of ineligibility is whichever of the following dates occurs first:

- The day on which the candidate ceases to be active in more than one state;
- The 30th day following the second consecutive primary in which the candidate receives less than 10 percent of the popular vote;
- The end of the matching payment period, which is generally the day when the party nominates its candidate for the general election; or
- In the case of a candidate whose party does not make its selection at a national convention, the last day of the last national convention held by a major party in the calendar year. 11 CFR §§9032.6 and 9033.5.

C. Definition of Non-Qualified Campaign Expense. A non-qualified campaign expense is any expense that is not included in the definition of a qualified campaign expense (see below).

D. Qualified Campaign Expense. Each of the following expenses is a qualified campaign expense.

- An expense that is:
 - Incurred by or on behalf of the candidate (or his or her campaign) during the period beginning on the day the individual becomes a candidate and continuing through the last day of the candidate's eligibility under 11 CFR §9033.5;
 - Made in connection with the candidate's campaign for nomination; and

- Not incurred or paid in violation of any federal law or the law of the state where the expense was incurred or paid. 11 CFR §9032.9.
- An expense incurred for the purpose of determining whether an individual should become a candidate, if that individual subsequently becomes a candidate, regardless of when that expense is paid. 11 CFR §9034.4.
- An expense associated with winding down the campaign and terminating political activity. 11 CFR §9034.4(a)(3).

E. Entitlement to Matching Payments after Date of Ineligibility. If, on the date of ineligibility (see above), a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31st of the Presidential election year provided that he or she still has net outstanding campaign debts on the day when the matching payments are made. 11 CFR §9034.1(b).

F. Winding Down Costs. A primary election candidate who does not run in the general election may receive and use matching funds after notifying the Commission in writing of the candidate's withdrawal from the campaign for nomination or after the date of the party's nominating convention, if the candidate has not withdrawn before the convention. A primary election candidate who runs in the general election must wait until 31 days after the general election before using any matching funds for winding down costs, regardless of whether the candidate receives public funds for the general election. 11 CFR §9034.11(d).

Facts and Analysis

A. Facts

The Candidate's date of ineligibility (DOI) was May 5, 2012. The Audit staff reviewed GJ2012's financial activity through May 31, 2014, analyzed estimated winding down costs and prepared the Statement of Net Outstanding Campaign Obligations that appears on the following page.

Gary Johnson 2012, Inc
Statement of Net Outstanding Campaign Obligations
As of May 5, 2012
Prepared June 20, 2014⁸

Assets

Cash in bank	\$ (10,856) ⁹	
Total Assets		\$ (10,856)

Liabilities

Accounts Payable (AP) for Qualified Campaign Expenses as of 5/5/12	\$ (1,268,352)	
AP (Primary Account) Billed Post-DOI	(503,515)	
Winding Down (WD) Costs (5/5/12 – 12/6/12)	0	
Actual WD Costs (12/7/12 - 5/31/14) [a]	(22,321)	
Estimated WD Costs (6/1/14 - 6/30/15) [b]	(148,763)	
Total Liabilities		\$(1,942,951)
Net Outstanding Campaign Obligations (Deficit) as of May 5, 2012		\$(1,953,807)

Footnotes to NOCO Statement:

- [a] The General election was held on November 6, 2012. The winding down period began 31 days after the General election on December 7, 2012.
- [b] Estimated winding down costs will be compared to actual winding down costs and adjusted accordingly.

Shown below are adjustments for funds received after the Candidate's DOI on May 5, 2012 through January 8, 2013, the date GJ2012 received its last matching fund payment.

Net Outstanding Campaign Obligations (Deficit) as of May 5, 2012	\$(1,953,807)
Less: Contributions Received (May 6, 2012 to January 8, 2013)	1,216,661
Less: Matching Funds Received through January 8, 2013	632,017
Remaining Net Outstanding Campaign Obligations (Deficit) as of January 8, 2013	\$105,129

As presented above, GJ2012 has not received matching fund in excess of its entitlement.

⁸ The Audit staff will update the NOCO when requested bank statements are provided by GJ2012. Disclosure reports filed by GJ2012 covering activity subsequent to May 31, 2014 cannot be used to update the NOCO because many of the reported expenses were included in unitemized totals and therefore cannot be attributed to the primary or general elections.

⁹ The primary election campaign's May 5, 2012 cash balance was negative due to short term use of funds from the general election account. (see Finding 3 on page 16 for more detail).

B. Preliminary Audit Report Recommendation

The Audit staff presented a preliminary NOCO statement and related work papers to GJ2012 representatives at the exit conference that showed that GJ2012 was in a surplus position and would be required to repay some matching funds received to the U.S. Treasury¹⁰. Audit staff requested that GJ2012 provide additional documentation after the exit conference to enable the Audit staff to update the NOCO statement. On January 24, 2014, and June 18, 2014, GJ2012 submitted additional invoices in support of debts incurred for primary election expenses. These additional invoices were mostly for interest owed on debts incurred in relation to the primary election that had not been paid, and one invoice previously not provided to the Audit staff for a debt incurred for fundraising activity in relation to the primary election. The Audit staff reviewed this documentation and revised the NOCO accordingly. As a result of this additional documentation, the revised NOCO indicated that GJ2012 did not receive matching funds in excess of its entitlement.

The Audit staff recommends that, within 60 calendar days of service of this report, GJ2012 demonstrate any adjustments it believes are required in connection with any part of the NOCO statement or provide any other additional comments.

Finding 2. Amounts Owed to the U.S. Treasury

Summary

During audit fieldwork, the Audit staff's review of GJ2012's receipts and disbursements identified that primary election funds were spent on non-qualified campaign expenses and that matching funds were received for contributions that were not eligible to be matched. The Audit staff recommends that GJ2012 demonstrate that primary election contributions were not spent on non-qualified campaign expenses, and that matching funds were received for only eligible contributions. Absent evidence to the contrary, the Audit staff will recommend that the Commission make a determination that \$336,030 is payable to the United States Treasury.

Legal Standard

A. Qualified Campaign Expense. Each of the following expenses is a qualified campaign expense.

- An expense that is:
 - Incurred by or on behalf of the candidate (or his or her campaign) during the period beginning on the day the individual becomes a candidate and continuing through the last day of the candidate's eligibility under 11 CFR §9033.5;
 - Made in connection with the candidate's campaign for nomination; and

¹⁰ This NOCO was prepared on December 12, 2013, and contains the same figures as the NOCO prepared on May 8, 2013. The May 8, 2013 NOCO was included in the Statement of Reasons In Support of Final Determination of Entitlement in the Matter of Governor Gary Johnson (LRA #905), dated November 14, 2013.

- o Not incurred or paid in violation of any federal law or the law of the state where the expense was incurred or paid. 11 CFR §9032.9.
- An expense incurred for the purpose of determining whether an individual should become a candidate, if that individual subsequently becomes a candidate, regardless of when that expense is paid. 11 CFR §9034.4.
- An expense associated with winding down the campaign and terminating political activity. 11 CFR §9034.4(a)(3).

B. Definition of Non-Qualified Campaign Expense. A non-qualified campaign expense is any expense that is not included in the definition of a qualified campaign expense (see above). These include, for example, but are not limited to:

- **Excessive expenditures.** An expenditure which is in excess of any of the limitations under 11 CFR §9035 shall not be considered a qualified campaign expense.
- **General election and post-ineligibility expenditures.** Except for winding down costs pursuant to 11 CFR §9034.4(a)(3) and certain convention expenses described in 11 CFR §9034.4(a)(6), any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR §9033.5, are not qualified campaign expenses. In addition, 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.
- **Civil or criminal penalties.** Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from contributions or matching payments. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act.
- **Payments to candidate.** Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.
- **Lost, misplaced, or stolen items.** The cost of lost, misplaced, or stolen items may be considered a nonqualified campaign expense. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost. 11 CFR §9034.4(b).

C. Matching Funds Used for Non-Qualified Campaign Expenses. If the Commission determines that a campaign used matching funds for non-qualified campaign expenses, the candidate must repay the Secretary of the United States Treasury an amount equal to the amount of matching funds used for the non-qualified campaign expenses. 26 U.S.C. §9038(b)(2)(A).

D. Seeking Repayment for Non-Qualified Campaign Expenses. In seeking repayment for non-qualified campaign expenses from committees that have received matching fund payments after the candidate's date of ineligibility, the Commission will review committee expenditures to determine at what point committee accounts no longer contain matching funds. In doing this, the Commission will review committee expenditures from the date of the last matching funds payment to which the candidate was entitled, using the assumption that the last payment has been expended on a last-in, first-out basis. 11 CFR §9038.2(b)(2)(iii)(B).

E. Primary Winding Down Costs During the General Election Period. A primary election candidate who runs in the general election, regardless of whether the candidate receives public funds for the general election, must wait until 31 days after the general election before using any matching funds for winding down costs related to the primary election. No expenses incurred by a primary election candidate who runs in the general election prior to 31 days after the general election shall be considered primary winding down costs. 11 CFR §9034.11(d).

F. How to Determine Repayment Amount for Non-Qualified Campaign Expenses When Candidate in Surplus Position. If a candidate must make a repayment to the United States Treasury because his or her campaign used matching funds to pay for non-qualified campaign expenses, the amount of the repayment must equal that portion of the surplus that bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's accounts. 11 CFR §9038.2(b)(2)(iii).

G. Bases for Repayment. The Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such excessive payments include, but are not limited to, the following:

- Payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable 11 CFR §9038.2(b)(1)(iii).

H. Notification of Repayment Obligation. The Commission will notify a candidate of any repayment determinations as soon as possible, but no later than three years after the close of the matching payment period. The Commission's issuance of the audit report to the candidate (under 11 CFR §9038.1(d)) will constitute notification for purposes of this section. 11 CFR §9038.2(a)(2).

Facts and Analysis

A. Payment of Non-Qualified Expenses with Primary Election Funds

1. Facts

During an examination of disbursement records, the Audit staff identified \$1,199,701 in disbursements for general election expenses paid with primary election funds. Of these disbursements, \$1,192,400 occurred during the period between the Candidate's DOI, May 5, 2012, and 31 days after the general election, December 7, 2012. During

this period, expenses incurred are not considered primary winding down costs. Since these expenses are not related to the primary election of the Candidate, they are considered non-qualified campaign expenses. In the post-election wind-down period, when wind-down expenses must be allocated between the primary and general election campaigns, \$7,301 was spent. Since these amounts were not allocated between campaigns, these are also non-qualified expenses. Additionally, the accounting staff for GJ2012 stated that expenses identified by themselves, or by NSON, as general election expenses were paid from the general account, and expenses identified as primary expenses were paid from the primary account. Of the expenses identified by Audit staff as non-qualified expenses, expenses totaling \$1,191,856 were paid out of the general account.

After the Candidate's DOI, GJ2012 continued to raise funds to pay off the debt incurred during the primary election, as permitted by law. Approximately \$1.2 million in private contributions designated for the primary election were deposited into GJ2012's general election account, and were used to pay general election expenses. Audit staff determined the private contributions designated for the primary election using the same calculations as in the Statement of Reasons In Support of Final Determination of Entitlement in the Matter of Governor Gary Johnson (LRA #905), dated November 14, 2013.

To determine which general election expenses were paid using the contributions designated for the primary election, Audit staff followed the following procedures:

1. Used the list of primary and general contributions calculated for the Statement of Reasons In Support of Final Determination of Entitlement in the Matter of Governor Gary Johnson (LRA #905), dated November 14, 2013.
2. Used GJ2012's disbursement database of disbursements from the primary election account. The dates from GJ2012's database were the check dates rather than the dates that the checks cleared the bank account. Any disbursements from the bank statements that were not in GJ2012's database were also included by Audit staff in this review. The same procedure was followed for the review of the general election account.
3. For each day analyzed, Audit staff first summed the three different types of receipts separately (primary contributions, general contributions and receipts of matching funds from the U.S. Treasury). Contributions were considered spent on a first-in, first-out (FIFO) basis. If multiple types of contributions were received on the same day, the contributions were applied to disbursements in the following order: primary, general, matching funds.
4. The last day that any primary election contributions submitted for matching funds were still in the general election account was December 20, 2012. Therefore, the calculation of non-qualified campaign expenses from that account ended on that date.

Following these procedures resulted in the most favorable repayment calculation for GJ2012.

Pursuant to 11 CFR §9038.2(b)(2)(iii)(B), calculation of non-qualified expenses from all of GJ2012's accounts would continue until no matching funds were left in any of the accounts. This "zero-out date" occurred on February 20, 2014. In order to completely and accurately calculate whether non-qualified expenses were paid with matching funds, Audit staff would need to receive information from GJ2012 about contributions received so that the amounts received for the primary and general elections could be accurately recorded. Although this information was requested, no contribution detail has been received from GJ2012 for contributions dated after December 31, 2012. In addition, although Audit staff requested bank statements, no bank statements for the general account were received after the November 2013 statement. Without these bank statements, Audit staff does not know what expenditures have been made and cannot determine if these expenditures were for the primary or general election. Since Audit staff is unable, given the documentation provided, to verify the receipts or expenditures after December 31, 2012, but has been able to verify the date the last contribution submitted for matching funds was deposited to the general account, the Audit staff used December 20, 2012, as the cutoff date for examining the general account for non-qualified expenses.¹¹

In accordance with 11 CFR §9038.2(b)(2)(iii), the ratio of repayment was calculated at 27.9053%.¹² This ratio applied to the non-qualified expenses equals a repayment amount of \$334,780.

2. Preliminary Audit Report Recommendation

The Audit staff presented this matter to GJ2012 representatives at the exit conference along with schedules detailing the finding. GJ2012 representatives did not comment on this finding. The Audit staff recommends that, within 60 calendar days of service of this report, GJ2012 demonstrate it did not make nonqualified expenses or provide any other additional comments it deems necessary. Absent such evidence, the Audit staff will make a recommendation that the Commission make a determination that \$334,780 is repayable to the U.S. Treasury.

B. Receipt of Matching Funds Based on Ineligible Contributions

1. Facts

During an examination of receipts in audit fieldwork, the Audit staff identified five contributions designated to the general election totaling \$8,000 that were submitted for matching funds. These contributions were ineligible to be matched for primary election funds. The amount of matching funds awarded for these ineligible contributions was \$1,250.

¹¹ Audit staff's estimate of the additional amount of possible non-qualified expenses is \$12,000, which would result in an additional repayment amount of about \$3,400. The \$12,000 estimate is based on the provided bank statements through November 2013 and an average of the expenses paid on the September, October and November 2013 multiplied by four to stand in for the last four months of expenses in the bank statements not provided to Audit staff. This estimate also assumes that all the expenses were paid using contributions to the primary election.

¹² Matching funds certified as of 90 days post-DOI divided by deposits for the Primary election as of 90 days post-DOI ($\$303,751/\$1,088,509=.279053$).

2. Preliminary Audit Report Recommendation

The Audit staff presented this matter to GJ2012 representatives at the exit conference along with schedules detailing the finding. GJ2012 representatives did not comment on this finding. The Audit staff recommends that, within 60 calendar days of service of this report, GJ2012 show that the contributions were not general election contributions or provide any other additional comments it deems necessary. Absent such evidence, the Audit staff will make a recommendation that the Commission make a determination that \$1,250 is repayable to the U.S. Treasury.

Finding 3. Use of General Election Contributions for Primary Election Expenses

Summary

During audit fieldwork, the Audit staff's review of GJ2012's receipts and disbursements during the pre-DOI period indicated that GJ2012 spent \$12,396 in general election receipts on primary election expenses prior to the Candidate's DOI. The Audit staff recommends that GJ2012 provide documentation to show that this did not occur, or provide additional explanation about the situation.

Legal Standard

Receipt of General Election contributions before the date of the Primary Election.

(1) If the candidate, or his or her authorized committee(s), receives contributions that are designated for use in connection with the general election pursuant to 11 CFR §110.1(b) prior to the date of the primary election, such candidate or such committee(s) shall use an acceptable accounting method to distinguish between contributions received for the primary election and contributions received for the general election. Acceptable accounting methods include, but are not limited to:

- (i) The designation of separate accounts for each election, caucus or convention; or
- (ii) The establishment of separate books and records for each election.

(2) Regardless of the method used under paragraph (e)(1) of this section, an authorized committee's records must demonstrate that, prior to the primary election, recorded cash-on-hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. 11 CFR §102.9(e).

Facts and Analysis

A. Facts

During Audit fieldwork, the Audit staff reviewed available receipt and disbursement records to determine what contributions, if any, were designated per contributor solicitation devices to the general election and then spent by GJ2012 on primary election expenses prior to the primary election date (May 5, 2012). Committees are not permitted to spend funds designated to the general election for primary election expenses prior to the primary election date. If general election funds are held in the primary election

account, the general election funds should be held in reserve and not spent for primary election purposes.

Prior to the primary election, GJ2012 received a total of \$22,396 designated to the general election that was deposited in the primary election account. The Audit staff determined the private contributions designated for the general election using the same calculations as was employed in the Statement of Reasons In Support of Final Determination of Entitlement in the Matter of Governor Gary Johnson (LRA #905), dated November 14, 2013. Of this amount, a total of \$10,000 was deposited to the general election account by September 6, 2011. Beginning on February 21, 2012, GJ2012 did not maintain enough contributions designated to the primary election to pay for all of its primary expenditures, and used contributions designated to the general election to make up the difference. The Audit staff's review identified \$12,396 in contributions designated to the general election that were spent on primary election expenses prior to the primary election date. These expenditures were identified as primary election expenses as they were bank fees incurred prior to Gary Johnson's DOI and payments on invoices submitted for various services incurred in connection with Gary Johnson's campaign for nomination. In addition, no invoices for any services rendered in conjunction with the general election were received prior to the payment of these expenses.

B. Preliminary Audit Report & Audit Division Recommendation

The Audit staff presented this matter to GJ2012 representatives at the exit conference and provided schedules detailing the payments made using general election funds for primary election expenses prior to the candidate's DOI for the audited cycle. GJ2012 representatives did not comment on this finding.

The Audit staff recommends that, within 60 calendar days of service of this report, GJ2012 provide documentation to demonstrate that general election contributions were not used to fund primary election activity. In accordance with section 102.9 of 11 CFR, documentation should demonstrate that an acceptable accounting method was used. Absent such a demonstration, GJ2012 should provide any additional comments it considers necessary with respect to this matter.

Finding 4. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff's review of GJ2012's disbursements indicated that debts from six vendors totaling \$407,455 were not disclosed on Schedule D-P (Debts and Obligations) as required. The Audit staff recommends that, absent documentation demonstrating that these expenditures did not require reporting on Schedule D-P, GJ2012 amend its disclosure reports to properly disclose these debts.

Legal Standard

A. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished.

52 U.S.C. §30104(b)(8) (formerly 2 U.S.C. 434(b)(8)) and 11 CFR §§104.3(d) and 104.11(a).

B. Separate Schedules. A political committee must file separate schedules for debts owed by and to the committee with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations.

- Once it has been outstanding 60 days from the date incurred, a debt of \$500 or less must be reported on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred, except reoccurring administrative expenses (such as rent) shall not be reported as a debt before the payment due date. 11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff used available disbursement records to reconcile the accounts¹³ of GJ2012's vendors. These vendors provided GJ2012 with general campaign management services such as fundraising, accounting, clerical and administrative staff, and travel arrangements.

The Audit staff identified debts to six of GJ2012's vendors totaling \$407,455 that were not reported on Schedule D-P as required. Of these debts, \$300,000 was owed to NSON for a bonus after Gary Johnson received the nomination as the Libertarian Party candidate for the Presidential general election. This bonus was incurred, per contract, as of the date of nomination, May 4, 2012, and should have been reported on the 2012 June Monthly report, covering the time period from May 1, 2012 through May 31, 2012.

It should be noted that GJ2012 was invoiced for half of this debt (\$150,000) on December 21, 2012, and reported it on the 2012 Year-End report. However, the Audit staff maintains the debts should have been reported as debt for the entire amount based on when the contract was put in force. The remaining reportable debts of \$107,455 were for smaller amounts to all six vendors identified by the Audit staff.

B. Preliminary Audit Report & Audit Division Recommendation

The Audit staff presented this matter to GJ2012 representatives at the exit conference and provided schedules detailing the unreported debts for each reporting period for the audit period. In response to the exit conference, GJ2012 submitted one additional invoice for the other half of the bonus referenced in the "Facts" section above. This invoice was

¹³ The reconciliation consisted of calculating invoiced and paid amounts for individual reporting periods in the 2011-2012 campaign cycle. The Audit staff then determined whether any outstanding debts were correctly disclosed on Schedule D-P. Each debt amount was counted once, even if it required disclosure over multiple reporting periods.

dated January 1, 2013. To date, this \$150,000 has not been reported on any reports filed with the Commission.

The Audit staff recommends that, within 60 calendar days of service of this report, GJ2012 provide documentation demonstrating that these expenditures did not require reporting on Schedule D-P. Absent such documentation, the Audit staff recommends that GJ2012 amend its reports to disclose the outstanding debts.

Finding 5. Extension of Credit by a Commercial Vendor

Summary

During audit fieldwork, the Audit staff's review of GJ2012's disbursements suggested that NSON¹⁴ made a prohibited contribution to GJ2012 by extending credit beyond its normal course of business and not making commercially reasonable attempts to collect \$1,752,032 from GJ2012 for services rendered. The Audit staff recommends that GJ2012 provide documentation demonstrating that the credit extended to GJ2012 was in the vendor's ordinary course of business and that the vendor made reasonable attempts to collect these debts.

Legal Standard

- A. Contribution defined.** A gift, subscription, loan (except when made in accordance with 11 CFR §100.72 and §100.73), advance, or deposit of money or anything of value made by a person for the purpose of influencing any election for Federal office is a contribution. The term "anything of value" includes all in-kind contributions.

The usual and normal charge for a service is the commercially reasonable rate that one would expect to pay at the time the services were rendered.

The provision of services at a charge less than the usual and normal charge results in an in-kind contribution. The value of such a contribution would be the difference between the usual and normal charge for the services and the amount the political committee was billed and paid. 11 CFR §100.52(a) and (d).

- B. Corporate Contributions Impermissible.** A corporation is prohibited from making any contribution in connection with a federal election. 52 U.S.C. §30118(a) (formerly 2 U.S.C. 441b(a)).
- C. Definition of Commercial Vendor.** A commercial vendor is any person who provides goods or services to a candidate or political committee and whose usual and normal business involves the sale, rental, lease or provision of those goods or services. 11 CFR §116.1(c).

¹⁴ NSON is a registered corporation in the state of Utah that also does business as Political Advisors. GJ2012 reported disbursements to Political Advisors, but all contracts and invoices were received from NSON.

D. Extension of Credit by Commercial Vendor. A commercial vendor, whether or not it is a corporation, may extend credit to a candidate or political committee provided that:

- The credit is extended in the vendor's ordinary course of business (see below); and
- The terms of the credit are similar to the terms the vendor observes when extending a similar amount of credit to a nonpolitical client of similar risk. 11 CFR §116.3(a) and (b).

E. Definition of Ordinary Course of Business. In determining whether credit was extended in the ordinary course of business, the Commission will consider whether:

- The commercial vendor followed its established procedures and its past practice in approving the extension of credit;
- The commercial vendor received prompt, full payment if it previously extended credit to the same candidate or political committee; and
- The extension of credit conformed to the usual and normal practice in the commercial vendor's industry or trade. 11 CFR §116.3(c).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff's review of GJ2012's disbursements suggested that NSON made a prohibited contribution to GJ2012 by extending credit beyond its normal course of business and not making commercially reasonable attempts to collect \$1,752,032 from GJ2012 for services rendered relating to the primary election.

On October 14, 2011, GJ2012 entered into a contract with NSON to manage the campaign. NSON handled fundraising, press and media relations, creative advertising, and all administrative functions of the primary election campaign. Disbursements to NSON were 86% of the total of all disbursements by GJ2012, and 89% of GJ2012's outstanding debt as of December 31, 2012 was owed to NSON. From April 21, 2011 through December 21, 2012, NSON invoiced GJ2012 \$2,198,204 for campaign management expenses, including fundraising, clerical work, and travel arrangements. As of March 31, 2013, \$1,752,032 had been outstanding more than 120 days, and \$936,247 remains outstanding. To date, GJ2012 has only made payments of \$1,261,957 for the \$2,198,204 invoiced by NSON.

The terms of the contract between GJ2012 and NSON stated that:

NSON may assess a carrying charge of eighteen percent (18%) per annum on payments not made within thirty (30) days of the date of the invoice. NSON may, at its sole discretion and without notice, suspend its services hereunder should Client not pay in full any amount invoiced. NSON further reserves the right, at its sole discretion to withhold from Client any instruments of NSON's services pending payment on Client's account.

