



FEDERAL ELECTION COMMISSION
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MEMORANDUM

To: The Commission

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Audit Division

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Lead Auditor

Subject: Audit Hearing for McSally for Congress (A15-04)

AGENDA ITEM

For Hearing of 2-8-18

Attached for your information is a copy of the Draft Final Audit Report (DFAR) and Office of General Counsel legal analysis that was mailed to McSally for Congress (MFC) on October 18, 2017. Counsel representing MFC responded to the DFAR on November 6, 2017, and requested a hearing before the Commission to discuss "primarily" the Audit Division's conclusions in Finding 1 (Misstatement of Financial Activity). Based on subsequent conversations with counsel, it appears that Finding 2 (Disclosure of Occupation/Name of Employer) may also be discussed. The hearing was granted on November 20, 2017, and has been scheduled for February 8, 2018.

Finding 1 – Misstatement of Financial Activity

Finding 1 is based on MFC's failure to comply with 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5). The Federal Election Campaign Act ("Act") and related regulations refer to contents of reports and require that each report disclose financial activity for the corresponding reporting period and election cycle.

In the Interim Audit Report (IAR), the Audit staff determined that MFC's reported activity compared to its bank records identified misstatements in 2013 and 2014. In 2013, beginning cash-on-hand was understated by \$9,121, disbursements were overstated by \$8,177, and receipts were overstated by \$15,676. In 2014, ending cash-on-hand was understated by \$94,453. See Chart I below. During the fieldwork, in 2016, MFC filed amended disclosure reports for calendar years 2013 and 2014 which materially corrected the 2013 misstatements, as well, as the 2014 ending cash-on-hand misstatement. However, by amending the reports, MFC overstated its 2014 receipts and disbursements by \$94,528 and \$85,472, respectively. See Chart II below.

MFC explained that it undertook a comprehensive internal review of its accounting and disclosure reports and, as a result, amended its disclosure reports including the 2013 and 2014 disclosure reports. Regarding the reporting of 2014 voided payments, MFC acknowledged that the Commission guidance provides that non-negotiated checks written by a committee should be reported as negative entries rather than as offsets to operating expenditures on Schedule B. However, MFC stated that it did not believe its decision to report these amounts as offsets was inconsistent with the Commission regulations. In the IAR, the Audit staff asked that MFC file a Form 99 (Miscellaneous Text) to further explain its reporting methodology regarding the transactions as a matter of public record. The IAR further recommended that, in the future, MFC disclose voided payments as negative entries on Schedule B.

In response to the IAR recommendation, MFC expressed its disagreement. MFC maintained that the receipts and disbursements, as amended, were not materially misstated. With respect to the voided payments, MFC stated that its reporting of these items as receipts was to ensure that the cash on hand was accurate. MFC explained that the Detailed Summary Pages delineate between the contributions from individuals and other types of receipts and, because these "vendor refunds" did not represent contributions from individuals, MFC concluded that no overstatement has occurred.

The DFAR concluded that reporting of voided disbursements and the corresponding non-existent vendor refunds did result in an overstatement of total disbursements and total receipts, respectively, regardless of the fact that the subtotals for certain subcategories of receipts and disbursements, were accurate. The overstatement occurred because MFC reported items that did not clear the bank. Therefore, MFC's reconciliation of its internal records did not translate to an accurate reporting even though the cash-on-hand was in agreement with the bank balance. See Chart III below.

In response to the DFAR, MFC disagreed with the Audit staff's conclusion. MFC stated that although many of these transactions appeared on the Committee's originally filed reports (i.e. the audited reports), they were not included in the amended reports filed on January 31, 2016 because they were either reported as duplicates on the audited reports or because the transaction did not actually occur in the first place. MFC acknowledged that the Commission's Campaign Guide provides "some" direction on when negative entries are appropriate in Schedules A and B. However, MFC stated that

the Commission has not provided clear guidance regarding how a committee must report a credit card chargeback. MFC stated that it continued to believe that it was reasonable for a committee to choose to report a transaction in a different way if it appears to a committee that it is a more accurate reflection of what occurred at the time. MFC believes that the Commission's Campaign Guide, although helpful at times, does not have the force of law.

Finding 2 – Disclosure of Occupation/Name of Employer

Finding 2 is based on MFC's failure to comply with 52 U.S.C. §30104(b)(3)(A) and § 30102(i) and 11CFR § 104.3. The Federal Election Campaign Act ("Act") and related regulations refer required information for contributions from individuals and best efforts compliance.

In the IAR, the Audit staff determined that MFC's contributions from individuals requiring itemization indicated that 1,266 contributions totaling \$687,572 lacked disclosure of occupation/name of employer. During audit fieldwork, MFC demonstrated "best efforts" to obtain, maintain and submit the missing occupation/name of employer information to materially correct the disclosure errors. Since MFC's corrective action occurred after audit notification, the matter is included in this audit report.

The Audit staff reviewed the receipt documents provided by MFC to determine if MFC utilized "best efforts" to obtain, maintain and submit the missing information. MFC presented a variety of documents to demonstrate its efforts to obtain and maintain the documentation as follows:

- MFC provided written statements from its former Finance Director and Treasurer which summarized their roles and duties with respect to "best efforts." According to MFC, its solicitation materials notified contributors of MFC's obligation under Federal Law to collect and report the name, mailing address, occupation and employer of individuals whose contributions exceeded \$200 in an election cycle. However, if the contributor did not provide the information, MFC sent a letter and asked for the information.
- The above statement was accompanied by samples of e-mail correspondence between the former Finance Director and the former Treasurer. In these, the former officials discussed the follow-up procedures for the contributors whose occupation/name of employer information was missing.
- Further, MFC provided samples of the "best effort" letters; a spreadsheet template used to create a list for the mail merge; as well as an example of the populated mail merge spreadsheet listing the dates and names of contributors whose information was requested.
- Finally, MFC described its "best efforts" procedures in the internal control questionnaire the Audit staff requested MFC to complete as follows: campaign staff would either call the contributor and explain the "best efforts" requirement to request, obtain and report the occupation/name of employer information, or, would send letters explaining the requirements and requesting the information.

Based on the contributor responses from the efforts noted above, MFC filed amended disclosure reports during audit fieldwork. The Audit staff reviewed these reports and determined that MFC materially disclosed the occupation/name of employer information.

In response to the IAR recommendation, MFC reiterated that it utilized “best efforts” to collect and report occupation/name of employer during the entire history of MFC including the 2014 cycle. The Audit staff considers this matter resolved.

In response to the DFAR, MFC disagreed with the DFAR’s conclusion that “since MFC’s corrective action occurred after audit notification, the matter is included in this report.” MFC stated that it always demonstrated “best efforts” and not only when the audit was initiated.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Sheraline Thomas or Zuzana Pacious at 694-1200.

Attachments:

- Draft Final Audit Report of the Audit Division on McSally for Congress
- Office of General Counsel Legal Analysis, dated October 6, 2017 and May 4, 2016
- MFC Response to Draft Final Audit Report, dated November 6, 2017

cc: Office of General Counsel

Chart I

**McSally for Congress
2014 Consolidated Bank Reconciliation – Audited Reports as of Audit Notification
Letter (4/25/15)**

	Opening Cash	Receipts	Disbursements	Ending Cash
Reported Activity - 01/01/14 - 12/31/14	547,974.98	4,067,069.15	4,253,327.71	364,036.32
Correct Reportable, Per Bank	549,597.41	4,121,243.84	4,212,351.45	458,489.80
Difference (Reported v Bank Activity)	1,622.43	54,174.69	(40,976.26)	94,453.48

Chart II

**McSally for Congress
2014 Consolidated Bank Reconciliation – Amended Reports as of January and
February 2016**

	Opening Cash	Receipts	Disbursements	Ending Cash
Reported Activity - 01/01/14 - 12/31/14	550,557.18	4,215,771.80	4,297,823.06	468,505.92
Correct Reportable, Per Bank	549,597.41	4,121,243.84	4,212,351.45	458,489.80
Difference (Reported v Bank Activity)	(959.77)	(94,527.96)	(85,471.61)	(10,016.12)

The amended reports materially corrected the ending cash on hand. However, in amending reports MFC caused an overstatement in both receipts and disbursements. The majority of the overstatement for receipts and disbursements were caused by the reporting of payments that were voided and the reporting of credit card chargebacks and refunds for contributions. (See Chart III below.)

Chart III- Misstatement on Amended Reports

	Receipts	Disbursements	Ending Cash
Reporting Vendor Payment Voids			
Voided payments reported as Receipts-Offsets to Operating Expenditures (Sch A)	(45,015.45)		(45,015.45)
Voided Disbursements with no negative entry reported on Sch B		(45,015.45)	45,015.45
Reporting of Chargebacks/Contributor Refunds			
Contributions Reported, not deposited	(21,100.00)		(21,100.00)
Credit Card Chargebacks and Refunds reported on Schedule B instead of Sch A as negative entry		(21,100.00)	21,100.00
Total	(66,115.45)	(66,115.45)	0.00



Draft Final Audit Report of the Audit Division on McSally for Congress

(January 1, 2013 - December 31, 2014)

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)

McSally for Congress is the principal campaign committee for Martha E. McSally, Republican candidate for the United States House of Representatives from the state of Arizona, 2nd Congressional District, and is headquartered in Tucson, Arizona. For more information, see the Campaign Organization chart, p.2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 3,757,456
○ Contributions from Political Parties	544,055
○ Transfers from Authorized Committees	304,638
○ Offsets/Other Receipts	240,363
Total Receipts	\$ 4,846,512
• Disbursements	
○ Operating Expenditures	\$ 4,298,479
○ Contribution Refunds	42,228
○ Other Disbursements	76,817
Total Disbursements	\$ 4,417,524

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Disclosure of Occupation/Name of Employer (Finding 2)
- Receipt of Contributions in Excess of the Limit (Finding 3)
- Failure to File 48-Hour Notices (Finding 4)
- Failure to Itemize Contributions from Political Committees (Finding 5)

¹ 52 U.S.C. §30111(b).

Draft Final Audit Report of the Audit Division on McSally for Congress

(January 1, 2013 - December 31, 2014)



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Part I

Background

Authority for Audit

This report is based on an audit of the McSally for Congress (MFC), 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 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(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.

Part II

Overview of Campaign

Campaign Organization

Important Dates	
• Date of Registration	February 6, 2012
• Audit Coverage	January 1, 2013 - December 31, 2014
Headquarters	
Tucson, Arizona	
Bank Information	
• Bank Depositories	Three
• Bank Accounts	Three checking, one savings
Treasurer	
• Treasurer When Audit Was Conducted	Paul Kilgore (4/1/15 – Present)
• Treasurer During Period Covered by Audit	James C. Thomas III (10/2/14 – 3/31/15) Hieu Tran (11/11/13 – 10/1/14) Janine Kaucher (5/22/12 – 11/10/13)
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2013	\$ 29,501
Receipts	
○ Contributions from Individuals	3,757,456
○ Contributions from Political Parties	544,055
○ Transfers from Authorized Committees	304,638
○ Offsets /Other Receipts	240,363
Total Receipts	\$4,846,512
Disbursements	
○ Operating Expenditures	4,298,479
○ Contribution Refunds	42,228
○ Other Disbursements	76,817
Total Disbursements	\$4,417,524
Cash-on-hand @ December 31, 2014	\$ 458,489

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of MFC's reported activity with its bank records identified misstatements in 2013 and 2014. In 2013, beginning cash-on-hand was understated by \$9,121, disbursements were overstated by \$8,177, and receipts were overstated by \$15,676. In 2014, ending cash-on-hand was understated by \$94,453. In 2016, MFC filed amended disclosure reports for calendar years 2013 and 2014 which materially corrected some of the misstatements, including cash on hand. However, 2014 receipts and disbursements remained misstated on the amended reports largely due to how MFC reported voided disbursements as offsets to operating expenditures.

In response to the Interim Audit Report recommendation, MFC discussed in detail the overstated receipts and disbursements on the amended 2014 reports. MFC maintained that it did not misstate its receipts and disbursements and that filing Form 99 (Miscellaneous Text) for activity that occurred almost three years ago would create "needless confusion." The Audit staff maintains that 2014 receipts and disbursements remain overstated by \$94,528 and \$85,472, respectively. (For more detail, see p. 5.)

Finding 2. Disclosure of Occupation/Name of Employer

A review of contributions from individuals requiring itemization indicated that 1,266 contributions totaling \$687,572 lacked disclosure of occupation/name of employer. During audit fieldwork, MFC demonstrated "best efforts" to obtain, maintain and submit the missing occupation/name of employer information to materially correct the disclosure errors. Since MFC's corrective action occurred after audit notification, the matter is included in this audit report.

In response to the Interim Audit Report recommendation, MFC reiterated that it utilized "best efforts" to collect and report occupation/name of employer during the entire history of MFC including the 2014 cycle. The Audit staff considers this matter resolved. (For more detail, see p. 9.)

Finding 3. Receipt of Contributions in Excess of the Limit

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any contributions exceeded the limit. This review indicated that MFC received 153 apparent excessive contributions totaling \$319,212. These errors occurred as a result of MFC not resolving the excessive portions of contributions by forwarding presumptive redesignation and/or reattribution letters to the contributors or issuing refunds in a timely manner. MFC has untimely resolved 148 contributions totaling \$312,412. The five remaining excessive contributions totaling \$6,800 could still be resolved, albeit untimely, via a presumptive redesignation and/or reattribution letter and refunds.

In response to the Interim Audit Report recommendation, MFC provided copies of negotiated refund checks totaling \$6,500 which untimely resolved four of the above excessive contributions. As such, MFC has materially complied with the recommendation and the Audit staff considers this matter resolved. (For more detail, see p. 11.)

Finding 4. Failure to File 48-Hour Notices

During audit fieldwork, the Audit staff noted that MFC failed to file or filed untimely 48-hour notices for 33 contributions totaling \$99,853, that were received prior to primary and general elections.

In response to the Interim Audit Report recommendation, MFC reiterated that the volume of contributions it received before both the primary and general elections was “overwhelming.” However, MFC restated it has implemented procedures and hired experienced FEC compliance specialists to ensure future compliance. The Audit staff maintains the 33 contributions totaling \$99,853 were not filed or were filed untimely. (For more detail, see p. 14.)

Finding 5. Failure to Itemize Contributions from Political Committees

The Audit staff reviewed contributions from political committees and determined that MFC failed to itemize 15 contributions from such entities totaling \$32,750 on Schedule A (Itemized Receipts) of its disclosure reports. During audit fieldwork, MFC filed amended reports and correctly disclosed these receipts. Since MFC’s corrective action occurred after audit notification, the matter is included in this audit report.

In response to the Interim Audit Report recommendation, MFC reiterated that it has hired an experienced FEC compliance specialist to serve as treasurer to ensure such inadvertent errors do not happen in the future. The Audit staff considers this matter resolved. (For more detail, see p. 15.)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of MFC's reported activity with its bank records identified misstatements in 2013 and 2014. In 2013, beginning cash-on-hand was understated by \$9,121, disbursements were overstated by \$8,177, and receipts were overstated by \$15,676. In 2014, ending cash-on-hand was understated by \$94,453. In 2016, MFC filed amended disclosure reports for calendar years 2013 and 2014 which materially corrected some of the misstatements, including cash on hand. However, 2014 receipts and disbursements remained misstated on the amended reports largely due to how MFC reported voided disbursements as offsets to operating expenditures.

In response to the Interim Audit Report recommendation, MFC discussed in detail the overstated receipts and disbursements on the amended 2014 reports. MFC maintained that it did not misstate its receipts and disbursements and that filing Form 99 (Miscellaneous Text) for activity that occurred almost three years ago would create "needless confusion." The Audit staff maintains that 2014 receipts and disbursements remain overstated by \$94,528 and \$85,472, respectively.

Legal Standard

A. 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 A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5) and 11 CFR §104.3.

B. Formal Requirements Regarding Reports and Statements. Each treasurer of a political committee is responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it. 11 CFR §104.14(d).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled MFC's reported activity with its bank records for calendar years 2013 and 2014. The reconciliation revealed that MFC misstated its beginning cash-on-hand, receipts, and disbursements for 2013 and its ending cash-on-hand for 2014. The following charts outline the discrepancies between MFC's 2013 and 2014 disclosure reports and its bank records. The succeeding paragraphs explain why the discrepancies occurred.

2013 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash-on-Hand @ January 1, 2013	\$ 20,380	\$ 29,501	\$ 9,121 Understated
Receipts	\$740,944	\$725,268	\$15,676 Overstated
Disbursements	\$213,349	\$205,172	\$ 8,177 Overstated
Ending Cash-on-Hand @ December 31, 2013	\$547,975	\$549,597	\$ 1,622 Understated

The \$9,121 understatement of beginning cash-on-hand likely resulted from prior-period discrepancies.

The overstatement of receipts resulted from the following:

• Offset to operating expenditure not supported by bank deposit ²	\$(15,000)
• Contribution refund from individual not reported as a negative	(150)
• Reported contribution from individual not supported by bank deposit	(500)
• Unexplained difference	(26)
Overstatement of Receipts	<u>\$(15,676)</u>

The overstatement of disbursements resulted from the following:

• Reported disbursements not clearing bank	\$(8,584)
• Unreported in-kind contribution	334
• Unexplained difference	73
Overstatement of Disbursements	<u>\$(8,177)</u>

2014 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash-on-Hand @ January 1, 2014	\$ 547,975	\$ 549,597	\$ 1,622 Understated
Receipts	\$4,067,069	\$4,121,244	\$54,175 Understated
Disbursements	\$4,253,328	\$4,212,352	\$40,976 Overstated
Ending Cash-on-Hand @ December 31, 2014	\$ 364,036	\$ 458,489	\$94,453 Understated

The \$94,453 understatement of the ending cash-on-hand resulted from various reporting discrepancies for receipts and disbursements.³

² This transaction relates to a 2012 media disbursement. From the documents provided, the Audit staff could not confirm whether MFC was issued a credit for the presumed payment. However, no actual refund was deposited into MFC's bank account.

³ The reported 2014 ending cash-on-hand includes a \$2,320 mathematical discrepancy.

During audit fieldwork, MFC filed comprehensive amended disclosure reports for calendar years 2013 and 2014. The Audit staff analyzed the amended reports and determined that MFC materially corrected the 2013 misstatements noted above as well as the 2014 ending cash-on-hand misstatement.⁴

However, by amending the reports, MFC overstated its 2014 receipts and disbursements by \$94,528 and \$85,472,⁵ respectively. The Audit staff discussed these misstatements at the exit conference.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the misstatement of financial activity for both audited and amended reports with MFC representatives at the exit conference and provided work papers detailing the differences. The Audit staff stated that, by amending the disclosure reports, MFC materially corrected the misstatements identified in the audited reports filed prior to audit notification. However, MFC inadvertently created additional reporting discrepancies in the amended reports.

In response to the exit conference, MFC representatives stated that they undertook a comprehensive internal review of MFC's accounting and disclosure reports beginning with MFC's inception in 2012 and reconciled over \$12.3 million in financial activity. As a result, MFC amended every disclosure report filed from 2012 through the year-end 2014. The representatives further stated that MFC spent considerable time and resources to ensure that the public record was as complete and accurate as possible. With respect to the 2013 and 2014 misstatements, MFC representatives stated that they would review the Audit staff's figures and would provide a detailed response at the completion of their review.

As mentioned above, MFC's amended disclosure reports materially overstated its 2014 receipts and disbursements. The majority of the misstatements was caused by the way MFC voided previously reported payments and credit card chargebacks. With respect to the reported payments MFC subsequently voided, instead of disclosing these voids as negative amounts on Schedule B, Line 17 (Operating Expenditures), MFC incorrectly added refunds on Schedule A, Line 14 (Offsets to Operating Expenditures) to offset the voided disbursements. While such reporting will create a material agreement in the ending cash-on-hand balances per bank and reports, it will also effectively inflate both receipts and disbursements. Similarly, the credit card chargebacks should have been disclosed as negative entries on Schedule A, Line 11a (Contributions from Individuals). Instead, MFC reported these chargebacks as disbursements on Line 20a (Refunds of Contributions), which also contributed to an overstatement of receipts and disbursements.

Regarding the 2014 voided payments, MFC acknowledged that the Commission guidance provides that non-negotiated checks written by a committee should be reported as negative entries rather than as offsets to operating expenditures. However, MFC further stated that it does not believe its decision to report these amounts as offsets is inconsistent with the Commission regulations. The FEC Campaign Guide for Congressional

⁴ MFC correctly removed 33 receipt transactions totaling \$27,115.

⁵ The initial overstatement was \$93,122, however, MFC later clarified the treatment of two disbursements totaling \$7,650. (\$85,472 = \$93,122 - \$7,650)

Candidates and Committees, however, states otherwise and provides instructions on how to address these transactions. The Audit staff maintains that MFC's reporting of voided checks is incorrect. MFC merely reported an accurate cash-on-hand balance but such reporting is insufficient because the Act and Commission regulations also requires disclosure and accurate reporting of receipts and disbursements. As such, the Audit staff notes that 2014 receipts and disbursements remain overstated by \$94,528 and \$85,472, respectively.

The Interim Audit Report recommended that MFC file a Form 99 (Miscellaneous Text) to further explain its reporting methodology regarding the transactions as a matter of public record. The Interim Audit Report further recommended that, in the future, MFC correctly disclose voided payments as negative entries on Schedule B.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MFC representatives maintained that the receipts and disbursements, as amended, were not materially misstated. Their response to the Interim Audit Report, similarly as their response to the exit conference, contained the same arguments discussed in detail above. With respect to the voided payments, MFC continued to argue that its reporting of these items as receipts was to ensure that the cash on hand was accurate. MFC explained that the Detailed Summary Pages delineate between the contributions from individuals and other types of receipts and, because these "vendor refunds" did not represent contributions from individuals, MFC concluded that no overstatement occurred. The Audit staff's position remains unchanged; reporting voided disbursements and the corresponding non-existent vendor refunds did result in overstatement of total disbursements and total receipts, respectively, regardless of the fact that the subtotals for certain subcategories of receipts and disbursements, were accurate. The overstatement occurred because MFC reported items that did not clear the bank. Therefore, MFC's reconciliation of its internal records did not translate to an accurate reporting even though the cash-on-hand was in agreement with the bank balance.

MFC did not file a Form 99. The representatives stated that filing Form 99 and referencing activity that occurred almost three years ago would create "needless confusion." In addition, MFC stated that even if this could be considered a misstatement, it would "barely represent 1.5% of MFC's receipts and disbursements," a percentage MFC considers immaterial. MFC also stated that the Commission's audit was "just a sample," whereas its internal review was a complete recreation of the database.⁶

⁶ The Audit staff notes that MFC's internal review coincided with the audit's fieldwork. Also, the Audit staff notes that the bank reconciliation does not involve a sample or sampling. The bank reconciliation involves detail comparison of the reconciled bank entries with the reports MFC filed with the Commission during the audit period.

Finding 2. Disclosure of Occupation/Name of Employer

Summary

A review of contributions from individuals requiring itemization indicated that 1,266 contributions totaling \$687,572 lacked disclosure of occupation/name of employer. During audit fieldwork, MFC demonstrated “best efforts” to obtain, maintain and submit the missing occupation/name of employer information to materially correct the disclosure errors. Since MFC’s corrective action occurred after audit notification, the matter is included in this audit report.

In response to the Interim Audit Report recommendation, MFC reiterated that it utilized “best efforts” to collect and report occupation/name of employer during the entire history of MFC including the 2014 cycle. The Audit staff considers this matter resolved.

Legal Standard

- A. Itemization Required for Contributions from Individuals.** An authorized candidate committee must itemize any contribution from an individual if it exceeds \$200 per election cycle, either by itself or when combined with other contributions from the same contributor. 52 U.S.C. §30104(b)(3)(A).
- B. Required Information for Contributions from Individuals.** For each itemized contribution from an individual, the committee must provide the following information:
- the contributor’s full name and address (including zip code);
 - the contributor’s occupation and the name of his or her employer;
 - the date of receipt (the date the committee received the contribution);
 - the amount of the contribution; and
 - the election cycle year-to-date total of all contributions from the same individual. 52 U.S.C. §30104(b)(3)(A) and 11 CFR §§100.12 and 104.3(a)(4)(i).
- C. Best Efforts Ensure Compliance.** When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee’s reports and records will be considered in compliance with the Act. 52 U.S.C. §30102(i) and 11 CFR §104.7(a).
- D. Definition of Best Efforts.** The treasurer and the committee will be considered to have used “best efforts” if the committee satisfied all of the following criteria.
- All written solicitations for contributions included:
 - a clear request for the contributor's full name, mailing address, occupation, and name of employer; and
 - the statement that such reporting is required by Federal law.
 - Within 30 days of receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
 - The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was

contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

A. Facts

A review of itemized contributions from individuals indicated that 1,266 contributions totaling \$687,572, or 29 percent of the dollar value of individual contributions required to be itemized by MFC, lacked disclosure of occupation/name of employer. The majority of the contributor entries with missing information were either disclosed with notations of "Information Requested" or were left blank on the Schedule A (Itemized Receipts).

During audit fieldwork, the Audit staff reviewed the receipt documents provided by MFC to determine if MFC utilized "best efforts" to obtain, maintain and submit the missing information. MFC presented a variety of documents to demonstrate its efforts to obtain and maintain the documentation as follows:

- MFC provided a written statement from its former Finance Director which summarized his roles and duties with respect to the "best efforts." According to MFC, its solicitation materials and devices notified contributors of MFC's obligation under Federal Law to collect and report the name, mailing address, occupation and employer of individuals whose contributions exceeded \$200 in an election cycle. However, if the contributor did not provide the information, MFC sent a letter and asked for the information.
- The above statement was accompanied by samples of e-mail correspondence between the former Finance Director and the former Treasurer. In these, the former officials discussed the follow-up procedures for the contributors whose occupation/name of employer information was missing.
- Further, MFC provided samples of the "best effort" letters; a spreadsheet template used to create a list for the mail merge; as well as an example of the populated mail merge spreadsheet listing the dates and names of contributors whose information was requested.
- Finally, MFC described its "best efforts" procedures in the internal control questionnaire the Audit staff requested MFC to complete as follows: campaign staff would either call the contributor and explain the "best efforts" requirement to request, obtain and report the occupation/name of employer information, or, would send letters explaining the requirements and requesting the information.

Based on the contributor responses from the efforts noted above, MFC filed amended disclosure reports during audit fieldwork. The Audit staff reviewed these reports and determined that MFC materially disclosed the occupation/name of employer information.

B. Interim Audit Report and Audit Division Recommendation

The Audit staff presented this matter to MFC representatives at the exit conference and noted that MFC has materially resolved this matter and no further action was required. However, because MFC's corrective action was taken after the audit notification, the matter would be presented in the audit report. In response to the exit conference, MFC representatives reiterated that MFC utilized "best efforts" to collect and report the occupation/name of employer information during the 2014 election cycle. They further

stated that solicitation materials included a clear request for the name, address, and occupation/name of employer of individuals whose contributions aggregated \$200 during the election cycle. In instances where the contributor did not provide such information, MFC made at least one effort to obtain the information.

The Interim Audit Report recommended that MFC provide any additional comments it deemed necessary with respect to this matter.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MFC again stated that it utilized “best efforts” to collect and report occupation/name of employer during the entire history of the committee, including the 2014 cycle. MFC reiterated that its solicitation materials included a clear request for the required occupation/name of employer information and in instances where the information was not provided, MFC made at least one effort to obtain the information.

Finding 3. Receipt of Contributions in Excess of the Limit

Summary

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any contributions exceeded the limit. This review indicated that MFC received 153 apparent excessive contributions totaling \$319,212. These errors occurred as a result of MFC not resolving the excessive portions of contributions by forwarding presumptive redesignation and/or reattribution letters to the contributors or issuing refunds in a timely manner. MFC has untimely resolved 148 contributions totaling \$312,412. The five remaining excessive contributions totaling \$6,800 could still be resolved, albeit untimely, via a presumptive redesignation and/or reattribution letter and refunds.

In response to the Interim Audit Report recommendation, MFC provided copies of negotiated refund checks totaling \$6,500 which untimely resolved four of the above excessive contributions. As such, MFC has materially complied with the recommendation and the Audit staff considers this matter resolved.

Legal Standard

A. Authorized Committee Limits. For the 2014 election, an authorized committee may not receive more than a total of \$2,600 per election from any one person or \$5,000 per election from a multicandidate political committee. 52 U.S.C. §§30116(a)(1)(A) and (a)(2)(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 check into its federal account and:
 - Keep enough money in the account to cover all potential refunds;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;

- 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); and
- If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

C. Joint Contributions. Any contribution made by more than one person (except for a contribution made by a partnership) must 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. The 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 the other contributor. The committee must inform the contributor that:

- The reattribution must be signed by both contributors;
- The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after 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 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:

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

E. Redesignation of Excessive Contributions. When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), 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:

- The redesignation must be signed by the contributor;
- The redesignation must be received by the committee within 60 days after the committee received the original contribution; and

- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion 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:

- 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.
- 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)(ii)(B)(1), (2), (3), (4), (5), and (6).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified 117 individuals with 153 apparent excessive contributions totaling \$319,212. MFC resolved \$259,969 of the excessive contributions by sending presumptive reattribution and/or redesignation letters that were untimely. The remaining excessive contributions totaling \$59,243 were primarily credit card or single accounts check contributions requiring additional documentation. These contributions could still be resolved, albeit untimely, via reattribution and/or redesignation letters or refunds. During the campaign, MFC maintained sufficient funds in its accounts to make refunds of these apparent excessive contributions.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the MFC representatives at the exit conference. The Audit staff provided schedules of the apparent excessive contributions along with a description of actions necessary to resolve them. Subsequent to the exit conference, MFC presented additional presumptive letters sent to the contributors that untimely resolved additional excessive contributions totaling \$20,550 and provided copies of negotiated refund checks that untimely resolved excessive contributions totaling \$31,893. The remaining five excessive contributions totaling \$6,800⁷ could still be resolved, albeit untimely, as follows: One excessive contribution could be resolved with a signed redesignation letter and the remaining four excessive contributions could be resolved with refunds to the contributor.

⁷ Remaining excessive contribution balance of \$6,800 = \$59,243 - \$20,550 - \$31,893.

The Interim Audit Report recommended that MFC provide documentation demonstrating that it resolved the remaining excessive contributions totaling \$6,800.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MFC provided copies of negotiated refund checks totaling \$6,500 which untimely resolved four of the five excessive contributions. As such, MFC has materially complied with the recommendation.

Finding 4. Failure to File 48-Hour Notices

Summary

During audit fieldwork, the Audit staff noted that MFC failed to file or filed untimely 48-hour notices for 33 contributions totaling \$99,853, that were received prior to primary and general elections.

In response to the Interim Audit Report recommendation, MFC reiterated that the volume of contributions it received before both the primary and general elections was “overwhelming.” However, MFC restated it has implemented procedures and hired experienced FEC compliance specialists to ensure future compliance. The Audit staff maintains the 33 contributions totaling \$99,853 were not filed or were filed untimely.

Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but not more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate, including:

- contributions from the candidate;
- loans from the candidate and other non-bank sources; and
- endorsements or guarantees of loans from the banks. 11 CFR §104.5(f).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified 187 contributions totaling \$442,543 that equaled or exceeded \$1,000 and were received during the 48-hour notice period for the primary and general elections. A review of these contributions indicated that MFC did not file 48-hour notices for 29 contributions totaling \$91,053 and untimely filed 48-hour notices for four contributions totaling \$8,800. These contributions are summarized as follows.

	Primary	General	Total
48-Hour Notices Not Filed	\$13,200	\$77,853	\$91,053
48-Hour Notices Filed Late	\$0	\$8,800	\$8,800
TOTALS	\$13,200	\$86,653	\$99,853

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed the filing of 48-hour notices with MFC representatives and provided schedules of the contributions for which 48-hour notices were not filed or were filed in an untimely manner. In response to the exit conference, MFC stated that the volume of contributions it received before the primary and general elections was at times overwhelming but it filed notices for almost 90 percent of the amount raised during the 48-hour time period. MFC also confirmed that it has implemented procedures and hired experienced FEC compliance specialists to ensure future compliance.

The Interim Audit Report recommended that MFC provide evidence that the 48-hour notices were not required to be filed; or were filed in a timely manner; or provide any further comments it considers relevant.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendations, MFC stated that the total error amount for non-filed and untimely filed 48-hour notices differed from the amount presented at the exit conference.⁸ MFC also reiterated that the volume of contributions received before both the primary and general elections was overwhelming at times. MFC has implemented procedures and hired experienced FEC compliance specialists to ensure future compliance. The Audit staff maintains the 33 contributions totaling \$99,853 were not filed or were filed untimely.

Finding 5. Failure to Itemize Contributions from Political Committees

Summary

The Audit staff reviewed contributions from political committees and determined that MFC failed to itemize 15 contributions from such entities totaling \$32,750 on Schedule A (Itemized Receipts) of its disclosure reports. During audit fieldwork, MFC filed amended reports and correctly disclosed these receipts. Since MFC's corrective action occurred after audit notification, the matter is included in this audit report.

In response to the Interim Audit Report recommendation, MFC reiterated that it has hired an experienced FEC compliance specialist to serve as treasurer to ensure such inadvertent errors do not happen in the future. The Audit staff considers this matter resolved.

⁸ The Audit staff routinely presents *preliminary* findings at the exit conference. These preliminary findings may be subject to change or modification based on additional documentation; internal review; the legal advice, etc.

Legal Standard

Regardless of Amount. Several types of receipts must be itemized on Schedule A regardless of amount. They include:

- Contributions from political committees and similar organizations;
- Transfers from other party committees and party organizations;
- Refunded contributions received from political committees. 52 U.S.C. §30104(b)(3)(B), (C), and (D).

Facts and Analysis

A. Facts

Based on a review of all contributions from political committees, the Audit staff identified 15 contributions totaling \$32,750 that were not itemized, as required and regardless of amount, on Schedule A, Line 11c (Contributions from Other Political Committees). All of these contributions were reported by the donor committees.

The Audit staff traced ten of these contributions totaling \$23,250 to MFC's receipt database. MFC had apparently recorded the receipt of these contributions and presumably reported them as unitemized contributions. The remaining five contributions totaling \$9,500⁹ were neither included in MFC's receipt database, nor itemized on Schedule A.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the unitemized contributions from political committees with MFC representatives and presented a schedule of the unitemized contributions. The Audit staff also noted that the review of the amended reports filed after audit notification indicated that MFC correctly disclosed all of these contributions on Schedule A. However, the Audit staff also noted that because MFC's corrective action was taken after the audit notification, the matter will be presented in this audit report. In response to the exit conference, MFC representatives stated that MFC hired an experienced FEC compliance specialist to serve as treasurer and to file the FEC reports. MFC further stated it will make every effort to ensure such inadvertent errors do not happen in the future.

The Interim Audit Report recommended that MFC provide any comments it deemed necessary with respect to this matter.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MFC representatives reiterated that they hired an experienced FEC compliance specialist to serve as treasurer to ensure such inadvertent errors do not happen in the future. The Audit staff considers this matter resolved.

⁹ This amount is also included in the 2014 understatement of receipts total (see Finding 1).



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

October 6, 2017

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas E. Hintermister
Assistant Staff Director
Audit Division

FROM: Erin Chlopak *EC*
Acting Associate
General Counsel for Policy

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Jennifer Waldman LH for JW
Attorney

SUBJECT: Draft Final Audit Report on McSally for Congress (LRA 1047)

The Office of General Counsel has reviewed the Draft Final Audit Report (“DFAR”) on the McSally for Congress (“Committee”). The DFAR contains five findings: Misstatement of Financial Activity (Finding 1), Disclosure of Occupation/Name of Employer (Finding 2), Receipt of Contributions in Excess of the Limit (Finding 3), Failure to File 48-Hour Notices (Finding 4) and Failure to Itemize Contributions from Political Committees (Finding 5). We generally concur with the findings, however, because the Committee raises the same point regarding Finding 1 that we addressed in our comments on the Interim Audit Report, we recommend including our comments to the Interim Audit Report along with the DFAR when it is transmitted to the Committee and the Commission. We also recommend explaining this in the accompanying cover letter to the Committee and cover memorandum to the Commission. If you have any questions, please contact Jennifer Waldman, the attorney assigned to this audit.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

May 4, 2016

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas E. Hintermister
Assistant Staff Director
Audit Division

FROM: Lisa J. Stevenson *LJS*
Acting General Counsel

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Jennifer G. Waldman *JW*
Attorney

SUBJECT: Interim Audit Report on McSally for Congress (LRA #1047)

I. INTRODUCTION

The Office of the General Counsel has reviewed the Interim Audit Report ("IAR") on McSally for Congress ("Committee"). The IAR contains five findings: Failure to File Contributions from Political Committees (Finding 5); Failure to File 48-Hour Notices (Finding 4); Receipt of Contributions in Excess of the Limit (Finding 3); Disclosure of Occupation/Name of Employer (Finding 2); and Misstatement of Financial Activity (Finding 1). Our comments in this memorandum address Finding 1, Misstatement of Financial Activity. If you have any questions, please contact Jennifer Waldman, the attorney assigned to this audit.

II. MISSTATEMENT OF FINANCIAL ACTIVITY (FINDING 1)

The IAR finds that the Committee misstated its receipts and disbursements for 2013 and 2014 and lists the various reporting discrepancies that resulted in the misstatements. One discrepancy involves how the Committee reported transactions related to contributions made by credit card. The Committee received certain contributions via credit cards, but the payments to the Committee were rejected because they were not supported by sufficient funds and credit limits to pay the charges. The Federal Election Commission Campaign Guide for Congressional Candidates and Committees, June 2014 (“Campaign Guide”) recommends that when a contribution is rejected, a committee report it as a negative entry on Schedule A so as to, in effect, zero out the previously reported contribution that never materialized. Federal Election Commission Campaign Guide for Congressional Candidates and Committees, June 2014, p 113. Instead, the Committee reported the rejected charge as a receipt and then as a corresponding refund. The Committee, however, never actually refunded these contributions because the funds were never received. The Committee, therefore, inflated its receipts (reporting a contribution that never materialized), and it inflated its disbursement (reporting a refund) totals.

A second discrepancy relates to how the Committee reported its voided payments to vendors (such as media firms) for future services. The Committee initially reported the payments to the vendor on Schedule B as a disbursement. When the Committee decided not to use that service (or not to air a commercial) they were then required to report the fact that these previously reported disbursements never occurred since the money never left the Committee’s account. The Campaign Guide recommends that the cancelled payment previously reported be amended as a negative amount on Schedule B – showing that the funds were never spent. *Id.* Instead, the Committee reported the voided payment as an offset to operating expenditures on Schedule A (receipts). This inflated Schedule A (receipts) because it had the same effect as if the Committee had received a refund from the vendor, which it did not. In addition, Schedule B (disbursements) was inflated because the report still showed that the Committee had spent the funds.

The Federal Election Campaign Act of 1971, as amended, (“FECA”) states that a committee must report the total amounts of receipts and disbursements in various categories, including refunds and rebates. But, the FECA and its regulations do not directly address how a committee should report rejected credit card charges and voided payments. *See* 52 U.S.C. § 30104(b)(2)(i) and (4); 11 C.F.R. §§ 104.3(a)(3), (ix)(A) and (B), (b)(2)(v)(A) and (B), (4)(v). As noted, the Campaign Guide does provide further instruction on how to address these two scenarios.

The IAR notes that while there is agreement in the ending cash-on-hand balance, the corresponding receipts and disbursements are inflated. The Committee argues that it believes that its decision to report subsequently voided payments as offsets was consistent with the Commission’s regulations because the cash-on-hand was correct. However, this is insufficient because the Act and Commission regulations require that the Committee accurately report receipts and disbursements, not just the ultimate cash on hand balance. 11 C.F.R. § 104.14(d); *see* Final Audit Report on Democratic Party of Wisconsin, at 9 (approved Mar. 25, 2015) (Committee had reporting errors that resulted in inflated disbursements and receipts and argued

that disclosure was sufficient, the Commission disagreed); Final Audit Report on TeaPartyExpress.Org PAC at 9 (approved Jan. 6, 2017) (finding of misstatement of financial activity due to improperly reported and inflated disbursement totals) (approved by the Commission without discussion). By improperly reporting the incomplete credit card transactions and the voided payments, the Committee disclosed inflated receipt and disbursement totals creating an inaccurate picture of the Committee's finances.

Regardless of whether the cash-on-hand numbers were ultimately accurate, the way in which the Committee made these disclosures created inaccuracies in both the receipts and disbursements totals as the IAR outlines. Accuracy is one of the core principles of disclosure.¹ The Commission's regulations, therefore, require that a committee file timely and accurate reports, and the treasurer must certify that the provided information is accurate. *See* 11 C.F.R. § 104.3, 104.4, 104.5, 104.6, 104.7, 104.8, 104.9, 104.18(g), and 104.20.

While the IAR raises the Committee's argument and reasoning for the differing cash-on-hand, we recommend that the Audit Division revise the IAR to include the legal basis supporting its conclusion that the Committee's interpretation is incorrect, i.e., that merely reporting an accurate cash-on-hand balance is insufficient and that the regulations require accurate disclosure of receipts and disbursements.

¹ In the context of reporting refunds, the Commission noted that to create an accurate picture, refunds must be reported but not "as memo entries, since *they will affect the committee's total disbursements and cash on hand*" (emphasis added). Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760 (Jan. 9, 1987).

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November 6, 2017

Thomas E. Hintermister
Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, NW
Washington, DC 20463
VIA EMAIL: SHTThomas@fec.gov

Re: McSally for Congress – Response to Draft Final Audit Report

Dear Mr. Hintermister:

On behalf of McSally for Congress (“Committee”), and Paul Kilgore, in his official capacity as Treasurer, we file this response to the Draft Final Audit Report (“DFAR”) received on October 18, 2017, in connection with the Federal Election Commission’s (“FEC” or “Commission”) audit of the Committee. We also request an audit hearing, pursuant to the Commission’s Procedural Rules for Audit Hearings, 74 Fed. Reg. 33140 (July 10, 2009), primarily to voice our disagreement with the Audit Division’s conclusions in Finding 1, specifically with regard to the amount of the alleged misstatement and the categorization and reporting of certain transactions. Because the amount of the misstatement is a question of fact, and not one of law, we request that the hearing be held in a closed executive session.

Before addressing the substance of the DFAR’s findings, we once again remind the Commission of the Committee’s extraordinary, and to our knowledge unprecedented, efforts to comprehensively evaluate all of its accounting and FEC reports beginning with the Committee’s inception in 2012. As we have previously noted, during the 2012 and 2014 election cycles, the Committee raised and spent over \$12.3 million, receiving more than 45,300 contributions from over 22,600 individual contributors, the majority of which came in the form of low dollar donations. For the time period covered by the Commission’s Audit (January 1, 2013 – December 31, 2014), the Committee received more than 33,000 contributions from over 19,000 donors. This amount and volume of activity was unparalleled for a non-incumbent. To illustrate her remarkable level of support, Congresswoman McSally was the third highest grossing fundraiser for all Republican Members of Congress in the 2016 cycle, despite just being a freshman and

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having never previously served in elected office. In short, although the level of support was tremendous, it also created unique challenges for Committee staff in handling the overwhelming volume of activity. This is precisely why the Committee acted swiftly to not only demand a comprehensive internal review of its finances, but to hire experienced FEC reporting professionals to perform the review.

Unlike the Commission's Audit, the Committee's internal review was not a sampling of the Committee's activity for the period of time being reviewed. Rather, the Committee started from the very beginning and completely rebuilt its database consisting of over \$12.3 million of activity over the 2012 and 2014 election cycles. In other words, the Committee started from scratch and examined every single transaction, contribution, and expenditure through a microscope to ensure everything was recorded and reported correctly for the entire history of the Committee. This was a colossal effort on the part of the Committee, and the Committee has spent a substantial amount of funds on professional reporting services, accountants, and lawyers over the last two years addressing the Commission's purported concerns.

Nonetheless, as a result of its internal review, every single report filed since the first report in 2012 through the 2014 Year-End Report was refiled on January 31, 2016. With respect to our position concerning Finding 1, it is critical to understand that the Committee's amended reports filed on January 31, 2016 were not based on its originally-filed reports (i.e. the audited reports). Instead, they are based on financial activities that actually occurred, as reflected in bank statements. As a result, all of the Committee's reports and bank statements reconcile to the penny, which has been the case for over a year and a half.

Finding 1

We incorporate by reference our response to the Audit Division's Interim Audit Report ("IAR") regarding Finding 1. Specifically, the Committee continues to take issue with the Audit Division's conclusions with respect to the amount of the alleged misstatement. As described in our response to the IAR, at the Exit Conference, Audit staff provided a list of 122 transactions they believed made up the alleged overstatement of \$94,528 in receipts. However, the Committee conducted its own review of this list, and of the 122 transactions, at least 33 transactions totaling \$27,115 do **not** appear on any of the amended reports. Likewise, Audit staff provided a list of transactions they believed made up the alleged overstatement of \$85,472 in disbursements. But the Committee reviewed this list, as well, and at least 23 of the transactions totaling approximately \$16,908 were **not** disclosed on the Committee's amended reports. Although many of these transactions appeared on the Committee's originally filed reports (i.e. the audited reports), they were not included in the amended reports filed on January 31, 2016 because they were either reported as duplicates on the audited reports or because the transaction did not actually occur in the first place. It is unclear why the Audit staff continues to insist on their version of the numbers when we have provided proof to the contrary. In short, the Committee believes its 2016 amended reports are an accurate reflection of what truly occurred at the time.

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Furthermore, although the Committee acknowledges that the Commission's Campaign Guide provides some direction on when negative entries are appropriate in Schedules A and B, the Commission has simply not provided clear guidance regarding how a committee must report a so-called "chargeback." We therefore believe it is reasonable for a committee to choose to report a transaction in a different way if it appears to a committee that it is a more accurate reflection of what occurred at the time. After all, the Commission's Campaign Guide, although helpful at times, does not have the force of law.

Finding 2

The DFAR states that this matter is resolved. However, we take issue with the DFAR's inference that the Committee only demonstrated "best efforts" "during audit fieldwork" and disagree with the DFAR's conclusion that "since MFC's corrective action occurred after audit notification, the matter is included in this audit report." It is a complete mischaracterization to suggest that the Committee's demonstration of "best efforts" only occurred after the Commission's audit was initiated. The fact that the Committee's originally-filed reports did not contain the occupation and employer for some donors does not mean that the Committee did not demonstrate "best efforts" to obtain that information in the first place. It simply means that the Committee was unable to obtain this information despite demonstrating "best efforts."

As we previously stated in our response to the IAR, the Committee's solicitation materials have always included a clear request for the name, address, occupation and employer of individuals whose contributions aggregated \$200 during the election cycle, and in instances where a contributor did not provide that information, the Committee would make at least one effort to obtain that information. Therefore, the DFAR's statement that "since MFC's corrective action occurred after audit notification, the matter is included in this audit report," cannot be true because "corrective action" in this context can only mean demonstrating "best efforts," which occurred from the beginning. "Corrective action" in this context does not mean that the Committee was ultimately able to obtain this information after multiple attempts.

In light of the fact that the Committee has demonstrated "best efforts" from its inception, we believe that Finding 2 should be removed altogether from the Final Audit Report.

Finding 3

Finding 3 in the DFAR correctly notes that the Committee provided copies of negotiated refund checks totaling \$6,500, which resolved four of the five remaining excessive contributions. In light of the signed redesignation letter from Larry Adamson that we provided to Sheraline Thomas on October 31, 2017, we request that Finding 3 be revised to state that all excessive contributions have now been resolved.

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Finding 4

The Committee's response to the IAR pointed out the discrepancy between the number and amount of untimely filed 48-hour contribution reports presented to the Committee at the Exit Conference and the number and amount contained in the IAR. However, the DFAR does not address our concerns or provide any explanation for this discrepancy other than a general statement that "preliminary findings at the exit conference...may be subject to change or modification based on additional documentation; internal review; legal advice, etc."¹ We respectfully request an explanation behind this discrepancy.

Even if the Audit staff is correct in its determination of the number and amount of untimely filed 48-hour contribution reports, the total amount in question is not material in contrast to the vast overall amount of financial activity the Committee had during the applicable period.

Finding 5

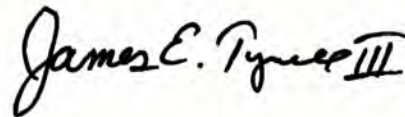
The Committee has no additional comments with respect to Finding 5 in the DFAR.

Conclusion

As we have already made clear, the Committee takes its reporting obligations very seriously, and it has taken extraordinary measures, both in time and money, to address these issues over the last two years. At the same time, we want the public record to reflect what actually happened during the applicable time period. For that reason, we believe it is imperative that the Commission hear our foregoing concerns in an audit hearing.

We appreciate the Audit Division's time and attention to this matter. Please feel free to contact me directly with any questions.

Respectfully submitted,



James E. Tyrrell III
Counsel to McSally for Congress

¹ Draft Final Audit Report, at 5 n. 8.