FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3444

DATE FILMED 4-13-94 CAMERA NO. 2

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REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: August 14, 1991

ANALYST: PAT SHEPPARD

I. COMMITTEE: Rick Montoya for United States Senate Committee (C00216549)
Luther G. Branham, Treasurer
5119A Leesburg Pike, Suite 117
Falls Church, VA 22041

II. RELEVANT STATUTE: 2 U.S.C. §434(b)(5)(D)
2 U.S.C. §434(b)(3)(E)

III. BACKGROUND:

Failure to File Supporting Schedules

The Rick Montoya for United States Senate Committee ("the Committee") has failed to file required supporting schedules totaling $136,438.02.

Line 13(a), Column A of the Detailed Summary Page of the Committee's 1990 Mid Year Report discloses $63,956.03 in loan receipts. Line 19(a), Column A of the Detailed Summary Page discloses $69,386.63 in loan repayments (Attachment 2).

Schedule C of the Committee's report indicates that several loans totaling $45,000 from the Western Bank have been repaid and consolidated by a new secured loan (Attachment 3). In addition, Schedule C indicates that $5,430.60 has been paid on the new loan. The Committee failed to provide a supporting Schedule B to itemize the $50,430.60 in bank loan repayments.

Line 13(a), Column A of the Detailed Summary Page of the Committee's 1990 Year End Report discloses $62,461.13 in loan receipts. Line 19(a), Column A of the Detailed Summary Page discloses $62,461.13 in loan repayments (Attachment 4). The amount on Lines 13(a) and 19(a) equal the amount of the loans itemized on Schedule C from the candidate ($19,457.42) and Western Bank ($43,003.71) (Attachment 5). The Committee failed to provide a supporting Schedule A totalling $43,003.71 for the bank loan and Schedule B totalling $43,003.71 for the bank loan, for a total of $86,007.42 in missing schedules on the 1990 Year End Report.

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On May 7, 1991, Requests for Additional Information ("RFAIs") for both reports were sent to the Committee (Attachments 6 and 7). The RFAIs request that the Committee provide the omitted supporting schedules. The RFAIs note that all loan repayments must be itemized, regardless of the amount.

In addition, the RFAI for the 1990 Year End Report suggests that the Committee may have inflated their totals if the loans have just been renegotiated. On May 30, 1991, a Second Notice was sent to the Committee for failure to respond (Attachment 8).

On July 3, 1991, a Reports Analysis Division analyst exhausted all means to get a phone number for the candidate or treasurer (Attachment 9).

As of this date, no further response has been received.

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None

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FEDERAL ELECTION COMMISSION
1989-1990
CANDIDATE INDEX OF SUPPORTING DOCUMENTS - (E)

DATE 9JUL91

Attachment # 1

CANDIDATE/COMMITTEE/DOCUMENT	OFFICE SOUGHT/	PARTY	RECEIPTS PRIMARY	RECEIPTS GENERAL	DISBURSEMENTS PRIMARY	DISBURSEMENTS GENERAL	COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
							TYPE OF FILER		
MONTOYA, RICK	SENATE	REPUBLICAN PARTY				NEW MEXICO	1988 ELECTION	ID# SBNM00101	
1. STATEMENT OF CANDIDATE									
2. PRINCIPAL CAMPAIGN COMMITTEE									
RICK MONTOYA FOR UNITED STATES SENATE COMMITTEE							ID #C00216549	SENATE	
1989 48 HOUR CONTRIBUTION NOTICE							1AUG89	2	B9SEN/006/3856
STATEMENT OF ORGANIZATION - AMENDMENT							9AUG89	3	B9SEN/008/3917
MID-YEAR REPORT			9,803		9,803		1JAN89 -31JUL89	20	B9SEN/009/0104
MID-YEAR REPORT - AMENDMENT			9,803		9,803		1JAN89 -31JUL89	9	90SEN/001/0373
REQUEST FOR ADDITIONAL INFORMATION							1JAN89 -31JUL89	2	B9FEC/614/0104
REQUEST FOR ADDITIONAL INFORMATION 2ND							1JAN89 -31JUL89	3	B9FEC/615/0121
YEAR-END			750		750		1JUL89 -31JAN90	19	90SEN/004/0091
YEAR-END - AMENDMENT			-		-		1JUL89 -31DEC89	11	90SEN/014/1344
1'ST LETTER INFORMATIONAL NOTICE							1JUL89 -31JAN90	2	90FEC/630/2153
1990 MID-YEAR REPORT			70,386		69,955		1JAN90 -30JUN90	21	90SEN/014/2241
REQUEST FOR ADDITIONAL INFORMATION							1JAN90 -30JUN90	2	91FEC/694/5032
REQUEST FOR ADDITIONAL INFORMATION 2ND							1JAN90 -30JUN90	3	91FEC/697/1502
YEAR-END			69,147		69,584		1JUL90 -31DEC90	13	91SEN/002/3385
REQUEST FOR ADDITIONAL INFORMATION							1JUL90 -31DEC90	2	91FEC/694/5029
REQUEST FOR ADDITIONAL INFORMATION 2ND							1JUL90 -31DEC90	3	91FEC/697/1505
TOTAL			150,086	0	150,092	0		115	TOTAL PAGES
3. AUTHORIZED COMMITTEES									
4. JOINT FUNDRAISING COMMITTEES AUTHORIZED BY THE CAMPAIGN									

All reports have been reviewed.
Cash on Hand as of 12/31/90 - $131.45
Debts owed by Committee as of 12/31/90 - $124,192.66
Debts owed to Committee as of 12/31/90 - $0

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1990 Mid Year Report
Attachment # 2
Page 1 of 1

DETAILED SUMMARY PAGE
of Receipts and Disbursements
(Page 2, FEC FORM 3)

Name of Committee (in full): RICK MONTOYA FOR U.S. SENATE COMM
Report Covering the Period: From 1/1/90 to 6/30/90

I. RECEIPTS	COLUMN A Total This Period	COLUMN B Calendar Year-To-Date
11 CONTRIBUTIONS (other than loans) From:		
(a) Individuals/Persons Other Than Political Committees		
(i) Itemized (use Schedule A)		
(ii) Unitemized		
(iii) Total of contributions from individuals		
(b) Political Party Committees		
(c) Other Political Committees (such as PACs)		
(d) The Candidate	6430.60	6930.60
(e) TOTAL CONTRIBUTIONS (other than loans) (add 11(a)(iii), (b), (c) and (d))	6430.60	6430.60
12 TRANSFERS FROM OTHER AUTHORIZED COMMITTEES		
13 LOANS		
(a) Made or Guaranteed by the Candidate	63,956.03	63,956.03
(b) All Other Loans		
(c) TOTAL LOANS (add 13(a) and (b))	63,956.03	63,956.03
14 OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)		PS
15 OTHER RECEIPTS (Dividends, Interest, etc.)		
16 TOTAL RECEIPTS (add 11(e), 12, 13(c), 14 and 15)	70,386.63	70,386.63
II. DISBURSEMENTS		
17 OPERATING EXPENDITURES	568.76	
18 TRANSFERS TO OTHER AUTHORIZED COMMITTEES		
19 LOAN REPAYMENTS		
(a) Of Loans Made or Guaranteed by the Candidate	69,386.63	69,386.63
(b) Of All Other Loans		
(c) TOTAL LOAN REPAYMENTS (add 19(a) and (b))	69,386.63	69,386.63
20 REFUNDS OF CONTRIBUTIONS TO		
(a) Individuals/Persons Other Than Political Committees		
(b) Political Party Committees		PS
(c) Other Political Committees (such as PACs)		
(d) TOTAL CONTRIBUTION REFUNDS (add 20(a), (b) and (c))		
21 OTHER DISBURSEMENTS		
22 TOTAL DISBURSEMENTS (add 17, 18, 19(c), 20(d) and 21)	69,955.39	69,955.39

III. CASH SUMMARY

23 CASH ON HAND AT BEGINNING OF REPORTING PERIOD	$ 154.50
24 TOTAL RECEIPTS THIS PERIOD (from Line 16)	$ 70,386.63
25 SUBTOTAL (add Line 23 and Line 24)	$ 70,541.13
26 TOTAL DISBURSEMENTS THIS PERIOD (from Line 22)	$ 69,955.39
27 CASH ON HAND AT CLOSE[illegible]G PERIOD (subtract Line 26 from [illegible]	$ 585.74

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1990 Mid Year Report
Attachment # 3
Page 1 of 4

SCHEDULE C
(Revised 3/80)

LOANS

Page 1 of 9 for LINE NUMBERS in (Use separate schedules for each numbered line)

Name of Committee (in Full)
RICK MONTOYA FOR U.S.

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payments To Date	Balance Outstanding at Close of This Period
RICK MONTOYA 506 W. PARKER LAS CRUCES, NM 88005 Election ☐ Primary ☐ General ☐ Other (specify)	10,000	10,000 (1)	-0-
Terms: Date Incurred 5/16/88 Date Due NONE Interest Rate N/A % (apr) ☐ Secured			
List All Endorsers or Guarantors (if any) to Item A			
(1) 1. Full Name, Mailing Address and ZIP Code Note: Loan Proceeds Derived From Personal Funds	Name of Employer Occupation Amount Guaranteed Outstanding $		
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payments To Date	Balance Outstanding at Close of This Period
RICK MONTOYA 506 W. PARKER LAS CRUCES, NM 88005 Election ☐ Primary ☐ General ☐ Other (specify)	35,000	35,000 (2)	-0-
Terms: Date Incurred 8/25/88 Date Due N/A Interest Rate N/A % (apr) ☐ Secured			
List All Endorsers or Guarantors (if any) to Item B			
(2) 1. Full Name, Mailing Address and ZIP Code Note: Loan Proceeds Borrowed From Western Bank	Name of Employer Occupation Amount Guaranteed Outstanding $		
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		

SUBTOTALS This Period This Page (optional) . . . . . .

TOTALS This Period (last page in this line only) . . . . . .

Carry outstanding balance o[redacted]e D, for this line. If no Schedule D, [redacted]ate line of Summary.

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SCHEDULE C
(Revised 3/80)

LOANS

Page 2 of 9
LINE NUMBER
(Use separate schedule for each numbered line)

Name of Committee (in Full)
RICK MONTOYA FOR US SENATE COMM

A. Full Name, Mailing Address and ZIP Code of Loan Source
Rick Montoya
506 W. Parker
Las Cruces, NM 88005
Election: ☑ Primary ☐ General ☐ Other (specify)

Original Amount of Loan	Cumulative Payments To Date	Balance Outstanding at Close of This Period
8,193.91	8,193.91 (2)	-0-

Terms: Date Incurred 6/8/88 Date Due N/A Interest Rate 14.25% (APR) ☑ Secured

List All Endorsers or Guarantors (if any) to Item A

1. Full Name, Mailing Address and ZIP Code
(2) Note: Loan Proceeds Borrowed from Western Bank
Name of Employer
Occupation
Amount Guaranteed Outstanding $

2. Full Name, Mailing Address and ZIP C
Name of Employer
Occupation
Amount Guaranteed Outstanding $

3. Full Name, Mailing Address and ZIP Code
Name of Employer
Occupation
Amount Guaranteed Outstanding $

B. Full Name, Mailing Address and ZIP Code of Loan Source
Rick Montoya
506 W. Parker
Las Cruces, NM 88005
Election: ☑ Primary ☐ General ☐ Other (specify):

Original Amount of Loan	Cumulative Payments To Date	Balance Outstanding at Close of This Period
1,355.70	1,355.70 (2)	-0-

Terms: Date Incurred 6/9/88 Date Due N/A Interest Rate 14.25% (APR) ☑ Secured

List All Endorsers or Guarantors (if any) to Item B

1. Full Name, Mailing Address and ZIP Code
(2) Note: Loan Proceeds Borrowed from Western Bank
Name of Employer
Occupation
Amount Guaranteed Outstanding $

2. Full Name, Mailing Address and ZIP Code
Name of Employer
Occupation
Amount Guaranteed Outstanding $

3. Full Name, Mailing Address and ZIP Code
Name of Employer
Occupation
Amount Guaranteed Outstanding $

SUBTOTALS This Period This Page (optional) . . . . . .

TOTALS This Period (last page in this line only) . . . . . .

Carry outstanding balance only on last page, Schedule B, for this line. If no Schedule B, carry forward to appropriate line of Summary.

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SCHEDULE C
(Revised 3.80)

LOANS

Page 3 of 9 for LINE NUMBER
(Use separate schedule for each numbered line)

Name of Committee (in Full)
Rick Montoya For U.S. Senate Committee

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payments To Date	Balance Outstanding at Close of This Period
Rick Montoya 506 W. Parker Las Cruces, NM 88005 Election: ☒ Primary ☐ General ☐ Other (specify)	1247.23	450.39 (1)	796.84
Terms: Date Incurred 6/10/88 Date Due N/A Interest Rate 14.25 (Fixed)			☐ Secured Loaning

List All Endorsers or Guarantors (if any) to Item A

1. Full Name, Mailing Address and ZIP Code Note: $450.39 of Loan proceeds Borrowed from Lending Institution $796.84 derived from personal Funds	Name of Employer Occupation Amount Guaranteed Outstanding $		
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payments To Date	Balance Outstanding at Close of This Period
Rick Montoya 506 W. Parker Rd Las Cruces, NM 88005 Election: ☒ Primary ☐ General ☐ Other (specify)	5,000 00	5,000 00 (2)	-0-
Terms: Date Incurred 6/10/88 Date Due N/A Interest Rate N/A (Fixed)			☐ Secured

List All Endorsers or Guarantors (if any) to Item B

1. Full Name, Mailing Address and ZIP Code Note: Loan Proceeds derived from personal Funds	Name of Employer Occupation Amount Guaranteed Outstanding $		
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		

SUBTOTALS This Period This Page (optional)	
TOTALS This Period (last page on this line only)	

Carry outstanding balance only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

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SCHEDULE C
(Revised 3/80)

LOANS

Page 7 of 9 for LINE NUMBER
(List consecutively throughout for each numbered line)

Name of Committee (in Full)
RICK MONTOYA FOR U.S. SENATE COMMITTEE

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
RICK MONTOYA 506 W. Parkway Rd LAS CRUCES, N.M. 88005 Election ☒ Primary ☐ General ☐ Other (specify)	18,660.58		18,660.53
Terms Date Incurred 3/22/90 Date Due N/A Interest Rate N/A % (APR) ☐ Secured			
List All Endorsers or Guarantors (if any) to Item A			
1. Full Name, Mailing Address and ZIP Code ① Loan derived from personal Funds to consolidate most Candidate loans to campaign	Name of Employer Occupation Amount Guaranteed Outstanding $		
2. Full name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
WESTERN BANK (RICK MONTOYA) P.O. BOX 457 LAS CRUCES, NEW MEXICO 88004 Election ☒ Primary ☐ General ☐ Other (specify)	45,000 00	[redacted] 5430.80	44,498.61
Terms Date Incurred 1/26/90 Date Due 1/26/95 Interest Rate 8.99 % (APR) ☒ Secured			
List All Endorsers or Guarantors (if any) to Item B			
1. Full Name, Mailing Address and ZIP Code ② Loan proceeds derived from secured loan used to consolidate old loans at lower interest rates.	Name of Employer Occupation Amount Guaranteed Outstanding $		
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		

SUBTOTALS This Period This Page (optional) .....

TOTALS This Period (last page in this line only) 63956.03

Carry outstanding balance only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

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1990 Year End Report
Attachment # 4
Page 1 of 1

DETAILED SUMMARY PAGE
of Receipts and Disbursements
(Page 2, FEC FORM 3)

Name of Committee (in full): RICK MONTOYA FOR U.S. SENATE COMMITTEE

Report Covering the Period: From 7/1/90 To 12/31/90

I. RECEIPTS	COLUMN A Total This Period	COLUMN B Calendar Year-To-Date
11. CONTRIBUTIONS (other than loans) FROM		
a) Individuals/Persons Other Than Political Committees		
i) Itemized (use Schedule A)		
ii) Unitemized		
iii) Total of contributions from individuals		
b) Political Party Committees		
c) Other Political Committees (such as PACs)		
d) The Candidate	6685.94	13,116.54
e) TOTAL CONTRIBUTIONS (other than loans) (add 11a(iii), 11b, 11c, and 11d)	6685.94	13,118.54
12. TRANSFERS FROM OTHER AUTHORIZED COMMITTEES		
13. LOANS		
a) Made or Guaranteed by the Candidate	62,461.13	62,461.13
b) All Other Loans		
c) TOTAL LOANS (add 13a and 13b)	62,461.13	62,461.13
14. OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)		
15. OTHER RECEIPTS (Dividends, Interest, etc.)		
16. TOTAL RECEIPTS (add lines 11e, 12, 13c, 14 and 15)	69,147.07	75,577.67
II. DISBURSEMENTS		
17. OPERATING EXPENDITURES	7097.77	7666.53
18. TRANSFERS TO OTHER AUTHORIZED COMMITTEES		
19. LOAN REPAYMENTS		
a) Of Loans Made or Guaranteed by the Candidate	62,461.13	62,461.13
b) Of All Other Loans		
c) TOTAL LOAN REPAYMENTS (add 19a and 19b)	62,461.13	62,461.13
20. REFUNDS OF CONTRIBUTIONS TO		
a) Individuals/Persons Other Than Political Committees		
b) Political Party Committees		
c) Other Political Committees (such as PACs)		
d) TOTAL CONTRIBUTION REFUNDS (add 20a(iii), 20b, and 20c)		
21. OTHER DISBURSEMENTS Copying + Mailing FEC Filings	25.48	25.48
22. TOTAL DISBURSEMENTS (add lines 17, 18, 19c, 20d, and 21)	69,584.38	70,153.14

III. CASH SUMMARY

23. CASH ON HAND AT BEGINNING OF REPORTING PERIOD	$ 565.76
24. TOTAL RECEIPTS THIS PERIOD (from Line 16)	$ 69,147.07
25. SUBTOTAL (add Line 23 and Line 24)	$ 69,715.83
26. TOTAL DISBURSEMENTS THIS PERIOD (from Line 22)	$ 69,584.38
27. CASH ON HAND AT CLOSE OF THE REPORTING PERIOD (Subtract Line 26 from 25)	$ 131.45

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SCHEDULE C
(Revised 3/80)

LOANS

1/31/91

1990 Year End Report
Attachment 5
Page 1 of 2

Name of Committee (in Full)
RICK MONTOYA FOR U.S. SENATE COMMITTEE

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
RICK MONTOYA 506 W. PARKER RD. LAS CRUCES, N.M. 88005 Election: ☒ Primary ☐ General ☐ Other (specify):	1247.23	-0-	796.84

Terms: Date Incurred 6/10/89 Date Due N/A Interest Rate N/A %(apr) ☐ Secured

List All Endorsers or Guarantors (if any) to Item A

1. Full Name, Mailing Address and ZIP Code LOAN PROCEEDS FROM PERSONAL FUNDS	Name of Employer Occupation Amount Guaranteed Outstanding $	
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $	
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $	

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
RICK MONTOYA 506 W. PARKER RD. LAS CRUCES, N.M. 88005 Election: ☐ Primary ☐ General ☐ Other (specify):	18,660.58	-0-	18,660.58

Terms: Date Incurred 3/22/90 Date Due N/A Interest Rate N/A %(apr) ☐ Secured

List All Endorsers or Guarantors (if any) to Item B

1. Full Name, Mailing Address and ZIP Code LOAN DERIVED FROM PERSONAL FUNDS	Name of Employer Occupation Amount Guaranteed Outstanding $	
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $	
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $	

SUBTOTALS This Period This Page (optional)	19,457.42
TOTALS This Period (last page in this line only)	

Carry outstanding balance only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

P1

P3

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SCHEDULE C
(Revised 3/80)

LOANS

1/31/91

Name of Committee (in Full)
RICK MONTOYA FOR U.S. SENATE COMMITTEE

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
WESTERN BANK P.O. BOX 457 LAS CRUCES, N.M. 88004 Election: ☒ Primary ☐ General ☐ Other (specify):	45,000.00	4235.94	43,003.71

Terms: Date Incurred 1/26/90 Date Due 1/26/95 Interest Rate 13.996 % (apr) ☒ Secured

List All Endorsers or Guarantors (if any) to Item A

1. Full Name, Mailing Address and ZIP Code	Name of Employer	Amount Guaranteed Outstanding	2. Full Name, Mailing Address and ZIP Code	Name of Employer	Amount Guaranteed Outstanding	3. Full Name, Mailing Address and ZIP Code	Name of Employer	Amount Guaranteed Outstanding
RICK MONTOYA 506 W. PARKER RD LAS CRUCES, N.M. 88005	SELF	$ 43,003.71			$			$
	Occupation: REAL ESTATE CONSULTANT			Occupation			Occupation	

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Election: ☐ Primary ☐ General ☐ Other (specify):			

Terms: Date Incurred _____ Date Due _____ Interest Rate _____ % (apr) ☐ Secured

List All Endorsers or Guarantors (if any) to Item B

1. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding	2. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding	3. Full Name, Mailing Address and ZIP Code	Name of Employer	Occupation	Amount Guaranteed Outstanding
			$				$				$

SUBTOTALS This Period This Page (optional)	43,003.71
TOTALS This Period (last page in this line only)	62,461.13

Carry outstanding balance only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

9 4 0 3 0 9 7 1 5 3 0

9 1 0 2 0 0 2 3 3 9 0

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

RQ-2

MAY 7 1991

Luther G. Branham, Treasurer
Rick Montoya For United States
Senate Committee
5119A Leesburg Pike, Suite 117
Falls Church, VA 22041

Identification Number: C00216549

Reference: Mid-Year Report (1/1/90-6/30/90)

Dear Mr. Branham:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Line 13(a), Column A, of the Detailed Summary Page discloses $63,956.03 in candidate loans. Schedule C supporting Line 13(a) itemizes $63,710.58 in loans. Please explain the discrepancy and amend your report(s). (11 CFR §104.3(a))

-Line 19(a), Column A, of the Detailed Summary Page discloses $69,396.93 in loan repayments to the candidate. Schedule C supporting Line 19(a) itemizes $69,091.18 in repayments. Please explain the discrepancy and amend your report(s). (11 CFR §104.3(b))

-Please provide a Schedule B to support the amount reported on Line 19(a), Column A, of the Detailed Summary Page. Each loan repayment made by the committee must be itemized on a supporting Schedule B, regardless of the amount of the repayment. (11 CFR §104.3(b)(4)(iii) and (iv)) Ps

-Your calculations for the loan schedule (Schedule C) appears to be incorrect. Our calculations disclose an apparent discrepancy of $4,929.21 in the loan owed to the bank. ($45,000 - $5,430.60 = $39,569.40). Please provide the correct outstanding balance or payment made to the loan on Schedule C.

A written response or an amendment to your original report(s) correcting the above problem(s) should be filed with the Secretary of the Senate, 232 Hart Senate Office Building, Washington, DC

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2 1 0 3 6 9 4 5 0 3 2

20510 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 376-2480.

Sincerely,

Pat Sheppard

Pat Sheppard
Senior Reports Analyst
Reports Analysis Division

9403097153 2
91036-45033

FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

RQ-2

Luther G. Branham, Treasurer
Rick Montoya For United States
Senate Committee
5119A Leesburg Pike, Suite 117
Falls Church, VA 22041

MAY 7 1991

Identification Number: C00216549

Reference: Year End Report (7/1/90-12/31/90)

Dear Mr. Branham:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Column B figures for the Summary and Detailed Summary Pages should equal the sum of the Column B figures on your previous report and the Column A figures on this report. Please amend your report to correct the Column B discrepancies for Line(s) 13(a), 13(c), 16, 19(a), 19(c), 22 and any subsequent report(s) which may be affected by this correction. Note that Column B should reflect only the year-to-date totals for calendar year 1990.

-The beginning cash balance of this report does not equal the ending balance of your 1990 Mid-Year report. Please clarify this discrepancy and amend any subsequent report(s) which may be affected by this correction.

-Please provide Schedules A and C to support the amount reported on Line 13(a) of the Detailed Summary Page. Each person who makes a loan to your committee or to the candidate acting as an agent of the committee must be reported on Schedule A and Schedule C. The itemization on Schedule A must include the person's full name, mailing address and zip code, along with the name of his/her employer, the date of the contribution/loan and the aggregate year-to-date amount of contributions made by the person. Schedule C must include any endorser or guarantor of the loan, the date the loan was made and all other terms of the loan. If the loan is from the candidate, you must indicate if it is from his/her personal funds. (11 CFR §104.3(a)(4)(iv))

PS

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-Please provide a Schedule B to support the amount reported on Line 19(a), Column A, of the Detailed Summary Page. Each loan repayment made by the committee must be itemized on a supporting Schedule B, regardless of the amount of the repayment. (11 CFR §104.3(b)(4)(iii) and (iv)

-If the Committee is only disclosing that a loan has been renegotiated, you have inflated your receipt and expenditures totals by adding this transaction on the Detailed Summary Page Amend you report to delete this transaction from your report. If new loans were received and/or loan repayment was made then please provide the omitted schedules.

A written response or an amendment to your original report(s) correcting the above problem(s) should be filed with the Secretary of the Senate, 232 Hart Senate Office Building, Washington, DC 20510 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 376-2480.

Sincerely,

Pat Sheppard

Pat Sheppard
Senior Reports Analyst
Reports Analysis Division

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

RQ-3

May 30, 1991

Luther G. Branham, Treasurer
Rick Montoya For United States
Senate Committee
5115A Leesburg Pike, Suite 117
Falls Church, VA 22041

Identification Number: C00216549

Reference: Mid-Year (1/1/90-6/30/90) and Year End Report (7/1/90-12/31/90) Reports

Dear Mr. Branham:

This letter is to inform you that as of May 29, 1991, the Commission has not received your response to our requests for additional information dated May 7, 1991. Those notices requested information essential to full public disclosure of your federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). Copies of our original requests are enclosed.

If no response is received within fifteen (15) days from the date of this notice, the Commission may choose to initiate audit or legal enforcement action.

If you should have any questions related to this matter, please contact Pat Sheppard on our toll-free number (800) 424-9530 or our local number (202) 376-2480.

Sincerely,

John D. Gibson

John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosures

ATTACHMENT # 9
PAGE 1 OF 1

MEMORANDUM TO FILES:
XX Telecon
Visit

DATE: July 3, 1991

NAME OF THE COMMITTEE: Rick Montoya for United States Senate Committee (NM)

SUBJECT: RFAIs for 1990 Mid Year and Year End Reports

FEC REP: Pat Sheppard

COMMITTEE REP: None

I tried both the Virginia and New Mexico Operator to get a telephone number for the candidate or treasurer. I was told by the Virginia operator that the telephone number for the candidate was a non-published number and there was no listing for the treasurer. The New Mexico operator had no listings.

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SENSITIVE

RECEIVED
F.E.C.
SECRETARIAT

91 OCT 24 PM 12:09

FEDERAL ELECTION COMMISSION
999 E ST. N.W.
WASHINGTON, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

RAD Referral: #91L-77
Staff Member: Richard M. Denholm

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(b)(5)(D)
2 U.S.C. § 434(b)(3)(E)

INTERNAL REPORTS CHECKED: Referral Material
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The Office of General Counsel received a referral from the Reports Analysis Division on August 14, 1991. The basis of the referral is the failure of the Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer (the "Committee"), to file a required supporting Schedule B for $50,430.60 in bank loan repayments. In addition, the Committee failed to file a required supporting Schedule A and required supporting Schedule B for a $43,003.71 bank loan.

II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended, (the "Act") requires the principal committee of each candidate for federal office to report each person who makes a loan to the

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reporting committee during the reporting period together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan. 2 U.S.C. § 434(b)(3)(E). In addition, the committee is required to report each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment. 2 U.S.C. § 434(b)(5)(D). The term "person" is defined as "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons..." 2 U.S.C. § 431(11).

Mr. Rick Montoya was a candidate for the United States Senate for New Mexico in the 1988 primary election. Mr. Montoya lost the primary election by only capturing 28% of the vote. According to the Statement of Organization filed with the Commission on July 31, 1987, Rick Montoya for United States Senate Committee is the authorized principal campaign committee of Rick Montoya, and Luther G. Branham is its treasurer.

On its 1990 Mid Year Report, the Committee disclosed that it had consolidated and repaid a number of loans totaling $45,000 by obtaining a new secured loan from Western Bank. In addition, the Committee disclosed that it had paid $5,430.60 on that $45,000 loan. Therefore, the total amount of loan repayments was $50,430.60.

Pursuant to 2 U.S.C. §434(b)(5)(D), the Committee was required to report the $50,430.60 in loan repayments which were made to Western Bank. Although the Committee included this

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amount on its summary pages, it failed to provide the necessary supporting schedules. On May 7, 1991, the Commission reminded the Committee, in writing, that each loan repayment must be itemized on a supporting Schedule B regardless of the amount of the loan. The Committee did not respond. On May 30, 1991, the Commission again reminded the Committee that it had failed to provide the required schedule. As of September 4, 1991, the Committee had not responded.

On its 1990 Year End Report, the Committee reported a $43,003.71 bank loan from Western Bank. Pursuant to 2 U.S.C. § 434(b)(3)(E), the Committee was required to identify each person who made a loan to the Committee during the reporting period. The Committee failed to provide the required Schedule A for the bank loan in the amount of $43,003.71 and failed to provide the required Schedule B for the same bank loan in the amount of $43,003.71.

On May 7, 1991, the Commission notified the Committee, in writing, that each person who makes a loan to the Committee must be reported on a supporting Schedule A and Schedule B. The Committee did not respond. Again, on May 30, 1991, the Commission notified the Committee, in writing, of its need to comply with the requests for information. As of September, 4, 1991, the Committee had not responded.

The Committee did not file the required supporting Schedule B for $50,430.60 in bank loan repayments and has not filed required supporting Schedule A and Schedule B for a $43,003.71 bank loan the Committee received. Therefore, the

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Office of the General Counsel recommends that the Commission find that there is reason to believe that the Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D).

III. **RECOMMENDATIONS**

1. Open a MUR

2. Find reason to believe that the Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D).

3. Approve the appropriate letter, and the attached Factual and Legal Analysis.

Lawrence M. Noble
General Counsel

10/23/91
Date

BY: Lois G. Lerner
Associate General Counsel

Attachments:

1. Referral Materials
2. Factual and Legal Analysis

Staff Member: Richard Denholm

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BEFORE THE FEDERAL ELECTION COMMISSION

(MUR 3404)

In the Matter of	)	
	)	
Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer.	)	RAD Referral #91L-77

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 28, 1991, the Commission decided by a vote of 5-0 to take the following actions in RAD Referral #91L-77:

1. Open a MUR.

2. Find reason to believe that the Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D).

3. Approve the appropriate letter, and the Factual and Legal Analysis, as recommended in the General Counsel's Report dated October 23, 1991.

Commissioners Aikens, Elliott, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioner Thomas did not cast a vote.

Attest:

10-28-91
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., Oct. 24, 1991 12:09 p.m.
Circulated to the Commission: Thurs., Oct. 24, 1991 4:00 p.m.
Deadline for vote: Mon., Oct. 28, 1991 4:00 p.m.

bjf

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 8, 1991

Luther G. Branham, Treasurer
Rick Montoya for United States Senate Committee
5119A Leesburg Pike Suite 117
Falls Church, Virginia 22041

RE: MUR 3444
Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer

Dear Mr. Branham:

On October 28, 1991, the Federal Election Commission found that there is reason to believe the Rick Montoya for United States Senate Committee ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D), provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Richard M. Denholm II, the staff member assigned to this matter, at (202) 219-3690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer **MUR:**

The Federal Election Campaign Act of 1971, as amended, (the "Act") requires the principal committee of each candidate for federal office to report each person who makes a loan to the reporting committee during the reporting period together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan. 2 U.S.C. § 434(b)(3)(E). In addition, the committee is required to report each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment. 2 U.S.C. § 434(b)(5)(D). The term "person" is defined as "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons..." 2 U.S.C. § 431(11).

Mr. Rick Montoya was a candidate for the United States Senate for New Mexico in the 1988 primary election. According to the Statement of Organization filed with the Commission on July 31, 1987, Rick Montoya for United States Senate Committee is the authorized principal campaign committee of Rick Montoya, and Luther G. Branham is its treasurer.

On its 1990 Mid Year Report, the Committee disclosed that it had consolidated and repaid a number of loans totaling $45,000 by obtaining a new secured loan from Western Bank. In

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addition, the Committee disclosed that it had paid $5,430.60 on that $45,000 loan. Therefore, the total amount of loan repayments was $50,430.60.

Pursuant to 2 U.S.C. §434(b)(5)(D), the Committee was required to report the $50,430.60 in loan repayments which were made to Western Bank. Although the Committee included this amount on its summary pages, it failed to provide the necessary supporting schedules.

On its 1990 Year End Report, the Committee reported a $43,003.71 bank loan from Western Bank. Pursuant to 2 U.S.C. § 434(b)(3)(E), the Committee was required to identify each person who made a loan to the Committee during the reporting period. The Committee failed to provide the required Schedule A for the bank loan in the amount of $43,003.71 and failed to provide the required Schedule B for the same bank loan in the amount of $43,003.71.

The Committee did not file the required supporting Schedule B for $50,430.60 in bank loan repayments and has not filed required supporting Schedule A and Schedule B for the $43,003.71 bank loan the Committee received. Thus, there is reason to believe that the Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer, violated 2 U.S.C. §§ 434(b)(5)(D) and 434(b)(3)(E).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 4, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Luther G. Branham, Treasurer
Rick Montoya for United States Senate Committee
5119A Leesburg Pike Suite 117
Falls Church, Virginia 22041

RE: MUR 3444
Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer

Dear Mr. Branham:

In a letter dated November 8, 1991, you were notified that the Federal Election Commission found reason to believe that the Rick Montoya for United States Senate Committee ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D), provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). Enclosed are copies of materials that were sent to you at that time. Under the Act, and Commission regulations, you have an opportunity to demonstrate that no action should be taken against you.

A review of our files indicates that to date you have not responded. Unless we receive a response from you within 5 days, this matter will proceed to the next stage of the enforcement process.

Should you have any questions, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Anne Weissenborn

BY: Anne Weissenborn
Assistant General Counsel
(Acting)

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RICK MONTOYA & ASSOCIATES
5110 A LEESBURG PIKE
SUITE 117
FALLS CHURCH, VIRGINIA 22041
TELEPHONE (703) 820-1726

December 11, 1991

Mr. Richard M. Denholm II
Federal Election Commission
FAX (202) 219-3923
Washington, D. C. 20463

Dear Mr. Denholm:

On December 10, 1991 I received your certified letter regarding MUR 3444 Rick Montoya for US Senate Committee. Since I still maintain residence and commute between Washington and New Mexico many times mail goes unanswer. This is what has happened in this instance. I do not have a Treasurer and must respond to all FEC correspondence myself. Obviously this system is not working and I have taken steps to assure that all your mail is answered in a timely manner.

I would like to formally request an extension for response until December 13, 1991.

I am confident that this matter can be cleared up to everyones satisfaction. I can assure you that I have made every attempt to fully comply with the law. Thank you for your consideration.

Sincerely,

Rick Montoya

Rick Montoya

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 11, 1991

Mr. Rick Montoya
5119 Leesburg Pike
Suite 117
Falls Church, Virginia 22041

RE: MUR 3444
Rick Montoya for
United States Senate
Committee and
Luther G. Branham, as
treasurer

Dear Mr. Montoya:

This is in response to your letter dated December 11, 1991, which we received on December 11, 1991, requesting an extension of 3 days until December 13, 1991 to respond to the Commission's determination that there is reason to believe that the Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer violated the Federal Election Campaign Act of 1971, as amended. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on December 13, 1991. If your response is not received by the deadline, this matter will proceed to the next level of the enforcement process.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II

Richard M. Denholm II
Attorney

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Rick Montoya
5119 A Leesburg Pike
Suite 117
Falls Church, Virginia 22041

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 DEC 13 PM 12:48

December 12, 1991

Mr. Richard M. Denholm, II
Attorney
Federal Election Commission
Washington, D.C. 20463

Ref: MUR 3444
Rick Montoya for United States Senate Committee

Dear Mr. Denholm,

I am writing in response to your letter dated November 8, 1991, indicating that the Federal Election Commission (FEC) believes that my U.S. Senate Campaign Committee is in violation of 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D), provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). I appreciate the confusion surrounding my previous filings in accordance with the Act but believe that the alleged violation is the result of a misunderstanding which can be clarified with the following information.

Please be advised that Luther G. Branham resigned as Treasurer in December of 1988 and I have been directly responsible for the committee's activities since that time. I request that you drop Mr. Branham from this or any other FEC action or correspondence.

I believe that the committee's 1990 Mid-Year Report and 1990 Year End Report fully complied with reporting requirements regarding loans.

During May and June, 1988, I received a secured loan from Western Bank in the form of four disbursements totalling $45,000 according to the following schedule, reported in my 1990 Mid-Year Report, Schedule C, Pages 1-3:

Disbursement	Date	$ Amount	Page/Part Reference #
1	05/25/88	35,000.00	1b
2	06/08/88	8,193.91	2a
3	06/09/88	1,355.70	2b
4	06/10/88	450.39	3a.1

		45,000.00	

From the period of May, 1988, through January 25, 1990, I paid interest only on the loan. On January 26, 1990, the aforementioned loan was rescheduled as a monthly installment loan to facilitate savings on interest and to provide for payment of interest and principle. This was **not** a new loan but

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merely a change in terms of the original $45,000 loan. This rescheduled loan was reported in my 1990 Mid-Year Report, page 9b.

The amount of $5,430.60, referenced on page 2, line 1 of your Factual and Legal Analysis, dated 11/08/91, was a payment on the loan of principle and interest, resulting in a loan balance of $44,498.61, as reported in my 1990 Mid-Year Report and explained below:

Principle Loan Amount	$45,000.00
Interest and Principle repayment as of 6/30/90 for 1990 Mid-Year Report	$ 5,430.60
Outstanding balance of loan as reported on 1990 Mid-Year Report, Schedule C, page 9, para b	$44,498.61

Again referencing your Factual and Legal Analysis, page 2, line 3, your total loan estimate of $50, 430.60 is not accurate as it assumes complete repayment of the initial $45,000.00 loan. In fact, the balance remaining, as I reported, was $44,498.61, shown on page 9, para B of my 1990 Mid-Year Report. According to my records, the figure of $50,430.60 does not appear on my Detailed Summary Page.

My 1990 Year End Report showed a $43,003.71 bank loan from Western Bank. Again, this was not a new loan but was the amount of the original loan less principle and interest payments during the timeframe of June through December, 1990. A Schedule A was not submitted for the amount of $43,003.71 because it was not a new loan. A Schedule B was not submitted for that period because no disbursement was made to Western Bank other than the $4235.94, reported on page 1, Section C, of the 1990 Year End Report.

Through the course of responding to your letter, I realize that I may be in error by continuing to report the original loan in Section I. - Reports, line item 13. - Loans of my Reports as I have done. I hope that this letter has clarified the origin of the amounts on my 1990 Reports and request that you contact me to confirm my error, if this is the case. I may be reached during the day at (703) 820-1726.

Sincerely,

Rick Montoya

Rick Montoya

Duly Sworn Before

Mary Louise Brown

City/County of Fairfax Commonwealth/State of Virginia

Sworn to and subscribed before me this 13th day of December, 19 91. Witness my hand and official seal.

Mary Louise Brown, Notary Public

My Commission Expires January 31, 1993

Date 12-13-91

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MUR 3444

RICK MONTOYA & ASSOCIATES
5119 A LEESBURG PIKE
SUITE 117
FALLS CHURCH, VIRGINIA 22041
TELEPHONE (703) 820-1726

December 26, 1991

Mr. Richard M. Denholm, II
Attorney
Federal Election Commission
Washington, D. C. 20463

Dear Mr. Denholm:

As we discussed last week, I am officially requesting pre-probable cause conciliation.

Again, I thank you for your explanation of the process and of the options available to me.

Should you have any additional questions please contact me at (703) 820-1726.

Sincerely,

Rick Montoya

Rick Montoya

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Western Bank

Las Cruces • Anthony • Hatch
Member FDIC

January 27, 1992

Mr. Rick Montoya
3309 Lakeside View Dr.
Falls Church, VA 22041

Dear Rick:

Enclosed is the information you requested on Loan #77707869:

7-1-90 Cumulative Balance: $ 5,430.60
Outstanding Balance: $44,498.61

12-31-90 Cumulative Balance: $ 4,235.94
Outstanding Balance: $43,003.71

If you need anything else, give me a call.

Sincerely,

Tammy Talavera

Tammy Talavera

9403097155 2

P.O. Box 487 • 201 N. Church • Las Cruces, New Mexico 88004 • (505) 526-5544 • Fax (505) 525-2383

APR-19-97 SUN 27:53 2 P.02

BORROWER'S NAME AND ADDRESS	LENDER'S NAME AND ADDRESS	
RICHARD THOMAS HUERTA 506 WEST PARKER LAS CRUCES, NM 88005	WESTERN BANK, LAS CRUCES, NM 201 NORTH CHURCH LAS CRUCES, NM 88004	Loan Number 77707869 Date MAY 26, 1988 Maturity Date NOVEMBER 22, 1988 Loan Amount $ 45,035.00 Renewal Of 78003491 & NEW MONEY

"I" includes each borrower above, jointly and severally. "You" means the lender, its successors and assigns.

Note: I promise to pay to you, or your order, at your address above the principal sum of FORTY FIVE THOUSAND THIRTY FIVE AND NO/100 Dollars $ 45,035.00 plus interest from date of the initial rate of 12.500 % per year, which rate is subject to change as an increase in the base rate WESTERN BANK LAS CRUCES, NEW MEXICO, BASE RATE, BUT NOT LESS THAN 10.0% OVER the following

The interest rate in effect on this note may change (as often as) DAILY (assuming there is a change in the base rate) and an increase in the interest rate will cause an increase in THE AMOUNT DUE AT MATURITY ☐ I also agree to pay a loan charge of $

I will pay this amount as follows: (a) ☐ on demand. (b) ☒ on demand, but if no demand is made, on NOVEMBER 22, 1988 (c) ☐ on

If (a), (b), or (c) is checked above, I will pay accrued interest and on the maturity date.

(d) ☐

☐ If checked, the loan is made under the New Mexico Bank Installment Loan Act of 1959.

☒ If checked, I also agree to pay a minimum interest charge of $ 25.00 if I pay this loan off before you have earned that much in interest.

LATE CHARGE ☐ If checked, I will pay a late charge on any payment made more than 10 days after it is due equal to 5% of the amount of the payment, or $10.00, whichever is less.

POST-MATURITY INTEREST. Interest will accrue after maturity on the unpaid balance of this note on the same basis as interest accrues prior to maturity, unless a specific post-maturity interest rate is agreed to in the next sentence.

☒ If checked, interest will accrue at the rate of 20.000 % per year on the balance of this note not paid at maturity, including maturity by acceleration.

THE PURPOSE OF THIS LOAN IS: BUSINESS: RENEWAL AND ADDITIONAL MONEY FOR CAMPAIGN EXPENSES

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost me.	AMOUNT FINANCED The amount of credit provided to me or on my behalf.	TOTAL OF PAYMENTS The amount I will have paid when I have made all scheduled payments.	I have the right to receive at this time an itemization of the Amount Financed
12.667 %	$ 2,811.13	$ 45,000.00	$ 47,811.13	RHU YES - I want an itemization NO - I do not want an itemization

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
1	$ 47,811.13	NOVEMBER 22, 1988
	$	
	$	
	$	

"e" means an estimate

e. 13.00 Filing Fees

e. N/A Non-filing Insurance

☐ Demand: ☒ This note has a demand feature. ☐ This note is payable on demand and all disclosures are based on an assumed maturity of one year.

Variable Rate: The annual percentage rate may increase during the term of this transaction if WESTERN BANK LAS CRUCES, NEW MEXICO, BASE RATE, BUT NOT LESS THAN 10.0% INCREASES

Any increase will take the form of AN INCREASE IN THE AMOUNT DUE AT MATURITY

If the rate increases by 1.000 ~~XXXX~~ IMMEDIATELY, the AMOUNT DUE AT MATURITY will increase to $48,033.22

The rate may not increase more often than once a DAY, and may not increase more than N/A % each N/A. The rate will not go above N/A %.

Security: I am giving a security interest in: (☒ brief description of other property) REAL ESTATE

☐ the goods or property being purchased.

☒ collateral securing other loans with you shall also secure this loan.

☒ my deposit accounts and other rights to the payment of money from you.

Late Charge: ☐ If a payment is late (more than 10 days after due) I will be charged 5% of the amount of the payment, or $10.00, whichever is less.

Prepayment: If I pay off this note early, I ☒ may ☐ will not have to pay a penalty, and I ☐ may ☒ will not be entitled to a refund of part of the finance charge.

☒ Assumption: Someone buying my home ☐ may, subject to conditions, be allowed to ☒ cannot assume the remainder of the mortgage on the original terms.

I can see my contract documents for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

Insurance: Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Type	Premium	Term	Signatures (or Initials)
Credit Life			I want credit life insurance X _____ Name of insured
Credit Disability			I want credit disability insurance X _____ Name of insured
Joint Credit Life			I want joint credit life insurance X _____ X _____

I do not want: RHU Credit Life Ins. _____ Credit Disability Ins. _____ Joint Credit Life Ins.

Property Insurance: I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from or through you I will pay $ _____ for _____ of coverage.

Itemization of Amount Financed

Amount given to me directly	$ 38,987.62	(a)
Amount paid on my account	$ 6,092.38	(b)
Amounts paid to others on my behalf:		
To Property Insurance Company	$	(c)
To Credit Life Insurance Company	$	(d)
To Disability Insurance Company	$	(e)
To Public Officials DOCUMENTATION FEE	$ 35.00	(f)
	$ 35.00	(g)
Prepaid Finance Charge	$	(h)
AMOUNT FINANCED (a through g - h)	$ 45,000.00	(i)
Finance Charge (include prepaid)	$ 2,811.13	(j)
Total of Payments (i + j)	$ 47,811.13	(k)

Security - To secure the payment of the note total (defined on the reverse side):

(1) I acknowledge and agree that you have the right to set-off this note against any obligation you have (now or hereafter) to pay money to me.

(2) You may collect the proceeds (or rebates of unearned premiums) on any insurance policy insuring me (where you are named as loss payee) and on any policy insuring the property securing this note. You will apply this toward what I owe you.

(3) ☐ If checked, this note is not further secured by any contemporaneous agreement (other than (1) and (2) of this section).

(4) ☒ If checked, this note is secured by a separate MORTGAGE dated MAY 26, 1988

(5) ☐ Security Agreement - If checked, I give you a security interest in the property described below. The rights I am giving you in this property, and the obligations this agreement secures are defined on the reverse side of this form.

9403097155 3

Assumptions - Unless specifically agreed in writing to the contrary, this security agreement and any loan it secures cannot be assumed by any person who buys the collateral described above from me, and I understand and agree that if I attempt to transfer any interest in the collateral (including, but not limited to, possession) I will be in default on all secured obligations.

This collateral will be used for PERSONAL purposes.

☐ If checked, this is a purchase money loan. You may include the name of the seller on the check or draft for this loan.

Signatures

Any person who signs within this enclosure does so to give you a security interest in the property described above, but assumes no personal obligation to pay this note.

Name

X Date

Signature for Lender - where necessary for filing this security agreement.

I agree to the terms of the note and security agreement above (including those on the other side of this form) and acknowledge receipt of at least one copy on today's date.

COSIGNERS - SEE NOTICE ON REVERSE SIDE BEFORE SIGNING

Signature

Signature X Richard Thomas Montoya

RICHARD THOMAS MONTOYA

Signature

VARIABLE INTEREST NOTE, DISCLOSURE, AND SECURITY AGREEMENT.

APR 12 92 DUN 22157 2

9403097155 4

EXTENSION AND REVISION AGREEMENT

Western Bank, Las Cruces, New Mexico

Note No. 77707869 January 26, 19 90

This refers to the loan evidenced by promissory note dated May 26, 1988, and due November 22, 19 88, for the face amount of Forty Five Thousand Thirty Five and 00/100---------- Dollars ($ 45,035.00) executed by Richard Thomas Montoya

present principal balance Forty Five Thousand and 00/100---------- Dollars ($ 45,000.00) upon which interest is paid to January 26, 1990. Said note is secured by the following, hereinafter referred to as the encumbrance:

and a Mortgage executed by the Makers hereof in favor of Western Bank, Las Cruces, New Mexico, on May 26, 1988, which mortgage is recorded in Book 432, Page (s) 885-889, of the Mortgage Records of Dona Ana County, New Mexico.

Request is hereby made that you modify the terms of said note and that you accept payment thereof at the time, or times, and in the manner following:

The above described note shall be revised in that additional money of $50.00 shall be issued for a documentation fee bringing the new principal balance to $45,050.00, bearing interest at the rate of 13.486%** per annum, payable in 59 equal monthly payments in the amount of $705.99 beginning February 26, 1990, and a final or 60th payment of unpaid principal and accrued interest in the amount of $28,784.17 which shall become due on January 26, 1995.

**The interest rate shall float with Western Bank Las Cruces, New Mexico, Base Rate, PLUS .50% point, to be adjusted daily, but not less than 10.0%

POST-MATURITY INTEREST: interest will accrue at the rate of 20.0% per year on the balance of this note not paid at maturity, including maturity by acceleration.

LATE CHARGE: I will pay a late charge on any payment made more than 10 days after it is due equal to 5% of the amount of the payment.

In consideration of such modification and your acceptance hereof, and your forbearance to enforce payment except as hereinabove

evidenced by said note is hereby acknowledged and admitted, and the undersigned, jointly, severally, and unconditionally promise and agree to pay the same with the interest thereon within the time and in the manner provided, together with attorneys' fees, costs of collection, and any other sums secured by the encumbrance.

Any and all securities for said principal obligation held by you, including the encumbrance, may be enforced by you concurrently or independently in such order as you may determine, and with reference to any such security in addition to the encumbrance, you may, without consent of or notice to any of the undersigned, exchange, substitute or release such security without affecting the liability of the undersigned, or any of them, and you may release any one or more parties hereto or to the above obligation, or permit the liability on said party or parties to terminate without affecting the liability of any other party or parties liable thereon.

This agreement is a revision and extension only, and not an extinguishment, renewal or novation of said note and/or the encumbrance referenced above; and except as herein provided, all of the terms and conditions of said note and said encumbrance shall remain in full force and effect.

Dated at Las Cruces, New Mexico this 26th day of January, 1990.

Richard Thomas Montoya

Richard Thomas Montoya

THE FOREGOING AGREEMENT IF ACCEPTED THIS 26th DAY OF January, 1990,

By: Sharron Stuart

Sharron Stuart, Senior Vice President
Western Bank, Las Cruces, New Mexico

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P.O. Box 407 • 201 N. Church • Las Cruces New Mexico 88004 • (505) 526-5544

(5) Lien Security Agreement - If checked, you are [illegible] property [illegible] on the reverse side of this form.

Assumptions - Unless specifically agreed in writing to the contrary, this security agreement and any loan it secures cannot be assumed by any person who buys the collateral described above from me, and I understand and agree that if I attempt to transfer any interest in the collateral (including, but not limited to, possession) I will be in default on all secured obligations.

This collateral will be used for: PERSONAL purposes.

☐ If checked, this is a purchase money loan. You may include the name of the seller on the check or draft for this loan.

Signatures

Any person who signs within this enclosure does so to give you a security interest in the property described above, but assumes no personal obligation to pay this note.

Name

X Date

Signature for Lender - where necessary for filing this security agreement.

I agree to the terms of the note and security agreement above (including those on the other side of this form) and acknowledge receipt of at least one copy on today's date.

COSIGNERS - SEE NOTICE ON REVERSE SIDE BEFORE SIGNING

Signature

Signature X Richard Thomas Montoya

RICHARD THOMAS MONTOYA

VARIABLE INTEREST NOTE, DISCLOSURE AND SECURITY AGREEMENT.

FLR-12 92 WED 2:42 P.02

9403097155 6

TENSION AND REVISION AGREEMENT

Western Bank, Las Cruces, New Mexico

Note No. 77707869 January 26, 19 90

This refers to the loan evidenced by promissory note dated May 26, 1988, and due November 22, 19 88, for the face amount of Forty Five Thousand Thirty Five and 00/100---------- Dollars ($ 45,035.00) executed by Richard Thomas Montoya

present principal balance Forty Five Thousand and 00/100---------- Dollars ($ 45,000.00) upon which interest is paid to January 26, 1990. Said note is secured by the following, hereinafter referred to as the encumbrance:

and a Mortgage executed by the Makers hereof in favor of Western Bank, Las Cruces, New Mexico, on May 26, 1988, which mortgage is recorded in Book 432, Page (s) 885-889, of the Mortgage Records of Dona Ana County, New Mexico.

Request is hereby made that you modify the terms of said note and that you accept payment thereof at the time, or times, and in the manner following:

The above described note shall be revised in that additional money of $50.00 shall be issued for a documentation fee bringing the new principal balance to $45,050.00, bearing interest at the rate of 13.486%** per annum, payable in 59 equal monthly payments in the amount of $705.99 beginning February 26, 1990, and a final or 60th payment of unpaid principal and accrued interest in the amount of $28,784.17 which shall become due on January 26, 1995.

**The interest rate shall float with Western Bank Las Cruces, New Mexico, Base Rate, PLUS .50% point, to be adjusted daily, but not less than 10.0%

POST-MATURITY INTEREST: interest will accrue at the rate of 20.0% per year on the balance of this note not paid at maturity, including maturity by acceleration.

LATE CHARGE: I will pay a late charge on any payment made more than 10 days after it is due equal to 5% of the amount of the payment.

92 FEB 12 PM 5:03
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

In consideration of such modification

your forbearance to enforce payment except as hereinabove provided, the indebtedness evidenced by said note is hereby acknowledged and admitted, and the undersigned, jointly, severally, and unconditionally promise and agree to pay the same with the interest thereon within the time and in the manner provided, together with attorneys' fees, costs of collection, and any other sums secured by the encumbrance.

Any and all securities for said principal obligation held by you, including the encumbrance, may be enforced by you concurrently or independently in such order as you may determine, and with reference to any such security in addition to the encumbrance, you may, without consent of or notice to any of the undersigned, exchange, substitute or release such security without affecting the liability of the undersigned, or any of them, and you may release any one or more parties hereto or to the above obligation, or permit the liability on said party or parties to terminate without affecting the liability of any other party or parties liable thereon.

This agreement is a revision and extension only, and not an extinguishment, renewal or novation of said note and/or the encumbrance referenced above; and except as herein provided, all of the terms and conditions of said note and said encumbrance shall remain in full force and effect.

Dated at Las Cruces, New Mexico this 26th day of January, 1990.

Richard Thomas Montoya

Richard Thomas Montoya

THE FOREGOING AGREEMENT IF ACCEPTED THIS 26th DAY OF January, 1990.

By: Sharron Stuart

Sharron Stuart, Senior Vice President
Western Bank, Las Cruces, New Mexico

9403097155 7

1 1-12-90 WED 2:34 2

F.03

L3-928-1.911 1:01

CEBALLOS
DONA ANA COUNTY CLERK
MAIN ROOM 101
LAS CRUCES, NEW MEXICO 88005

ACKNOWLEDGMENT FOR INDIVIDUALS

STATE OF NEW MEXICO)
) ss
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this 26th day of January February, 1990, by Richard Thomas Montoya

My commission expires:
January 31, 1993

Notary Public

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO)
) ss
COUNTY OF DONA ANA)

The foregoing in[illegible]ment was acknowledged before me [illegible]s 26th day of January, 1990, by Sharron Stuart, Senior Vice President of Western Bank, Las Cruces, a New Mexico corporation, on behalf of said corporation.

My commission expires:

5/26/91

Dina Schlotterbeck
Notary Public

State of N. Mex., Co. of Doña Ana, ss
Reception No. 9290 I Hereby certify that this instrument was filed for record and duly recorded on

FEB 9 1990

at 9:04 o'clock A.M. mtg
Book 465 Page 896-897
Records of said County, Doña Ana, New Mexico
County Clerk
By [illegible] Deputy

897

9403097155 8

CEBALLOS
DONA ANA COUNTY CLERK
LAS CRUCES, NEW MEXICO

ACKNOWLEDGMENT FOR INDIVIDUALS

STATE OF NEW MEXICO)
) ss
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this 26th day of January February, 1990, by Richard Thomas Montoya

My commission expires:
January 31, 1993

Notary Public

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO)
) ss
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this 26th day of January, 1990, by Sharron Stuart, Senior Vice President of Western Bank, Las Cruces, a New Mexico corporation, on behalf of said corporation.

My commission expires:
5/26/91

Notary Public

9403097159

State of N. Mex., Co. of Dona Ana: ss
Recorded on No. 2330 I Hereby certify that this instrument was filed for record and duly recorded on:

FEB 9 1990

No. 04 Book A mtg
Book 465 Page 896-897
Records of said County, Auditor, Clerk
County Clerk
By Deputy

897

BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	
RICHARD THOMAS BARTUNA 505 WEST PARKER LAS CRUCES, NM 88005	WESTERN BANK, LAS CRUCES, N.M. 201 NORTH CHURCH LAS CRUCES, NM 88004	Loan Number 7226786-9 Date MAY 26, 1988 Maturity Date NOVEMBER 22, 1988 Loan Amount $ 45,035.00 Renewal Of 78003491 & NEW MONEY

Note: I promise to pay to you, or your order, at your address above, the principal sum of: FORTY FIVE THOUSAND THIRTY FIVE AND NO/100 Dollars $ 45,035.00 plus interest from DATE at the annual rate of 12.500 % per year, which rate is subject to change as set above to be the following base rate: WESTERN BANK LAS CRUCES, NEW MEXICO, BASE RATE, BUT NOT LESS THAN 10.00

The interest rate in effect on this note may change (as often as) DAILY (assuming there is a change in the base rate) and an increase in the interest rate will cause an increase in THE AMOUNT DUE AT MATURITY ☐ I also agree to pay a loan charge of $ ____

I will pay the amount as follows: (a) ☐ on demand (b) ☒ on demand, but if no demand is made, on NOVEMBER 22, 1988 (c) ☐ on ____

If (a), (b), or (c) is checked above, I will pay accrued interest ____ and on the maturity date

(d) ☐ ____

☐ If checked, this loan is made under the New Mexico Bank Installment Loan Act of 1958.

☒ If checked, I also agree to pay a minimum interest charge of $ 25.00 if I pay this loan off before you have earned that much in interest.

LATE CHARGE: ☐ If checked, I will pay a late charge on any payment made more than 10 days after it is due equal to 5% of the amount of the payment, or $10.00, whichever is less.

POST-MATURITY INTEREST. Interest will accrue after maturity on the unpaid balance of this note on the same basis as interest accrues prior to maturity, unless a specific post-maturity interest rate is agreed to in the next sentence.

☒ If checked, interest will accrue at the rate of 21.00 % per year on the balance of this note not paid at maturity, including maturity by acceleration.

THE PURPOSE OF THIS LOAN IS: BUSINESS LOANS TO ADDITIONAL MONEY FOR CAMPAIGN EXPENSES

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost me.	AMOUNT FINANCED The amount of credit provided to me or on my behalf.	TOTAL OF PAYMENTS The amount I will have paid when I have made all scheduled payments.
12.667 %	$ 2,811.13	$ 45,000.00	$ 47,811.13

I have the right to receive at this time an itemization of the Amount Financed. RMA YES - I want an itemization. NO - I do not want an itemization.

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
1	47,811.13	NOVEMBER 22, 1988
	$	
	$	
	$	

"e" means an estimate

$ 13.00 Filing Fees

$ N/A Non-filing Insurance

☒ Demand: ☒ This note has a demand feature. ☐ This note is payable on demand and all disclosures are based on an assumed maturity of one year.

Variable Rate: The annual percentage rate may increase during the term of this transaction if: WESTERN BANK LAS CRUCES, NEW MEXICO, BASE RATE, BUT NOT LESS THAN 10.00 INCREASES

Any increase will take the form of AN INCREASE IN THE AMOUNT DUE AT MATURITY

If the rate increases by 1.000 % IMMEDIATELY the AMOUNT DUE AT MATURITY will increase to $48,633.22

The rate may not increase more often than once a DAY, and may not increase more than N/A % each N/A. The rate will not go above N/A %.

Security: I am giving a security interest in: ☒ (Brief description of other property) REAL ESTATE

☐ the goods or property being purchased.

☒ collateral securing other loans with you shall also secure this loan.

☒ my deposit accounts and other rights to the payment of money from you.

Late Charge: ☐ If a payment is late (more than 10 days after due) I will be charged 5% of the amount of the payment, or $10.00, whichever is less.

Prepayment: If I pay off this note early, I ☒ may ☐ will not have to pay a penalty, and I ☐ may ☒ will not be entitled to a refund of part of the finance charge.

☒ Assumption: Someone buying my home ☐ may, subject to conditions, be allowed to ☒ cannot assume the remainder of the mortgage on the original terms.

I can see my contract documents for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

Insurance: Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Type	Premium	Term	Signatures (or Initials)
Credit Life			I want credit life insurance X ____ Name of Insured
Credit Disability			I want credit disability insurance X ____ Name of Insured
Joint Credit Life			I want joint credit life insurance X ____ X ____

I do not want: RMA Credit Life Ins.; ____ Credit Disability Ins.; ____ Joint Credit Life Ins.

Property Insurance: I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from or through you I will pay $ ____ for ____ of coverage.

Itemization of Amount Financed

Amount given to me directly	$ 38,907.62	(a)
Amount paid on my account	$ 6,092.38	(b)
Amounts paid to others on my behalf		
To Property Insurance Company	$ ____	(c)
To Credit Life Insurance Company	$ ____	(d)
To Disability Insurance Company	$ ____	(e)
To Public Officials	$ ____	(f)
DOCUMENTATION FEE	$ 35.00	(g)
Prepaid Finance Charge	$ 35.00	(h)
AMOUNT FINANCED (a through g - h)	$ 45,000.00	(i)
Finance Charge (include prepaid)	$ 2,811.13	(j)
Total of Payments (i + j)	$ 47,811.13	(k)

Security - To secure the payment of the note total (defined on the reverse side):

(1) I acknowledge and agree that you have the right to set-off this note against any obligation you have (now or hereafter) to pay money to me.

(2) You may collect the proceeds (or rebates of unearned premiums) on any insurance policy insuring me (where you are named as loss payee) and on any policy insuring the property securing this note. You will apply this toward what I owe you.

(3) ☐ If checked, this note is not further secured by any contemporaneous agreement (other than (1) and (7) of this section).

(4) ☒ If checked, this note is secured by a separate MORTGAGE dated MAY 25, 1988

(5) ☐ Security Agreement - If checked, I give you a security interest in the property described below. The rights I am giving you in this property, and the obligations this agreement secures are defined on the reverse side of this form.

9 4 0 3 0 9 7 1 5 6 0

Assumptions - Unless specifically agreed in writing to the contrary, this security agreement and any loan it secures cannot be assumed by any person who buys the collateral described above from me, and I understand and agree that if I attempt to transfer any interest in this collateral (including, but not limited to, possession) I will be in default on all secured obligations.

This collateral will be used for PERSONAL purposes.

☐ If checked, this is a purchase money loan. You may include the name of the seller on the check or draft for the loan.

Signatures

Any person who signs within this enclosure does so to give you a security interest in the property described above, but assumes no personal obligation to pay this note.

Name

X Date

Signature for Lender - where necessary for filing this security agreement.

X

VARIABLE INTEREST NOTE, DISCLOSURE, AND SECURITY AGREEMENT.

I agree to the terms of the note and security agreement above (including those on the other side of this form) and acknowledge receipt of at least one copy on today's date.

COSIGNERS - SEE NOTICE ON REVERSE SIDE BEFORE SIGNING

Signature

Signature X Richard Thomas Montoya

RICHARD THOMAS MONTOYA

Signature

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RECEIVED
F.E.C.
SECRETARIAT
92 JUL 7 AM 9 08

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer	)	MUR 3444
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On August 14, 1991, the Reports Analysis Division referred a matter concerning the Rick Montoya for United States Senate Committee (the "Committee") and Luther G. Branham, as treasurer, to the Office of the General Counsel. As discussed, the Commission originally made a finding of reason to believe that the Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer, had violated the Act. However, Mr. Montoya will be considered by this Office to be "acting as treasurer."[1] Additionally, Commission records do not indicate

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1. To date, Luther Branham's name appears on Commission records as the Committee's treasurer. However, on December 12, 1991, Rick Montoya responded on behalf of the Committee. Mr. Montoya notified this Office that Branham resigned as treasurer in 1988. A review of Commission records since 1988 revealed a letter dated July 29, 1989 from Susan L. Van Buskirk, assistant treasurer. The letter informed the Commission that Van Buskirk was resigning as assistant treasurer and that all correspondence to the Committee should be mailed to Rick Montoya. Correspondence were directed to Montoya although the Committee never provided notice that Branham had resigned as treasurer. The letter, therefore, created the impression that Montoya had become de facto treasurer.

When determining whether to name an individual as a respondent in an enforcement matter as the committee's "acting treasurer," several factors may be considered. These factors include: (1) whether the treasurer of record has ceased to perform his duties as treasurer; (2) whether the individual acting as treasurer maintained the committee's books and records; (3) whether the individual acting as treasurer accepted contributions on behalf of the committee; (4) whether the individual acting as treasurer made expenditures on behalf of

that an amended Statement of Organization was filed to reflect the treasurer change. As discussed below, this Office therefore has recommended that the Commission find an additional violation based on the failure to file an amended Statement of Organization. Furthermore, the basis of the referral was the failure of the Committee to file a required supporting Schedule B for $50,430.60 in bank loan repayments, and it appeared that the Committee failed to file required supporting schedules for a $43,003.71 bank loan. Based on the foregoing, on October 28, 1991, the Commission found reason to believe that the Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D). On December 13, 1991, the Office of the General Counsel received a response from Rick Montoya on behalf of the Committee. (Attachment 1). On December 30, 1991, this Office received a written request for pre-probable cause conciliation from Montoya. (Attachment 2).

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(Footnote 1 continued from previous page)
the committee; (5) whether the individual acting as treasurer made deposits into and disbursements from the committee's accounts; and (6) whether the individual acting as treasurer filed the committee's financial reports. See FEC v. Committee to Elect Bennie Batts, No. 87-5789 (S.D.N.Y. Feb. 14, 1989).

The Committee's most recent reports have been signed by Montoya as treasurer. It also appears that Montoya has maintained the committee's books, accepted contributions, and made disbursements on behalf of the committee. In addition, in telephone conversations with this Office, Montoya represented that he has been acting as the Committee's treasurer since Branham's resignation. Finally, Montoya appears to have control over Committee documents because he has provided documents in response to the Commission's reason to believe finding. Accordingly, this Office will consider Montoya to be "acting as treasurer" in this matter.

II. ANALYSIS

This report addresses the pre-probable cause conciliation request. Furthermore, it addresses additional violations discovered by this Office after the Committee submitted its response to the Commission's reason to believe finding.

A. Response to the Original Reporting Violations

In his response, Montoya denied that he failed to file required schedules. He stated that, between 1988 and 1990, he received only one bank loan. The loan was obtained from Western Bank on May 26, 1988, which the Committee did report. (Attachment 3). The loan totaled $45,000. It was collateralized and was disbursed to the Committee in four installments during May and June of 1988. (Attachment 1).[2] The loan was due on demand or by November 22, 1988. It bore an interest rate of 12.5%. The loan instrument also provided that if the balance of the loan was not paid at maturity, then the interest rate would increase to 20%.

Each installment was reported on Schedule C of the Committee's 1988 July Quarterly Report, as amended. Rick Montoya was reported as the source of the loan. On the

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2. The four installments were as follows:

Installment #	Date Incurred	Date Due	Amount
1	5-25-88	11-22-88	$35,000.00
2	6-8-88	11-22-88	$ 8,193.91
3	6-9-88	11-22-88	$ 1,355.70
4	6-10-88	11-22-88	$ 450.39
			$45,000.00

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report, under "endorsers or guarantors," the following note appears: "Note: Loan proceeds borrowed from lending institution." Western Bank is not mentioned as the source of the loan. Also, it does not appear that the Committee filed Schedule A to itemize the actual source of the loan at that time.

Although the loan was due on demand or November 22, 1988, Montoya admitted the following in his response: "From the period of May, 1988, through January 25, 1990, I paid interest only on the loan." (Attachment 1). On January 26, 1990, the loan was extended. (Attachment 4).[3] The loan instrument provided for monthly payments of principal and interest. The new interest rate was 13.486%.[4] Also, the due date of the loan was extended to January 26, 1995. The rescheduled loan was reported on the 1990 Mid-Year Report. The source of the loan was no longer reported to be Montoya but was reported as Western Bank.

The response also stated that a $43,003.71 figure, which was reported on the 1990 Year End Report and at first appeared to be a different loan, was not a new loan. Instead, the $43,003.71 merely reflected the remaining principal of the $45,000 loan.

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3. In a recent telephone conversation with this Office, Montoya stated that the 1988 and 1990 loan documents evidence the only agreements, either written or oral, made with Western Bank.

4. The Committee reported an interest rate of 13.996%.

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Notwithstanding Montoya's explanation that there was only one loan from Western Bank, grounds exist to substantiate the original violations. Confusion resulted due to the Committee's incomplete and inaccurate reporting of that loan. As mentioned, Montoya argued that Schedule A was not required in 1990 because the Committee did not obtain any new loans. However, even if the Committee was not required to file Schedule A in 1990, a review of Commission records revealed that the Committee never filed the required Schedule A to itemize the original loan in 1988 as required by 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R. § 104.3(a)(4)(iv). In addition, the Committee did not file an accurate Schedule B for repayments on that loan, whether it was obtained in 1988 or 1990. For example, on Schedule C of its 1990 Mid-Year Report, the Committee reported cumulative payments of $5,430.60. However, Schedule B of the same report reflects cumulative payments of only $4,235.90. Because of the inaccuracies in the reports, the total amount of loan repayments is not clear. In addition, the failure to file Schedule A and failure to file an accurate Schedule B resulted in confusion on the Committee's Year End Report regarding the outstanding amount of the loan. Thus, the $43,003.71 amount appeared to be a new loan.[5]

5. The confusion might have been avoided if the Committee had responded to inquiries from the Reports Analysis Division.

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B. Additional Violations

1. 2 U.S.C. § 433(c)

As discussed, the Commission originally had found reason to believe that the Committee and its treasurer, Luther Branham, had violated the Act. In its December 12, 1991 response, the Committee stated that Luther Branham resigned as treasurer in 1988. However, the Committee did not file an amended Statement of Organization to notify the Commission of this fact. The Commission was not notified of the resignation of Mr. Branham until the Committee submitted its response to this Office.

Although the Commission now has been informed of the resignation of the Committee's treasurer, the Committee nevertheless was required to file a report within 10 days of the change in information previously submitted on its Statement of Organization. 2 U.S.C. § 433(c). Instead, it allowed over three years to elapse before notifying the Commission of the change in treasurer. Based on the foregoing, the Office of the General Counsel recommends that the Commission find reason to believe that the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, violated 2 U.S.C. § 433(c).

2. 2 U.S.C. § 441b and 11 C.F.R. § 100.7(b)(11)

Pursuant to 2 U.S.C. § 441b(a) any national or state bank is prohibited from making contributions or expenditures in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office. In

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addition, any candidate, political committee, or other person is prohibited from knowingly accepting or receiving any contribution prohibited by this section.

The terms "contribution" or "expenditure" include, inter alia, loans, advances, deposits of money, or anything of value made to a campaign committee in connection with any election for Federal office. 2 U.S.C. § 441(b)(2). Excluded from the definition of "contribution," however, are loans by certain banks made "in the ordinary course of business." 2 U.S.C. § 441b(b)(2).

To be considered in the "ordinary course of business," Section 431(8)(B)(vii) provides that such loan:

> (I) shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors;
>
> (II) shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and
>
> (III) shall bear the usual and customary interest rate of the lending institution.

Similarly, Commission Regulations at 11 C.F.R. § 100.7(b)(11) provide that a loan is deemed to have been made in the ordinary course of business if it:

1) bears the usual and customary interest rate of the lending institution for the category of the loan involved;

2) is made on a basis which assures repayment;

3) is evidenced by a written instrument; and

4) is subject to a due date or amortization schedule.

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The Commission considered similar issues in MUR 2408, Nancy Dick for U.S. Senate and Metro National Bank. In that MUR, the Commission found reason to believe that Metro National Bank and the Committee had violated 2 U.S.C. § 441b(a). Metro National Bank had extended a loan to the Committee to cover an overdraft on one of the Committee's checking accounts. The loan was extended two times, and each time the Committee only paid interest on the loan. When the loan was extended, the Committee had cash on hand of $2,049.84 and debts outstanding of $276,537.42, and the collateralization may have been inadequate. Therefore, there was a question as to whether the loan was made and extended on a basis which assured repayment. General Counsel's Report dated April 16, 1987 at 4-5.

As discussed, Western Bank, insured by the Federal Deposit Insurance Corporation, made a $45,000 loan to Rick Montoya on May 26, 1988. The loan was due on demand or by November 22, 1988. The loan initially appeared to have been made in the ordinary course of business because the written agreement contained terms which assured repayment; the loan was subject to a due date; and it appeared to bear the usual and customary interest rate.

However, based on the following, questions exist as to whether the loan was obtained or extended in the ordinary course of business. First, Montoya admitted that he paid only interest on the loan between May 26, 1988 and January 26, 1990. After the November 22, 1988 maturity date, it does not appear that Western Bank attempted to secure repayment of the loan because

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Montoya continued only to pay interest. Additionally, Montoya stated during a recent telephone conversation that he paid 12% interest for the term of the loan. This apparently includes the period beginning after the loan was due, November 22, 1988, and ending when the loan was extended, January 26, 1990. However, a term of the original loan was that, if the loan was not repaid at maturity, then the interest charged would be 20%. Finally, similar to Nancy Dick for U.S. Senate, this Committee had high debts and low cash on hand. When the loan was obtained in 1988, the Committee had cash on hand of $4,105.41 and debts outstanding of $132,830.63. When the loan was extended in 1990, the Committee, for the period beginning January 1 and ending June 30, had cash on hand of $585 and debts outstanding of $128,170.

Accordingly, the Office of the General Counsel believes this loan may not have been made in the ordinary course of business. Therefore, this Office believes there may have been a violation of 2 U.S.C. § 441b(a) by Western Bank for the servicing and extension of the loan and the Rick Montoya for U.S. Senate Committee and Rick Montoya, acting as treasurer for the acceptance of the loan or the de facto loan terms.

C. Request for Pre-Probable Cause Conciliation

Based on the foregoing, this Office also recommends that the Commission reject the Committee's request for pre-probable cause conciliation at this time.

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D. **Additional Discovery**

Finally, attached for the Commission's approval are proposed interrogatories and document requests to be issued by subpoena and answered by Western Bank. (Attachment 6). This Office believes these questions are necessary in order to determine whether the loan at issue was obtained or extended in the ordinary course of business. Because of the nature of the violations and the parties involved, this Office believes that discovery should take the form of a subpoena rather than informal, written questions.

III. **RECOMMENDATIONS**

1. Find reason to believe that the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, violated 2 U.S.C. §§ 433(c) and 441b(a).

2. Find reason to believe that Western Bank violated 2 U.S.C. § 441b(a).

3. Decline, at this time, to enter into conciliation with the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, prior to a finding of probable cause to believe.

4. Approve the attached Subpoena to Produce Documents and Order to Submit Written Answers.

5. Approve the attached Factual and Legal Analyses.

6. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date 7/17/92

BY: Lois G. Lerner
Associate General Counsel

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Attachments
1. Response of the Committee
2. Request for pre-probable cause conciliation
3. Original Loan Instrument (1988)
4. Rescheduled Loan Instrument (1990)
5. Factual and Legal Analyses
6. Subpoena and Order to Western Bank

Staff assigned: Richard Denholm

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DONNA ROACH DR
COMMISSION SECRETARY

DATE: JULY 22, 1992

SUBJECT: MUR 3444 - GENERAL COUNSEL'S REPORT DATED JULY 17, 1992.

The above-captioned document was circulated to the Commission on FRIDAY, JULY 17, 1992 11:00 A.M.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	
Commissioner Elliott	XXX
Commissioner McDonald	
Commissioner McGarry	
Commissioner Potter	
Commissioner Thomas	

This matter will be placed on the meeting agenda for TUESDAY, JULY 28, 1992.

Please notify us who will represent your Division before the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3444
Rick Montoya for United States	)	
Senate Committee and Rick Montoya,	)	
acting as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on July 28, 1992, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 3444:

1. Find reason to believe that the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, violated 2 U.S.C. §§ 433(c) and 441b(a).

2. Find reason to believe that Western Bank violated 2 U.S.C. § 441b(a).

3. Decline, at this time, to enter into conciliation with the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, prior to a finding of probable cause to believe.

4. Approve the Subpoena to Produce Documents and Order to Submit Written Answers as recommended in the General Counsel's report dated July 17, 1992.

(continued)

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5. Approve the Factual and Legal Analyses recommended in the General Counsel's report dated July 17, 1992.

6. Approve the appropriate letters as recommended in the General Counsel's report dated July 17, 1992.

Commissioners McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioners Aikens and Elliott dissented.

Attest:

7-29-92
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 12, 1992

Mr. Bill Robertson, Chairman
Western Bank
201 N. Church Street
Box 457
Las Cruces, New Mexico 88004

RE: MUR 3444

Dear Mr. Robertson:

On July 28, 1992, the Federal Election Commission found that there is reason to believe Western Bank violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Additionally, enclosed is a Subpoena to Produce Documents and Order to Submit Written Answers to Questions, directed to Western Bank. The Right to Financial Privacy Act of 1978 permits the customer whose records are sought ten days from the date of receipt of the Subpoena and Order to move to quash them. Upon the expiration of this period, the Commission will notify you that it has complied with the Right to Financial Privacy Act. In the absence of judicial intervention, it is then your obligation to comply with the terms of the Subpoena and Order. See 12 U.S.C. §§ 3405 and 3411.

Under the Act, you also have an opportunity to demonstrate that no action should be taken against Western Bank. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 30 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against Western Bank, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or

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recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be shown. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Subpoena and Order

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Western Bank **MUR:** 3444

Pursuant to 2 U.S.C. § 441b(a) any national or state bank is prohibited from making contributions or expenditures in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office.

The terms "contribution" or "expenditure" include, inter alia, loans, advances, deposits of money, or anything of value made to a campaign committee in connection with any election for Federal office. 2 U.S.C. § 441(b)(2). Excluded from the definition of "contribution," however, are loans by certain banks made "in the ordinary course of business." 2 U.S.C. § 441b(b)(2).

To be considered in the "ordinary course of business," Section 431(8)(B)(vii) provides that such loan:

(I) shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors;

(II) shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and

(III) shall bear the usual and customary interest rate of the lending institution.

Similarly, Commission Regulations at 11 C.F.R. § 100.7(b)(11) provide that a loan is deemed to have been made in the ordinary course of business if it:

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1) bears the usual and customary interest rate of the lending institution for the category of the loan involved;

2) is made on a basis which assures repayment;

3) is evidenced by a written instrument;

4) is subject to a due date or amortization schedule.

Mr. Rick Montoya was a candidate for the United States Senate for New Mexico in the 1988 primary election. According to the Statement of Organization filed with the Commission on July 31, 1987, Rick Montoya for United States Senate Committee is the authorized principal campaign committee for Rick Montoya, and Luther G. Branham is its treasurer.

Western Bank, a member of the Federal Deposit Insurance Corporation, made a $45,000, secured loan to Rick Montoya on May 26, 1988. The loan was due on demand or by November 22, 1988. The loan was paid in four installments. The first installment was paid on May 25, 1988 in the amount of $35,000. The second installment was paid on June 8, 1988 in the amount of $8,193.91. The third installment was paid on June 9, 1988 in the amount of $1,355.70. The fourth installment was paid on June 10, 1988 in the amount of $450.39. The interest rate on the loan was 12.5%. In addition, the agreement provided that if the loan was not paid at maturity, then an interest rate of 20% would thereafter be charged.

On January 26, 1990, pursuant to an "Extension and Revision Agreement," the original loan was rescheduled. The due date of the loan was extended to January 26, 1995. Also, the interest rate became 13.486%.

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The loan initially may have been made in the ordinary course of business because the written agreement appeared to contain terms which assured repayment; the loan was subject to a due date; and it appeared to bear the usual and customary interest rate.

However, based on the following, questions exist as to whether the loan was made or extended in the ordinary course of business. First, only interest was paid on the loan between May 26, 1988 and January 26, 1990. Second, after the November 22, 1988 maturity date, it does not appear that Western Bank attempted to secure repayment of the loan because Montoya continued only to pay interest. Additionally, it is unclear whether Western Bank charged Montoya 20% interest on the loan after it matured as the agreement required. Finally, when the loan was secured in 1988, the Committee had cash on hand of $4,105.41 and debts outstanding of $132,830.63. When the loan was extended in 1990, the Committee, for the period beginning January 1 and ending June 30, had cash on hand of $585 and debts outstanding of $128,170.

Accordingly, there is reason to believe that Western Bank violated 2 U.S.C. § 441b(a).

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3444
)
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Bill Robertson, Chairman
Western Bank
201 N. Church Street
Box 457
Las Cruces, New Mexico 88004

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set her hand in Washington, D.C. on this 11th day of August, 1992.

Joan D. Aikens
Joan D. Aikens
Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

Attachments
Interrogatories
Request for Production of Documents

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ATTACHMENT TO SUBPOENA AND ORDER TO:

Bill Robertson, Chairman
Western Bank
201 N. Church Street
Box 457
Las Cruces, New Mexico 88004

The attached Subpoena to Produce Documents and Order to Submit Written Answers to Questions has been issued by the Federal Election Commission under the authority of 2 U.S.C. § 437d(a)(1) and (3) as part of a lawful investigation being conducted under the authority of 2 U.S.C. § 437g(a)(2). You are required to submit written answers to the questions and the requested documents within 15 days of the Commission's Certification of Compliance with the Right to Financial Privacy Act.

You are hereby advised of the provisions of 2 U.S.C. § 437g(a)(12) which prohibits anyone from making public any Commission investigation and provides for a fine up to $5,000 for a violation of that provision.

Please set forth answers in the spaces provided below each question (attaching supplemental pages as required) and return this original with an original affidavit signed by the appropriate bank official attesting to the truth of the answers. The affidavit must be sworn to and notarized.

Considering the possible application of the Right to Financial Privacy Act of 1978, please do not provide any information not requested by the questions.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory and request for production of documents propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the response.

If you cannot answer the following interrogatories and request for production of documents in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by the following requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from May 1, 1988 to December 31, 1990.

The following interrogatories and request for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES

1. Identify all the directors and officers of Western Bank during 1988, 1989, and 1990. Include in your answer the responsibilities of each officer and director, including those directors who are also officers of Western Bank.

   Response:

2. Describe in detail the role of each individual identified above in the granting and renewal of loans.

   Response:

3. Regarding the May 26, 1988 loan ("loan") and January 26, 1990 Extension and Revision Agreement ("ERA") between Rick Montoya and Western Bank or Rick Montoya for U.S. Senate Committee and Western Bank described in the Factual and Legal Analysis:

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a. Describe in detail the process by which the loan and the ERA were obtained by the Committee or Rick Montoya.

Response:

b. Describe in detail the reasons why the loan and ERA were obtained from Western Bank and the Committee's efforts to obtain a loan or ERA from other sources.

Response:

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c. List all meetings, negotiations and conversations held between Western Bank and Rick Montoya or officials of Rick Montoya for U.S. Senate Committee to discuss an extension of credit to the Committee or Rick Montoya from Western Bank, the loan agreement or ERA, the repayment of the loan or ERA, and the renewal of the loan. Include in your answer the date, location, and attendees of each meeting, negotiation, and conversation. Also include in your answer a detailed description of the purpose of each meeting, negotiation, and conversation, and all decisions reached as a result of the meeting, negotiation, and conversation. Identify all documents which refer, relate, or pertain to each such meeting, negotiation, and conversation.

Response:

d. Describe in detail what factors were considered by Western Bank in the granting of the loan and the renewing of the loan in the ERA.

Response:

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e. Identify each Western Bank employee, officer, director, or agent involved in the consideration, granting, monitoring, and renewal of the loan or ERA.

Response:

f. List by date and amount all payments to principal or interest, separately, made to Western Bank in connection with the loan and ERA.

Response:

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g. Describe in detail all efforts made by Western Bank to obtain the money owed to it on the loan or ERA. If no efforts were made to collect the outstanding loan balance, explain why.

Response:

h. State whether the loan or ERA were reviewed by an internal audit or by auditors not employed by Western Bank. Identify all documents which refer, relate, or pertain to review of the loan or ERA.

Response:

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i. State whether Western Bank deviated from the terms of the May 26, 1988 loan agreement. If yes, explain why.

Response:

4. Describe the requirements generally imposed by your bank for making unsecured and partially secured loans. Include in your response (1) Western Bank's policy regarding the maximum amount that may be loaned to a borrower without requiring security; (2) Western Bank's policy regarding the minimum amount of security required against the amount borrowed; and (3) any other criteria used by Western Bank in considering the credit worthiness of a borrower.

Response:

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5. Identify any person (other than counsel) who was consulted or otherwise assisted in the preparation of answers to these questions.

Response:

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REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce each and every document concerning, relating, or pertaining to the loan or ERA including, but not limited to:

   a. All documents identified in response to the above interrogatories.

   b. Documents which set out, refer to, or in any way pertain to the terms of the loan agreement or ERA and their collateral or security.

   c. Documents submitted by Rick Montoya or Rick Montoya for U.S. Senate Committee or any person acting on its behalf to Western Bank.

   d. Documents which refer or pertain to meetings, or preparation for meetings, including but not limited to those held by a loan committee or Board of Directors, in which the loan or ERA were discussed.

2. Produce copies of loan manuals, procedures, instructions, and all other guidance used by loan officers, directors, or other bank agents in considering whether to grant a loan, extend a loan, or to grant any other extension of credit.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 12, 1992

Mr. Rick Montoya, Acting as Treasurer
Rick Montoya for United States Senate
5119A Leesburg Pike, Suite 117
Falls Church, Va. 22041

RE: MUR 3444
Rick Montoya for United States Senate and Rick Montoya, acting as treasurer

Dear Mr. Montoya:

On July 28, 1992, the Federal Election Commission found that there is reason to believe Rick Montoya for United States Senate ("Committee") and you, acting as treasurer, violated 2 U.S.C. §§ 433(c) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Additionally, in a letter dated November 8, 1991, you were notified that the Federal Election Commission found reason to believe that Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D). On December 30, 1991, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe. The Commission has considered your request and determined, because of the need to complete the investigation, to decline at this time to enter into conciliation prior to a finding of probable cause to believe. At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you, acting as treasurer, regarding the Commission's most recent reason to believe finding. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

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In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, acting as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be shown.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer **MUR:** 3444

The Federal Election Campaign Act of 1971, as amended, (the "Act") requires the principal committee of each candidate for federal office to report within 10 days a change in information previously submitted on its Statement of Organization. 2 U.S.C. § 433(c).

Pursuant to 2 U.S.C. § 441b(a) any national or state bank is prohibited from making contributions or expenditures in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office. In addition, any candidate, political committee, or other person is prohibited from knowingly accepting or receiving any contribution prohibited by this section.

The terms "contribution" or "expenditure" include, inter alia, loans, advances, deposits of money, or anything of value made to a campaign committee in connection with any election for Federal office. 2 U.S.C. § 441(b)(2). Excluded from the definition of "contribution," however, are loans by certain banks made "in the ordinary course of business." 2 U.S.C. § 441b(b)(2).

To be considered in the "ordinary course of business," Section 431(8)(B)(vii) provides that such loan:

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(I) shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors;

(II) shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and

(III) shall bear the usual and customary interest rate of the lending institution.

Similarly, Commission Regulations at 11 C.F.R. § 100.7(b)(11) provide that a loan is deemed to have been made in the ordinary course of business if it:

1) bears the usual and customary interest rate of the lending institution for the category of the loan involved;

2) is made on a basis which assures repayment;

3) is evidenced by a written instrument; and

4) is subject to a due date or amortization schedule.

Mr. Rick Montoya was a candidate for the United States Senate for New Mexico in the 1988 primary election. According to the Statement of Organization filed with the Commission on July 31, 1987, Rick Montoya for United States Senate Committee is the authorized principal campaign committee for Rick Montoya, and Luther G. Branham was its treasurer.

In response to the Commission's finding that there was reason to believe that the Committee had violated 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D), Mr. Montoya admitted that Luther Branham had resigned as treasurer in 1988. However, the Committee never filed an amendment to its Statement of

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Organization to reflect this change. The Commission was not notified of the change in treasurers until the response was filed on December 13, 1991.

Because of the Committee's failure to file an amended Statement of Organization within 10 days of the resignation of Luther Branham, as treasurer, there is reason to believe that the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer,[1] violated 2 U.S.C. §§ 433(c).

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1. To date, Luther Branham's name appears on Commission records as the Committee's treasurer. A review of Commission records since 1988 revealed a letter dated July 29, 1989 from Susan L. Van Buskirk, assistant treasurer. In the letter, she informed the Commission that she was resigning as assistant treasurer and that all correspondence to the Committee should be mailed to Rick Montoya. Van Buskirk's letter did not mention the resignation of Branham as treasurer.

When determining whether to name an individual as a respondent in an enforcement matter as the committee's "acting treasurer," several factors may be considered. These factors include: (1) whether the treasurer of record has ceased to perform his duties as treasurer; (2) whether the individual acting as treasurer maintained the committee's books and records; (3) whether the individual acting as treasurer accepted contributions on behalf of the committee; (4) whether the individual acting as treasurer made expenditures on behalf of the committee; (5) whether the individual acting as treasurer made deposits into and disbursements from the committee's accounts; and (6) whether the individual acting as treasurer filed the committee's financial reports. See FEC v. Committee to Elect Bennie Batts, No. 87-5789 (S.D.N.Y. Feb. 14, 1989).

The Committee's most recent reports have been signed by Montoya as treasurer. It also appears that Montoya has maintained the committee's books, accepted contributions, and made disbursements on behalf of the committee. In addition, in telephone conversations with this Office, Montoya represented that he has been acting as the Committee's treasurer since Branham's resignation. Finally, Montoya appears to have control over Committee documents because he has provided documents in response to the Commission's reason to believe finding. Accordingly, this Office will consider Montoya to be "acting as treasurer" in this matter.

In addition, Western Bank, a member of the Federal Deposit Insurance Corporation, made a $45,000, secured loan to Rick Montoya on May 26, 1988. The loan was due on demand or by November 22, 1988. The loan was paid in four installments. The first installment was paid on May 25, 1988 in the amount of $35,000. The second installment was paid on June 8, 1988 in the amount of $8,193.91. The third installment was paid on June 9, 1988 in the amount of $1,355.70. The fourth installment was paid on June 10, 1988 in the amount of $450.39. The interest rate on the loan was 12.5%. In addition, the agreement provided that if the loan was not paid at maturity, then an interest rate of 20% would thereafter be charged.

On January 26, 1990, pursuant to an "Extension and Revision Agreement," the original loan was rescheduled. The due date of the loan was extended to January 26, 1995. Also, the interest rate became 13.486%.

The loan initially may have been made in the ordinary course of business because the written agreement appeared to contain terms which assured repayment; the loan was subject to a due date; and it appeared to bear the usual and customary interest rate.

However, based on the following, questions exist as to whether the loan was made or extended in the ordinary course of business. First, only interest was paid on the loan between May 26, 1988 and January 26, 1990. Second, after the November 22, 1988 maturity date, it does not appear that Western Bank attempted to secure repayment of the loan because

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Montoya continued only to pay interest. Additionally, it does not appear that Western Bank charged Montoya 20% interest on the loan after it matured as the agreement required. Finally, when the loan was secured in 1988, the Committee had cash on hand of $4,105.41 and debts outstanding of $132,830.63. When the loan was extended in 1990, the Committee, for the period beginning January 1 and ending June 30, had cash on hand of only $585 and debts outstanding of $128,170.

Accordingly, there is reason to believe that the Rick Montoya for U.S. Senate Committee and Rick Montoya, acting as treasurer, violated 2 U.S.C. § 441b(a).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Bill Robertson, Chairman
Western Bank
201 N. Church Street
Box 457
Las Cruces, New Mexico 88004

RE: MUR 3444

Dear Mr. Robertson:

Enclosed is a Certificate of Compliance with the Right to Financial Privacy Act of 1978, issued in connection with the Subpoena and Order sent to your financial institution on August 12, 1992, seeking the financial records of Rick Montoya.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II

Richard M. Denholm II
Attorney

Enclosure
Certificate

9403097160 1

CERTIFICATION OF COMPLIANCE WITH THE RIGHT TO FINANCIAL PRIVACY ACT

TO: Mr. Bill Robertson, Chairman
Western Bank
201 N. Church Street
Box 457
Las Cruces, New Mexico 88004

FROM: Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 3444

I hereby certify, pursuant to Section 1103(b) of the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3403(b), that the provisions of the Act have been complied with as to the Subpoena to Produce Documents and Order to Submit Written Answers forwarded to you in the above-captioned matter, responses to which are being ordered pursuant to 12 U.S.C. §§ 3402 and 3405.

Sincerely,

8-27-92
Date

Richard M. Denholm II
Attorney

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3444

NAME OF COUNSEL: Anderson Carter, II

ADDRESS: P.O. Box16488
Las Cruces, NM 88004

TELEPHONE: 505-523-7810

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

9/8/92
Date

Bill Robertson, Chairman + CEO
Signature

RESPONDENT'S NAME: Bill Robertson, Chairman

ADDRESS: Western Bank, Las Cruces
P.O. Box 457
Las Cruces, NM 88004

HOME PHONE:

BUSINESS PHONE: 505-527-6200

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Anderson Carter, II
ATTORNEY and COUNSELOR AT LAW

LICENSED IN NEW MEXICO & TEXAS

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

SEP 17 10 07 AM '92

Law Office Suites
300 Western Bank Bldg.
201 North Church
Post Office Box 16488
Las Cruces, New Mexico 88004
Office 505 523-7810 505 526-8682
FAX 505 527-0215

September 15, 1992

Richard M. Denholm, II
Office of the General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D. C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 SEP 17 PM 4:23

Re: MUR 3444

Dear Mr. Denholm:

As you and I discussed by telephone last week, I have prepared a Response to the Factual and Legal Analysis in the above-referenced matter. In addition, we are submitting the Response to Subpoena to Produce Documents and Order to Submit Written Answers. For the document production, we are sending a duplicate of the Bank's entire loan file regarding Mr. Montoya.

We believe that Western Bank, Las Cruces made its loan to Rick Montoya in the ordinary course of business and has maintained this loan at all times in the ordinary course of business. Hopefully, your review of the material we have tendered to the Commission will suitably resolve this matter. While we have provided everything in the Bank's possession responsive to the subpoena, we would be happy to provide any additional information or materials which you may need.

If I can be of any further assistance in this regard, please contact me.

Sincerely,

Anderson Carter, II

AC:ag
Enclosures
c: Bill Robertson

VIA FEDERAL EXPRESS

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) MUR 3444)

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL 92 SEP 17 PM 4:23

RESPONSE TO FACTUAL AND LEGAL ANALYSIS

Western Bank, Las Cruces, through its counsel, hereby submits this response to the Federal Election Commission's Factual and Legal Analysis in this matter.

On July 28, 1992, the Federal Election Commission found reason to believe that Western Bank, Las Cruces ("Bank") violated a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis which formed a basis for the Commission's finding is based upon erroneous information.

Clearly, the Act prohibits any national or state bank from making contributions or expenditures in connection with any election to political office. Excluded from the definition of "contribution", however, are loans by banks made "in the ordinary course of business". 2 U.S.C. §441 b (b) (2). The Factual and Legal Analysis cites the appropriate statutes and regulations defining loans made in the "ordinary course of business." The Factual and Legal Analysis then makes a number of "factual" statements which are incorrect. The correct "facts" of this loan transaction are as follows:

On May 26, 1988, a $45,000 loan was made to Rick Montoya. The proceeds were used to pay off a $6,000 loan previously made to Mr. Montoya on April 25, 1988. The balance was apparently used for campaign expenses. The term of the loan was for six months (until November 22, 1988). The interest rate was a variable rate of Bank's base rate plus .5% (not 12.5% as set forth in the Factual and Legal Analysis).

The Factual and Legal Analysis states that the loan was paid in four installments with the first installment being paid on May 25, 1988. (In light of the fact that this is a day before the loan was even made, it appears obvious that this is an incorrect statement.) In fact, the loan to Rick Montoya was funded in its entirety on May 27, 1988. There were not multiple installments

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as suggested in the Factual and Legal Analysis. The Factual and Legal Analysis then states that the original loan was re-scheduled pursuant to an Extension and Revision Agreement dated January 26, 1990, and the interest rate became 13.86%. This statement is only partially correct, and would certainly lead the FEC to the conclusion that this loan was ignored from its original due date (November 22, 1988) until the Extension and Revision Agreement executed on January 26, 1990. However, this is not the case.

On November 30, 1988, by an Extension and Revision Agreement, the loan was renewed for six months at the same variable interest rate and using the same collateral. On June 19, 1989, the loan was again renewed for six months at the same rate and using the same collateral. The renewal of this type of loan under these circumstances is common practice within the Bank, and this particular loan presented no extraordinary or unusual circumstances. At the time of the June 19, 1989 renewal, it was agreed that at the maturity of the renewal, the loan would be converted to monthly payments on a ten-year amortization.

On January 26, 1990, the loan was renewed for five years at the same variable interest rate, but monthly payments were established based upon a ten-year amortization. Collateral for the loan has remained the same throughout. Since January 26, 1990, the loan has been on monthly payments and will mature on January 26, 1995. All principal and interest payments required under the loan have been made. Over the term of the loan, the principal of the loan has been decreased by over $6,000, and the Bank has earned and received over $24,000 in interest.

The Factual and Legal Analysis recognizes that the loan was initially made in the ordinary course of business because "the written agreement appeared to contain terms which assured repayment; the loan was subject to a due date; and it appeared to bear the usual and customary rate of interest." This has continued to be the case throughout the existence of this loan. As outlined above, this loan has always been subject to a written agreement which has assured repayment, was subject to a due date, and required interest at a usual and customary interest rate.

The Factual and Legal Analysis raises four questions as to whether the loan was made or extended in the ordinary course of business. The first question concerns the fact that only

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interest was paid on the loan between May 26, 1988 and January 26, 1990. This is not an uncommon practice. Banks are in the business of collecting interest. So long as the loan continues to exhibit favorable characteristics, it may be extended and renewed. At all times from May 26, 1988 until January 26, 1990, the loan was covered by appropriate documentation (promissory note and extension and revision agreements). Further, the loan was fully secured by real estate valued substantially in excess of the loan amount. Interest was paid on a current basis upon each renewal. The loan continued to be a profitable one for the Bank and the existence of substantial collateral assured full repayment of all principal and interest on this loan.

The second question raised by the Factual and Legal Analysis concerned the Bank's efforts to secure repayment of the loan after the original maturity date of November 22, 1988. Because this loan continued to meet the Bank's criteria for making loans, this loan was renewed at the original maturity date. This renewal is evidenced by appropriate, written documentation in the form of an Extension and Revision Agreement. It continued to bear the same variable interest rate which was customary and usual for this Bank. A new due date was established for the loan and the real estate mortgage continued to assure repayment of this loan. At all times, this loan was handled in the same manner as other loans of this type made by the Bank.

The third question raised by the Factual and Legal Analysis concerned whether the Bank charged Montoya 20% interest on the original loan after it matured. The Bank did not impose the 20% post-maturity interest rate since this loan was appropriately re-negotiated. The Bank only imposes this rate of interest in the case of severe collection problems turned over to legal counsel for collection and/or foreclosure. In the case of Mr. Montoya, this loan was appropriately re-negotiated as described above, and therefore, the 20% interest rate was not applied.

The final question raised by the Factual and Legal Analysis concerns the financial condition of the Campaign Committee during the pertinent times of making and renewing this loan. It is unclear from the Factual and Legal Analysis what point is being made by the

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discussion of the Committee's financial condition; however, it is presumed the question must relate to the credit-worthiness of the Committee. The Bank was not aware of the financial condition of the Campaign Committee and did not consider it in making its loan. The loan was made to Rick Montoya, personally. The Bank has not worked with any Campaign Committee in making any loans to Mr. Montoya, nor did the Bank look to the Campaign Committee or its financial condition in making this loan. Rather, the Bank looked to Rick Montoya, personally, and his financial condition in making this loan. At the time of making the loan, Mr. Montoya had on deposit at Western Bank, Las Cruces (more than of the loan was on deposit when the loan was made). Mr. Montoya's financial statements showed a net worth of from total assets of His debt -to-assets ratio is which is considered a good ratio by the Bank. While not very liquid, Mr. Montoya had good equity in real estate in and around Las Cruces. This loan was specifically collateralized by 4.8 acres of farmland in an area that is being converted to semi-exclusive residential property. The property was appraised at $71,000. A mortgage covering the property was appropriately executed by Montoya and recorded by the Bank in the Dona Ana County real estate records. This mortgage continues in full force and effect at this time.

Each of the factual statements made within this response is confirmed by the Response to Subpoena to Produce Documents and Order to Submit Written Answers which is submitted, under oath, along with this response. These written answers along with the copy of Mr. Montoya's loan file submitted to the Commission clearly indicate that this loan was made in the ordinary course of business. At all times, it was subject to a written agreement (promissory note and subsequent extension and revision agreements). These agreements contained the usual terms allowing for collection of the promissory note, including principal, interest, and any expenses of collection. Payment was further assured by a mortgage on real property which was valued substantially in excess of the amount owed on the loan. While the due date on the loan has been extended in the usual and

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customary manner of the Bank, the loan has at all times been subject to a due date. Further, the loan continues to bear interest at a usual and customary interest rate.

Accordingly, Western Bank, Las Cruces is not in violation of 2 U.S.C. §441 b (a).

ANDERSON CARTER, II
P. O. Box 16488
Las Cruces, NM 88004
(505) 526-8682

Attorney for Western Bank, Las Cruces

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) MUR 3444
)
)
)

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 SEP 17 PM 4:23

RESPONSE TO SUBPOENA TO PRODUCE DOCUMENTS AND ORDER TO SUBMIT WRITTEN ANSWERS

To: Office of the General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D. C. 20463

Western Bank, Las Cruces, hereby submits its response to the Federal Election Commission's Subpoena to Produce Documents and Order to Submit Written Answers.

1. Identify all the directors and officers of Western Bank during 1988, 1989 and 1990. Include in your answer the responsibilities of each officer and director, including those directors who are also officers of Western Bank.

Response: See Exhibit "A" attached.

2. Describe in detail the role of each individual identified above in the granting and renewal of loans.

Response:

The responsibilities and duties of each individual identified above in the granting and renewal of loans is as follows:

Directors: The board directs the activities of the Bank in the same way that owners direct the activities of any other business. The Board determines the strategic objectives of the Bank and is the source of all its policies. Specific responsibilities include: (1) selecting and supervising the chairman and president; (2) establishing strategic objectives and long-term goals; (3) determining

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bank policies; (4) providing overall direction for the Bank; (5) monitoring short-term plans and budgets, and (6) monitoring performance.

Chairman and C.E.O: The Chairman and C.E.O reports to the board of directors and is responsible to the board for the day-to-day management of the Bank. The Chairman's primary duty is to see that the Bank accomplishes its planned objectives and goals, his responsibility is to operate the Bank as a sound and prudent business in accordance with the general policies of the board.

President and C.O.O.: The President and C.O.O. is responsible for routine, day-to-day operations. He directly supervises each division chief. The President and C.O.O. temporarily assumes the position of the Chairman and C.E.O. in his absence.

Senior Vice President - Commercial Loans: The Senior Vice President of Commercial Loans is responsible for all commercial loan operations. She directs all the commercial loan officers and supervises the loan operations for the Bank.

Vice President and Assistant Vice President - Loan Officer: The loan officer is responsible for maintaining and servicing the commercial loan portfolio assigned to him or her. This includes originating and collecting the loan or loans from customers.

Loan Origination Process: In the origination process, there are several thresholds that have been established under the Bank's policy to determine who has the authority to grant a loan.

At the beginning of each year, the board of directors holds an organizational meeting to determine who has the authority to grant loans. Each loan officer is assigned a loan limit under which that loan officer can make loans. All loans above the officer's lending limit must first go through the officer's loan committee. Then, if the total loan relationship to a customer is greater than $100,000, the loan must be approved by the Executive Loan Committee.

The officer's loan committee is made up of loan officer and other officers of the Bank appointed to the committee by the board. all loans over the officer's loan limit must go through this committee. all relationships with loan activity over $100,000 must also first go through this committee before it goes on to the Executive Loan Committee.

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The Executive Loan Committee is made up of senior loan officers and outside directors of the Bank. The normal makeup of the Committee is five Bank directors and four senior officers of the Bank. This Committee pre-approves all loans with relationships over $100,000 and ratifies all loans made by officers over $25,000.

In summary, all loans over $25,000 are ratified by the Executive Loan Committee. All loans over the officer's lending limit go to the officer's loan committee and all loans over $100,000 must be pre-approved by the Executive Loan Committee.

3. Regarding the May 26, 1988 loan ("loan") and January 26, 1990 Extension and Revision Agreement ("ERA:) between Rick Montoya and Western Bank or Rick Montoya for U. S. Senate committee and Western Bank described in the Factual and Legal Analysis:

a. Describe in detail the process by which the loan and the ERA were obtained by the Committee or Rick Montoya.

Response:

The loan was obtained by Rick Montoya, personally. The Bank has not ever worked with any campaign committee in making any loans to Montoya. The Bank did not look to the Campaign Committee or its financial condition in making this loan; rather, the Bank looked to Rick Montoya, personally, and his financial condition in making this loan.

On April 25, 1988, a loan (Loan No. 78003491) for $6,000 was granted to Mr. Montoya by John Garrett (President and C.O.O. for 1988). This loan was under Mr. Garrett's loan authority and under the $25,000 threshold, therefore, no other action by any other members of the Bank was needed. As Mr. Garrett is not with the Bank anymore, we would have to assume that Mr. Montoya asked for the loan for personal expenses, as was noted on the loan memo dated April 25, 1988. The loan was for 30 days and was priced at 12% fixed. The loan was unsecured. The structure of this loan is not unusual for the Bank. The loan was acknowledged by a loan officer,

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Ray Carlson, and Senior Vice President William Deitemeyer. No other details as far as the $6,000 loan dated April 25, 1988 are known.

On May 26, 1988, a $45,000 loan (Loan No. 77707869) was made to Mr. Montoya. The proceeds were used to pay off the $6,000 loan made on April 25, 1988, and the balance was used for campaign expenses (as noted in the loan file). The term of the loan was for six months (until November 22, 1988). The interest rate was a variable rate of Western Bank, Las Cruces' Base Rate plus .5%, and one point origination fee.

In considering the credit worthiness of a customer, the loan officer investigates the deposit balances at the bank. When the $45,000 loan was made, Mr. Montoya had in two deposit accounts (more than of the loan was on deposit when the loan was made). Further, the Bank considers financial condition of the borrower and the value of collateral. (See 3d below). Financial statements were obtained from borrower.

The collateral for the loan was, and is, 4.8 acres of farmland in an area that is being converted to a semi-exclusive residential area. A mortgage covering the property was executed on May 26, 1988 by Montoya and recorded on May 27, 1988 in the Dona Ana county real estate records. This mortgage is still in full force and effect. A title policy was obtained and dated May 27, 1988, and an appraisal was done by Vice President, Ray Carlson. The property was appraised for $71,000 on May 4, 1988.

On November 30, 1988, by an Extension and Revision Agreement, the loan was renewed for six months at the same rate, and using the same collateral by Ray Carlson. Since the renewal was less than Mr. Carlson's loan authority, no other action was needed. On June 19, 1989, the loan was renewed for six months at the same rate, and using the same collateral, by Sharron Stuart (Senior Loan Officer). (Mrs. Stuart took over management of the loan when Mr. Carlson passed away.) The renewal of this type of loan under these circumstances is common practice within the Bank, and this particular loan presented no extraordinary or unusual circumstances. At the time of the June 19, 1989 renewal, it was agreed that at the maturity of the renewal, it would be converted

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to monthly payments on a ten-year amortization (with payments of approximately $705 per month).

On January 26, 1990, the loan was renewed for five years at the same rate, with monthly payments based on a ten-year amortization. Collateral for the loan remained the same. Since that time, the loan has been on monthly payments, and will mature on January 26, 1995. All principal and interest payments required under the loan have been made.

b. Describe in detail the reasons why the loan and ERA were obtained from Western Bank and the Committee's efforts to obtain a loan or ERA from other sources.

Response:

Since the officer originating this loan (John Garrett) is no longer with the Bank, we presume Montoya approached Western Bank because he had an established banking relationship with Western Bank through deposit accounts with the Bank. The Bank is not aware of other sources that Mr. Montoya may have contacted to obtain a loan. The loan was extended because it continued to be a profitable, current and well-secured loan.

c. List all meetings, negotiations and conversations held between Western Bank and Rick Montoya or officials of Rick Montoya for U. S. Senate Committee to discuss an extension of credit to the Committee or Rick Montoya from Western Bank, the loan agreement or ERA, the repayment of the loan or ERA, and the renewal of the loan. Include in your answer the date, location and attendees of each meeting, negotiation and conversation. Also include in your answer a detailed description of the purpose of each meeting, negotiation, and conversation, and all decisions reached as a result of the meeting, negotiation and conversation. Identify all documents which refer, relate, or pertain to each such meeting, negotiation and conversation.

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Response:

Based upon the information in the file, the following communications were made with Mr. Montoya (while there may have been other communications, these are the only ones documented in the file and within the knowledge of the Bank):

4/25/88 - The $6,000 loan was made. It is assumed that the loan was made at a meeting at the Bank.

5/10/88 - (10:30 a.m.) Received a call from Mr. Montoya. No record of returning call by Mr. Garrett.

5/26/88 - The $45,000 loan was made. It is assumed that the loan was made at a meeting at the Bank.

8/29/88 - (4:34 p.m.) Received call from Mr. Montoya. No record of returning call by Mr. Carlson.

8/29/88 - (1:05 p.m.) Received call from Mr. Montoya. No record of returning call by Mr. Garrett.

11/88 - Effort was made to call Mr. Montoya at 526-9209. Message from telephone company stating the phone was disconnected.

11/30/88 - Loan was renewed for $45,000 for six months. This was done by mail. Refer to the loan file for documentation.

6/13/89 - Letter to Mr. Montoya telling him that Sharron Stuart was not able to get in touch with him by telephone, please call the Bank.

6/19/89 - Loan was renewed for $45,000 for six months. This was done by mail. Refer to the loan file for documentation.

7/05/89 - Letter to Mr. Montoya asking for the loan renewals to be signed.

7/06/89 - Original personal financial statement from Mr. Montoya was sent back to him asking him to sign and return to the Bank.

1/26/90 - Loan was renewed for $45,000 for five years on 10-year amortization. This was done by mail. Refer to the loan file for documentation.

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1/12/90 - Letter to Mr. Montoya reminding him that the loan is past due and that the loan needs to be renewed.

1/17/90 - Letter confirming conversation between Mr. Montoya and Sharron Stuart on structure of amortized loan renewal.

2/08/90 - Letter was sent to Mr. Montoya asking for current financial statement.

10/10/90 - Letter was sent to Mr. Montoya asking for current financial statement.

1/27/92 - Mr. Montoya requested information on the loan and a letter was sent outlining the cumulative balance and outstanding balance as of 7/1/90 and 12/31/90. See letter dated 1/27/92 in loan file. This request and response was done by letter.

d. Describe in detail what factors were considered by Western Bank in the granting of the loan and the renewing of the loan in the ERA:

Response:

The $6,000 loan was based on Mr. Montoya's financial condition and reputation in the community. Mr. Montoya was an established deposit customer of the Bank and enjoyed a good reputation for paying his bills and having a stable financial picture.

The $45,000 loan was based on Mr. Montoya's reputation, character, and his financial condition. Mr. Montoya showed a net worth of from total assets of This debt-to-asset ratio is which is considered a good ratio. While not real liquid, Mr. Montoya had good equity in real estate in and around Las Cruces. The collateral for the loan is 4.8 acres on Northwind Road. This property appraised at $71,000.00. Sales of neighboring property in 1989 have confirmed the basis for this appraisal.

The loans were made based upon Mr. Montoya's financial stability and his ability to repay the loan from equities, should he not be able to service the debt through his personal cash flow. A specific mortgage of 4.8 acres in a favorable area worth $71,000 gave assurance of full recovery for this loan.

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Western Bank did not look to the Campaign Committee or its financial condition in making or renewing this loan. In fact, Western Bank did not obtain any information regarding the Campaign Committee.

e. Identify each Western Bank employee, officer, director or agent involved in the consideration, granting, monitoring and renewal of the loan or ERA.

Response:

The Western Bank employees, officers, directors or agents involved in the loans to Rick Montoya are as follows (addresses and phone numbers for each are given in response to question 1 above):

John Garrett, Jr. (no longer with the Bank)
President and C.O.O.

Ray Carlson (deceased)
Vice President

Kandy Jones
Secretary

William Deitemeyer (no longer with the Bank)
Senior Vice President

Sharron Stuart
Senior Vice President

Dina Schlotterbeck (no longer with the Bank)
Administrative Assistant

Kelly Dunn
Assistant Vice President

Tammy Talavera
Secretary

f. List by date and amount all payments to principal or interest, separately, made to Western Bank in connection with the loan and ERA.

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Response:

The payments to principal or interest made to Western Bank in connection with the loan and ERA is attached as Exhibit "B".

g. Describe in detail all efforts made by Western Bank to obtain the money owed to it on the loan or ERA. If no efforts were made to collect the outstanding loan balance, explain why.

Response:

Not all attempts to collect loans owed to Western Bank are logged in the files. However, with reference to the Montoya loan, the file shows the following details:

7/5/89 - Sharron Stuart sent Mr. Montoya a letter asking for the ERA to be signed, and the interest to be paid current before the ERA could be booked.

1/12/90 - Sharron Stuart sent Mr. Montoya a letter asking for Mr. Montoya to pay the interest on the loan and make arrangements for the loan to be put on a monthly payment basis.

1/17/90 - Dina Schlotterbeck sent Mr. Montoya a letter asking the the ERA be signed and that monthly payments would be paid at $705.99 per month.

Since the loan was put on an amortized basis of monthly payments, Mr. Montoya has been contacted for late payments. The attached payment schedule shows that some payments have been late, but they have been made. Over the term of the loan, the principal of the loan has decreased by over $6,000, and the Bank has earned and received over $24,000 in interest.

h. State whether the loan or ERA were reviewed by an internal audit or by auditors not employed by Western Bank. Identify all documents which refer, relate or pertain to review of the loan or ERA.

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Response:

Annual audits are made by an outside accounting firm. In addition, Western Bank is subject to regular review by federal and state bank regulatory agencies. While this loan file is available for such review, we are not aware of any review being done on this file.

i. State whether Western Bank deviated from the terms of the May 26, 1988 loan agreement. If yes, explain why.

Response:

Western Bank did not make any extraordinary deviations from the terms of the May 26, 1988 loan agreement. The loan was renegotiated through valid and binding extension and revision agreements (See 3d above) extending the original term of the note. Western Bank did not impose the 20% post maturity interest rate since this loan was appropriately renegotiated. The Bank only imposes this rate in the case of severe collection problems turned over to legal counsel for collection and/or foreclosure.

4. Describe the requirements generally imposed by your bank for making unsecured and partially secured loans. Include in your response (1) Western Bank's policy regarding the maximum amount that may be loaned to a borrower without requiring security; (2) Western Bank's policy regarding the minimum amount of security required against the amount borrowed; and (3) any other criteria used by Western Bank in considering the credit worthiness of a borrower.

Response:

This loan to Montoya was a fully secured loan ($71,000 collateral value for a $45,000 loan); however, in response to this question, the following excerpts from the Bank's Loan Policy and Procedures set forth the Bank's policy regarding such loans. (This Loan Policy and Procedures Manual was not in effect at the time this loan was made or renewed. The specific

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manual in effect at that time is not available; however, the basic policies expressed here would have been followed in making this loan):

II. BANK OBJECTIVES.

A. External Policy Goals

Since this Bank was organized, it has been one of the most respected financial institutions in the county. The primary external objective of the bank is to enhance our public image as a high quality, friendly place to bank. Our reputation, our image, and a high level of public confidence in the bank are extremely important to us.

B. Internal Policy Goals

C. The Bank has eight basic guidelines for its loan portfolio:

1. We want to eliminate four classes of loans: (1) underpriced loans; (2) high risk loans; (3) loans which are difficult and expensive to administer; and (4) term loans longer than three years, at fixed rates, unless it is a portion of government guaranteed loan.

2. Past due and non-accrual loans will be kept to an absolute minimum by applying aggressive collection procedures to all problem loans.

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3. Sound credit evaluation will precede all commercial and real estate loan decisions, and we will be conservative in our retail loan approval process.

4. We take loan documentation seriously. If we do not have time to document a loan correctly, we do not have time to make the loan.

5. As necessary, loans will either float with a commercial base lending rate or they will be subject to repricing every 90 to 180 days in order to match our interest-sensitive liabilities.

6. We aggressively seek good loan relationships. We define a good loan relationship as one which is also a good deposit relationship.

7. We prefer a total asset mix wherein loans equal about 65 percent of our assets and about seven times our capital. WE prefer a loan mix that is 33.3 percent commercial, 33.3 percent retail, and 33.3 percent real estate. These percentages will e changed from time to time as the credit needs of the community changes and as the Bank's strategic plan changes.

8. We will avoid all undue concentrations of loans to a single industry or based on a single class of collateral.

D. Desirable, Undesirable and Unacceptable Loans.

The Bank's priorities in extending various types of loans will change from time to time as interest rates, money market conditions and competitive factors change. We now follow these general guidelines to determine which types of loans our loan officers should make:

1. Desirable Loans

(a) Well-secured, short-term working capital loans to established businesses in our market area.

(b) Loans for and secured by general-use machinery and equipment which has a developed resale market.

(c) Loans secured by readily marketable stocks and bonds with adequate margins for market fluctuations. We define readily marketable securities as those stocks with an established national market and a history of steady performance, as well as those bonds rated "A" or better.

(d) Loans secured by cash value of life insurance in an amount equal to or greater than the loan.

(e) Loans secured by savings or time accounts of an amount equal to or in excess of the amount of the loan. This applies primarily to our own deposits. It also applies to deposits in other local financial institutions, as long as there is a reasonable expectation that these deposits will move to our Bank

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and there is an agreement by the other bank to acknowledge the assignment and to subordinate their right of offset.

(f) Automobile loans secured by a vehicle less than ten years old.

(g) Short-term loans, secured by sufficient equity in real estate, with good primary sources of repayment.

(h) Interim construction loans with a permanent takeout.

(i) Home real estate bridge loans to assist a customer in buying a new home and selling an old one, if it is well secured by equity in the old home.

(j) Permanent real estate loans whose interest rates can be adjusted periodically to market interest rates.

2. Undesirable Loans

(a) Loans secured by stock that is closely held and not readily marketable.

(b) Loans secured by speculative (below "B") bonds or bonds issued by foreign entities.

(c) Interim construction loans without a permanent takeout or plan for permanent financing.

(d) Any permanent real estate loan with a fixed interest rate greater than three years.

(e) Loans secured by household goods, jewelry, or works of art.

(f) Working capital loans to new businesses that are not well secured.

(g) Loans on automobiles older than ten years.

3. Prohibited Loans

(a) Loans secured by restricted stock.

(b) Loans secured by stock of our bank.

(c) Loans secured by U. S. savings bonds.

(d) Loans secured by property held in trust for a minor or incompetent person.

(e) Loans to borrowers who have previously declared bankruptcy.

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(f) Loans to people whose honesty is questionable.

(g) Loans for purposes that might not be legal.

(h) Loans to our employees or directors when they are not entirely consistent with FIRA as spelled out in our regulatory compliance manual.

(i) Any loan that has the appearance of being discriminatory under the Equal Credit Opportunity Act or other federal regulations.

[Non-applicable material omitted]

VI. BASIC CREDIT POLICY

A. Analysis of a Potential Loan

Analyzing a potential loan requires careful consideration of: (1) the borrower; (2) the borrower's financial condition as reflected on acceptable financial statements; (3) the borrower's management capability; (4) the borrower's industry, and (5) the economic environment i which the loan would be granted. Assessing risk and structuring a loan is an intuitive art based on sound training, sound judgment and experience. Prudent lending requires that individuals granting the loan: (1) determine that the borrower is an honest, credit-worthy individual; (2) determine that the borrower is a capable manager; (3) understand the specific purpose of the loan; (4) understand the source and plan of repayment; (5) evaluate all backup sources of repayment; and (6) find that the purpose, sources of repayment and collateral are acceptable, reasonable, practical and accomplishable within the normal framework in which the borrower operates. Undesirable features of each loan should be documented. The following additional general guidance should be helpful.

B. Secured and Unsecured Loans

This Bank makes loans (1) to customers whose character is firmly established; (2) when the loan's purpose, source and term of repayment are clearly understood, and (3) when the source and term of repayment match the customer's cash flows.

This Bank makes secured and unsecured loans. Unsecured loans, however, are usually made only to long-standing customers of sound net worth, above average liquidity, and unquestionable repayment ability. Unsecured loans will usually have maturities of less than three years.

Most loans made by this Bank will be secured, but collateral is not a substitute for the borrower's ability to repay. Collateral is taken as a way to control the borrower and to provide an additional source of repayment. Cash flow is our primary source of repayment; collateral is our secondary source of repayment.

The quality and liquidity of collateral are of paramount importance and must be confirmed before the loan is made. Secured loans should be margined so that money received from the collateral under foreclosure conditions will repay

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the loan. Each loan officer is responsible for obtaining an objective appraisal of the collateral prior to funding a loan. If the loan is renewed or extended, the loan officer must consider the need for a new appraisal before granting the renewal or extension.

5. Identify any person (other than counsel) who was consulted or otherwise assisted in the preparation of answers to these questions.

Response: (Addresses and telephone numbers are shown in response to question 1 above.)

Kelly Dunn

Sharron Stuart

Bill Robertson

Kandy Jones

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REQUEST FOR PRODUCTION OF DOCUMENTS

In response to Request 1A, 1B, 1C and 1D, Western Bank, Las Cruces herewith provides a complete duplicate of the Rick Montoya loan file exactly as it is maintained in the Bank. This file contains all documents which Western Bank, Las Cruces has which are responsive to the request.

In response to Request No. 2, Western Bank, Las Cruces states that the Loan Policy and Procedures Manual in effect at the time period May 1, 1988 to December 31, 1990, is not available, all copies having been discarded following the adoption of the current Loan Policy and Procedures Manual in 1991. The current manual is approximately 200 pages in length and is not submitted since it is not responsive to the request. However, it will be provided upon request (an informal letter request is sufficient).

BILL ROBERTSON

STATE OF NEW MEXICO)
ss.
COUNTY OF DONA ANA)

Bill Robertson, being first duly sworn on oath states that he is currently the Chairman of the Board of Western Bank, Las Cruces, a New Mexico banking corporation, named and

mentioned in the foregoing pleading; he has read and understands the same and the matters therein stated are true and correct to the best of his knowledge and belief.

Bill Robertson

SUBSCRIBED AND SWORN TO before me this 16th day of September, 1992.

Notary Public

My Commission Expires: 4-27-96

SUBMITTED BY:

ANDERSON CARTER, II
P. O. Box 16488
Las Cruces, NM 88004
(505) 523-7810

Attorney for Western Bank, Las Cruces

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1988 (as of January 1)

Directors

Don Kidd, 127 S. Canyon, Carlsbad, NM 88220; Chairman/President Western Commerce Bank, P.O. Drawer 1358, Carlsbad, NM 88220; (505)887-6686
John W. Garrett, Jr., 3250 Solar Ridge, Las Cruces, NM 88005; President, Dona Ana Savings & Loan, 277 E. Amador, Las Cruces, NM 88001; (505)524-7748
John Moore, 2000 San Acacio, Las Cruces, NM 88001; (505)524-4395
W. E. Binns, 2595 Missouri, Las Cruces, NM 88001
Wesley L. Walker, 1024 N. Melendres, Las Cruces, NM 88001
Bob J. Porter, 2007 Turrentine Dr., Las Cruces, NM 88001; (505)524-7836
Anderson Carter, P.O. Box 998, Las Cruces, NM 88004; (505)526-8076
Lavar West, 608 N. Miller, Mesa, AZ (602)272-6721
J. J. Aragon*, c/o Western Bank, Las Cruces, New Mexico Trust Dept., P.O. Box 457, Las Cruces, NM 88001

*Advisory Director

Officers

Don Kidd, Chairman & C.E.O., 127 S. Canyon, Carlsbad, NM 88220
John W. Garrett, Jr., President & C.O.O., 3250 Solar Ridge, Las Cruces, NM 88005
William Deitemeyer, Senior Vice President, 4681 Linda Lane, Chandler, AZ 85226
Kimerick Hayner, Senior Vice President & Trust Officer, 1000 Lantana, Las Cruces, NM 88005
Sharron Stuart, Vice President, 4200 Escondido, Las Cruces, NM 88005
Manford Fee, Vice President, 2144 Sagecrest Ave., Las Cruces, NM 88001
Ray Carlson, Vice President, Deceased
Bruce Weber, Cashier, 27753 County Road H-6, Cortez, CO 81321
Jaylen Graham, Assistant Vice President, 641 Roualt, Las Cruces, NM 88001
Rita Moziejko, Assistant Vice President, 1312 Eugene, Las Cruces, NM 88001
Cindy Owen, Assistant Vice President, 2178 Shady Place, Las Cruces, NM 88005
Judy Cunningham, Assistant Cashier, 1117 Jett Ave., Las Cruces, NM 88001
Vera Valencia, Assistant Cashier, P.O. Box 702, Los Lunas, NM 87031
Richard Duncan, Assistant Cashier & Manager of Information Systems, 316 La Mirada, El Paso, TX 79932 (915)584-3504
Linda Brocklehurst, Mortgage Loan Officer, 602 Wienrich Rd, Las Cruces, NM 88005

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EXHIBIT

"A"

Aina Sauskis, Assistant Trust Officer, 445 Keathly, Las Cruces, NM 88001
Lola Muth, Executive Secretary, P.O. Box 307, Las Cruces, NM 88004

1989 (as of January 1)

Directors

Don Kidd
J. J. Aragon
Anderson Carter
Basilio DiGregorio*, P.O. Box 1729, Gallup, NM 87307; (505)722-4411
Bill Robertson
Anderson Carter, II*, P.O. Box 16199, Las Cruces, NM 88004; (505)526-8682
Clois Ratliff, 2509 Jeanne Court, Alamogordo, NM 88310;

*Advisory Director

Officers

Don Kidd, Chairman and C.E.O.
Bill Robertson, President & C.O.O.
Kimerick Hayner, Senior Vice President & Trust Officer
Sharron Stuart, Vice President
Ray Carlson, Vice President
Bruce Weber, Cashier
Jaylen Graham, Assistant Vice President
Rita Moziejko, Assistant Vice President
Cindy Owen, Assistant Vice President
Karlon Cox, Assistant Vice President, 2610 Apodaca Rd., Las Cruces, NM 88005
Richard Duncan, Assistant Cashier & Manager of Information Systems
Vera Lara, Assistant Cashier
Patty Groth, Assistant Cashier, 5318 Heritage Way, N.E., #B, Albuquerque, NM 87109
Bernetta Sedillo, Assistant Cashier, 3232 Neptune, Las Cruces, NM 88001
Mark Brown, Banking Officer, 5215 Genesee Cove, #28, San Diego, CA 92122
Thomas Mestas, Banking Officer, 2937 Valle Vista Dr., Las Cruces, NM 88001
Lola Muth, Executive Secretary
Liz Sparks, Assistant Trust Officer, P.O. Box 1353, Tucumcari, NM 88401-1353

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1990 (as of January 1)

Directors

Don Kidd
Loren Kuehne, 3265 Arrowhead, Las Cruces, NM 88001
Anderson Carter
Basilio DiGregorio*
Bill Robertson
J. J. Aragon*
Clois Ratliff
Anderson, Carter, II*

*Advisory Director

Officers

Don Kidd, Senior Chairman
Bill Robertson, Chairman and C.E.O.
Loren Kuehne, President and C.O.O.
Kimerick Hayner, Senior vice President
Sharron Stuart, Senior Vice President
Richard Flamm, Vice President, 3585 Paradise Lane, Las Cruces, NM 88005
Jaylen Graham, Vice President
Cindy Owen, Vice President
Tom Warren, Vice President, 3345 Westridge Rd., Las Cruces, NM 88005
Bruce Weber Cashier
Mark Brewer, Assistant Vice President, P.O. Box 7357, Las Cruces, NM 88006
Karlon Cox, Assistant Vice President
Kelly Dunn, Assistant Vice President, P.O. Box 2438, Las Cruces, NM 88004
Rita Moziejko, Assistant Vice President
Patty Groth, Assistant Cashier
Bernetta Sedillo, Assistant Cashier
Liz Sparks, Assistant Trust Officer
Thomas Mestas, Banking Officer

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Rick Montoya Loans:

	Balance	Principal	Interest	
Loan made on 4/27/88 for $6,000				
04/27/88	6,000.00	6,000.00		
04/27/88	6,035.00	35.00		Doc. Fee
05/27/88	0.00	(6,035.00)	57.38	
		0.00	57.38	
Loan made on 5/27/88				
05/27/88	44,942.62	44,942.62		
05/27/88	44,977.62	35.00		Doc Fee
10/11/88	45,035.00	57.38		
11/20/88	45,035.00		2,965.65	
12/19/88	45,070.00	35.00		Doc Fee
07/06/89	45,105.00	35.00		Doc Fee
07/06/89	45,070.00	(35.00)	3,406.78	
01/19/90	45,070.00		2,000.00	
02/05/90	45,035.00	(35.00)	1,820.64	
02/05/90	45,000.00	(35.00)		
02/08/90	45,050.00	50.00		
02/28/90	44,828.94	(221.06)	529.94	
03/26/90	44,580.44	(248.50)	457.49	
05/03/90	44,514.76	(65.68)	640.31	
06/13/90	44,498.61	(16.15)	689.84	
06/27/90	44,031.01	(467.60)	238.39	
08/13/90	44,031.01	0.00	705.99	
09/07/90	43,834.66	(196.35)	509.64	
10/26/90	43,834.66	0.00	705.99	
11/29/90	43,817.78	(16.88)	689.11	
12/06/90	43,212.60	(605.18)	100.81	
01/04/91	43,003.71	(208.89)	497.10	
01/30/91	42,726.46	(277.25)	497.10	
03/08/91	42,621.74	(104.72)	601.27	
05/14/91	42,621.74	0.00	705.99	
05/24/91	42,445.98	(175.76)	530.23	
07/05/91	42,397.99	(47.99)	658.00	
07/19/91	41,911.08	(486.91)	219.08	
08/23/91	41,746.51	(164.57)	541.42	
10/15/91	41,153.16	(593.35)	816.65	
11/21/91	41,009.18	(143.98)	562.01	
12/12/91	40,612.06	(397.12)	308.87	
01/24/92	40,511.77	(100.29)	605.70	
02/18/92	40,148.83	(362.94)	343.05	
03/17/92	39,823.61	(325.22)	380.77	
04/09/92	39,427.86	(395.75)	310.24	
06/04/92	38,766.73	(661.13)	747.87	
07/07/92	38,802.02	35.29		Late Fee
07/23/92	38,735.74	(66.28)	639.71	
08/06/92	38,771.03	35.29		Late Fee
		(6,171.59)	24,425.64	

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EXHIBIT

"B"

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 23, 1992

Mr. Rick Montoya, Acting as Treasurer
Rick Montoya for United States Senate
5119A Leesburg Pike, Suite 117
Falls Church, Virginia 22041

RE: MUR 3444

Dear Mr. Montoya:

In a letter dated August 12, 1992, you were notified that on July 28, 1992, the Federal Election Commission found there is reason to believe Rick Montoya for United States Senate ("Committee") and you, acting as treasurer, violated 2 U.S.C. §§ 433(c) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Additionally, in a letter dated November 8, 1991, you were notified that the Federal Election Commission found reason to believe that Rick Montoya for United States Senate Committee and Luther G. Branham, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D). On December 30, 1991, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe. The Commission considered your request and determined, because of the need to complete the investigation, to decline at that time to enter into conciliation prior to a finding of probable cause to believe. At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

This Office has enclosed a copy of the August 12, 1992 letter and copies of materials that were sent to you with that letter. Under the Act, and Commission regulations, you have an opportunity to demonstrate that no action should be taken against you.

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A review of our files indicates that to date you have not responded. Unless we receive a response from you within 10 days, this matter may proceed to the next stage of the enforcement process.

Should you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II
Attorney

Enclosures

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Rick Montoya
5119A Leesburg Pike #117
Falls Church, Virginia 22041

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

OCT 18 9 01 AM '92

October 2, 1992

Mr. Richard Denholm III
Attorney - Federal Election Commission
999 E Street, N. W.
Washington, D. C. 20463

RE: MUR 3444

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Dear Mr. Denholm:

This letter is in response to your letter of September 23, 1992.

ISSUE I - CHANGE IN ORGANIZATION

Apparently, I did violate 2 USC §433(c) by not notifying you that my Treasurer, Luther G. Branham resigned after the primary election held in June of 1988. I inaccurately assumed that my staff had notified the Commission of this change, obviously you were not.

ISSUE II - THE WESTERN BANK LOAN

I must state in the strongest possible terms, that Western Bank granted me the loan in the ordinary course of business, in fact, at the time of the loan, I felt I was being charged a higher than normal interest rate for a <u>secued loan</u>! The Commission fails to take into account that I secured this loan with a parcel of land that was appraised, using accepted practices and the loan was granted based on the value of that land and for no other reason.

Upon rescheduling this loan , the interest rate was again increased from 12.5% to 13.486% (no reasonable person can call this anything but a good loan for the bank). I am indeed frustrated by the Commission's insistence that this loan was not made under the ordinary course of business by Western Bank.

I have been struggling during these difficult economic times to pay off this loan because I know full well, that if I do not, Western Bank will foreclose on my land. I must again state, that this loan was applied for and granted under standard banking practices and I have <u>never</u> been given any special treatment by Western Bank.

It is my sincere desire that these issues be resolved at the earliest possible date and I thank you for your consideration.

Rick Montoya

Rick Montoya

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer	)	MUR 3444 **SENSITIVE**
	)	
Western Bank	)	
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was generated as a referral from the Reports Analysis Division ("RAD") concerning the Rick Montoya for United States Senate Committee ("Committee") and Luther G. Branham, as treasurer. The basis for the referral was the Committee's failure to file a required supporting Schedule B for $50,430.60 in bank loan repayments to Western Bank. At the time RAD referred the Committee, it also appeared that the Committee failed to file required supporting schedules for a second loan from Western Bank in the amount of $43,003.71.

On October 28, 1991, the Federal Election Commission found reason to believe that the Committee and its treasurer violated 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). On July 28, 1992, the Commission made additional findings. First, the Commission found reason to believe that the Committee and Rick Montoya, acting as treasurer, violated 2 U.S.C. §§ 433(c) and 441b(a). Second, the Commission found reason to believe Western Bank violated 2 U.S.C. § 441b(a) and approved a

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Subpoena and Order to the bank. At that time, the Commission declined the Committee's request to enter into pre-probable cause conciliation.

II. ANALYSIS

A. Initial Reporting Violations

The Act requires the principal committee of each candidate for federal office to report each person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan. 2 U.S.C. § 434(b)(3)(E). See also 11 C.F.R. § 104.3(a)(4)(iv). The Committee is required to report each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment. 2 U.S.C. § 434(b)(5)(D). See also 11 C.F.R. §§ 104.3(b)(4)(iii) and (iv). Pursuant to 2 U.S.C. § 431(8)(A), a "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i).

In response to the Commission's original findings, Mr. Montoya denied that the Committee failed to file required schedules. He stated that, between 1988 and 1990, he received one $45,000 bank loan from Western Bank. Mr. Montoya also contended that the $43,003.71 figure, which appeared to be a different loan, was not a new loan. Instead, $43,003.71 reflected the remaining principal of the $45,000 loan. Based upon the information

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provided, this Office agrees that there is only one loan at issue here.

The loan was collateralized and was disbursed to the Committee in four installments during May and June of 1988.[1] The loan reflected the following terms: (1) It was due on demand or by November 22, 1988; (2) bore an interest rate of 12.5%; and (3) if the balance of the loan was not paid at maturity, the interest rate would increase to 20%. Each installment was reported on Schedule C of the Committee's 1988 July Quarterly Report, as amended.

From the information available in this matter, it is apparent that the Committee inaccurately reported the Western Bank loan. First, the Committee failed to accurately report the source of the loan. On the Committee's 1988 July Quarterly Report, Rick Montoya was originally reported as the source of the loan. On the Committee's Amended 1988 July Quarterly Report, under "endorsers or guarantors," the following note appears: "Note: Loan proceeds borrowed from lending institution." Western Bank was not reported as the source of

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1. The four installments were as follows:

Installment #	Date Incurred	Date Due	Amount
1	5-25-88	11-22-88	$35,000.00
2	6-8-88	11-22-88	$ 8,193.91
3	6-9-88	11-22-88	$ 1,355.70
4	6-10-88	11-22-88	$ 450.39
			$45,000.00

the loan as required by 2 U.S.C. § 434(b)(3)(E).[2] Additionally, the Committee did not file Schedule A for the 1988 July Quarterly Report to itemize the actual source of the loan.

On January 26, 1990, the loan was extended. The rescheduled loan was reported on the Committee's 1990 Mid-Year Report, and Western Bank was reported as the source of the loan on Schedule C. (Attachment 4 at 13). On that Schedule C, the Committee reported that it had made cumulative loan payments of $5,430.60. Further, Schedule C reflected that the Committee had repaid loans to Rick Montoya. (Attachment 4 at 5). Although the Committee was also required to file Schedule B to itemize these disbursements to Western Bank and Rick Montoya, it did not file this schedule. Therefore, the total amount of loan repayments is not clear.

The foregoing evidence substantiates the Commission's reason to believe findings that the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D) by failing to file required schedules.

B. <u>Section 441b Violations</u>

Pursuant to 2 U.S.C. § 441b(a), any national or state bank is prohibited from making contributions or expenditures in connection with any election to any political office, or in

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2. The Committee submitted an illegible copy of a loan agreement with its Amended 1988 July Quarterly Report. It is not clear whether this was the Western Bank loan agreement.

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connection with any primary election. In addition, any candidate, political committee, or other person is prohibited from knowingly accepting or receiving any contribution prohibited by this section. The term "contribution" includes loans made to a campaign committee in connection with any election for Federal office. 2 U.S.C. § 441(b)(2). Excluded from the definition of "contribution," however, are loans by certain banks made "in the ordinary course of business." 2 U.S.C. § 441b(b)(2). To be deemed a loan made in the "ordinary course of business," section 431(8)(B)(vii) provides that such a loan shall bear the usual and customary interest rate of the lending institution for the category of the loan involved; shall be made on a basis which assures repayment; shall be evidenced by a written instrument; shall be subject to a due date or amortization schedule, and shall be considered a loan by each guarantor in proportion to the total number of guarantors and the amount of the unpaid balance. See also 11 C.F.R. § 100.7(b)(11).

After the Commission's initial findings, this Office sought additional information from the Committee and Western Bank to determine if the loan at issue was made in the ordinary course of business. There were several outstanding questions. First, the original loan matured on November 22, 1988. However, it did not appear that Western Bank attempted to secure repayment of the loan because Montoya merely paid the accumulating interest. Second, Montoya stated during a telephone conversation with this Office that he paid 12% interest for the term of the loan,

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including the period from the date the loan was due, November 22, 1988, through the date the bank granted an extension of that loan, January 26, 1990. This appeared to be contrary to the terms of the original loan, however, which stated that if the loan was not repaid at maturity, the interest charged would be 20%. Finally, it was unclear whether the loan was made on a basis which assured repayment. This Committee had substantial debts and low cash on hand. When the loan was obtained in 1988, the Committee reported cash on hand of only $4,105.41 and debts outstanding of $132,830.63. When the loan was extended in 1990, the Committee reported cash on hand of $585 and debts outstanding of $128,170.

Both the Committee and Western Bank responded. Counsel for Western Bank, Anderson Carter ("Counsel"), submitted answers to the Commission's interrogatories and provided Rick Montoya's bank file. As a result of the investigation into this matter, it appears that Western Bank made and extended the loan to Rick Montoya in the ordinary course of business.

1. **Failure to Secure Loan Repayment**

Counsel acknowledged that Mr. Montoya paid only interest on the loan from May 26, 1988 to January 26, 1990, but he argued that this is not an uncommon practice. (Attachment 1 at 3). Counsel further asserted that the loan was evidenced by appropriate documentation and was fully secured by real estate. Id. "At all times, this loan was handled in the same manner as other loans of this type made by the Bank." Id. Counsel stated

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that the loan "...continued to bear the same variable interest rate which was customary and usual for this Bank." (Attachment 1 at 3).

Although Western Bank did not secure repayment of the loan at its original due date, this Office believes that the bank's actions were conducted in the ordinary course of business. By extending the loan, it appears that Western Bank made a reasonable business decision. The bank demonstrated that it had valid commercial interests in extending the loan based on profitability. According to the evidence, Western Bank collected $24,000 in interest with principal decreasing by $6,000. Further, Western Bank's administration of the loan appeared to be in the ordinary course of business because the bank held a substantial security interest in real estate owned by Mr. Montoya. The bank also fully documented the loan, extensions, and security interest. For example, the original loan was renewed under an Extension and Revision Agreement dated November 30, 1988.[3] For the foregoing reasons, it appears that Western Bank made the loan and extensions in the ordinary course of business. 2 U.S.C. § 431(8)(B)(vii) and 11 C.F.R. § 100.7(b)(11).

2. <u>Failure to Charge 20% Interest Penalty</u>

Counsel explained that the Bank did not charge Mr. Montoya the 20% post-maturity interest rate as indicated by the terms of the original agreement because the loan was appropriately

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3. Counsel also provided a copy of this agreement.

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re-negotiated. (Attachment 1 at 3). Counsel stated that the Bank only imposed post-maturity interest at that rate "...in the case of severe collection problems turned over to legal counsel for collection and/or foreclosure." (Attachment 1 at 3). Because Mr. Montoya's loan was re-negotiated, the 20% interest rate was not applied. Id.

This Office believes that Western Bank has demonstrated that it was in the ordinary course of business to forego the 20% interest charge. Based on the evidence, it appears that the bank decided to re-negotiate the loan because it was profitable and fully secured. Accordingly, it appears that Western Bank's decision not to assess the 20% interest rate was reasonable and handled in the ordinary course of business.

3. Committee's Lack of Liquidity

Although the Committee's reports reflected minimal cash on hand and considerable debts, Counsel asserted that Western Bank looked to Mr. Montoya's financial status as guarantor of the loan. (Attachment 1 at 4). A review of the evidence submitted by Counsel also indicates that Mr. Montoya guaranteed the loan, and he had substantial assets with which to secure the loan. (See Attachment 1 at 34 and 41). At the time the loan was originally obtained, May 1988, Mr. Montoya had a net worth of approximately Further, the documentation revealed that Mr. Montoya executed a mortgage on 4.8 acres of farmland to fully secure the loan. (See Attachment 1 at 65). The farmland

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was valued at approximately $76,000.[4] (See Attachment 1 at 41). In addition, Counsel argued that Mr. Montoya's debt-to-assets ratio was and the Bank considered this to be a credit-worthy ratio. Id.

Therefore, despite the Committee's poor financial situation, this Office believes that Western Bank made and extended the loan in the ordinary course of business based on the guarantee by Mr. Montoya. The loan was fully secured by Mr. Montoya's substantial assets and real property with a value greater than the amount of the loan.

4. **Conclusion**

Based on the foregoing, this Office believes that the Western Bank loan and its extensions were completed in the ordinary course of business. Therefore, this Office recommends that the Commission take no further action as to Western Bank with regard to a violation of 2 U.S.C. § 441b and close the file as to this respondent. Additionally, this Office recommends that the Commission take no further action as to Rick Montoya for United States Senate and Rick Montoya, acting as treasurer, with regard to a violation of 2 U.S.C. § 441b.

C. **Section 433(c) Violation**

Pursuant to 2 U.S.C. § 433(c), any change in information previously submitted in a statement of organization must be

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4. It appears that there was a minor discrepancy in the value of the land used to secure the loan. Counsel's response indicated the property value was $71,000 while the documents indicated a value of $76,000. In either case, the value of the land appears to be substantially greater than the amount of the loan at issue.

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reported within 10 days of the change. In his response, Rick Montoya admitted that the Committee violated 2 U.S.C. § 433(c) because it did not timely amend its Statement of Organization after the Committee's treasurer resigned in 1988. (Attachment 2 and See General Counsel's Report dated July 17, 1992). To date, the Committee has not filed an amended statement of organization.

III. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

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IV. RECOMMENDATIONS

1. Take no further action as to Western Bank with regard to a violation of 2 U.S.C. § 441b and close the file as to this respondent.

2. Take no further action as to the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, with regard to a violation of 2 U.S.C. § 441b.

3. Enter into conciliation with the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, prior to a finding of probable cause to believe.

4. Approve the attached proposed conciliation agreement and the appropriate letter.

Lawrence M. Noble
General Counsel

7/30/93
Date

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Response of Western Bank.
2. Response of Rick Montoya for United States Senate and Rick Montoya, acting as treasurer.
3. Proposed Conciliation Agreement
4. 1990 Mid-Year Report

Staff assigned: Richard Denholm

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: AUGUST 5, 1993

SUBJECT: MUR 3444 - GENERAL COUNSEL'S REPORT DATED JULY 30, 1993.

The above-captioned document was circulated to the Commission on Monday, August 2, 1993 at 11:00 a.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	XXX
Commissioner Elliott	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Potter	
Commissioner Thomas	

This matter will be placed on the meeting agenda for Tuesday, August 10, 1993.

Please notify us who will represent your Division before the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3444
Rick Montoya for United States	)	
Senate Committee and Rick Montoya,	)	
acting as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 10, 1993, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 3444:

1. Take no further action as to Western Bank with regard to a violation of 2 U.S.C. § 441b, on the basis of the General Counsel's report finding no evidence of a violation, and close the file as to this respondent.

2. Take no further action as to the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, with regard to a violation of 2 U.S.C. § 441b, on the basis of the General Counsel's report finding no evidence of a violation.

(continued)

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3. Enter into conciliation with the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, prior to a finding of probable cause to believe.

4. Approve an amended conciliation agreement,

Commissioners Aikens, Elliott, McDonald, McGarry, and Potter voted affirmatively for the decision. Commissioner Thomas was not present.

Attest:

8-13-93
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 19, 1993

Anderson Carter, II, Esquire
P.O. Box 16488
Las Cruces, NM 88004

RE: MUR 3444
Western Bank

Dear Mr. Carter:

In a letter dated August 12, 1992, you were notified that the Federal Election Commission found reason to believe that Western Bank violated 2 U.S.C. § 441b. On September 17, 1992, the Commission received your response to the reason to believe finding.

After considering the circumstances of the matter, the Commission determined on August 10, 1993, to take no further action as to Western Bank with regard to a violation of 2 U.S.C. § 441b, based upon the General Counsel's conclusion that there was no evidence of a violation, and closed the file as to this respondent. The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II

Richard M. Denholm II
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 19, 1993

Rick Montoya, Acting as Treasurer
Rick Montoya for United States
Senate Committee
5119A Leesburg Pike, Suite 117
Falls Church, VA 22041

RE: MUR 3444

Dear Mr. Montoya:

In a letter dated November 8, 1991, you were notified that the Federal Election Commission found reason to believe that the Rick Montoya for United States Senate Committee and its treasurer violated 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D). In a letter dated August 12, 1992, you were notified that the Federal Election Commission found reason to believe that the Rick Montoya for United States Senate Committee and you, acting as treasurer, violated 2 U.S.C. §§ 433(c) and 441b.

After considering the circumstances of the matter, the Commission determined on August 10, 1993, to take no further action against the Rick Montoya for United States Senate Committee and you, acting as treasurer, with regard to a violation of 2 U.S.C. § 441b, based upon the General Counsel's conclusion that there was no evidence of a violation.

Furthermore, at your request, the Commission determined on August 10, 1993, to enter into negotiations directed towards reaching a pre-probable cause conciliation agreement in settlement of all violations in this matter. The enclosed agreement reflects an admission that the Rick Montoya for United States Senate Committee and you, acting as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E), 434(b)(5)(D), and 433(c).

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light

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of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II

Richard M. Denholm II
Attorney

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SEPTEMBER 7, 1993

Rick Montoya, Acting as Treasurer
Rick Montoya for United States
Senate Committee
5119A Leesburg Pike, Suite 117
Falls Church, Virginia 22041

RE: MUR 3444

Dear Mr. Montoya:

On August 19, 1993, you were notified that the Federal Election Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. On that same date, you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that conciliation negotiations entered into prior to a finding of probable cause to believe are limited to a maximum of 30 days. To date, you have not responded to the proposed agreement. The 30 day period for negotiations will soon expire. Unless we receive a response from you, this Office will consider these negotiations terminated and will proceed to the next stage of the enforcement process.

Should you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II
Attorney

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer	)	MUR 3444
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was generated as a referral from the Reports Analysis Division ("RAD") concerning the Rick Montoya for United States Senate Committee ("Committee") and Luther G. Branham, as treasurer. The basis for the referral was the Committee's failure to file a required supporting Schedule B for $50,430.60 in bank loan repayments to Western Bank.[1]

On October 28, 1991, the Federal Election Commission found reason to believe that the Committee and its treasurer violated 2 U.S.C. §§ 434(b)(3)(E) and 434(b)(5)(D), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Attachment 1. On July 28, 1992, the Commission made additional findings. First, the Commission found reason to believe that the Committee and Rick Montoya, acting as treasurer, violated 2 U.S.C. §§ 433(c) and 441b(a). Attachment 2. Second, the Commission found reason to believe Western Bank violated 2 U.S.C. § 441b(a) and approved a Subpoena and Order to the bank. Id. At that time, the Commission declined the

1. At the time RAD referred the Committee, it also appeared that the Committee failed to file required supporting schedules for a second loan from Western Bank in the amount of $43,003.71. Upon further review, it was discovered that there was only one bank loan at issue.

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Committee's request to enter into pre-probable cause conciliation. Id.

The Commission determined on August 10, 1993, to take no further action against Respondents and Western Bank as to the 2 U.S.C. § 441b violation on the basis of the General Counsel's Report finding no evidence of a violation. Attachment 3. The Commission closed the file as it pertained to Western Bank. Id. With regard to Respondents, the Commission approved a conciliation agreement

This report contains recommendations to assure that this matter conforms to the Court's opinion in FEC v. NRA Political Victory Fund, et al., No. 91-5360 (D.C. Cir. Oct. 22, 1993) ("NRA"). This report also includes the recommendation that the Commission approve the terms of the attached conciliation agreement, which is identical to an agreement signed and submitted by Mr. Montoya prior to the NRA decision.

II. RECOMMENDED ACTIONS IN LIGHT OF FEC v. NRA

Based upon the original referral from the Reports Analysis Division and a review of the public record, and consistent with the Commission's November 9, 1993, decisions concerning compliance

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with the NRA opinion, this Office recommends that the Commission revote its determinations to: 1) open a MUR; 2) find reason to believe that the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E), 434(b)(5)(D), and 433(c); and 3) enter into pre-probable cause conciliation with the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, regarding the violations of 2 U.S.C. §§ 434(b)(3)(E), 434(b)(5)(D), and 433(c). For the convenience of the Commission, this Office has attached the certifications in this matter dated October 28, 1991, July 29, 1992, and August 13, 1993. This Office further recommends that the Commission approve the attached factual and legal analysis and the attached conciliation agreement.[2] Attachments 6 and 7.

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2. The factual and legal analysis includes material relevant to the Respondents' violations of 2 U.S.C. §§ 434(b)(3)(E), 434(b)(5)(D), and 433(c) contained in the First General Counsel's Report dated October 23, 1991 and the General Counsel's Reports dated July 17, 1992 and July 30, 1993.

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IV. RECOMMENDATIONS

1. Open a MUR.

2. Find reason to believe that the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E), 434(b)(5)(D), and 433(c).

3. Enter into conciliation prior to a finding of probable cause to believe with the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, regarding violations of 2 U.S.C. §§ 434(b)(3)(E), 434(b)(5)(D), and 433(c).

4. Approve the attached factual and legal analysis.

5. Approve the attached conciliation agreement.

6. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

Date 1/5/94

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Commission Certification dated October 28, 1991.
2. Commission Certification dated July 29, 1992.
3. Commission Certification dated August 13, 1993.
4. Letter from Mr. Rick Montoya dated September 17, 1993.
5. Letter from Mr. Rick Montoya dated September 22, 1993.
6. Factual and Legal Analysis.
7. Proposed conciliation agreement.

Staff assigned: Richard Denholm

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer.	)	MUR 3444

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 11, 1994, the Commission decided by a vote of 6-0 to take the following actions in MUR 3444:

1. Open a MUR.

2. Find reason to believe that the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E), 434(b)(5)(D), and 433(c).

3. Enter into conciliation prior to a finding of probable cause to believe with the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, regarding violations of 2 U.S.C. §§ 434(b)(3)(E), 434(b)(5)(D), and 433(c).

4. Approve the factual and legal analysis, as recommended in the General Counsel's Report dated January 5, 1994.

(continued)

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5. Approve the conciliation agreement, as recommended in the General Counsel's Report dated January 5, 1994.

6. Approve the appropriate letter, as recommended in the General Counsel's Report dated January 5, 1994.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

1-13-94
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., Jan. 06, 1994 9:31 a.m.
Circulated to the Commission: Thurs., Jan. 06, 1994 11:00 a.m.
Deadline for vote: Tues., Jan. 11, 1994 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JANUARY 21, 1994

Rick Montoya, Acting as Treasurer
Rick Montoya for United States
Senate Committee
5119A Leesburg Pike, Suite 117
Falls Church, VA 22041

RE: MUR 3444
Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer

Dear Mr. Montoya:

On October 28, 1991, and July 28, 1992, the Federal Election Commission found reason to believe that the Rick Montoya for United States Senate Committee and its treasurer violated 2 U.S.C. §§ 434(b)(3)(E), 434(b)(5)(D), and 443(c), and subsequently entered into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, No. 91-5360 (D.C. Cir. Oct. 22, 1993). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six-member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

In this matter, on January 11, 1994, the Commission revoted to find reason to believe that the Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, violated 2 U.S.C. §§ 434(b)(3)(E), 434(b)(5)(D), and 433(c), and to approve the attached Factual and Legal Analysis. You should

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refer to that document for the basis of the Commission's decision.

Furthermore, the Commission revoted to enter into conciliation negotiations prior to a finding of probable cause to believe, and approved the terms contained in your most recent submission. In view of the NRA decision, and the reconstitution of the Commission as a six-member body, it is necessary that you sign the enclosed conciliation agreement reflecting those terms. Please sign and return the enclosed agreement within ten days.

Given the unique circumstances engendered by the NRA decision, conciliation negotiations, prior to a finding of probable cause to believe, will be limited to a maximum of 30 days.

If you have any questions, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

For the Commission,

Danny L. McDonald

Danny L. McDonald
Vice Chairman

Enclosures
Conciliation Agreement
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer	)	MUR 3444
	)	
	)	**SENSITIVE**

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

Attached is a conciliation agreement signed and submitted by Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer. Attachment 1. The attached agreement contains no changes from the agreement approved by the Commission on January 11, 1994. A check for the initial installment payment for the civil penalty has not been received. This Office recommends that the Commission accept the attached conciliation agreement and close the file.

II. **RECOMMENDATIONS**

1. Accept the attached conciliation agreement with Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer.
2. Approve the appropriate letter.
3. Close the file.

Lawrence M. Noble
General Counsel

Date 3/3/94 BY: [signature]
Lois G. Lerner
Associate General Counsel

Attachment
1. Conciliation Agreement

Staff Assigned: Richard Denholm

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer.	)	MUR 3444
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 9, 1994, the Commission decided by a vote of 6-0 to take the following actions in MUR 3444:

1. Accept the conciliation agreement with Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer, as recommended in the General Counsel's Report dated March 3, 1994.

2. Approve the appropriate letter, as recommended in the General Counsel's Report dated March 3, 1994.

3. Close the file.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

3-9-94
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Fri., Mar. 4, 1994 9:48 a.m.
Circulated to the Commission: Fri., Mar. 4, 1994 12:00 p.m.
Deadline for vote: Wed., Mar. 4, 1994 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MARCH 15, 1994

Mr. Anderson Carter, II, Esq.
P.O. Box 16488
Las Cruces, New Mexico 88004

RE: MUR 3444
Western Bank

Dear Mr. Carter:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MARCH 15, 1994

Mr. Rick Montoya, Acting as Treasurer
Rick Montoya for United States
Senate Committee
3313 Lakeside View Dr.
Falls Church, VA 22041

RE: MUR 3444
Rick Montoya for United States Senate Committee and Rick Montoya, acting as treasurer

Dear Mr. Montoya:

On March 9, 1994, the Federal Election Commission accepted the signed conciliation agreement you submitted on behalf of Rick Montoya for United States Senate Committee in settlement of violations of 2 U.S.C. §§ 434(b) and 433(c), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

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Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the first installment payment for the civil penalty is due within 30 days of the conciliation agreement's effective date, and the Committee also must file the amended reports referenced at Clause VI of the conciliation agreement. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Rick Montoya for United States Senate and Rick Montoya, acting as treasurer	)	MUR 3444

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Rick Montoya for United States Senate Committee and its treasurer ("Respondents"), violated 2 U.S.C. §§ 434(b)(5)(D), 434(b)(3)(E), and 433(c).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

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IV. The pertinent facts in this matter are as follows:

1. Mr. Rick Montoya was a candidate for the U.S. Senate for New Mexico in the 1988 primary election. The Rick Montoya for United States Senate Committee is the authorized principal campaign committee for Mr. Montoya's campaign. See 2 U.S.C. § 431(5).

2. Mr. Rick Montoya is the acting treasurer of the Rick Montoya for United States Senate Committee.

3. The Federal Election Campaign Act of 1971, as amended (the "Act"), requires the principal committee of each candidate for federal office to report each person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan. 2 U.S.C. § 434(b)(3)(E). See also 11 C.F.R. § 104.3(a)(4)(iv).

4. The Committee is required to report each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment. 2 U.S.C. § 434(b)(5)(D). See also 11 C.F.R. §§ 104.3(b)(4)(iii) and (iv).

5. The Act defines a "person" to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. § 431(11).

6. During 1988, Respondents received a $45,000 loan from Western Bank.

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7. Respondents were required to file Schedule A with the 1988 July Quarterly Report to itemize the loan pursuant to 2 U.S.C. § 434(b)(3)(E).

8. Respondents failed to itemize the loan and file Schedule A with the 1988 July Quarterly Report in violation of 2 U.S.C. § 434(b)(3)(E). See also 11 C.F.R. 104.3(a)(4)(iv).

9. Respondents were required to file an accurate Schedule B to itemize loan repayments pursuant to 2 U.S.C. § 434(b)(5)(D). See also 11 C.F.R. §§ 104.3(b)(4)(iii) and (iv).

10. Respondents failed to file Schedule B with the 1990 Mid-Year Report in violation of 2 U.S.C. § 434(b)(5)(D). See also 11 C.F.R. §§ 104.3(b)(4)(iii) and (iv).

11. Schedule C of the Respondents' 1990 Mid-Year Report reflects loan repayments of $5,430.60, but Respondents' Schedule B of the same report does not reflect loan repayments.

12. Pursuant to 2 U.S.C. § 433(c), a Committee must file a report within 10 days of a change in information previously submitted on its Statement of Organization.

13. Respondents' Statement of Organization dated September 1, 1987, reflects Luther Branham as treasurer.

14. Respondents notified the Commission on December 12, 1991, that Luther Branham resigned as treasurer of the Committee in 1988. Rick Montoya has been acting as treasurer of the Committee since 1989. To date, respondents have not amended the Statement of Organization.

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15. Respondents failed to file an amended Statement of Organization within 10 days of Luther Branham's resignation.

V. 1. Respondents' 1988 July Quarterly Report failed to include Schedule A for a $45,000 loan from Western Bank in violation of 2 U.S.C. § 434(b)(3)(E). See also 11 C.F.R. 104.3(a)(4)(iv).

2. Respondents failed to file Schedule B with the 1990 Mid-Year Report for loan repayments on the $45,000 loan from Western Bank in violation of 2 U.S.C. § 434(b)(5)(D). See also 11 C.F.R. §§ 104.3(b)(4)(iii) and (iv).

3. Respondents violated 2 U.S.C. § 433(c) by failing to file an amended Statement of Organization within 10 days of the change in the Committee's treasurer.

VI. 1. Respondents will file an amended 1988 July Quarterly Report to include the required Schedule A for the $45,000 loan from Western Bank.

2. Respondents will file a Schedule B for the 1990 Mid-Year Report to accurately reflect loan repayments.

3. Respondents will file an amended Statement of Organization to reflect the resignation of Luther Branham and designation of a new treasurer.

VII. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Four Thousand Dollars ($4,000), pursuant to 2 U.S.C. § 437g(a)(5)(A), such penalty to be paid as follows:

1. One initial payment of $1,000 due thirty days from the effective date of this agreement;

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2. Thereafter, three consecutive monthly installment payments of $1,000 each;

3. Each installment shall be paid thirty days from the date of the previous installment.

4. In the event that any installment payment is not received by the Commission within five days of the date it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to Respondents. Failure by the Commission to accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to future overdue installments.

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same, and the Commission has approved the entire agreement.

X. Except as provided in Paragraph VII, Sections 2 and 3 above, Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY: _____ 3-15-94
Lois G. Lerner
Associate General Counsel
Date

FOR THE RESPONDENTS:

Rick Montoya _____ 2-26-94
Name
Position Acting as Treasurer
Date

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3444

DATE FILMED 4-15-94 CAMERA NO. 2

CAMERAMAN JMH

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

✓ Microfilm

Public File

Press

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3444.

8/29/94

94043561355

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 16, 1994

Mr. Rick Montoya, Treasurer
Rick Montoya for U.S. Senate
3313 Lakeside View Dr.
Falls Church, VA 22041

RE: MUR 3444
Rick Montoya for
U.S. Senate and Rick
Montoya, treasurer

Dear Mr. Montoya:

On March 15, 1994, the Federal Election Commission and Rick Montoya for U.S. Senate ("Committee") and you, as treasurer, entered into a conciliation agreement in settlement of violations of 2 U.S.C. §§ 434(b)(3)(E), 434(b)(5)(D), and 433(c). The conciliation agreement provided for installment payments, with your first payment due on April 15, 1994, and additional payments due on the 15th day of each successive month, until July 15, 1994.

According to Commission records, your payments for the months of May, June and July have not been received. Please be advised that, pursuant to 2 U.S.C. § 437g(a)(5)(D), violation of any provision of the conciliation agreement may result in the institution of a civil suit for relief in the United States District Court. On August 10, 1994, I sent a letter concerning this matter to your business address and it was returned as undeliverable. Unless we receive the payments from you within ten days of the date of this letter, this Office will recommend that the Commission file suit to remedy this violation.

If you believe the Commission's records are in error, or if you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II
Attorney

9404356136

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 10, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Rick Montoya, Treasurer
Rick Montoya for U.S. Senate
5119A Leesburg Pike #117
Falls Church, VA 22041

RE: MUR 3444
Rick Montoya for
U.S. Senate and Rick
Montoya, treasurer

Dear Mr. Montoya:

On March 15, 1994, the Federal Election Commission and Rick Montoya for U.S. Senate ("Committee") and you, as treasurer, entered into a conciliation agreement in settlement of violations of 2 U.S.C. §§ 434(b)(3)(E), 434(b)(5)(D), and 433(c). The conciliation agreement provided for installment payments, with your first payment due on April 15, 1994, and additional payments due on the 15th day of each successive month, until July 15, 1994.

According to Commission records, your payments for the months of May, June and July have not been received. Please be advised that, pursuant to 2 U.S.C. § 437g(a)(5)(D), violation of any provision of the conciliation agreement may result in the institution of a civil suit for relief in the United States District Court. Unless we receive the payments from you within ten days of the date of this letter, this Office will recommend that the Commission file suit to remedy this violation.

If you believe the Commission's records are in error, or if you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II
Attorney

9404356137

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 10/14/94

✓ Microfilm

_____ Public Records

_____ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 3444

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

Sep 19 2 07 PM '94

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
Rick Montoya for United States Senate Committee and Rick Montoya, as treasurer	)	MUR 3444
	)	
	)	
	)	

SEP 27 1994

EXECUTIVE SESSION

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

On March 9, 1994, the Federal Election Commission ("Commission") accepted a signed conciliation agreement submitted by Rick Montoya, acting treasurer,[1] on behalf of Rick Montoya for United States Senate Committee ("Respondents"). In the agreement, Respondents admit violations of 2 U.S.C. §§ 433(c), 434(b)(3)(E), and 434(b)(5)(D), provisions of the Federal Election Campaign Act of 1971, as amended, ("the Act"); agree to amend their Statement of Organization and 1988 July Quarterly and 1990 Mid-Year Reports; and agree to pay a $4,000 civil penalty.[2] (Attachment 1.) The agreement provides for monthly installment payments with an initial payment of $1,000, followed by three $1,000 installment payments, which were scheduled for the 15th of May, June, and July 1994.

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1. Rick Montoya is now the Committee's treasurer of record.

2. This matter was generated as a referral from the Reports Analysis Division ("RAD") concerning Respondents' failure to file a required supporting Schedule B for $50,430.60 in bank loan repayments to Western Bank.

Respondents filed amended reports and paid $1,000 toward the civil penalty. However, to date, they have not paid the balance of the civil penalty, $3,000.

II. ANALYSIS

Under 2 U.S.C. § 437g(a)(1), the Commission may review a Respondent's compliance with the terms of a conciliation agreement. Further, the agreement signed by Mr. Montoya specifically states that if the Commission believes that the terms of the agreement have been violated, it may file a civil suit in United States District Court. (Attachment 1, at 7.)

After Respondents missed their first installment payment, the staff attorney contacted Mr. Montoya on June 13, 1994.[3] Mr. Montoya stated that he was having financial difficulties, but expected to pay the entire civil penalty by August 15, 1994. On August 10, 1994, this Office sent a reminder letter to Mr. Montoya's business address, but it was returned as undeliverable. (Attachment 2.) On August 16, 1994, this Office sent a letter to Mr. Montoya's home address. The letter informed him that Respondents' installment payments for May, June, and July had not been received and that this Office intended to recommend that the Commission file suit if full payment was not received within 10 days. (Attachment 3.) This Office received no response and, to date, $3,000 of the civil penalty remains unpaid.

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3. Mr. Montoya has been the Committee's sole representative throughout this matter.

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Based on the foregoing, this Office recommends that the Commission authorize the filing of a civil suit for relief in United States District Court against Rick Montoya for United States Senate Committee and Rick Montoya, as treasurer.

III. RECOMMENDATIONS

1. Authorize the Office of the General Counsel to file a civil suit for relief in United States District Court against Rick Montoya for United States Senate Committee and Rick Montoya, as treasurer.

2. Approve the appropriate letter.

Date 9/16/94

Lawrence M. Noble
General Counsel

Attachments
1. Conciliation agreement and cover letter, dated March 15, 1994.
2. Letter from Denholm to Montoya, dated August 10, 1994.
3. Letter from Denholm to Montoya, dated August 16, 1994.

Attorney Assigned: Richard M. Denholm II

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3444
Rick Montoya for United States	)	
Senate Committee and Rick Montoya,	)	
as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on September 27, 1994, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3444:

1. Authorize the Office of the General Counsel to file a civil suit for relief in United States District Court against Rick Montoya for United States Senate Committee and Rick Montoya, as treasurer.

2. Approve the appropriate letter as recommended in the General Counsel's September 16, 1994 report.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

9-28-94
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

2404359095

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCTOBER 3, 1994

Mr. Rick Montoya, Treasurer
Rick Montoya for U.S. Senate
3313 Lakeside View Dr.
Falls Church, VA 22041

RE: MUR 3444
Rick Montoya for
U.S. Senate and Rick
Montoya, as treasurer

Dear Mr. Montoya:

On March 15, 1994, the Federal Election Commission and Rick Montoya for U.S. Senate and you, as treasurer, entered into a conciliation agreement in settlement of violations of 2 U.S.C. §§ 434(b)(3)(E), 434(b)(5)(D), and 433(c). The conciliation agreement provided for installment payments, with your first payment due on April 15, 1994, and additional payments due on the 15th day of each successive month, until July 15, 1994.

According to Commission records, your payments for the months of May, June, and July have not been received. On August 10, 1994, this Office sent a letter concerning your late payments to your business address, but it was returned as undeliverable. On August 16, 1994, we sent a letter to your home address stating that unless we received full payment within 10 days, this Office would recommend that the Commission file suit to remedy your breach of the conciliation agreement. You did not respond to our letter and, accordingly, on September 27, 1994, the Commission authorized this Office to file a civil suit in United States District Court to remedy this violation of the conciliation agreement.

Should you have any questions or should you wish to settle this matter prior to suit, please contact Stephen Hershkowitz, Assistant General Counsel, at (202) 219-3400, within five days of your receipt of this letter.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure

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