

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of MBFI’s reported financial activity with its bank records revealed a misstatement of receipts and disbursements in calendar year 2018. MBFI overstated receipts by \$6,293,350 and disbursements by \$6,294,482. In response to the Interim Audit Report recommendation, MBFI did not file amendments or a Form 99 (Miscellaneous Electronic Submission). MBFI stated, “...the former treasurer did not ultimately report the repayments from the Candidate’s personal funds correctly” and that loan repayments should have been reported as in-kind contributions instead of as memo entries as recommended by the Audit staff. In response to the Draft Final Audit Report, MBFI filed amended disclosure reports that corrected the public record.

The Commission approved a finding that MBFI overstated its reported receipts and disbursements by \$6,293,350 and \$6,294,482, respectively, in calendar year 2018.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the election cycle;
- The total amount of disbursements for the reporting period and for the election cycle; and
- Transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4), and (5).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled MBFI’s reported financial activity with its bank records for calendar years 2017 and 2018. In addition to the bank records provided by MBFI, on May 9, 2019, the Commission issued subpoenas to one vendor and its financial institution to obtain documentation necessary to complete the comparison of MBFI’s financial activity to the information contained in the disclosure reports filed with the Commission.¹ The reconciliation determined that MBFI misstated receipts and disbursements for 2018. The following chart details the discrepancies between MBFI’s disclosure reports and bank activity. The succeeding paragraphs explain why the discrepancies occurred.

2018 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash on hand @ January 1, 2018	\$2,313,439	\$2,313,439	\$0
Receipts	\$22,376,798	\$16,083,448	\$6,293,350 Overstated
Disbursements	\$24,618,654	\$18,324,172	\$6,294,482

¹ MBFI was cooperative and attempted to comply with the Audit staff’s request for documentation but was unable to obtain the requested information from the associated vendors, resulting in the issuance of subpoenas.

2018 Committee Activity			
	Reported	Bank Records	Discrepancy
			Overstated
Ending Cash on hand @ December 31, 2018	\$71,583	\$72,715	\$1,132 Understated

The overstatement of receipts resulted from the following:

• Two unreported Candidate loans	+ 96,520
• Candidate loans incorrectly reported	- 6,388,558
• Unexplained differences	- 1,312
Net Overstatement of Receipts	<u>\$ 6,293,350</u>

The overstatement of disbursements resulted from the following:

• Disbursements not reported or reported incorrectly	+ 2,736
• Credit card fees over-reported	- 4,472
• Candidate loan repayments not reported	+ 96,520
• Candidate loans incorrectly reported	- 6,388,558
• Unexplained differences	- 708
Net Overstatement of Disbursements	<u>\$ 6,294,482</u>

The \$1,132 understatement of the ending cash on hand was a result of the reporting discrepancies described above.

The Candidate loan and loan repayments totaling \$6,388,558 were the result of MBFI misreporting the conversion of Candidate loans to contributions. The converted loan amounts should have been disclosed as memo entries on Schedule A (Itemized Receipts) and Schedule B (Itemized Disbursements), given the campaign finance software used by MBFI.² Instead, MBFI reported the loan amounts as transactions on Schedules A and B, which overstated receipts and disbursements, respectively.

The credit card fees totaling \$4,472 were the net result of some fees being over-reported and some fees being under-reported.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter during the exit conference with MBFI representatives and provided schedules detailing the misstatement of financial activity.

In response to the exit conference, MBFI submitted a written response as follows:

² Various campaign finance software handle the conversion of a candidate loan to a contribution differently, but in no case should this conversion be reported as an in-kind contribution. The software used by MBFI treats the conversion of a candidate loan to a contribution as memo entries on Schedules A and B. Regardless of which campaign finance software a committee chooses to use, the amounts in the disclosure reports must match the bank statement activities.

“The Committee provided documentation related to this finding during the audit process, including access to all banking records, electronic transaction processors, and the Committee’s electronic information database. The Committee has no new materials to provide with this response, but it is the Committee’s belief that the FEC’s preliminary finding mischaracterizes certain transactions. The Committee will likely be requesting Commission guidance on legal questions related to this finding³, and the Committee intends to take further corrective action as may be required at the conclusion of this matter.”

The Interim Audit Report recommended that MBFI amend its disclosure reports or file a Form 99⁴ to correct the misstatements noted above and reconcile the cash balance on its most recently filed report to correct any subsequent discrepancies.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBFI stated, “...the former treasurer did not ultimately report the repayments from the Candidate’s personal funds correctly” and “The current treasurer has since conferred with the software provider and legal counsel, and they are all in agreement that the proper reporting of the payments is as an in-kind contribution.” MBFI stated that the lines of credit were in the name of the Candidate and repaid from his personal funds, without first being deposited into MBFI’s bank account, and it prepared amended reports to “more clearly disclose the source(s) of the funds.” MBFI also stated that “...while the transaction(s) were not reported on the correct lines of the FEC report, all the transactions were publicly disclosed.”

The Audit staff noted the Candidate loans and lines of credit were not taken out in the name of MBFI, as such, the repayments were not made on behalf of MBFI and should not be reported as in-kind contributions. The transactions were between the Candidate and the financial institution. As a result, and in consultation with the Reports Analysis Division, the Audit staff maintains that the converted loans should have been disclosed as memo entries on Schedule A and Schedule B, given the campaign finance software used by MBFI⁶, rather than in-kind contributions. The Audit staff further noted that MBFI had not filed amendments or a Form 99 as of this report.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that MBFI did not file amended reports or a Form 99 and MBFI’s 2018 receipts and disbursements remained overstated by \$6,293,350 and \$6,294,482, respectively.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, MBFI filed amended disclosure reports that corrected the public record.

³ MBFI did not submit a Request for Consideration of a Legal Question by the Commission with respect to this finding.

⁴ MBFI was advised by the Audit staff that if it chose to file a Form 99, instead of amending its disclosure reports, the form must contain all pertinent information that is required on each schedule.

F. Audit Hearing

MBFI did not address this finding during the Audit Hearing.

Commission Conclusion

On March 10, 2022, the Commission considered the Audit Division Recommendation Memorandum, in which the Audit staff recommended that the Commission find that MBFI overstated its reported receipts and disbursements by \$6,293,350 and \$6,294,482, respectively, in calendar year 2018.

The Commission approved the Audit staff's recommendation.

Finding 5. Disclosure of Memo Entries and Candidate Loans

Summary

During audit fieldwork, the Audit staff determined that MBFI failed to properly disclose joint fundraising memo entries, totaling \$933,814, from 13 joint fundraising committees. MBFI also failed to properly disclose the correct loan balances and loan terms for 29 transactions, totaling \$11,569,963. In response to the Interim Audit Report recommendation, MBFI did not file amendments or a Form 99 (Miscellaneous Electronic Submission) and did not provide any documentation. However, regarding disclosure of joint fundraising memo entries, MBFI stated "all have been corrected and will be included in the amendments that have been prepared to be filed." Regarding the disclosure of loan balances and loan terms, MBFI did not agree with the finding.

In response to the Draft Final Audit Report, MBFI filed amended disclosure reports that materially corrected disclosure of the joint fundraising memo entries. MBFI did not correct the disclosure of loan terms and dates, repayment amounts, loan forgiveness, and outstanding balances on Schedule C (Loans) and Schedule C-1 (Loans and Lines of Credit from Lending Institutions).

The Commission approved a finding that MBFI failed to correctly disclose joint fundraising memo entries totaling \$933,814 and failed to correctly disclose loan balances and loan terms for transactions totaling \$11,569,963.

Legal Standard

- A. Contents of Reports.** Each report must disclose for the reporting period and for the election cycle, the total amount of:
- Contributions from persons other than political committees;
 - Contributions from authorized committees which makes a transfer to the reporting committee;
 - Loans made by or guaranteed by the candidate and the identification of each person who makes, endorses or guarantees a loan to the committee. 52 U.S.C. §30104(b)(2)(G), (3)(E) and 4(D).

B. Contents Required - Information for Contributions. For each itemized contribution, the committee must provide the following information:

- The contributor's full name and address (including zip code);
- The contributor's occupation and the name of his or her employer (for individual contributors);
- The date of receipt (the date the committee received the contribution);
- The amount of the contribution; and
- The aggregate year-to-date total of all contributions from the same individual. 11 CFR §§100.12 and 104.3(a)(4) and 52 U.S.C. §30104(b)(3)(A).

C. Itemization of Contributions from Joint Fundraising Efforts. Participating political committees shall report joint fundraising proceeds in accordance with 11 CFR §102.17(c) (8) when such funds are received from the fundraising representative. 11 CFR §102.17(c)(3)(iii).

Each participating political committee reports its share of the net proceeds as a transfer-in from the fundraising representative and shall also file a memo Schedule A itemizing its share of gross receipts as contributions from the original contributors to the extent required under 11 CFR §104.3(a). 11 CFR §102.17(c)(8)(i)(B).

D. Itemization required. Political committees must itemize:

- Any contributions from an individual if it exceeds \$200 per calendar year (or per election cycle in the case of an authorized committee) either by itself or when aggregated with other contributions from the same contributor. 11 CFR §104.3(a)(4)(i); and
- Every contribution from any political committee, regardless of the amount. 52 U.S.C. §30104(b)(3)(A) and (B).

E. Itemizing Loans. Each person who makes a loan to the political committee during the reporting period must be disclosed with the following information:

- Identification of any endorser or guarantor of the loan;
- The date the loan was made;
- The amount of the loan. 11 CFR §104.3(a)(4)(iv).

F. Schedule C. On a Schedule C, both the original loan and payments to reduce principal must be reported each reporting period until the loan is repaid. The committee need only list the candidate as the source of the loan. Also, the type of loan the candidate receives (i.e., bank loan, brokerage account, credit card, home equity line of credit) must be disclosed in either the first box for endorsers and guarantors with a notation for loan type or in the box for "Loan Source" after the candidate's name. 11 CFR §104.3(d) and §104.11.

G. Reporting Bank Loans, Home Equity Loans and Other Lines of Credit. A political committee must disclose in the report covering the period when the loan was obtained on Schedules C-1:

- The date, amount, and interest rate of the loan;
- The name and address of the lending institution; and

- The types and value of the collateral or other sources of repayment that secure the loan, if any. 11 CFR §104.3(d)(4).

Facts and Analysis

A. Transfers from Joint Fundraising Committees

1. Facts

The Audit staff's review of all joint fundraising transfers identified that MBFI failed to properly disclose joint fundraising memo entries totaling \$933,814 from 13 joint fundraising committees.

The chart below details the \$933,814 as follows:

Disclosure Errors	
Type of Review	100%
Memo Entries Not Itemized	\$29,785
Memo Entries Disclosed on Schedule A - Incorrect Receipt Date	\$904,029
Total Amount	\$933,814

2. Additional Information

For the contributions that were disclosed on Schedule A, totaling \$904,029, MBFI reported the date of the transfer from the joint fundraising committee rather than the date the contribution was reported received by the joint fundraising committee.

3. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with MBFI representatives during the exit conference and provided schedules of the incorrectly disclosed joint fundraising memo entries.

In response to the exit conference, MBFI submitted the written response as follows:

“The Committee provided documentation related to this preliminary finding during the audit process and has no new materials to provide with this response. To date, the Committee has made additional preemptive adjustments to its contributor information, including identifying memo entries to be added to contribution entries. The Committee intends to take further corrective action as may be required at the conclusion of this matter.”

The Interim Audit Report recommended that MBFI provide additional documentation demonstrating that the joint fundraising memo entries were correctly disclosed on Schedule A. Absent such documentation, it was further recommended that MBFI amend its disclosure reports or file a Form 99⁸ to correct the memo entries totaling \$904,029 and itemize the missing memo entries on Schedule A totaling \$29,785.

4. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBFI submitted a written statement as follows:

“Regarding the receipts from joint fundraising committees (“JFCs”), two years ago the current treasurer reviewed all receipts from JFC’s and personally contacted all the JFC treasurers from whom the Committee did not have memo entries related to the transfers. He then added those memo entries to the Committee’s reports as the information was obtained. Some of the reported JFC transfers were missing memo entries and others were reported on line 11c, not line 12. All have been corrected and will be included in the amendments that have been prepared to be filed.”

The Audit staff noted that MBFI had not filed amendments or a Form 99 as of this report.

5. Draft Final Audit Report

The Draft Final Audit Report acknowledged that MBFI did not file amended reports or a Form 99 and that MBFI intended to but had not corrected the public record regarding the disclosure of memo entries from joint fundraisers totaling \$933,814.

6. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, MBFI filed amended disclosure reports that materially corrected the public record.

7. Audit Hearing

MBFI did not address this finding during the Audit Hearing.

Commission Conclusion

On March 10, 2022, the Commission considered the Audit Division Recommendation Memorandum, in which the Audit staff recommended that the Commission find that MBFI failed to correctly disclose joint fundraising memo entries totaling \$933,814.

The Commission approved the Audit staff’s recommendation.

B. Disclosure of Loans

1. Facts

During audit fieldwork, the Audit staff reviewed 31 bank loans, lines of credit and candidate loans to MBFI totaling \$11,666,483. Of this amount:

- Three bank loans, 13 lines of credit and 13 candidate loans, for 29 transactions totaling \$11,569,963 were disclosed incorrectly on Schedules C and C-1; and
- Loans and lines of credit for two transactions, totaling \$96,520, were not reported (see Finding 1. Misstatement of Financial Activity).

Disclosure errors consisted of disclosing incorrect or missing information including: loan terms and dates, repayment amounts, loan forgiveness, outstanding balances, as well as

disclosing the Candidate's spouse as a guarantor for a loan. The loan documentation did not support the information that was reported on the disclosure reports.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with MBFI representatives during the exit conference and provided a schedule of the loans and lines of credit disclosed incorrectly. In response to the exit conference, MBFI submitted a written response as follows:

“The Committee provided documentation related to this preliminary finding during the audit process and has no new materials to provide with this response. The Committee intends to take further corrective action as may be required at the conclusion of this matter.”

The Interim Audit Report recommended that MBFI provide additional documentation demonstrating that the identified loans and lines of credit were correctly disclosed. Absent such documentation, it was further recommended that MBFI amend its reports or file a Form 99⁸ to correct the disclosure errors.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBFI stated, “...it is currently unclear to the Committee how the Audit Division concluded that the Committee accepted two unreported candidate loans totaling \$96,520 since this finding does not correspond to any of the Committee's records.” There was no specific comment regarding the disclosure of the 29 transactions totaling \$11,569,963. Additionally, MBFI further stated:

“Furthermore, to the extent that the facts and conclusions in [the proposed finding] relate to the \$250,000 loan repayment limit found in Section 403 of BCRA or the Committee's acceptance of debt retirement contributions, the Audit Division should amend this finding because of the recent federal court decision in *Ted Cruz for Senate v. Federal Election Commission*, Civil No. 19-cv-908 (D.C. Dist. Ct., June 3, 2021). Since many of the facts and conclusions of [the proposed finding] may involve and may be impacted by the loan repayment limit, the Commission's conclusions may rely on an unconstitutional provision that renders [the proposed finding] invalid, or at least a portion of it.

Given the significant impact that the Ted Cruz for Senate ruling may have on [the proposed finding], the Committee believes it is imperative for the Commission's Audit staff to reconsider its preliminary audit findings, reissue a revised Interim Audit Report, and give the Committee the opportunity to respond to the revised Interim Audit Report. For this reason, the Committee will refrain from providing any additional response to [the proposed finding] until that occurs.”

The Audit staff noted that MBFI was provided the schedule for the unreported loans and lines of credit totaling \$96,520 at the exit conference, as it relates to the unreported loans outlined in Finding 1, Misstatement of Financial Activity. In addition, the Audit staff offered to send the schedule again with the issuance of the Interim Audit Report if MBFI requested

it; however, MBFI did not make the request at that time. The Audit staff again provided the relevant information upon receipt of MBFI's response to the Interim Audit Report.

The Audit staff further noted that this finding was not related to MBFI making Candidate loan and interest repayments in excess of the \$250,000 limit permitted for repayment to the Candidate, as discussed in what is now Issue 2, and therefore is not impacted by the ruling cited by MBFI. MBFI had not filed amendments or a Form 99 as of this report.

4. Draft Final Audit Report

The Draft Final Audit Report acknowledged the MBFI narrative response and maintained that absent filing of amendments or a Form 99, MBFI had not corrected the public record. The disclosure errors included loan balance and loan terms, and incorrectly disclosing the Candidate's spouse as a guarantor for transactions totaling \$11,569,963.

5. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, MBFI did not correct the disclosure of loan terms and dates, repayment amounts, loan forgiveness, and outstanding balances on Schedule C and Schedule C-1. MBFI reiterated the statement it provided in response to the Interim Audit Report, "...it is still unclear to the Committee how the Audit Division concluded that the Committee accepted two unreported candidate loans totaling \$96,520 since this finding does not correspond to any of the Committee's records." Furthermore, MBFI believed the Supreme Court's pending ruling in *Ted Cruz for Senate v. Federal Election Commission* will impact the facts and conclusions of this finding. MBFI believed "it is imperative for the Commission's Audit staff to either postpone or reconsider its audit findings, reissue a revised Draft Final Audit Report, and give the Committee the opportunity to respond to the revised Draft Final Audit Report."

The Audit staff noted that this finding was not related to MBFI making Candidate loan and interest repayments in excess of the \$250,000 limit permitted for repayment to the Candidate, as discussed in what is now Issue 2. The Disclosure of Loans finding is based on whether or not the *reporting* of the loan terms is supported by the loan documentation provided by MBFI, and not based on the Candidate loan *repayment limitation* amount. Pursuant to 11 C.F.R. §§ 104.3(d) and 104.11, the Schedule C must disclose the date of the loan, original loan amount and payments to reduce the principal on each report until the loan is repaid. The Schedule C-1 must disclose the date, amount and interest rate of the loan, as well as the name and address of the lending institution. MBFI incorrectly disclosed loan terms and dates, repayment amounts, loan forgiveness, and outstanding balances on Schedules C and C-1, disclosure requirements which exists irrespective of the Cruz litigation cited by MBFI.

The Audit staff further noted that MBFI was provided the schedule of the unreported loans and lines of credit totaling \$96,520 at the exit conference and again upon receipt of MBFI's response to the Interim Audit Report. Also, the converted candidate loans should have been disclosed as memo entries on Schedule A (Itemized Receipts) and Schedule B (Itemized Disbursements) or MBFI could have filed a Form 99 (Miscellaneous Electronic Submission) in lieu of filing amendments with memo entries for Schedules A and B.

6. Audit Hearing

MBFI did not address this finding during the Audit Hearing.

Commission Conclusion

On March 10, 2022, the Commission considered the Audit Division Recommendation Memorandum, in which the Audit staff recommended that the Commission find that MBFI failed to correctly disclose loan balances and loan terms for transactions totaling \$11,569,963.

The Commission approved the Audit staff's recommendation.