FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 16, 2018

MEMORANDUM

TO: Krista Roche
Director of Alternative Dispute Resolution

FROM: Thomas Hintermister
Assistant Staff Director TH
Audit Division

Zuzana O. Pacious
Audit Manager zop

Sheraline Thomas
Lead Auditor

SUBJECT: McSally for Congress (MFC) (A15-04) – Referral Matters

On May 8, 2018, the Commission approved the Proposed Final Audit Report on the McSally for Congress. The report was released to the public on May 15, 2018. In accordance with the Materiality Thresholds for Authorized Committees, the Final Audit Report of the Commission includes matters that meet the criteria for referral to the Office of Alternative Dispute Resolution.

Finding 3 – Receipt of Contributions in Excess of the Limit
Finding 5 – Failure to Itemize Contributions from Political Committees

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding these matters, please contact Sheraline Thomas or Zuzana Pacious at 694-1200.

Attachments: Finding 3 – Receipt of Contributions in Excess of the Limit
Finding 5 – Failure to Itemize Contributions from Political Committees
Designation of Counsel

cc: Patricia C. Orrock via e-mail

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Finding 3. Receipt of Contributions in Excess of the Limit

Summary

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

In response to the Interim Audit Report recommendation, MFC provided copies of negotiated refund checks totaling $6,500 which untimely resolved four of the above excessive contributions. In response to the Draft Final Audit Report, MFC provided a signed redesignation letter and resolved the remaining excessive contribution of $300, albeit untimely.

The Commission approved the finding that MFC untimely resolved excessive contributions totaling $319,212.

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Legal Standard

A. **Authorized Committee Limits.** For the 2014 election, an authorized committee may not receive more than a total of $2,600 per election from any one person or $5,000 per election from a multicandidate political committee. 52 U.S.C. §§30116(a)(1)(A) and (a)(2)(A); 11 CFR §§110.1(a) and (b) and 110.9.

B. **Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
- Return the questionable check to the donor; or
- Deposit the check into its federal account and:
  - Keep enough money in the account to cover all potential refunds;
  - Keep a written record explaining why the contribution may be illegal;
  - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
  - Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation); and
  - If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

C. **Joint Contributions.** Any contribution made by more than one person (except for a contribution made by a partnership) must include the signature of each contributor on

the check, money order, or other negotiable instrument or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

D. **Reattribution of Excessive Contributions.** The Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

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

Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

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

E. **Redesignation of Excessive Contributions.** When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

- The redesignation must be signed by the contributor;
- The redesignation must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.
- The committee is required to notify the contributor of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead. 11 CFR §110.1(b)(5)(ii)(B)(1), (2), (3), (4), (5), and (6).

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Facts and Analysis

A. Facts

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

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the MFC representatives at the exit conference. The Audit staff provided schedules of the apparent excessive contributions along with a description of actions necessary to resolve them. Subsequent to the exit conference, MFC presented additional presumptive letters sent to the contributors that untimely resolved additional excessive contributions totaling $20,550 and provided copies of negotiated refund checks that untimely resolved excessive contributions totaling $31,893. The remaining five excessive contributions totaling $6,800[1] could still be resolved, albeit untimely, as follows: One excessive contribution could be resolved with a signed redesignation letter and the remaining four excessive contributions could be resolved with refunds to the contributor.

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

C. Committee Response to Interim Audit Report

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

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[1] Remaining excessive contribution balance of $6,800 = $59,243 - $20,550 - $31,893.

D. Draft Final Audit Report
The Draft Final Audit Report acknowledged that MFC submitted additional documentation that untimely resolved four of the five excessive contributions.

E. Committee Response to Draft Final Audit Report
In response to the Draft Final Audit Report, MFC provided the remaining copy of a signed redesignation letter that untimely resolved the last pending excessive contribution.

F. Audit Hearing
MFC did not address this finding during the Audit hearing.

Commission Conclusion
On April 26, 2018, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that MFC received contributions from individuals that exceeded the limit totaling $319,212.

The Commission approved the Audit staff's recommendation.

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Finding 5. Failure to Itemize Contributions from Political Committees

Summary

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

In response to the Interim Audit Report recommendation, MFC reiterated that it has hired an experienced FEC compliance specialist to serve as treasurer to ensure such inadvertent errors do not happen in the future. MFC offered no further comments in response to the Draft Final Audit Report.

The Commission approved the finding that MFC failed to itemize contributions from political committees totaling $32,750.

Legal Standard

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

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

Facts and Analysis

A. Facts

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

The Audit staff traced ten of these contributions totaling $23,250 to MFC's receipt database. MFC had apparently recorded the receipt of these contributions and presumably reported them as unitemized contributions. The remaining five contributions totaling $9,500[2] were neither included in MFC's receipt database, nor itemized on Schedule A.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the unitemized contributions from political committees with MFC representatives and presented a schedule of the unitemized contributions. The Audit staff also noted that the review of the amended reports filed after audit notification indicated that MFC correctly disclosed all of these contributions on Schedule A. However, the Audit staff also noted that because MFC's corrective action was taken after

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

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the audit notification, the matter will be presented in this audit report. In response to the exit conference, MFC representatives stated that MFC hired an experienced FEC compliance specialist to serve as treasurer and to file the FEC reports. MFC further stated it will make every effort to ensure such inadvertent errors do not happen in the future.

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

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

D. Draft Final Audit Report
The Draft Final Audit Report acknowledged that MFC filed amended reports and correctly disclosed contributions from political committees. However, since MFC's corrective action occurred after audit notification the matter is included in this audit report.

E. Committee Response to Draft Final Audit Report
In response to the Draft Final Audit Report, MFC provided no additional comments.

F. Audit Hearing
MFC did not address this finding during the Audit hearing.

Commission Conclusion
On April 26, 2018, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that MFC failed to itemize contributions from political committees totaling $32,750.

The Commission approved the Audit staff's recommendation.

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