



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 11, 2019

MEMORANDUM

TO: Krista Roche
Director
Alternative Dispute Resolution

FROM: Patricia C. Orrock
Chief Compliance Officer

Rickida Morcomb
Audit Manager

Rosa Crussiah
Lead Auditor

SUBJECT: Marsha Blackburn for Congress, Inc. (A17-02) – Referral Matter

On February 1, 2019, the Commission approved the Proposed Final Audit Report on the Marsha Blackburn for Congress, Inc. The report will be released to the public on February 15, 2019. In accordance with the Materiality Thresholds for Authorized Committees, the Final Audit Report of the Commission includes a matter that meets the criteria for referral to the Office of Alternative Dispute Resolution.

**Finding – Receipt of Contributions in Excess of the Limit:
Amount in Violation (\$100,350); Calendar Years (2015, 2016)**

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Rosa Crussiah or Rickida Morcomb at 694-1200.

Attachments: **Finding – Receipt of Contributions in Excess of the Limit
Designation of Counsel
Tolling Agreement**

cc: Patricia C. Orrock via e-mail

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 exceeded the contribution limit. This review indicated that MBF received apparent excessive contributions totaling \$100,350. These errors occurred as a result of MBF not resolving the excessive portions of contributions by forwarding presumptive redesignation or reatribution letters to its contributors, obtaining signed reatribution letters from its contributors, or issuing refunds of the excessive portions of contributions in a timely manner. In response to audit fieldwork and the exit conference, MBF untimely resolved excessive contributions from individuals totaling \$88,150. In response to the Interim Audit Report recommendation, MBF provided two completed reatribution letters from the contributors and copies of four refund checks which untimely resolved the remaining excessive contributions. In response to the Draft Final Audit Report, MBF did not provide any additional comments. The Audit staff concluded that MBF received excessive contributions totaling \$100,350, and they were resolved by MBF, albeit untimely.

The Commission approved a finding that MBF received excessive contributions totaling \$100,350.

Legal Standard

A. Authorized Committee Limits. An authorized committee may not receive more than a total of \$2,700 per election from any one person. 52 U.S.C §30116(a)(1); 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 or establish a separate account in a campaign depository for such contributions;
 - 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 reatribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reatribution and redesignation); and
 - If the committee does not receive a proper reatribution 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 contributors 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)(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

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written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

Presumptive Redesignation- 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. 11 CFR §110.1(b)(5)(ii)(B)(1)-(4).

The committee is required to notify the contributor by any written method, including electronic mail, 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)(5) and (6).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed contributions from individuals and identified apparent excessive contributions as noted below.

Excessive Contributions	
Contributions from Individuals Errors	\$100,350
Total Amount of Excessive Contributions	\$100,350
Reasons for Excessive Contributions	
Contributions not resolved via presumptive letter	\$82,550
Contributions not resolved with a signed reattribution letter or refund	\$17,800
Total Amount of Excessive Contributions	\$100,350

B. Additional Information

The errors totaling \$82,550 were the result of MBF not resolving the excessive portion of contributions by timely forwarding a presumptive letter to its contributors informing them how their contribution had been redesignated or reattributed.

The errors totaling \$17,800 were the result of MBF reattributing the excessive portion of contributions written on checks imprinted with a single account holder to another individual without a signed authorization from its contributors as required by 11 CFR 110.1(k). These errors also included credit card contributions that exceeded the per

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election limit for individuals. MBF did not provide the Audit staff documentation supporting how it determined who to reattribute the excessive portion of the contribution.

MBF did not maintain a separate account for questionable contributions. However, MBF did maintain a sufficient balance in its bank accounts to make refunds of the apparent excessive contributions.

C. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with MBF representatives during audit fieldwork as well as at the exit conference and provided a schedule of the apparent excessive contributions. MBF representatives did not provide any comments at the time.

In response to the audit fieldwork and the exit conference, MBF sent contributors redesignation and reattribution letters with an offer of a refund. However, MBF did not receive a signed reattribution from these contributors with excessive contributions totaling \$12,200. MBF refunded one of the apparent excessive contributions totaling \$2,500 and provided untimely signed reattribution letters for contributions totaling \$3,100.

MBF also submitted untimely presumptive redesignation and reattribution letters that were sent to the contributors with excessive contributions totaling \$82,550. It was noted that MBF believed it previously received timely authorizations from all the contributors to redesignate or reattribute the contributions. However, MBF did not provide the Audit staff with timely letters to support this statement. The Audit staff considered these contributions untimely resolved.

In response to audit fieldwork and the exit conference, MBF submitted the following documentation:

Corrective Action Taken in Response to Audit Fieldwork and Exit Conference	
Presumptive Letters Sent- <i>Untimely</i>	\$82,550
Contribution Refunded- <i>Untimely</i>	\$2,500 ¹
Signed Reattribution Letters Submitted- <i>Untimely</i>	\$3,100
Amount of Excessive Contributions - <i>Not Resolved</i>	\$12,200

¹ MBF provided a copy of the front of the refund check but did not provide evidence that this refund check was negotiated.

The Interim Audit Report recommended that MBF provide evidence which would demonstrate the unresolved excessive contributions in question, totaling \$12,200, were timely resolved. Absent such demonstration, it was further recommended that MBF refund the contributions and provide evidence of such refunds or disgorge the funds to a governmental entity or to a qualified charitable organization.

D. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBF stated that it "...takes compliance and reporting obligations very seriously" and reiterated that it believes it had previously obtained timely authorizations from the contributors to redesignate or reattribute the excessive contributions. Of the remaining \$12,200 excessive contributions, MBF provided the Audit staff with copies of two signed reattribution letters for \$3,800 and copies of four refund checks for \$8,400 of the excessive contributions. As such, all the excessive contributions were resolved by MBF, albeit untimely.

E. Draft Final Audit Report

The Draft Final Audit Report acknowledged that MBF untimely resolved all of the excessive contributions identified by the Audit staff.

F. Committee Response to the Draft Final Audit Report

MBF's response to the Draft Final Audit Report provided no additional comments.

Commission Conclusion

On December 6, 2018, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that MBF received excessive contributions totaling \$100,350.

The Commission approved the Audit staff's recommendation.