



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 22, 1999

Mr. Robert C. Tarnok  
Treasurer  
Metropolitan Life Insurance Company  
Employees' Political Participation Fund A  
One Madison Avenue  
New York, New York 10010-3690

RE: MUR 4955

Dear Mr. Tarnok:

On December 16, 1999, the Federal Election Commission found that there is reason to believe that Metropolitan Life Insurance Company Employees' Political Participation Fund A and you, as treasurer, violated 2 U.S.C. § 432(d), 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.

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 additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light 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.

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.

Letter to Robert C. Tarnok

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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 attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Albert Veldhuyzen, the attorney assigned to this matter, at (202) 694-1356.

Sincerely,



Scott E. Thomas  
Chairman

Enclosures

Factual and Legal Analysis

Procedures

Designation of Counsel Form

Conciliation Agreement

**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Metropolitan Life Insurance Company Employees'  
Political Participation Fund A  
Robert C. Tarnok, as Treasurer

**MUR:** 4955

**I. GENERATION OF MATTER**

This matter was generated by an audit of Metropolitan Life Insurance Company Employees' Political Participation Fund A ("Metlife") and Robert C. Tarnok, as Treasurer, undertaken in accordance with 2 U.S.C. § 438(b).

**II. FACTUAL AND LEGAL ANALYSIS**

**A. LAW**

A political committee is required to file reports detailing receipts and disbursements with the Commission in accordance with 2 U.S.C. § 434(a)(4). These reports must be "available for audit, inspection, or examination by the Commission or its authorized representative(s) for a period of not less than 3 years after the report or statement is filed." 11 C.F.R. § 104.14(b)(3).

In addition to the reports, the political committee must also maintain the underlying records upon which the reports are based. 11 C.F.R. § 104.14(b)(1). Specifically, each political committee or person filing reports is required to:

Maintain records, including bank records, with respect to the matters required to be reported, including vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness. *Id.*

Among the items that the treasurer of a political committee must keep are records of contributions and disbursements, such as receipts, canceled checks, and monthly billing

statements. 11 C.F.R. §§ 102.9(a), 102.9(b)(2). These must be kept for three years after the report to which such records and accounts relate is filed. 11 C.F.R. § 102.9(c); *see also* 2 U.S.C. § 432(d).

In the performance of recordkeeping duties, a treasurer shall use his or her "best efforts to obtain, maintain and submit the required information and shall keep a complete record of such efforts." 11 C.F.R. § 102.9(d). If there is a showing of best efforts, records of a committee are considered in compliance with the Federal Election Campaign Act of 1971, as amended ("the Act"). *Id.* If a treasurer does not make at least one written effort to obtain a duplicate copy of a receipt, invoice, or canceled check, he or she "will not be deemed to have exercised best efforts to obtain, maintain and submit the records." *Id.*

#### **B. ANALYSIS**

From January 1, 1995 to December 31, 1996, Metlife received contributions from individuals totaling approximately \$353,300, the majority of which were collected through payroll deduction. In the course of conducting its audit, the Audit Division discovered that Metlife had failed to maintain all payroll deduction authorization forms prior to 1995.<sup>1</sup> Those that were available were dated between 1995 and 1997. As a result, there was no substantiation for 53% of the items listed in the February 1995 through January 1997 Metlife financial disclosure reports.

The Interim Audit Report recommended that, within 30 days, Metlife locate the missing employee payroll deduction authorizations or obtain written confirmations from contributors. Metlife's attorney objected to the request, arguing that "nowhere in that rule [11 C.F.R.

<sup>1</sup> Metlife representatives informed the Audit staff that the forms were apparently lost as a result of a personnel change in the payroll office — the forms were presumably put into storage and Metlife has not been able to locate them. There is no indication that Metlife intentionally discarded the authorization forms.

§ 104.14(b)], or anywhere else in the FEC regulations, are PACs required to keep records of Authorization Forms.”

While it is true that the regulations do not specifically mention payroll deduction authorization forms, the language of 11 C.F.R. § 104.14(b)(1) is not exhaustive. The items listed merely cite examples of records that must be maintained to verify the accuracy and completeness of disclosure reports. Because the list in 11 C.F.R. § 104.14(b)(1) is preceded by the term “including,” political committees may be required to maintain records other than those specifically listed as long as they are necessary to verify, explain, and clarify the filed reports for accuracy and completeness. *See* 11 C.F.R. § 104.14(b)(1). *See also* Singer, Sutherland Statutory Construction § 45 (5th ed. 1992) (in statutory construction, the doctrine of *expressio unius* states that a list within a statute is deemed exhaustive unless there is language to indicate otherwise).

The authorization forms, which are used to implement employee payroll deductions, provide the necessary information needed to verify the accuracy and completeness of the filed reports because they include the contributor’s name, the amount and date of the contribution, the type of contribution, and the contributor’s signature. The forms confirm the truth of the information submitted in the disclosure reports and serve as a record of the contributors’ donative intent. They are also indicative of donative intent for subsequent contributions. Because authorization forms support the legitimacy of multiple contributions (rather than a single contribution), they are especially important to keep for verification purposes. *Accord* Advisory Opinion (“AO”) 1999-3.<sup>2</sup>

<sup>2</sup> In AO 1999-3, Microsoft PAC requested guidance regarding the use of digital electronic signatures to authorize payroll deduction of contributions. The Commission advised Microsoft PAC that, whether in paper document or electronic record format, the payroll deduction authorization must be maintained for three years from the filing date of each PAC report on which a contribution pursuant to that authorization is disclosed. The employee making the contribution must be able to use an electronic or written signature to revoke or modify the amount of the

In addition, authorization forms provide an indication that the contribution was voluntary, made without the threat of physical force, job discrimination, or financial reprisal. See 11 C.F.R. § 114.5(a)(1). Payroll deduction plans for political contributions which may result in involuntary or unintentional contributions are not permissible.<sup>3</sup> See *FEC v. NEA*, 457 F. Supp. 1102 (D.D.C. 1978). Without a record of each payroll deduction authorization form, the Commission cannot verify whether Metlife asked the employees beforehand whether they wanted contributions deducted from their pay. Authorization forms must be kept because they confirm the voluntariness of the transactions and rule out that political contributions were required as a condition of membership or employment. See 11 C.F.R. § 114.5(a)(1).

Furthermore, because payroll deduction authorization forms are records that support disclosure reports, they must be kept for three years from the date of the report — not three years from the date of the authorization form.<sup>4</sup> 11 C.F.R. §§ 102.9(c); 104.14(b)(3). Accord AOs 1999-3 and 1999-6. The assertion that authorization forms older than three years may be thrown away systematically is contrary to the wording of 11 C.F.R. § 102.9(c).

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authorization at any time and a record of the authorizing signature must be maintained in a retrievable manner so as to be available for review by the Commission in the event of an audit or investigation.

<sup>3</sup> *FEC v. NEA* involved a “reverse check-off” method of payroll deduction under which a teacher signing an NEA membership application automatically agreed to a one dollar political contribution deduction in addition to a deduction for union dues. The only recourse for the teacher not wishing to make a political contribution was to request a refund. The court held that contributions above and beyond normally assessed union dues for the purpose of funding a political action committee could not be collected through reverse check-off. The decision did not preclude payroll deduction plans for political contributions — it simply required that the union member be “asked beforehand if he wants a contribution to be deducted along with his dues.” *FEC v. NEA*, 457 F. Supp. 1102, 1109 (D.D.C. 1978). At issue was a separate payroll deduction for political advocacy — neither this report nor the decision in *FEC v. NEA* address the political use of union dues.

<sup>4</sup> Under 11 C.F.R. § 102.9(c), authorization forms older than three years must be maintained as long as they continue to support disclosure reports. Therefore, if an individual continues to contribute for 10 years, for example, his original 10-year old authorization form should be available for inspection if it supports any filed disclosure report less than three years old.

Payroll deduction forms are "records" necessary to verify, explain, and clarify the filed reports — Metlife collected and maintained such records until their loss. Consequently, Metlife appears to have been aware of the importance of keeping and obtaining the required records.

A political committee is required to use best efforts to maintain and submit required information to the Commission. 11 C.F.R. § 102.9(d). The communications between the Audit Division and Metlife indicate that the latter was not aware that the pre-1995 authorization forms were missing until the audit. Although the Commission subsequently recommended that Metlife locate the missing records or obtain new confirmations from contributors, Metlife objected in writing. Because Metlife's treasurer did not make at least one written effort to obtain a duplicate copy of each missing authorization form even after the Commission's recommendation that it do so within 30 days, it appears that Metlife did not use its best efforts to maintain the required records. *See* 11 C.F.R. § 102.9(d).

Accordingly, the Commission found reason to believe that Metlife, and Robert C. Tarnok, as Treasurer, violated 2 U.S.C. § 432(d) by failing to preserve all records required by the Federal Election Campaign Act.