FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Audit Referral 99-22

December 13, 1999

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: EVA CLAYTON COMMITTEE FOR CONGRESS - REFERRAL

On November 23, 1999, the Commission approved the final audit report (FAR) on the Eva Clayton Committee for Congress. The report was released to the public on December 6, 1999. The following finding is being referred to your office in accordance with Commission-approved Materiality Threshold II.C.4.: Receipt of Loan in Excess of the Limitation.

All workpapers and related documentation are available for review in the Audit Division. If you have any questions, please contact Jim Miller or Marty Favin at 694-1200.

Attachment:

- FAR Finding II.A. (Receipt of Loan in Excess of the Limitation)

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. RECEIPT OF LOAN IN EXCESS OF THE LIMITATION

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000.

Section 100.7(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that the term *contribution* includes loans (except for a loan made in accordance with 11 CFR 100.7(b)(11)) and that the term *loan* includes a guarantee, endorsement, and any other form of security. This section further states: a loan which exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR part 110 shall be unlawful whether or not it is repaid; a loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid; that the aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110; and, each endorser or guarantor of a loan shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement and in the absence of such written stipulation, the loan shall be considered a loan by each endorser or guarantor in the proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.[1]

On December 24, 1997, the Candidate signed a BB&T (Branch Banking & Trust Company) Promissory Note as the borrower of $20,000 and then loaned $12,000 to the Committee. The Committee filed a Schedule C (Loans) with its 1997 Year End report which listed a $12,000 loan from BB&T, with the Candidate and her spouse as endorsers/guarantors.[2] A Schedule C-1 (Loans and Lines of Credit from Lending Institutions) was also filed which listed the $20,000 loan from BB&T and noted that the endorsers/guarantors disclosed on Schedule C were secondarily liable for the debt incurred. In response to a Request for Additional Information sent to the Committee from the Commission's Reports Analysis Division, the Committee filed an amendment to

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[1] Pursuant to 11 CFR §100.7(a)(1)(i)(D), a candidate may obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral or security for the loan and the spouse shall not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan which is used for the candidate's campaign. Similarly, when the loan is unsecured, the spouse will not be considered to have made a contribution if the bank relied upon the candidate's assets in making the loan. *See* Explanation and Justification for 11 CFR §100.7(a)(1)(i)(D), 48 Fed. Reg. 19020 (April 27, 1983) ("a signatory spouse will not be considered a contributor if the value of the candidate's share of the property used as collateral or *as the basis for the loan* equals or exceeds the amount of the loan to be used for the candidate's campaign") (emphasis added).

[2] The Committee had also secured a loan from BB&T in the amount of $35,000 in 1996. Security for this loan was a second deed of trust on the personal residence of the Candidate and her spouse. The Audit staff determined that the Candidate's equity value in this property was sufficient.

Schedules C and C-1 which stated that the Candidate borrowed $20,000 from BB&T and then loaned $12,000 to the Committee on that same date. A $12,000 counter deposit on December 24, 1997 was noted on the Committee's bank statement. The $20,000 loaned by BB&T was at a fixed rate of 12.50% and the principal plus accrued interest was due in full at maturity on March 23, 1998. The Candidate's spouse signed as an additional co-maker on the $20,000 loan. In a letter from the Vice-President of the BB&T bank which made the loan, this note was described as "unsecured."

The Committee made a $4,000 payment relative to this note on March 20, 1998 and the Candidate apparently made a $2,000 payment on the same date. A modification to this Promissory Note was signed by the Candidate and her spouse on March 24, 1998. This modification extended the final due date for repayment of this note to March 24, 2000 and required 23 monthly payments of $700 each, with one final payment of all remaining principal and interest on the due date. The adjusted balance for this modification was noted as $14,618 (the $20,000 originally loaned to the Candidate, less principal paid through March 24, 1998 of $5,382).

According to a loan transaction history from BB&T, thirteen payments, in the amount of $700 each, were made between April 1998 and May 1999. These payments were apparently made by the Candidate.

The Candidate provided a statement to the Audit staff which explained that this $20,000 loan "...was not secured by a Deed of Trust and did not require a signature from my husband." She added that "[t]he Bank's tradition of having the husband to sign an unsecured loan is negative and disadvantageous toward women and married women. I can't imagine any man, including my husband, being required to sign for a loan of this amount with a [my] comparable salary and the clear ability to repay the loan."

Subsequent to the exit conference, the Committee provided three letters from the Vice President of the bank which made the loan. These letters were addressed to the Candidate. The first letter stated that "[t]his unsecured note was made to you and co-signed by Mr. Clayton. This was done as a matter of tradition and was not actually required for Mr. Clayton to sign. You certainly needed no help to qualify for the loan. The loan was made to be used for your purposes and is being repaid by you."

The second letter stated that the Candidate was the primary borrower but that the note was also signed by the Candidate's spouse and

> "[t]o clarify any misunderstanding, please consider that when extending unsecured credit it is important to the financial institution to consider not only income but also financial net worth. Net worth, in the case of married partners, is considered to be, for the most part, equity in jointly owned assets. If an institution had to look at liquidation of assets for repayment of debt, it would only be possible if both partners had signed the note. For this reason, it

> is preferred to have both partners in a marriage to sign unsecured debt, regardless of which is the primary borrower—It is preferred but not required and certainly, in your case, it is not necessary for Mr. Clayton to sign. Today [6/9/99], I am completing the necessary documentation to release Mr. Clayton form [sic] both notes."

The second letter further stated that to the best of this bank official's knowledge, all repayments made, to date, have been made by the Candidate or the Committee.

The third letter, dated July 13, 1999, stated the following: "[p]lease accept this correspondence as certification that Mr. Theaoseus T. Clayton [the Candidate's spouse] has no financial obligation relating to the above stated loans. It is also intended to assure any interested parties, with whom you may share this information, that this is a true and accurate statement." The loans referred to are the $20,000 loan discussed in this finding and the $35,000 loan noted in Footnote 3.

The Audit staff notes that on the original Promissory Note (dated December 24, 1997), the Candidate's spouse signed as an additional co-maker and on the Note Modification Agreement (dated March 24, 1998), he signed as an additional borrower/guarantor. Since the Candidate loaned $12,000 of the $20,000 loan to the Committee on December 24, 1997, the Audit staff considers the Candidate's spouse to have been obligated for 50% of the value of this loan and thus, to have made a $6,000 contribution to the Committee, pursuant to 11 CFR §100.7(a)(1). On December 22, 1997, he also made a contribution by check to the Committee in the amount of $1,000. Accordingly, when the $12,000 loan was made to the Committee on December 24, 1997, the Candidate's spouse made a contribution in excess of the 2 U.S.C. §441a contribution limit by $6,000 ($7,000 - $1,000). As noted above, the Candidate's spouse was released from his obligation relative to this loan per a letter dated July 13, 1999. A modification to the loan agreement or other document evidencing that the Candidate's spouse is no longer a guarantor was not provided with the July 13, 1999 letter.

In the interim audit report, the Audit staff recommended that the Committee provide evidence that the Candidate's spouse did not make a contribution to the Committee in excess of the 2 U.S.C. §441a limit in the amount of $6,000, and provide any additional information or explanation relative to this matter. The Audit staff further recommended that the Committee provide a copy of the modification to the loan agreement or other document evidencing that the Candidate's spouse was no longer a guarantor relative to this loan and that any change in the terms of this loan should be reflected on Schedule C and C-1 of the Committee's Mid-Year 1999 report or an amendment thereto.

In its response to the interim audit report, the Committee provided a document from the Vice President of BB&T bank which released the Candidate's spouse as co-maker on the loan. This document included the signatures of the Candidate and her

spouse dated June 21, 1999. In its response, the Committee stated that it appeared "...that this document was never submitted to the Audit Division."

The Committee also provided a letter from BB&T, dated October 28, 1999, which stated that the loan in question was made jointly by the Candidate and her spouse in the amount of $20,000 and that this loan was paid off on August 9, 1999. It further stated that "[t]his loan has been satisfied in full and thus no modifications can be made to either term, conditions or obligations."

In addition, the Committee filed an amended Schedule C and C-1 relative to the 1999 Mid Year report, which covered the reporting period January 1, 1999 through June 30, 1999, that removed the Candidate's spouse as a guarantor for this loan.

No evidence, additional information or explanation was provided by the Committee refuting that the Candidate's spouse made a contribution to the Committee in excess of the 2 U.S.C. §441a limit in the amount of $6,000 as a result of contributing $1,000 to the Committee on December 22, 1997 and guaranteeing 50% of the $12,000 loan from the Candidate to the Committee on December 24, 1997 [$1,000 + $6,000 - $1,000 (2 U.S.C. §441a limit)]. As noted above, the Candidate's spouse was released from this obligation on June 21, 1999 and the obligation was paid off on August 9, 1999.