

**SENSITIVE**

In the Matter of

Ferraro for Senate '98 and Addie Gutttag,  
as treasurer  
Geraldine Ferraro

)  
) RR 99L-14  
)  
)

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FEDERAL ELECTION  
COMMISSION  
SECRETARIAT  
2001 FEB - 9 P 4: 1

**GENERAL COUNSEL'S REPORT #2**

I. **ACTIONS RECOMMENDED:** Open a MUR, find reason to believe and take no further action with respect to Ferraro for Senate '98 and Addie Gutttag, as treasurer, and Geraldine Ferraro, and close the file with respect to all respondents.

II. **BACKGROUND**

Ferraro for Senate '98 accepted \$350,000 in loans from Smith Barney, which were secured by stocks in the candidate's brokerage account. Under the Act, loans from a brokerage firm constituted prohibited corporate contributions. On July 25, 2000, the Commission considered the First General Counsel's Report in this matter, dated July 17, 2000. The Commission voted to take no further action at this time with respect to RAD Referral #99L-14, partially due to the fact that the Treasury-Postal Service Appropriations bill for fiscal year 2001 was pending. The pending legislation contained language which would authorize the type of brokerage loans at question in this case. Eventually, the relevant language was included in the Department of Transportation and Related Agencies bill for fiscal year 2001.

III. **ANALYSIS**

On October 23, 2000, the Department of Transportation and Related Agencies Appropriations Act, 2001 became law. See Public Law No. 106-346. House Resolution (H.R.) 5394, which was incorporated into Pub. Law. No. 106-346, added a new clause to the end of

2 U.S.C. § 431(8)(B) which states:

(xv) any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, if such loan is made in accordance with applicable law and under commercially reasonable terms and if the person making such loan makes loans derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit in the normal course of the person's business. }

Pub. Law. No. 106-346, Title 3 § 502(b), Treatment of lines of credit obtained by candidates as commercially reasonable loans. See Attachment 1.

However, at the time the violation was committed it was a *prima facie* violation of the Act, involving the acceptance of a large sum of prohibited contributions and the failure by the committee to report the true source of these contributions in a timely fashion. Therefore, this Office recommends that the Commission find reason to believe that Ferraro for Senate '98 and Addie Gutttag, as treasurer, and Geraldine Ferraro violated 2 U.S.C. § 441b(a), and that Ferraro for Senate '98 and Addie Gutttag, as treasurer, violated 2 U.S.C. § 434(b)(3)(E).

Because 2 U.S.C. § 431(8)(B) has been amended to allow the type of brokerage loans secured by the candidate's own personal account, as in this case, and based upon the Commission's initial discussion of this internally generated matter, this Office recommends taking no further action in this matter and closing the file with respect to all respondents.

#### IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that Ferraro for Senate '98 and Addie Gutttag, as treasurer, and Geraldine Ferraro violated 2 U.S.C. § 441b(a), but take no further action and close the file.
3. Find reason to believe that Ferraro for Senate '98 and Addie Gutttag, as treasurer, violated 2 U.S.C. § 434(b)(3)(E), but take no further action and close the file.

4. Approve the appropriate letters.

Lois G. Lerner  
Acting General Counsel

2/9/01  
Date

BY: Abigail A. Shaine  
Abigail A. Shaine  
Acting Associate General Counsel

Attachment:

Excerpt from the Congressional Record, October 5, 2000

Staff assigned: Tara Meeker

21.04.1403.0458

(c) **RELATION TO OTHER PROVISION.**—Section 644 of the Treasury and General Government Appropriations Act, 2001 (relating to Federal agency monitoring of personal information on use of the Internet) shall not have effect.

(d) **DEFINITIONS.**—For the purposes of this section:

(1) The term "regulatory" means agency actions to implement, interpret or enforce authorities provided in law.

(2) The term "supervisory" means examinations of the agency's supervised institutions, including assessing safety and soundness, overall financial condition, management practices and policies and compliance with applicable standards as provided in law.

**SEC. 502. (a) CLARIFICATION OF PERMISSIBLE USE OF FACSIMILE MACHINES AND ELECTRONIC MAIL TO FILE INDEPENDENT EXPENDITURE STATEMENTS.**—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) is amended by adding at the end the following new subsection:

"(d)(1) Any person who is required to file a statement under subsection (c) of this section, except statements required to be filed electronically pursuant to subsection (a)(1)(A)(i) may file the statement by facsimile device or electronic mail, in accordance with such regulations as the Commission may promulgate.

"(2) The Commission shall make a document which is filed electronically with the Commission pursuant to this paragraph accessible to the public on the Internet not later than 24 hours after the document is received by the Commission.

"(3) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying the documents covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature."

(b) **TREATMENT OF LINES OF CREDIT OBTAINED BY CANDIDATES AS COMMERCIALLY REASONABLE LOANS.**—Section 301(8)(B) of such Act of 1971 (2 U.S.C. 431(8)(B)) is amended—

(1) by striking "and" at the end of clause (iii);

(2) by striking the period at the end of clause (iv) and inserting "; and"; and

(3) by adding at the end the following new clause:

"(v) any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, if such loan is made in accordance with applicable law and under commercially reasonable terms and if the person making such loan makes loans derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit in the normal course of the person's business."

(c) **REQUIRING ACTUAL RECEIPT OF CERTAIN INDEPENDENT EXPENDITURE REPORTS WITHIN 24 HOURS.**—

(1) **IN GENERAL.**—Section 304(c)(2) of such Act (2 U.S.C. 434(c)(2)) is amended in the matter following subparagraph (C)—

(A) by striking "shall be reported" and inserting "shall be filed"; and

(B) by adding at the end the following new sentence: "Notwithstanding subsection (a)(5), the time at which the statement under this subsection is received by the Secretary, the Commission, or any other recipient to whom the notification is required to be sent shall be considered the time of filing of the statement with the recipient."

(2) **CONFORMING AMENDMENT.**—Section 304(a)(5) of such Act (2 U.S.C. 434(a)(5)) is amended by striking "or (4)(A)(ii)" and inserting "or (4)(A)(ii), or the second sentence of subsection (c)(2)".

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to elections occurring after January 2001.

**SEC. 503.** Of the amounts provided to the Office of National Drug Control Policy for fiscal year 2001 for the anti-doping efforts of the United States Olympic Committee, the Director of such Office shall make direct payment of \$3,300,000 to The U.S. Anti-Doping Agency, Incorporated, for the conduct of anti-doping activities: Provided, That these funds shall be provided not later than 30 days after the date of the enactment of this Act: Provided further, That of the funds made available for this effort, The U.S. Anti-Doping Agency shall have the sole authority to obligate these funds for the promotion of anti-doping efforts relating to United States athletes in the Olympic, Pan American, and Paralympic Games.

**SEC. 504.** Section 640 of the Treasury and General Government Appropriations Act, 2001 (relating to Civil Service Retirement System) shall not have effect.

**SEC. 505. (a) CIVIL SERVICE RETIREMENT SYSTEM.**—The table under section 8334(c) of title 5, United States Code, is amended—

(1) in the matter relating to an employee by striking:

"7.5 ..... January 1, 2001, to December 31, 2002.

7 ..... After December 31, 2002."

and inserting the following:

"7 ..... After December 31, 2000."

(2) in the matter relating to a Member or employee for Congressional employee service by striking:

"8 ..... January 1, 2001, to December 31, 2002.

7.5 ..... After December 31, 2002."

and inserting the following:

"7.5 ..... After December 31, 2000."

(3) in the matter relating to a law enforcement officer for law enforcement service and firefighter for firefighter service by striking:

"8 ..... January 1, 2001, to December 31, 2002.

7.5 ..... After December 31, 2002."

and inserting the following:

"7.5 ..... After December 31, 2000."

(4) in the matter relating to a bankruptcy judge by striking:

"8.5 ..... January 1, 2001, to December 31, 2002.

8 ..... After December 31, 2002."

and inserting the following:

"8 ..... After December 31, 2000."

(5) in the matter relating to a judge of the United States Court of Appeals for the Armed Forces for service as a judge of that court by striking:

"8.5 ..... January 1, 2001, to December 31, 2002.

8 ..... After December 31, 2002."

and inserting the following:

"8 ..... After December 31, 2000."

(6) in the matter relating to a United States magistrate by striking:

"8.5 ..... January 1, 2001, to December 31, 2002.

8 ..... After December 31, 2002."

and inserting the following:

"8 ..... After December 31, 2000."

(7) in the matter relating to a Court of Federal Claims judge by striking:

"8.5 ..... January 1, 2001, to December 31, 2002.

8 ..... After December 31, 2002."

and inserting the following:

"8 ..... After December 31, 2000."

(8) in the matter relating to a member of the Capitol Police by striking:

"8 ..... January 1, 2001, to December 31, 2002.

7.5 ..... After December 31, 2002."

and inserting the following:

"7.5 ..... After December 31, 2000."

and

(9) in the matter relating to a nuclear materials courier by striking:

"8 ..... January 1, 2001 to December 31, 2002.

7.5 ..... After December 31, 2002."

and inserting the following:

"7.5 ..... After December 31, 2000."

(b) **FEDERAL EMPLOYEES' RETIREMENT SYSTEM.**—

(1) **IN GENERAL.**—Section 8422(a) of title 5, United States Code, is amended by striking paragraph (3) and inserting the following:

"(3) The applicable percentage under this paragraph for civilian service shall be as follows:

"Employee ..... 7 ..... January 1, 1987, to December 31, 1998.

7.25 ..... January 1, 1999, to December 31, 1999.

7.4 ..... January 1, 2000, to December 31, 2000.

7 ..... After December 31, 2000."

Congressional employee.

7.5 ..... January 1, 1987, to December 31, 1998.

7.75 ..... January 1, 1999, to December 31, 1999.

7.9 ..... January 1, 2000, to December 31, 2000.

7.5 ..... After December 31, 2000."

Member

7.5 ..... January 1, 1987, to December 31, 1998.

7.75 ..... January 1, 1999, to December 31, 1999.

7.9 ..... January 1, 2000, to December 31, 2000.

8 ..... January 1, 2001, to December 31, 2002.

7.5 ..... After December 31, 2002.

7.5 ..... January 1, 1987, to December 31, 1998."

Law enforcement officer, firefighter, member of the Capitol Police, or air traffic controller.

7.75 ..... January 1, 1999, to December 31, 1999.

7.9 ..... January 1, 2000, to December 31, 2000.

7.5 ..... After December 31, 2000."

Nuclear materials courier.

7 ..... January 1, 1987, to October 16, 1998.

7.5 ..... October 17, 1998, to December 31, 1998.

7.75 ..... January 1, 1999, to December 31, 1999.

7.9 ..... January 1, 2000, to December 31, 2000.

7.5 ..... After December 31, 2000."

(2) **MILITARY SERVICE.**—Section 8422(e)(6) of title 5, United States Code, is amended—

(A) in subparagraph (A), by inserting "and" after the semicolon;

(B) in subparagraph (B), by striking "; and" and inserting a period; and



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *SCW*

DATE: February 9, 2001

SUBJECT: RAD 99L-14-General Counsel's Report #2

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

CIRCULATIONS

SENSITIVE ☒  
NON-SENSITIVE ☐

72 Hour TALLY VOTE ☒  
24 Hour TALLY VOTE ☐  
24 Hour NO OBJECTION ☐  
INFORMATION ☐  
96 Hour TALLY VOTE ☐

DISTRIBUTION

COMPLIANCE ☒  
Open/Closed Letters ☐  
MUR ☐  
DSP ☐  
STATUS SHEETS ☐  
Enforcement ☐  
Litigation ☐  
PFESP ☐  
RATING SHEETS ☐  
AUDIT MATTERS ☐  
LITIGATION ☐  
ADVISORY OPINIONS ☐  
REGULATIONS ☐  
OTHER ☐


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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: Lois Lerner  
Acting General Counsel

FROM: Mary W. Dove/Lisa R. Davis  
Office of the Commission Secretary 

DATE: February 15, 2001

SUBJECT: RAD Referral #99L-14 - General Counsel's Report #2  
dated February 9, 2001.

The above-captioned document was circulated to the Commission  
on Monday, February 12, 2001.

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Mason	—
Commissioner McDonald	—
Commissioner Sandstrom	<u>XXX</u>
Commissioner Smith	—
Commissioner Thomas	—
Commissioner Wold	—

This matter will be placed on the meeting agenda for  
Tuesday, February 27, 2001.

Please notify us who will represent your Division before the Commission on this  
matter.