

BEFORE THE FEDERAL ELECTION COMMISSION

2004 JAN -9 A 11: 25

In the Matter of )  
 ) MUR 5197  
Federal National Mortgage )  
Association )

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by John Berthoud, President of the National Taxpayers Union, and on the basis of information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Federal National Mortgage Association ("Respondent") violated 2 U.S.C. § 441b(a).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.

§ 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:<sup>1</sup>

<sup>1</sup> All of the facts recounted in this agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA. All statements of the law in this agreement that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder.

1. The Federal National Mortgage Association is a corporation organized by authority of a law of Congress within the meaning of 2 U.S.C. § 441b(a).

2. The Federal National Mortgage Association is organized pursuant to 12 U.S.C. § 1716 *et seq.*

3. The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits "any corporation organized by authority of any law of Congress" from making "a contribution or expenditure in connection with any election to any political office." 2 U.S.C. § 441b(a). The Act also prohibits "any candidate, political committee, or other person" from knowingly accepting or receiving "any contribution prohibited by this section." *Id.*

4. For purposes of Section 441b, the terms "contribution" and "expenditure" include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in" Section 441b.

5. The Act excludes from the definition of contribution:

any gift, subscription, loan, advance, or deposit of money or anything of value to a national or a State committee of a political party specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office.

2 U.S.C. § 431(8)(B)(viii). This is the so-called "building fund exemption." *See, e.g.,* Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, and 1983-8. Funds falling under the building fund exemption are exempt from the prohibitions of 2 U.S.C. § 441b. *See* 11 C.F.R. § 114.1(a)(2)(ix); Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1983-8, and 1979-17. Therefore, national and state committees of political parties may accept donations

24-04-407-0375

covered by the building fund exemption from corporations organized by authority of any law of Congress. *See id.*

6. Respondent from 1998 to 2000 made a total of \$51,470 in contributions to the Republican Governors' Association. The funds were deposited into the Republican National State Elections Committee account of the Republican National Committee, which was not a building fund.

7. Respondent made a \$700 contribution to the National Republican Congressional Committee ("NRCC") on June 16, 1999, which check did not contain a contemporaneous designation for the building fund. The NRCC deposited the \$700 into its building fund account.

8. Respondent made a \$50,000 contribution to the 1999 Republican Senate-House Dinner Committee, a joint fundraising committee, by a check dated June 29, 1999, which check did not contain a contemporaneous designation for the building fund. The \$50,000 was deposited in the 1999 Republican Senate-House Dinner Committee Building Fund and then transferred to the respective building funds of the NRCC and the National Republican Senatorial Committee ("NRSC"). The NRCC and the NRSC deposited the funds each received from Respondent in their respective building fund accounts.

9. Respondent made a \$100,000 contribution to the 2000 Republican House-Senate Dinner Committee, a joint fund-raising committee, by a check dated May 19, 2000, which check did not contain a contemporaneous designation for the building fund. The \$100,000 was deposited in the 2000 Republican Senate-House Dinner Committee Building Fund and then transferred to the respective building funds of the NRCC and NRSC. The NRCC and the NRSC deposited the funds each received from Respondent in their respective building fund accounts.

24-04-407-0376

V. Respondent contributed \$51,470 to the Republican National State Elections Committee account of the Republican National Committee, in violation of 2 U.S.C. § 441b(a).

VI. 1. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Ten Thousand dollars (\$10,000.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondent will cease and desist from violating 2 U.S.C. § 441b(a).

3. Respondent will maintain contemporaneous documentation of specific designations for any future donations to building funds.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement, or any requirement thereof, has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

24-04-407-0377

This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton  
General Counsel

BY:

Rhonda J. Vosdigh by US  
Rhonda J. Vosdigh  
Associate General Counsel  
for Enforcement

2/18/04  
Date

FOR THE RESPONDENT:

BY:

Jan Witold Baran  
Jan Witold Baran  
WILEY REIN & FIELDING LLP  
1776 K Street, NW  
Washington, DC 20006

1/8/04  
Date

Counsel to Respondent

24-04-407-0378