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**999 E Street, N.W.
Washington, D.C. 20463**

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5198

DATE COMPLAINT FILED: April 17, 2001

DATE OF NOTIFICATION: April 24, 2001

DATE REACTIVATED: June 5, 2002

**EXPIRATION OF STATUTE OF
LIMITATIONS: July 31, 2005**

COMPLAINANT: National Legal and Policy Center by Kenneth F. Boehm, Chairman

**RESPONDENTS: The Honorable Maria Cantwell
Cantwell 2006 and Keith Grinstein, as Treasurer
U.S. Bank National Association**

**RELEVANT STATUTES: 2 U.S.C. § 431(8)
2 U.S.C. § 434(a) and (b)
2 U.S.C. § 441b
11 C.F.R. § 100.7
11 C.F.R. § 104.3(d)**

**INTERNAL REPORTS CHECKED: Disclosure Reports
FEC Indices**

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint alleges that the Honorable Maria Cantwell and Maria Cantwell for Senate,¹ and U.S. Bank National Association ("U.S. Bank") violated the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations in connection with two loans U.S. Bank made to Ms. Cantwell during her 2000 Senate campaign. Specifically, the Complaint alleges that the loans, a \$600,000 line of credit

¹ On April 18, 2001, the Committee filed an amendment to its Statement of Organization, changing its name to Cantwell 2006.

1 and a \$4,000,000 line of credit, were prohibited corporate contributions from U.S. Bank
2 to Ms. Cantwell because Ms. Cantwell did not provide sufficient collateral for the
3 \$600,000 loan and obtained both loans at a preferential rate of interest. See Complaint,
4 pages 2-4. In addition, the Complaint alleges that the Cantwell Committee failed to
5 properly and timely disclose the terms of these loans by mid-October 2000 in violation of
6 the reporting requirements. *Id.* at 4.

7 As discussed below, the information provided by Respondents effectively rebuts
8 the assertions in the Complaint that the two loans were prohibited contributions. The
9 evidence shows that U.S. Bank extended the \$600,000 loan on a basis that assures
10 repayment, U.S. Bank applied to each loan the usual and customary rate of interest for
11 U.S. Bank clients such as Ms. Cantwell, and U.S. Bank made each loan according to
12 applicable law and in the ordinary course of business. Accordingly, this Office
13 recommends the Commission find no reason to believe that U.S. Bank and the Cantwell
14 Respondents violated 2 U.S.C. § 441b. However, concerning the allegation that the
15 Cantwell Committee failed to properly and timely report the loans, this Office
16 recommends the Commission find reason to believe the Cantwell Committee violated
17 2 U.S.C. § 434(b), send an admonishment letter and close the file.

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Factual Background—Bank Loans**

20
21 U.S. Bank submitted information about the two bank loans through the
22 Declaration of Lauren Jassny, Senior Vice President and Credit Risk Officer with U.S.
23 Bank, and supporting documentation from Ms. Cantwell's loan files and other Bank

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1 records. Ms. Cantwell and the Cantwell Committee also provided information regarding
2 the loans and Ms. Cantwell's financial status.

3 Ms. Cantwell's relationship with the Bank began in 1995 and she has used U.S.
4 Bank for both banking and trust services.² See Bank Response, pages 2-3. She is a long-
5 standing client of U.S. Bank's Private Financial Services Department, the department that
6 provides various services to individuals whose primary incomes and/or liquidity exceed
7 respectively and whose net worth exceeds million.³ *Id.* Ms.
8 Cantwell met the Bank's requirements for these services by this Department because of
9 her substantial net worth. *Id.*

10 The \$600,000 line of credit originated as a \$50,000 personal line of credit with
11 U.S. Bank in September 1997, several years prior to Ms. Cantwell's candidacy for U.S.
12 Senate. See Bank Response, page 3. U.S. Bank underwrote and extended the \$50,000
13 line of credit to Ms. Cantwell as an unsecured loan in accordance with then-existing
14 underwriting standards that relied on Ms. Cantwell's income and substantial net worth.
15 *Id.*

16 In February 1998, U.S. Bank increased the \$50,000 line of credit to \$70,000. See
17 Bank Response, page 3; Jassny Decl. Ex. 2 (Promissory Note and Disbursement Request
18 and Authorization). In December 1999, U.S. Bank took a second deed of trust on Ms.

² According to U.S. Bank, Ms. Cantwell has maintained an interest-bearing checking account at U.S. Bank since 1995 and later opened and still maintains two campaign accounts at the Bank. See Bank Response, page 3. In addition, U.S. Bank notes that Ms. Cantwell maintained a money market account of substantial balance with the brokerage arm of U.S. Bank. *Id.*

³ The services provided include: private select checking, money market and savings options; cash management, Visa and debit cards; credit lines and loans; real estate loans; international banking; and trust investment and estate planning services. See Bank Response, page 3.

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1 Cantwell's residence as security for the \$70,000 line of credit in lieu of stock.⁴ See
2 Jassny Decl. Ex. 3 (Deed of Trust, Promissory Note and Supporting Documentation).
3 U.S. Bank also reduced the interest rate on the line of credit to U.S. Bank's Prime Rate,
4 "in keeping with [U.S. Bank's] current home equity line programs' for borrowers with
5 Ms. Cantwell's high net worth." See Jassny Decl. Ex. 4.

6 To finance her 2000 Senate race, Ms. Cantwell asked U.S. Bank to increase the
7 \$70,000 line of credit to \$600,000. See Cantwell Response, page 2; Jassny Decl. Ex. 7
8 (Promissory Note and Disbursement Request and Authorization). U.S. Bank increased
9 the line of credit in July 2000. *Id.* The written promissory note for the line of credit
10 shows a due date of June 4, 2001, lists the deed of trust dated December 16, 1999, as
11 security for the loan, and shows the interest rate remaining at U.S. Bank's Prime Rate.⁵
12 *Id.*

13 Carla Haddow, the Bank Account Executive, recommended the \$530,000 increase
14 in the line of credit and James Sheeley, the Business Line Manager, approved the
15 increase. See Bank Response, page 5. The approval documents for the increase in the
16 line of credit state that Cantwell was in the process of exercising approximately
17 million in stock options and would be depositing additional funds with the Bank. *Id.*

⁴ Ms. Cantwell purchased her home in March 1998 for \$342,000. See Jassny Decl. Ex. 5 (Closing Statement). According to U.S. Bank, the second deed of trust was unnecessary to the underwriting process but was added to benefit the borrower rather than the lender. See Jassny Decl. Ex. 4. Specifically, U.S. Bank notes that when the second deed of trust was taken, Ms. Cantwell's net worth exceeded million, an amount that was more than sufficient to support an unsecured line of credit for \$70,000. *Id.* U.S. Bank explains that the second deed of trust was placed at the request of Ms. Cantwell and her accountant because by using the second deed of trust in support of a home equity loan, Ms. Cantwell could take advantage of income tax benefits that stock collateral did not offer. See Bank Response, page 4.

⁵ According to U.S. Bank, the loan approval documentation noted that a second deed of trust had already been taken by the bank with the notation "[u]nderwritten as unsecured but a 2nd DOT [deed of trust] filed on primary residence at 904 7th Avenue South, Edmonds, WA 98020. Title insurance, appraisal, and verification of homeowner's insurance continue to be waived." See Jassny Decl. Ex. 8 (U.S. Bank Commercial Loan Waiver, Amendment and Modification).

1 Bank documents show that the sources of repayment for the increase in the line of credit
2 to \$600,000 were Ms. Cantwell's income and sale of liquid assets (stocks). *Id.*
3 According to U.S. Bank, as of July 21, 2000, Ms. Cantwell's "Personal Financial
4 Statement Recap Sheet" showed that Ms. Cantwell's net worth exceeded million and,
5 pursuant to the Private Financial Services Underwriting Guidelines, Ms. Cantwell
6 exceeded the underwriting criteria for an unsecured loan.⁶ *Id.* U.S. Bank states that Ms.
7 Cantwell met the liquidity test at million, more than times the amount of the loan,
8 had the resources to repay the loans from liquid assets, and had a Beacon Score of
9 which significantly exceeded the point minimum.⁷ *Id.* at 6. Additionally, U.S. Bank
10 states that the increase in the line of credit from \$70,000 to \$600,000 complied with the
11 U.S. Bank Credit Policy and Underwriting Standards and Underwriting Guidelines as
12 evidenced by the loan approval document. *Id.*

13 According to information provided by Mr. James Caley, Ms. Cantwell's
14 accountant, in July 2000 Ms. Cantwell had assets available exceeding \$25 million, had a

⁶ U.S. Bank states that the Underwriting Guidelines that were applied to all loans of the size and type extended to Ms. Cantwell require that the borrower meet the following criteria:

See Bank Response, pages 5-6.

⁷ Beacon Score refers to a type of rating that assesses a borrower's likelihood of repaying a loan. The score is based on data available on the borrower's credit report and measures the relative degree of risk a potential borrower represents to the lender. *See U.S. Bank Response, Footnote 3 at 7.*

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1 previous year's income and compensation exceeding \$7 million, and had very little debt.⁸

2 See Cantwell Response, pages 5; Exhibit 2, Affidavit from James Caley; Exhibit 3,
3 United States Senate Public Financial Disclosure Report for New Employee and
4 Candidate Reports.

5 In September 2000, Ms. Cantwell obtained a second line of credit for campaign
6 purposes from U.S. Bank in the amount of \$4,000,000. See U.S. Bank Response, page 6;
7 Cantwell Response, page 2. U.S. Bank kept the interest rate at a variable rate at U.S.
8 Bank's Prime Rate and used Ms. Cantwell's shares of stocks, valued in excess of
9 million, as collateral for the loan.⁹ See U.S. Bank, pages 6-7.

10 **B. Legal Analysis—Bank Loans**

11 **1. Loans Made In the Ordinary Course of Business**

12
13 The Act prohibits corporations from making contributions in connection with any
14 federal election and prohibits candidates, political committees, or other persons
15 knowingly to accept or receive such contributions. 2 U.S.C. § 441b. The term
16 "contribution" does not include a loan from a qualifying bank if such loan is made in

⁸ The Cantwell Respondents note that in July 2000, Ms. Cantwell's cash and bonds were worth more than times the amount of this line of credit, her salary from the previous year was more than times the amount of the line of credit, and her stock plus stock options were worth more than times the amount of the line of credit. See Cantwell Response, page 5.

⁹ The Complaint did not allege nor is there any evidence of insufficient collateralization for the \$4,000,000 line of credit or that the loans lacked a written instrument and due date. Loan documentation provided by U.S. Bank shows that the \$4,000,000 line of credit was collateralized by shares of Real Networks stock, held at U.S. Bank Private Financial Services, in Bellevue, Washington. See Bank Response, pages 6-7; Jassny Decl. Ex. 12 (Letter Agreement) and Ex. 13 (Promissory Note, Disbursement Request and Authorization, Commercial Security Agreement, and Commercial Pledge and Security Agreement). U.S. Bank noted that as of August 23, 2000, the shares of stock were valued in excess of million and that Ms. Cantwell had obtained approval from legal counsel for stock issuer Real Networks to liquidate in excess of million worth of stock if necessary, an amount more than sufficient to repay the loan. *Id.* at 7. U.S. Bank emphasizes that the liquid collateral was times the loan amount and Ms. Cantwell's total liquid net worth was times the loan amount. *Id.* Loan documentation also shows that a written instrument evidenced each loan, i.e., a Promissory Note, and each Note made the loan subject to a due date (i.e., June 4, 2001, and March 15, 2001, respectively). See Bank Response, Jassny Decl. Exs. 7 and 13; Cantwell Response, Exs. 1 and 4.

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1 accordance with applicable banking laws and regulations and is made in the ordinary
2 course of business. 11 C.F.R. § 100.7(b)(11); *see* 2 U.S.C. § 431(8)(B)(vii). Under
3 Commission regulations, lines of credit are treated in the same manner as bank loans.
4 11 C.F.R. § 100.7(b)(11)(i).

5 A loan is considered to be made in the ordinary course of business if it: (1) bears
6 the usual and customary interest rate of the lending institution for the category of loan
7 involved; (2) is made on a basis which assures repayment; (3) is evidenced by a written
8 instrument; and (4) is subject to a due date or amortization schedule." 11 C.F.R.
9 § 100.7(b)(11).

10 **a. The \$600,000 Line of Credit Was Made on a Basis That**
11 **Assures Repayment**

12
13 There are several ways a borrower can meet the Commission's standard for
14 assurance of repayment of a loan (including a line of credit): (1) the lending institution
15 has perfected a security interest in collateral owned by the candidate or political
16 committee receiving the loan;¹⁰ or (2) the lending institution has obtained a written
17 agreement whereby the candidate or political committee receiving the loan has pledged
18 future receipts, e.g., public financing funds, fundraising, and interest income. 11 C.F.R.
19 § 100.7(b)(11)(i). Commission regulations provide that absent a perfected security
20 interest or pledge of future receipts, loans can be guaranteed by the borrower's signature
21 that is based on the "totality of circumstances on a case-by-case basis." *See* 11 C.F.R.
22 § 100.7(b)(11)(ii); *see also* Explanation and Justification, Loans from Lending

¹⁰ When the lending institution relies on collateral, "the fair market value of the collateral must be equal to or greater than the loan amount, and any senior liens as determined on the date of the loan, and the candidate or political committee provides documentation to show that the lending institution has a perfected security interest in the collateral." 11 C.F.R. § 100.7(b)(11)(i)(A)(1). "Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel paper, stocks, accounts receivable and cash on deposit." *Id.*

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1 Institutions to Candidates and Political Committees, 56 Fed. Reg. 67118, 67119
2 (December 27, 1991),¹¹ Advisory Opinion 1994-26 (September 26, 1994), and MURs
3 4311/4327 (October 3, 1996).

4 Prior Commission applications of the totality of circumstances standard at
5 11 C.F.R. § 100.7(b)(11)(ii) in cases involving unsecured lines of credit to a candidate
6 show that a bank may evaluate multiple factors such as the borrower's relationship to the
7 lending bank, the terms of the loan agreement, and the borrower's income and credit
8 background in determining whether it could expect a loan to be repaid. In Advisory
9 Opinion 1994-26, the Commission found that pre-existing lines of credit based on the
10 candidate's signature were made on a basis that assure repayment and the candidate's use
11 of the lines of credit did not violate 11 C.F.R. § 100.7(b)(11) because the lines of credit
12 pre-dated the candidacy,¹² were based on the candidate's personal financial status,
13 evidenced a long-standing relationship between the lenders and the candidate, and the
14 terms of the agreement were not "out of the ordinary or unduly favorable to" the
15 candidate. In MURs 4311/4327, the Commission applied the factors referenced in
16 Advisory Opinion 1994-26 in considering whether the totality of circumstances indicated

¹¹ The Explanation and Justification states: "Paragraph (b)(11)(ii) leaves open the possibility that other approaches, such as loans guaranteed in whole or in part by the borrower's signature, which are not specified in the rules, will also be found to have met this standard in specific cases."

¹² It should be noted, that unlike the line of credit in the Advisory Opinion, which was obtained long before the candidate's candidacy, the \$530,000 increase in the line of credit in the instant matter was obtained expressly for campaign purposes, i.e., loan approval documentation included the notation "[r]ecommend immediate increase in existing revolving line of credit from \$70M to \$600M to fund media campaign next week." See Jassny Decl. Ex. 8 (U.S. Bank Commercial Loan Waiver, Amendment and Modification). Nevertheless, the fact that the \$600,000 line of credit was obtained for campaign purposes does not change the conclusion that the loan was made on a basis that assures repayment.

1 that an unsecured bank loan to a candidate was made on a basis, which assures
2 repayment.¹³

3 Based on the totality of circumstances, U.S. Bank properly approved the increase
4 in the line of credit to \$600,000 as it was partially secured and guaranteed by Ms.
5 Cantwell's signature.¹⁴ Information provided by Respondents shows that U.S. Bank and
6 Ms. Cantwell had a pre-existing and long-standing banking relationship and that U.S.
7 Bank was fully familiar with Ms. Cantwell's net worth, assets, and payment history on
8 previous transactions.¹⁵ See Bank Response, page 2; Cantwell Response, pages 3-6.
9 Specifically, the Declaration of Lauren Jassny, Senior Vice President and Credit Risk
10 Officer at U.S. Bank, and supporting documentation from Ms. Cantwell's loan files and
11 other U.S. Bank records show that, in increasing the line of credit, U.S. Bank properly
12 considered the circumstances of its long-standing relationship with Ms. Cantwell,
13 including her substantial assets and ability to repay. When the \$600,000 line of credit
14 was extended, Ms. Cantwell had more than enough income and assets to assure
15 repayment of the line of credit.

16 In addition, the fact that U.S. Bank, in determining whether to extend the
17 \$600,000 line of credit to Ms. Cantwell, used the same factors as the Commission used in
18 determining whether the loans in Advisory Opinion 1994-26 and in MURs 4311/4327

¹³ In MURs 4311/4327, the Commission voted to take no action against respondents with respect to the bank loan issue.

¹⁴ The Complaint's argument that the \$600,000 line of credit was not made on a basis which assures repayment because it was only secured by a home valued at \$375,000 ignores the fact that U.S. Bank extended the line of credit based on Ms. Cantwell's signature because of her substantial net worth and pre-existing relations with U.S. Bank.

¹⁵ The Cantwell Respondents state that Ms. Cantwell obtained her lines of credit from the branch of U.S. Bank located in Bellevue, Washington, and that she conducted all of her personal banking at that particular branch. See Cantwell Response, pages 1-2.

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1 were made on a basis that assures repayment weigh in favor of the \$600,000 line of credit
2 as having been made on a basis that assures repayment. Specifically, U.S. Bank took
3 several factors into account in determining whether to increase Ms. Cantwell's existing
4 credit line from \$70,000 to \$600,000. These included her creditworthiness, the fact that
5 Ms. Cantwell had a fairly significant prior relationship with U.S. Bank at the time of the
6 increase to \$600,000, the "Personal Financial Statement Recap Sheet" that was prepared
7 for Ms. Cantwell in July 2000 showing that her net worth exceeded million, and the
8 fact that under U.S. Bank's Private Financial Services Underwriting Guidelines, Ms.
9 Cantwell "substantially exceeded the underwriting criteria for an unsecured loan." See
10 Bank Response, page 5.

11 **b. The \$600,000 and \$4,000,000 Lines of Credit Bore the**
12 **Usual and Customary Interest Rate**
13

14 A loan is made in the ordinary course of business if, *inter alia*, "it bears the usual
15 and customary interest rate of the lending institution for the category of loan involved."
16 11 C.F.R. § 100.7(b)(11). Based on information provided by U.S. Bank, it appears that
17 the interest rate on both loans, U.S. Bank's Prime Rate, was the usual and customary rate
18 for the category of loan involved and for lines of credit to private banking clients.
19 Indeed, it appears that many loans in this same category were made at a lower rate of
20 interest than that charged Ms. Cantwell.¹⁶

21 When U.S. Bank took the second deed of trust in December 1999, it lowered the
22 interest rate on Ms. Cantwell's \$70,000 line of credit to U.S. Bank's Prime Rate, in line

¹⁶ U.S. Bank notes that the language in the Disbursement Request and Authorization signed by Ms. Cantwell for the \$600,000 line of credit expressly acknowledges that she was not receiving U.S. Bank's lowest rate. That section states "[t]his is the rate of interest which Lender from time to time establishes as its Prime Rate and is not, for example, the lowest rate of interest which Lender collects from any borrower or class of borrowers." See Bank Response, pages 9-10.

1 with the Bank's "current home equity line programs for borrowers with Ms. Cantwell's
2 high net worth." See Jassny Decl. Ex. 4. The interest rate remained at U.S. Bank's Prime
3 Rate through July 2000 when Ms. Cantwell obtained an increase in the \$70,000 credit
4 line to \$600,000 and through September 2000 when Ms. Cantwell obtained a second line
5 of credit for \$4,000,000. As discussed below, U.S. Bank kept the interest rate at U.S.
6 Bank's prime rate through increases in the line of credit and extension of a second line of
7 credit because of Ms. Cantwell's substantial net worth throughout that period. See pages
8 4-6, *supra*.

9 U.S. Bank submitted a "Pricing Comparison," a listing of lines of credit extended
10 within the last two years in the same general ranges as Ms. Cantwell's loans, \$500,000 to
11 \$1,000,000, and \$2 million to \$5 million.¹⁷ See Bank Response, page 7. -
12
13
14
15

16 *Id.* U.S. Bank argues, "the pricing comparison clearly demonstrates that
17 U.S. Bank's Prime Rate or a lower rate is customary for lines of credit extended to
18 borrowers evidencing financial characteristics similar to Ms. Cantwell." *Id.*
19
20

¹⁷ U.S. Bank explains that the "Pricing Comparison" analyzes interest rates provided to similarly situated Bank clients in the same or close geographic area. See Jassny Decl. Ex. 14. U.S. Bank notes that the representative lines of credit included in the "Pricing Comparison" were taken from all major Pacific Northwest region teams at U.S. Bank and reflect those lines extended to clients similar to Ms. Cantwell, based on the following characteristics: type of borrower (individual or family LLC, and not businesses), collateral (generally unsecured or stock secured), net worth, and liquidity. See Bank Response, Footnote 4 at 7.

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Consequently, it appears that

U.S. Bank's Prime Rate was the usual and customary rate of interest for the category of loan involved and for Private Financial Services clients with substantial net worth such as Ms. Cantwell.

Based on the above analysis, this Office recommends that the Commission find no reason to believe U.S. Bank National Association violated 2 U.S.C. § 441b. In addition, this Office recommends that the Commission find no reason to believe that Senator Maria Cantwell and Cantwell 2006 and Keith Grinstein, as Treasurer, violated 2 U.S.C. § 441b.

C. Factual Background—The Reporting of the Bank Loans

In its disclosure reports filed with the Commission during the 2000 Senate campaign, the Cantwell Committee reported transfers from the \$600,000 and \$4,000,000 loans as having been received from Ms. Cantwell rather than from U.S. Bank. Thus, the Committee provided no Schedule C-1 information regarding the loans. On December 27, 2000, and January 18, 2001, the Reports Analysis Division mailed the Committee Requests for Additional Information regarding the reporting of candidate loans in its 2000 12-Day Pre-General Report. The Committee filed an amended 2000 12-Day Pre-General Report providing the Schedule C-1 information for the two loans on January 30, 2001. The Schedule C-1 for the \$600,000 the line of credit lists the deed of trust on Cantwell's personal residence (Part D), valued at \$375,000, as partial collateral, and "Reliance on borrower's net worth" (Part F) as the bases upon which U.S. Bank extended the line of credit and upon which it was assured repayment. *Id.* The Schedule C-1, however, does not accurately reflect that the residence pledged as partial collateral was a

1 second deed of trust.¹⁸ The Schedule C-1 for the \$4,000,000 line of credit lists
2 \$11,830,000 worth of stock personally owned by the candidate as collateral for the loan.

3 The Complaint alleges that the Cantwell Committee did not file the required
4 Schedule C-1 disclosing the loans until January 31, 2001, i.e., after the Commission had
5 sent the Committee several letters regarding the reporting of the loans and after the
6 election, and that Cantwell's failure to timely report "denied the public the right to know
7 important details" about the financing of her campaign. See Complaint, page 4. The
8 Complaint adds that the fact that Ms. Cantwell was unable to pay back her loans on a
9 timely basis and had to renegotiate the terms of the loans underscores the seriousness of
10 the violations. *Id.* at 5.

11 **D. Legal Analysis—The Reporting of the Bank Loans**

12 When a candidate receives a loan for use in connection with his or her campaign,
13 the candidate receives the loan as an agent of his or her authorized committee. 2 U.S.C.
14 § 432(e)(2); 11 C.F.R. §§ 101.2 and 102.7(d). Such loans are reportable by the
15 committee and itemizable as loans from the lender to the committee, rather than as loans
16 from the candidate to the committee. 2 U.S.C. § 434(b)(3)(E); 11 C.F.R.
17 § 104.3(a)(3)(vii)(B) and (a)(4)(iv).

¹⁸ According to U.S. Bank, the \$375,000 appraisal value of the residence noted on the Schedule C-1 reflects an increase from the \$345,000 earlier appraisal noted when the second deed of trust was taken in December 1999. See Bank Response, page 5; Jassny Decl. Ex. 3 (Deed of Trust, Promissory Note, and supporting documentation) and Decl. Ex. 10 (Loan Information Sheet). U.S. Bank notes that the estimated \$375,000 value of the home as of January 25, 2001, was substantially below the formal appraisal one month later, which placed the value of the property at \$525,000. See Jassny Decl. Ex. 11 (Appraisal dated February 22, 2001). Although the \$600,000 loan appears to have been made on a basis that assures repayment, it appears that the second deed of trust on Ms. Cantwell's personal residence should not be considered as any kind of real collateral for the increase in the line of credit from \$70,000 to \$600,000. This is because the second deed of trust was originally taken for the \$70,000 line of credit in December 1999, and because it was not necessary for underwriting purposes but purely taken for tax reasons as a benefit to Ms. Cantwell rather than as a benefit to the bank. See footnote 4, *supra*. Thus, the \$600,000 should be viewed as being extended on an unsecured basis. Ms. Cantwell decided not to use her substantial assets as security for the loan.

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1 All loans received by a committee, including loans guaranteed by the candidate,
2 must be reported and continually itemized and reported until repaid. 2 U.S.C. § 434(b)
3 and 11 C.F.R. § 104.3(a)(4)(iv) and (d); 11 C.F.R. § 104.11.¹⁹ A committee that obtains
4 a loan from a bank must also file a Schedule C-1 with the first report due after a new loan
5 or line of credit has been established.²⁰ 11 C.F.R. § 104.3(d)(1).

6 The Cantwell Respondents do not deny that the Cantwell Committee omitted to
7 file the Schedule C-1 information when it initially reported the loans. They argue,
8 however, that contrary to the assertions in the Complaint, the Committee did not hide the
9 loans in question and did not intend to deceive the public or the Commission. See
10 Cantwell Response, page 7. They also assert that the omission was inadvertent and that
11 they promptly corrected and submitted amended reports when the error was discovered.

12 First, Respondents argue that it is incorrect to suggest that this money was hidden
13 because from the beginning the Cantwell Committee disclosed all receipts of money from
14 the candidate and all expenditures from these funds. See Cantwell Response, page 8.

15 Respondents also argue that the person who prepared the reports misunderstood the

¹⁹ A committee must itemize the receipt of a loan, regardless of the amount, on a separate Schedule A for the appropriate loan category, e.g., ("Loans made or guaranteed by the candidate"). All repayments made on a loan must also be itemized. 11 C.F.R. § 104.3(b)(4)(iii) and (iv).

²⁰ Schedule C-1 requires that the following information be disclosed: (1) the date and amount of the loan or line of credit; (2) the interest rate and repayment schedule of the loan, or each draw on the line of credit; (3) the types and value of traditional collateral or other sources of repayment securing the loan or line of credit and whether that security interest is perfected; and (4) an explanation of the basis of the credit established if the bases in (3) are not applicable. 11 C.F.R. § 104.3(d)(1)(i)-(iv). The committee treasurer must sign the schedule on Line G and attach a copy of the loan agreement. 11 C.F.R. § 104.3(d)(2). The lending institution must sign the statement on Line I, attesting that: the terms of the loan and other information regarding the extension of the loan are accurate, the terms and condition of the loan are no more favorable than those extended to similarly situated borrowers, the lending institution is aware that the loan must be made on a basis which assures repayment, and that in making the loan it has complied with the regulations set forth at 11 C.F.R. §§ 100.7(b)(11) and 100.8(b)(12).

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1 Commission's requirements and inadvertently omitted the Schedule C-1 information
2 from the original reports.²¹ *Id.* at 7.

3 Second, Respondents state that the Committee discovered this error while
4 reviewing its books and records at the end of 2000 and that they quickly prepared
5 amended reports with the complete loan information. *Id.* at 8. Respondents assert that
6 contrary to the Complainant's claim, these reports were actually completed prior to
7 receiving any notification from the Commission and were filed simultaneously with
8 receiving the notifications. *Id.* Respondents request that the Commission take into
9 account "the good faith correction" and take no further action as to the reporting errors
10 that the Committee corrected.

11 The Cantwell Committee did not timely report complete loan information
12 regarding the loans obtained from U.S. Bank. Accordingly, this Office recommends that
13 the Commission find reason to believe that Cantwell 2006 and Keith Grinstein, as
14 treasurer, violated 2 U.S.C. § 434(b). In light of the recommendations to find no reason
15 to believe concerning the core allegations in the complaint that the loans were prohibited
16 corporate contributions, and given that the reporting errors appear to have been
17 inadvertent and the Cantwell Committee took prompt corrective action before the
18 initiation of this matter, this Office recommends that the Commission send an
19 admonishment letter to Cantwell 2006 and Keith Grinstein, as treasurer, and close the
20 file.

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²¹ Respondents argue that the error is understandable because under generally accepted accounting principles, funds obtained by the candidate personally using the candidate's own assets, would be disclosed as the candidate's funds. See Cantwell Response, pages 7-8.

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III. RECOMMENDATIONS

1. Find no reason to believe Senator Maria Cantwell and Cantwell 2006 and Keith Grinstein, as Treasurer, violated 2 U.S.C. § 441b.
2. Find no reason to believe U.S. Bank National Association violated 2 U.S.C. § 441b.
3. Find reason to believe that Cantwell 2006 and Keith Grinstein, as Treasurer, violated 2 U.S.C. § 434(b), and send an admonishment letter.
4. Approve the appropriate letters.
5. Close the file.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
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BY:


Jonathan Bernstein
Assistant General Counsel


Dominique Dillenseger
Attorney

January 7, 2004
Date