



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D C 20463

**SEP 30 2004**

**Kenneth A. Gross, Esquire  
Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005**

**RE: MUR 5390**

**Dear Mr. Gross:**

On October 22, 2003, the Federal Election Commission notified your client, Robert Mitchell Delk, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, the Commission, on September 14, 2004, found that there is reason to believe that Mr. Delk violated 2 U.S.C. § 441b, a provision of 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 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

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

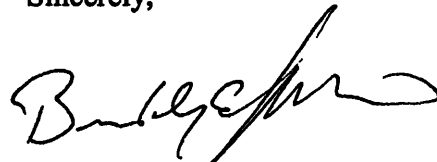
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demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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 matter to be made public.

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley A. Smith", with a stylized flourish at the end.

Bradley A. Smith  
Chairman

Enclosure  
Factual and Legal Analysis

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1                                   **FEDERAL ELECTION COMMISSION**  
2                                   **FACTUAL AND LEGAL ANALYSIS**  
3  
4

5   RESPONDENT:       Robert Mitchell Delk

MUR 5390

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8   **I.       INTRODUCTION**  
9

10           Public Citizen filed a complaint with the Federal Election Commission (“the  
11   Commission”) on October 16, 2003, alleging that Robert Mitchell Delk (“Mitch Delk”),  
12   Senior Vice President of Government Relations at the Federal Home Loan Mortgage  
13   Corporation (“Freddie Mac”) between January 1999 and March 2004, made excessive  
14   contributions in violation of the Federal Election Campaign Act of 1971, as amended  
15   (“the Act”), in connection with fundraising dinners he hosted at Ser Inc. (d/b/a Galileo  
16   Restaurant, hereinafter “Galileo”) during the 2001-2002 election cycle. The complaint  
17   further alleges that Epiphany Productions, Inc., a Freddie Mac vendor, made corporate  
18   contributions in violation of the Act by failing to make reasonable efforts to collect  
19   payments from campaign committees for organizational services it rendered in  
20   connection with the fundraising dinners.

21           The complaint does not make any allegation of wrongdoing with respect to  
22   Freddie Mac. However, in the wake of the complaint and the public disclosure of  
23   accounting improprieties within the company, discussed *infra*, Freddie Mac submitted to  
24   the Commission *sua sponte* a document entitled “Summary of Freddie Mac Campaign  
25   Finance Review” (“Submission”). The Submission explains that “[a]s part of its efforts  
26   to reestablish Freddie Mac’s credibility, the company has committed to demonstrating its  
27   compliance with all laws and regulations that apply to its activities.” Without drawing  
28   any legal conclusions, the Submission sets forth information obtained during a review by

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outside legal counsel of the campaign finance activities of Freddie Mac personnel, including, but not limited to, the fundraising dinners hosted by Mitch Delk at Galileo.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Background

Freddie Mac is a stockholder-owned corporation chartered by the U.S. Congress to provide a continuous and low-cost source of capital to finance America's housing.<sup>1</sup> Freddie Mac is subject to congressional oversight by the House Committee on Financial Services. The corporation is also subject to oversight by the U.S. Department of Housing and Urban Development (HUD) and the Office of Federal Housing Enterprise Oversight (OFHEO).

Freddie Mac and its employees and vendors engaged in a myriad of campaign fundraising activities, addressed in this matter, including: (1) campaign fundraising events sponsored by Freddie Mac's in-house lobbyists and subsidized in part by Freddie Mac, which apparently paid certain related expenses; (2) corporate facilitation of individual earmarked contributions by Freddie Mac; and (3) a Freddie Mac contribution of \$150,000 to the Republican Governors Association.

### B. Freddie Mac Payments for Expenses Related to the Delk Fundraising Dinners

#### 1. Corporate Reimbursements

The Act prohibits corporations from making contributions or expenditures in connection with any Federal election or for any officer or director of a corporation to consent to such contributions or expenditures. *See* 2 U.S.C. § 441b(a). The term

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<sup>1</sup> This description was taken from Freddie Mac's website, located at <http://www.freddiemac.com/orate/whoware/regulation/oversight.html> (visited April 15, 2004).

1 "contribution" includes any direct or indirect payment, distribution, loan, advance,  
2 deposit, or gift of money, or any services, or anything of value. 2 U.S.C. § 441b(b)(2).

3 Between 1999 and May 2003, Mitch Delk sponsored campaign fundraising  
4 dinners at Galileo for the benefit of Members of Congress who served on the House and  
5 Senate Committees that oversee Freddie Mac. According to Freddie Mac, the scope of its  
6 internal investigation included an examination of whether Freddie Mac paid any of the  
7 expenses associated with Mr. Delk's fundraising dinners at Galileo, either directly or  
8 through reimbursement to Mr. Delk. Freddie Mac reportedly reviewed expense records  
9 between 1999 through 2003, the period during which Mr. Delk hosted various events at  
10 Galileo. These events included the campaign fundraising dinners discussed *supra*, which  
11 Freddie Mac described as "individual volunteer activity," as well as separate, company-  
12 sponsored events, which Freddie Mac explained were unrelated to campaign fundraising.  
13 According to Freddie Mac, this examination revealed two instances in which "it is  
14 possible" the company reimbursed Mr. Delk for "individual volunteer fundraising  
15 events" at Galileo.

16 Specifically, Galileo reimbursed Mr. Delk for the cost of fundraising dinners held  
17 on March 16 and March 23, 1999. Freddie Mac issued reimbursements for these events  
18 in December 1999 in the total amount of \$5,974.34 (\$3,161.38 + \$2,812.96). According  
19 to Freddie Mac, Mr. Delk did not provide invoices from Galileo for these two fundraising  
20 events, and Mr. Delk indicated that he does not recall who paid for the events. Some of  
21 the individuals listed on the expense report as attending the March 23, 1999 dinner are  
22 reflected in disclosure reports as having made a contribution to the PAC for which the

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1 fundraiser was held near the date of the fundraising dinner, suggesting that these events  
2 were campaign fundraisers.

3 In addition, Freddie Mac paid a total of \$360 in taxi cab expenses for Mr. Delk's  
4 travel to and from campaign fundraising dinners between April 2000 and February 2003.  
5 Specifically, in its Submission, Freddie Mac identified 18 occasions where Mr. Delk  
6 submitted expense reports and received reimbursements in the amount of \$20 for a  
7 taxicab to and from Galileo on the evening of a campaign fundraising dinner.

8 **2. Payments to Epiphany Productions, Inc.**

9 Freddie Mac's internal investigation also revealed payments made by Freddie  
10 Mac to Epiphany Productions, Inc. ("Epiphany") for organizational services related to  
11 Mr. Delk's fundraising dinners at Galileo. The organizational services provided by  
12 Epiphany in connection with the fundraising dinners included developing invitation lists  
13 with Mr. Delk's input, distributing the invitations, contacting Galileo to schedule the  
14 event, keeping track of RSVPs, and collecting the contribution checks and delivering  
15 them to the campaign committees.

16 According to Freddie Mac, the company retained Epiphany for political  
17 "consulting services" in June 1999, one month after Mr. Delk began working with  
18 Epiphany in connection with the fundraising dinners at Galileo. Freddie Mac stated that  
19 Epiphany also provided organizational services related to corporate events. Both Freddie  
20 Mac and Epiphany maintain that Epiphany's activities relating to the fundraising dinners  
21 were separate from Freddie Mac's retention of Epiphany.

22 Nevertheless, in August of 2002, Mr. Delk and Freddie Mac's outside election  
23 law counsel discovered that Epiphany had improperly billed Freddie Mac for expenses

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related to the fundraising dinners held at Galileo in March 1999, principally for "broadcast fax" services associated with the distribution of invitations to the fundraisers. These invoices were apparently reviewed and approved by Mr. Delk. On August 8, 2002, Epiphany sent a check in the amount of \$22,512 to Freddie Mac to refund the expenses erroneously billed to Freddie Mac. Subsequently, on February 5, 2004, following a request from Freddie Mac's outside counsel that Epiphany refund additional line item charges that could not be confirmed as related to Freddie Mac's corporate activities, Epiphany sent another check refunding a total of \$2,221.06.<sup>2</sup> The Submission notes that there are two Epiphany invoices with charges in the amount of \$442.54 for which counsel is in the process of requesting either an explanation or refund from Epiphany.

### 3. Conclusions

Based on the foregoing, there is reason to believe that Robert Mitchell Delk, as a corporate officer, violated 2 U.S.C. § 441b by consenting to Freddie Mac's payments to Epiphany Productions, Inc., as well as its reimbursements to Mr. Delk, for expenses related to fundraising activity in connection with federal elections.

#### C. Other Fundraising Activity of Freddie Mac Employees and Vendors

##### 1. Clarke Camper and The Leger Co., Inc.

In addition to the fundraisers at Galileo, the internal investigation conducted by Freddie Mac examined what the company describes as "other volunteer fundraising events" hosted by Freddie Mac personnel. According to Freddie Mac, this examination uncovered five fundraising events in 2003 hosted by Clarke Camper, then Vice President

<sup>2</sup> A copy of the front of the refund checks is attached to the Summary. However, the Submission does not include a copy of the back of the checks or other evidence that the checks were negotiated.

1 of Government Relations, with the assistance of the Leger Co., Inc., a vendor with whom  
2 Freddie Mac apparently had a "consulting agreement."<sup>3</sup>

3 According to Freddie Mac, Mr. Camper and Liz Leger of the Leger Co., Inc.  
4 hosted five fundraising meals between January and May 2003, holding three of these  
5 events in a Freddie Mac conference room and two in restaurants. According to Freddie  
6 Mac, Mr. Camper and Ms. Leger stated that they compiled invitation lists together, based  
7 mainly on contact information provided to Ms. Leger by Mr. Camper, that Mr. Camper  
8 "generally" sent out invitations to the events from his personal e-mail account, that, on at  
9 least one occasion, a Freddie Mac employee who "work[ed] with" Mr. Camper in  
10 Government Relations circulated an invitation to one of the fundraising events via his  
11 personal e-mail account and apparently kept track of some RSVPs for the event, and that  
12 "certain Freddie Mac" personnel made the arrangements for the use of a conference room  
13 in connection with the fundraising activity. According to Freddie Mac, Mr. Camper  
14 stated that in each instance either he or the benefiting campaign committee paid for the  
15 food, and both Mr. Camper and Ms. Leger stated that the services rendered by Ms. Leger  
16 in connection with Mr. Camper's fundraisers were not part of the Freddie Mac  
17 "consulting agreement" with the Leger Co., Inc. According to Freddie Mac, Mr. Camper  
18 and Ms. Leger stated that after each event, Ms. Leger would issue an invoice to the  
19 benefiting campaign for \$250 to cover the cost of Ms. Leger's services in planning and  
20 executing the event.

21 Nevertheless, in its Submission, Freddie Mac revealed that in an invoice dated  
22 March 26, 2003, covering the period February-March 2003, The Leger Co., Inc. charged

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<sup>3</sup> Freddie Mac did not provide a copy of its "consulting agreement" with the Leger Co., Inc. or indicate when the agreement was entered.



1 Freddie Mac \$2,902.42 for dishes and related items described as "Catering Acquisition  
2 Expenses" to enable the Government Relations group to hold meals in its conference  
3 room. According to Freddie Mac, at that time, Freddie Mac was considering forming a  
4 PAC that would host events in the conference room. Significantly, however, Freddie  
5 Mac did not deny that it purchased the dishes for use in connection with the  
6 Camper/Leger fundraising events and the Leger Co.'s acquisition of the dishes occurred  
7 during the time period that Ms. Leger was assisting Mr. Camper in hosting fundraisers,  
8 suggesting that the dishes may have been purchased for use in connection with the  
9 fundraising meals.

10 Expense reports provided by Freddie Mac reflect that Mitch Delk approved the  
11 payments by Freddie Mac to the Leger Co. Accordingly, there is reason to believe that  
12 Robert Mitchell Delk, as a corporate officer, violated 2 U.S.C. § 441b by consenting to  
13 the corporate contribution.

14 **2. Corporate Facilitation of Contributions**

15 In its Submission, Freddie Mac described a practice by Mr. Delk and Mr. Camper  
16 of soliciting individual earmarked contributions from Freddie Mac executives, which  
17 were collected and transmitted by Freddie Mac personnel to recipient campaign  
18 committees. According to Freddie Mac, both Mr. Delk and Mr. Camper discussed  
19 individual contributions to federal candidates with senior Freddie Mac executives,  
20 including the Chief Executive Officer ("CEO") and General Counsel, and forwarded the  
21 contributions to the recipient committees, sometimes with the assistance of Freddie Mac  
22 personnel. Freddie Mac describes these activities as "personal activity" and maintains  
23 that all of the executives solicited for contributions, which were solicited between

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1 September 1998 and July 2002 and totaled \$41,500, were part of Freddie Mac's restricted  
2 class.

3 A corporation may make partisan communications to its restricted class, which  
4 includes its stockholders and executive or administrative personnel and their families.  
5 See 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(a)(2)(i) and 114.3; *see also* footnote 7.

6 As such, a corporation may solicit or suggest in a communication sent to its restricted  
7 class that they contribute to a particular candidate or committee; however, a corporation  
8 (including officers, directors or other representatives acting as agents of corporations)  
9 may not facilitate the making of the individual's contribution to the candidate or act as a  
10 conduit for individual contributions. See 11 C.F.R. §§ 114.2(f) and 110.6(b)(2)(ii).

11 Examples of facilitating the making of contributions include: (1) officials or employees  
12 of the corporation ordering subordinates or support staff (who therefore are not acting as  
13 volunteers) to plan, organize or carry out the fundraising project as a part of their work  
14 responsibilities using corporate resources; and (2) providing materials for the purpose of  
15 transmitting or delivering contributions, such as stamps, envelopes addressed to a  
16 candidate or political committee other than the corporation's or labor organization's  
17 separate segregated fund, or other similar items which would assist in transmitting or  
18 delivering contributions, but not including providing the address of the candidate or  
19 political committee. See 11 C.F.R. § 114.2(f)(2)(ii).

20 According to Freddie Mac, Ella Lee, the assistant to Leland Brendsel, the CEO of  
21 Freddie Mac, "relayed messages" between Mr. Delk, Mr. Camper and Mr. Brendsel, as  
22 well as other executives concerning individual contributions to federal candidates.  
23 Freddie Mac further revealed that Ms. Lee collected contributions from the executives

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1 and transmitted them to the candidate's campaign or to Mr. Delk or Mr. Camper, who  
2 then transmitted the contributions to the campaigns. At times, Ms. Lee arranged for a  
3 courier service paid by Freddie Mac to deliver the checks to the campaigns. Freddie Mac  
4 did not assert that Ms. Lee was acting as a volunteer in carrying out these activities.  
5 Documents provided by Freddie Mac indicate that \$5,000 in individual contributions was  
6 transmitted to campaign committees by courier paid for by Freddie Mac between  
7 September and November 2001. Based on the foregoing, there is reason to believe  
8 Robert Mitchell Delk, as an officer and agent of the corporation, violated 2 U.S.C. § 441b  
9 by consenting to the use of corporate resources to facilitate campaign contributions.

10 D. Freddie Mac's \$150,000 Contribution to the  
11 Republican Governors Association  
12

13 In its Submission, Freddie Mac disclosed that in October 2002, Freddie Mac  
14 contributed \$150,000 to the Republican Governor's Association ("RGA"). At that time,  
15 the RGA was a part of the Republican National Committee. According to Freddie Mac,  
16 the RGA misreported the contribution as a personal contribution from Mr. Delk, and Mr.  
17 Delk and Freddie Mac's outside counsel became aware of the misreporting "a number of  
18 months later." Freddie Mac's counsel reportedly contacted the RGA and learned that, in  
19 addition to the misreporting of the source of the contribution, the RGA had erroneously  
20 deposited the contribution into a non-building fund account. According to Freddie Mac,  
21 in June 2003, the RGA refunded the contribution to Freddie Mac.

22 The Act prohibits "any corporation organized by authority of any law of  
23 Congress" from making "a contribution or expenditure in connection with any election to  
24 any political office." 2 U.S.C. § 441b(a). The Act also prohibits "any candidate, political  
25 committee, or other person" from knowingly accepting or receiving "any contribution

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1 prohibited by this section.” *Id.* For purposes of Section 441b, the terms “contribution”  
 2 and “expenditure” include “any direct or indirect payment, distribution, loan, advance,  
 3 deposit, or gift of money, or any services, or anything of value . . . to any candidate,  
 4 campaign committee, or political party or organization, in connection with any election to  
 5 any of the offices referred to in” Section 441b.

6 Importantly, the Act excludes from the definition of contribution:

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

12  
 13 2 U.S.C. § 431(8)(B)(viii) (emphasis added). This is the so-called “building fund  
 14 exemption.” *See, e.g.,* Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14,  
 15 and 1983-8. Funds falling under the building fund exemption are exempt from the  
 16 prohibitions of 2 U.S.C. § 441b. *See* 11 C.F.R. § 114.1(a)(2)(ix); *see also* Advisory  
 17 Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1983-8, and 1979-17. Therefore,  
 18 national and state committees of political parties may accept donations covered by the  
 19 building fund exemption from corporations, including those like Freddie Mac, which are  
 20 organized by authority of any law of Congress.<sup>4</sup> *See id.*

21 In its Submission, Freddie Mac asserts that its intention was to make a permissible  
 22 building fund contribution. According to Freddie Mac, Mr. Delk stated that the \$150,000  
 23 contribution was part of a single \$250,000 commitment of support that he made to the  
 24 RGA on behalf of Freddie Mac; the other \$100,000 had been contributed by Freddie Mac

<sup>4</sup> The Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155, 116 Stat. 81 (2002), which took effect November 6, 2000, just days after Freddie Mac’s \$150,000 contribution, removed the building fund exemption for national party committees.

1 in March 2002 and was properly deposited by the RGA into the building fund account.  
2 According to Freddie Mac, Mr. Delk further stated that he communicated to the RGA,  
3 through Wayne Berman, the Honorary Finance Chairman of the RGA, his intention that  
4 the contributions were to be deposited into the building fund account.

5 Significantly, Freddie Mac had an internal procedure, which addressed building  
6 fund contributions and was established in 1994 to ensure compliance with the Act. The  
7 procedure provided for "a cover letter that notifies the recipient that the funds are to be  
8 used only for building fund purposes in accordance with" the Act. Further, the procedure  
9 established a "designated compliance officer responsible for reviewing requests under"  
10 the corporate procedure to ensure compliance with the Act.<sup>5</sup>

11 Attached to its Submission, Freddie Mac provided copies of documentation  
12 related to the two Freddie Mac contributions. For the first contribution of \$100,000,  
13 which was made payable to the "Republican Governors Association Eisenhower Building  
14 Fund," this documentation included a copy of the required cover letter that accompanied  
15 the contribution notifying the recipient that the funds only for building fund purposes. In  
16 contrast, the documentation for the \$150,000 contribution, which was made payable only  
17 to the "Republican Governors Assn," did not include a copy of the required cover letter.

18 While Freddie Mac attached to its Submission a copy of its corporate procedure  
19 regarding contributions, Freddie Mac does not address the existence of its corporate  
20 procedure in its Submission or address whether that procedure was followed in this

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<sup>5</sup> Freddie Mac's corporate procedure does not name a "designated compliance officer," but instead states that "the Senior Deputy General Counsel, Corporate Affairs, or his/her designee, shall review the request [for building fund expenditures] to determine whether it complies with the Act." However, documents submitted by Freddie Mac suggest that Bruce S. Oliver, Freddie Mac's Associate General Counsel for Mortgage Law, served in this capacity with respect to Freddie Mac's earlier \$100,000 contribution to the RGA. Specifically, Freddie Mac submitted a copy of the required cover letter with respect to its earlier \$100,000 contribution, which contained a statement that the corporation's procedure was followed. The statement was signed by Mr. Oliver.

1 instance. Rather, Freddie Mac maintains that "the information makes clear that Freddie  
2 Mac's intention was to make a permissible building fund contribution," noting that Mr.  
3 Delk explained that he communicated to the RGA, through Wayne Berman, his intention  
4 that the contributions were to be deposited in the building fund.

5 On June 11, 2004, Mr. Delk's counsel submitted an affidavit sworn to by Wayne  
6 L. Berman. Mr. Berman states that during a telephone conversation in which Mr. Delk  
7 agreed to seek a contribution of \$250,000 from Freddie Mac to support the RGA, Mr.  
8 Delk reminded him that a Freddie Mac contribution was required to be used to support  
9 the RNC building fund. Mr. Berman further avers that he received the first installment of  
10 the Freddie Mac contribution from Mr. Delk with a letter instructing the RGA to apply  
11 the contribution to the appropriate accounts, and that he forwarded the check and the  
12 letter to Susan Nelson, the RGA Finance Director, consistent with his normal practice.  
13 Mr. Berman further states that in October 2002, Mr. Delk gave him a Freddie Mac check  
14 for the remainder of the contribution; that the check was accompanied by a letter with  
15 instructions exactly like the letter that accompanied the first portion of the contribution;  
16 and that he forwarded the check and the letter to Ms. Nelson. Notably, however, neither  
17 Mr. Berman nor Freddie Mac produced a copy of the letter that purportedly accompanied  
18 the \$150,000 contribution. Finally, Mr. Berman states that after handing him the  
19 contribution, Mr. Delk reiterated that the contribution was to support the RNC building  
20 fund only.

21 While Mr. Berman states that the \$150,000 was specifically designated in writing  
22 to be for building fund purposes, a copy of the cover letter has not been produced. Given  
23 that -- (1) the \$150,000 contribution check was not specifically designated, on its face,

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1 for building fund purposes, in contrast to the first installment; (2) a copy of the cover  
2 letter required pursuant to corporate procedure has not been provided; and (3) Freddie  
3 Mac conspicuously failed to explain in its Submission whether it followed corporate  
4 procedure with respect to the payment – on balance, the available information supports a  
5 finding that the \$150,000 may have been outside of the building fund exemption.  
6 Accordingly, there is reason to believe that Robert Mitchell Delk, as a corporate officer  
7 and agent, violated 2 U.S.C. § 441b by consenting to a corporate contribution by Freddie  
8 Mac to the Republican National Committee.

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