FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BY FIRST CLASS MAIL

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700 13th Street, N.W.
Suite 600
Washington, DC 20005

OCT 22 2013

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RE: MUR 6757
(formerly RR 13L-01)

Dear Mr. Elias:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that Gillibrand for Senate (the "Committee") and Karen Feldman, in her official capacity as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On February 5, 2013, the Committee was notified that it was being referred to the Commission's Office of the General Counsel for possible enforcement action under 2 U.S.C. § 437g. On September 24, 2013, the Commission found reason to believe that the Committee and Karen Feldman, in her official capacity as treasurer, violated 2 U.S.C. § 434(b), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

The civil penalty for violations of the Act may be the greater of either the statutory civil penalty or the amount of the contribution or expenditure involved in the violation. 2 U.S.C. § 437g(a)(5); 11 C.F.R. § 111.24(a)(1). The penalty for the Committee's violation of 2 U.S.C. § 434(b) for failing to disclose accurately a total of $12,124.00 in receipts on its original 2011 April Quarterly Report and $229,478.83 in disbursements on its original 2009 April Quarterly, 2009 July Quarterly, 2009 October Quarterly, 2009 Year-End, 2010 April Quarterly, 2010 July Quarterly, 2010 October Quarterly, 2010 30 Day Post-General, 2011 April Quarterly, and 2011 July Quarterly Reports was calculated using the formula that the Administrative Fine Program

uses to calculate fines for reports that are filed late or not filed. *See* 11 C.F .R. § 111.43. Applying this formula yields a rounded civil penalty of $9,000.

If you are interested in engaging in pre-probable cause conciliation, please contact Peter Blumberg at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 2 U.S.C. § 437g(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

In the meantime, 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.

Please note that the Committee has a legal obligation to preserve all documents, records, and materials relating to this matter until notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

We look forward to your response.

On behalf of the Commission,

Ellen L. Weintraub

Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Gillibrand for Senate and Karen Feldman in her official capacity as treasurer

MUR 6757 (formerly RRL 13-01)

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities, *see* 2 U.S.C. § 437g(a)(2). The Reports Analysis Division ("RAD") referred Gillibrand for Senate and Karen Feldman in her official capacity as treasurer (the "Committee") to the Office of the General Counsel ("OGC") for failing to disclose additional receipts of $12,124.00 and additional disbursements of $229,478.83 during the 2010 and 2012 election cycles. In response, the Committee explained that the reporting errors were uncovered by a new accounting firm hired by the Committee in 2011 to handle its accounting and Federal Election Commission ("FEC") reporting requirements. Based on the available information, the Commission has determined to open a MUR and find reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to disclose receipts and disbursements accurately in reports to the Commission.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Committee is the principal campaign committee for Kirsten Gillibrand, a successful New York candidate for Senate in the 2010 and 2012 election cycles. RAD referred the Committee to OGC for amending its 2009 April Quarterly, 2009 July Quarterly, 2009 October Quarterly, 2009 Year-End, 2010 April Quarterly, 2010 July Quarterly, 2010 October Quarterly, 2010 30 Day Post-General, 2011 April Quarterly, and 2011 July Quarterly Reports to disclose

additional receipts of $12,124.00 and additional disbursements of $229,478.83, which is an aggregate increase in activity of $241,602.83.

The increased activity reflected in the amendments to each of these reports is summarized in the chart below.

Report	Date of Amendment	Amount of Increased Receipts	Amount of Increased Disbursements	Total Increased Activity
2009 April Quarterly	01/31/2012		$13,612.03	$13,612.03
2009 July Quarterly	01/31/2012		$11,012.46	$11,012.46
2009 October Quarterly	01/31/2012		$13,957.44	$13,957.44
2009 Year-End	01/31/2012		$21,434.93	$21,434.93
2010 April Quarterly	01/31/2012		$19,714.00	$19,714.00
2010 July Quarterly	01/31/2012		$25,610.87	$25,610.87
2010 October Quarterly	01/31/2012		$18,455.73	$18,455.73
2010 30 Day Post-General	01/31/2012		$12,990.37	$12,990.37
2011 April Quarterly	01/31/2012	$12,124.00	$48,499.77	$60,623.77
2011 July Quarterly[1]	05/04/2012		$44,191.23	$44,191.23
	TOTAL	**$12,124.00**	**$229,478.83**	**$241,602.83**

The Committee filed a Miscellaneous Text Submission ("Form 99") with the January 31 amendments which stated, in part, that the Committee had "recently hired a new professional accounting firm to handle its accounting and compliance with FEC reporting requirements," that this firm "noticed some routine discrepancies in reports filed between 2009 and 2011," and that the Committee "has resolved these discrepancies and amended its reports accordingly."

RAD sent the Committee a Request for Additional Information ("RFAI") on June 21, 2012, requesting an explanation for the apparent increased activity. In response to the RFAI, the Committee filed a Form 99 reiterating that in August of 2011, the Committee retained an

[1] On July 23, 2012, the Committee filed an Amended 2011 July Quarterly Report, disclosing no further changes to the Committee's disbursements; however, though the Committee labeled that report as an amended 2011 12 Day Pre-Primary Report. RAD considered it to be "an amended 2011 July Quarterly Report because it has the same coverage dates as previously-filed 2011 July Quarterly Reports." *See* Referral at 7; *id.* at n.1.

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accounting firm. Form 99 at 1 (August 1, 2012). The firm uncovered "routine discrepancies, such as duplicate entries and missing donor information." *Id.* The firm also found unreported "merchant fees" and "a handful of [unreported] receipts." *Id.*

The Committee was referred to OGC and upon receipt of the Referral, OGC notified the Committee about this matter on February 5, 2013. *See Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4, 2009). The Committee did not file a response to the Referral notification.

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B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee treasurers to file reports in accordance with the provisions of 2 U.S.C. § 434. *See* 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and disbursements. *See* 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. The Act further requires committees to disclose itemized breakdowns of receipts and disbursements. *See* 2 U.S.C. § 434(b)(2)-(6); 11 C.F.R. § 104.3(a)(4), (b)(4).

Here, the Committee did not comply with the Act's reporting requirements when it failed to disclose a total of $241,602.83 in receipts and disbursements on the ten original reports listed above. Therefore, the Commission has determined to find reason to believe that the Committee violated 2 U.S.C. § 434(b).