



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Amy Wills Gray, Treasurer
Ready PAC
PO Box 7705
McLean, VA 22106

APR 25 2019

RE: MUR 7284

Dear Ms. Gray:

On October 12, 2017, the Federal Election Commission notified Ready PAC and you in your official capacity as treasurer (the "Committee") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On April 23, 2019, the Commission found, on the basis of the information in the complaint, that there is no reason to believe the Committee violated 52 U.S.C. § 30104(b). Accordingly, the Commission closed its file in this matter as it pertains to the Committee. The Factual and Legal Analysis, explaining the Commission's finding, is enclosed.

The Commission reminds you that the confidentiality provisions of 52 U.S.C. § 30109 (a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Kimberly D. Hart, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Mark Shonkwiler by CG". The signature is written in a cursive style.

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Ready PAC and Amy Wills Gray MUR 7284
in her official capacity as treasurer

Ready PAC operates as a hybrid political committee and is registered with the Commission.¹ The Complaint alleges Ready PAC did not report a lease of its email list to Correct the Record in late 2015.² In support of the allegation, the Complaint cites a December 2015 email posted on Wikileaks that references Correct the Record's "emails to the larger Ready for Hillary list."³

Ready PAC reported receiving \$150,000 from "American Bridge 21st Century" on May 6, 2015 in exchange for the email list.⁴ Information available to the Commission indicates that American Bridge 21st Century Foundation leased the email list to American Bridge 21st Century at the end of 2015, and that American Bridge 21st Century then leased the list to Correct the Record.

Because the available information does not indicate that Ready PAC rented the list to Correct the Record, the Commission finds no reason to believe that Ready PAC and Amy Wills Gray, in her official capacity as treasurer, violated 52 U.S.C. § 30104(b) for failing to report the list rental to Correct the Record.

¹ See Ready PAC Statement of Organization (Jan. 23, 2013). Ready PAC previously went by the name "Ready for Hillary PAC." See *id.* Ready PAC did not respond to the Complaint.

² Compl. at 13-14.

³ *Id.*; see also Ready PAC Amended Statement of Organization (Apr. 12, 2015) (changing name, eight months prior to the leaked email's date, from "Ready for Hillary PAC" to "Ready PAC").

⁴ Ready PAC 2015 Mid-Year Report at 23 (July 23, 2015).

1 FEDERAL ELECTION COMMISSION
2 FACTUAL AND LEGAL ANALYSIS

3
4 RESPONDENT: American Bridge 21st Century and Rodell MUR 7284
5 Mollineau in his official capacity as treasurer
6

7 **I. INTRODUCTION**
8

9 The Complaint makes a wide range of allegations relating to financial transactions
10 between independent expenditure-only political committee American Bridge 21st Century (“AB
11 PAC”) and section 501(c)(4) non-profit American Bridge 21st Century Foundation (“AB
12 Foundation”) (collectively the “AB Entities”). The Complaint broadly alleges that AB PAC
13 misrepresented the purpose of receipts from AB Foundation as overhead and staff expenses when
14 they were actually contributions from AB Foundation and from donors to AB Foundation who
15 earmarked those funds for AB PAC. The Complaint further alleges that AB PAC failed to
16 properly report various specific transactions, including its debts to AB Foundation.

17 For reasons set forth below, the Commission finds no reason to believe that AB PAC
18 violated the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission
19 regulations by failing to report earmarked contributions; and finds reason to believe that AB
20 PAC and Rodell Mollineau, in his official capacity as treasurer, violated the reporting
21 requirements of the Act in the manner in which it reported “reconciled” transactions with other
22 entities.

1 **II. FACTUAL BACKGROUND**

2 AB PAC, AB Foundation, and Correct the Record are separate entities that share an
3 address.¹

4 AB PAC is an independent expenditure-only political committee that is registered with
5 the Commission.² It describes itself as a progressive research and communications organization
6 that is committed to “holding Republicans accountable for their words and actions.”³ AB PAC
7 made \$19,724,726 in disbursements during the 2016 election cycle⁴ and, in December 2016,
8 announced a new project it described as focused on ensuring that Donald Trump’s administration
9 would be held accountable (the “Trump Accountability Project”).⁵

10 AB Foundation is registered with the IRS as a 501(c)(4) nonprofit organization that
11 describes its mission as being “to compare and contrast progressive and conservative solutions to
12 America’s public policy concerns and to educate the American people and the nation’s leaders
13 on the results of that research.”⁶ In 2017, AB Foundation published “Trump Accountability”
14 policy briefs that the Complaint characterizes as political activity related to AB PAC’s Trump
15 Accountability Project.⁷

¹ Compl. at 4.

² See AB 21st Century Statement of Organization (Jan. 31, 2011).

³ *American Bridge 21st Century (Who We Are)*, <https://ab21.wpengine.com/about/> (last visited May 7, 2018).

⁴ See American Bridge 21st Century Amended 2016 Year-End Report at 2 (June 15, 2016); American Bridge 21st Century Amended 2015 Year-End Report at 2 (Aug. 31, 2016).

⁵ *David Brock Announces American Bridge Trump Administration Accountability War Room*, <https://americanbridgepac.org/tag/trump-accountability/> (last visited May 7, 2018).

⁶ See Compl., Ex. A. at 2.

⁷ See *id.* at 10, 12.

MUR 7284 (American Bridge 21st Century)
Factual and Legal Analysis

1 Correct the Record operates as a hybrid political committee and is registered with the
2 Commission.⁸ According to the Complaint, Correct the Record was a project of AB PAC before
3 it registered as a political committee in 2015.⁹ Ready PAC operates as a hybrid political
4 committee and is registered with the Commission.¹⁰

5 **A. AB Entities' Financial Transactions & the Common Paymaster Arrangement**

6 From 2011 to 2018, AB PAC reported 116 receipts from AB Foundation that total
7 approximately \$15.6 million.¹¹ All of these receipts were reported on line 12 of AB PAC's
8 reports (as "offsets to operating expenditures"), most for the reported purpose of "Overhead &
9 Staff Expenses" and some for "Overhead Expenses."¹² AB PAC also reported debts and
10 obligations owed to AB Foundation for "Overhead & Staff Expenses" or "Overhead Expenses"
11 in 2011, 2013, and 2014.¹³

⁸ See Correct the Record Amended Statement of Organization (June 5, 2017).

⁹ Compl. at 4.

¹⁰ See Ready PAC Statement of Organization (Jan. 23, 2013). Ready PAC previously went by the name "Ready for Hillary PAC." See *id.*

¹¹ These totals were calculated by exporting data, from the Commission's online database, on AB PAC's receipts from 2011 through the 2018 year-end report. Of these 116 receipts, 29 were receipts from AB Foundation (totaling \$4,534,000) post-dating June 30, 2017, the close of books of AB PAC's last publicly available report preceding the filing of the Complaint on October 10, 2017.

¹² The memo entries for all but eight of the receipts state the receipts are for "Overhead and Staff Expenses," but do not otherwise itemize the portion of each receipt that is going to each expense. Six receipts from the 2013-14 reporting period contain blank memo entries, and two receipts from the 2011-12 reporting period contain memo entries that indicate they are for "Overhead Expenses."

¹³ See, e.g., American Bridge 21st Century Amended 2014 Pre-General Report at 79 (Aug. 1, 2015); American Bridge 21st Century Amended 2014 July Quarterly Report at 428, 429 (July 31, 2015); American Bridge 21st Century 2013 Year End Report at 538 (Jan. 31, 2014); American Bridge 21st Century Amended 2011 Mid-Year Report at 75 (May 24, 2012).

1 The Complaint asserts that, starting in 2014, the AB Foundation payments that AB PAC
2 reported as offsets to operating expenditures were disproportionately high and represent an effort
3 to hide AB Foundation's contributions to and work for AB PAC.¹⁴

4 **1. The "Common Paymaster" Arrangement**

5 The Complaint makes a number of interrelated allegations of wrongdoing related to the
6 funds transferred from AB Foundation to AB PAC.¹⁵ Under the common paymaster provisions
7 in the Internal Revenue Code, two or more "related" entities, like the AB Entities, may employ
8 the same individuals at the same time and pay these individuals through only one of the entities
9 (the "common paymaster"), which is considered, for federal tax purposes, to be a single
10 employer.¹⁶ By using a common paymaster arrangement, related entities pay, in total, no more
11 social security tax than a single employer would pay.¹⁷ Each entity must pay its own part of the
12 employment taxes and may deduct only its own part of the wages.¹⁸ The common paymaster is
13 responsible for filing information and tax returns, issuing W-2 forms, and cutting the paychecks
14 to the employees, while the other entity transfers its share of the employee expenses to the

¹⁴ Compl. at 9. The Complaint does not suggest, or allege facts to support, that AB Foundation is a connected organization of AB PAC, or, conversely, that AB PAC should be considered a separate segregated fund of AB Foundation. See 52 U.S.C. § 30118(b)(2)(C) (exempting from definition of "contribution" those payments by connected organization for SSF's administrative costs); 11 C.F.R. § 114.1(a)(2)(iii) (same).

¹⁵ Compl. at 5-12.

¹⁶ Internal Revenue Serv., U.S. DEPT. OF THE TREASURY, Pub. No. 15-A, Employer's Supplemental Tax Guide at 22 (Feb. 21, 2018), <https://www.irs.gov/pub/irs-pdf/p15a.pdf> ("Employer's Tax Guide").

¹⁷ *Id.*; see also Internal Revenue Serv., *Common Paymaster* (Feb. 1, 2018), available at <https://www.irs.gov/government-entities/common-paymaster> (last visited Apr. 25, 2018) ("Common Paymaster Guide") (explaining basic aspects of common paymaster arrangements, including when corporations are considered "related" and how common paymaster arrangement allows related corporations to avoid paying inflated taxes on wages that, if cumulated across related employers paying separately, might exceed FICA and FUTA wage caps).

¹⁸ Internal Revenue Serv., Employer's Tax Guide at 22.

MUR 7284 (American Bridge 21st Century)
Factual and Legal Analysis

1 common paymaster.¹⁹ The Complaint asserts that AB PAC's reported receipts from AB
2 Foundation for "Overhead and Staff" were disproportionate to the relative share of the
3 organizations' respective activities and an improper use of the common paymaster
4 arrangement.²⁰ For example, the available information shows that in 2017, AB PAC's reported
5 payroll expenses increased slightly, compared to the two previous years, yet AB PAC received
6 \$3,809,000 more from AB Foundation that year for purported overhead and salary expenses than
7 it had received in 2016.²¹

8 AB PAC, as the common paymaster, disbursed salaries to the common staff.²² AB
9 Foundation either prospectively forwarded or retroactively reimbursed funds to AB PAC for the
10 work done on behalf of the foundation.²³ The AB Entities indicate that at least some portion of
11 AB Foundation's transfers to AB PAC were for overhead expenses in addition to staff expenses
12 under the common paymaster arrangement.²⁴

13 The record does not indicate which of AB PAC's reported disbursements are payments,

¹⁹ See *id.*; Internal Revenue Serv., Common Paymaster Guide (explaining transfers between related entities utilizing common paymaster arrangement).

²⁰ Compl. at 9. The AB Entities' compliance with IRS requirements is outside the Commission's jurisdiction and not analyzed here.

²¹ Compare American Bridge 21st Century Amended 2017 Year End Report at 42 (Aug. 24, 2018) (disclosing that AB PAC received \$4,529,000 from AB Foundation during 2017) with American Bridge 21st Century Amended October 2016 Quarterly Report at 23 (July 1, 2016) (disclosing that AB PAC received \$720,000 from AB Foundation during 2016).

²² See Response of AB 21st Century, AB 21st Century Foundation, and Correct the Record ("Joint Resp.") at 1-2 (Nov. 29, 2017).

²³ See *id.* at 1-2 (stating that AB PAC pays the salaries under the common paymaster arrangement and AB Foundation reimburses AB PAC for staff work for AB Foundation); *id.* at 4 (describing funds AB Foundation paid AB PAC in 2015 which had not been used by the end of the year and were "held by AB PAC to be used to pay AB Foundation payroll and overhead expenses").

²⁴ See *id.* at 4-5 (describing transfers for overhead expenses and the AB Entities' "ongoing reconciliation based on the exchange of resources").

1 in whole or in part, for the AB Entities' shared employees' work for AB Foundation under the
2 common paymaster arrangement. The record also does not indicate what portion of the
3 overhead, staff, or other offsets to operating expenses that AB PAC reported receiving from AB
4 Foundation are receipts for AB Foundation's salary obligations under the common paymaster
5 arrangement and which portion are receipts for other purposes. Additionally, the record does not
6 break down how much AB PAC paid to its own, as opposed to AB Foundation's, employees
7 because AB PAC's reported disbursements for "salary," "payroll," and related expenses do not
8 differentiate between entities.

9 The Complaint makes a number of interrelated allegations of wrongdoing related to the
10 transfers from AB Foundation to AB PAC that are discussed in the analysis below.

11 **2. AB PAC's Debt Obligation to AB Foundation**

12 The Complaint also alleges that AB PAC failed to report to the Commission a \$610,800
13 debt that it owed AB Foundation in 2015; the Complaint presents this allegation as separate from
14 the common paymaster arrangement.²⁵ As support for the allegation, the Complaint cites to a
15 Form 990 that AB Foundation filed with the IRS in 2015; the form reported that \$610,800 was
16 "Due from American Bridge PAC."²⁶

17 The Response disputes that the amount that AB Foundation reported on its Form 990 was
18 a "debt," explaining that the amount was not a traditional "debt and obligation" that had to be
19 reported to the Commission, but instead was a transfer under the common paymaster

²⁵ Compl. at 13.

²⁶ *Id.*, Ex. A at 25.

1 arrangement that “represented the Foundation’s accounting of funds it had paid to the PAC in
2 2015 which had not been used for staff and overhead expenses during the year.”²⁷

3 **B. Correct the Record’s Email List Rental**

4 The Complaint further alleges that Correct the Record failed to report the receipt or use
5 of an email list that it received in late 2015 from Ready PAC.²⁸ In support of this allegation, the
6 Complaint cites a December 2015 email posted on Wikileaks that references Correct the
7 Record’s “emails to the larger Ready for Hillary list.”²⁹

8 Though the Complaint presents this allegation as separate from the financial transactions
9 between the AB Entities, the Response assert that the list rental involved a series of transactions
10 between them. The Response states that AB Foundation first leased the email list from Ready
11 PAC for \$150,000.³⁰ Ready PAC reported receiving \$150,000 from “American Bridge 21st
12 Century” on May 6, 2015 in exchange for the email list.³¹ The Response states that AB PAC
13 leased the email list from AB Foundation at the end of 2015, and that AB PAC “accounted for its
14 payment of the fair market value of the list through the ongoing reconciliation” between the AB
15 Entities.³² AB PAC does not appear to have specifically described list rental as a purpose of any
16 reported disbursement to or receipt from AB Foundation. The Response further states that AB
17 PAC then leased the list to Correct the Record, which “reimbursed AB PAC for the value of the

²⁷ Joint Resp. at 4.

²⁸ Compl. at 13-14.

²⁹ *Id.*; see also Ready PAC Amended Statement of Organization (Apr. 12, 2015) (changing name, eight months prior to the leaked email’s date, from “Ready for Hillary PAC” to “Ready PAC”).

³⁰ Joint. Resp. at 4-5 (noting that AB Foundation reported the list rental from Ready PAC in a 2015 IRS filing).

³¹ Ready PAC 2015 Mid-Year Report at 23 (July 23, 2015).

³² Joint Resp. at 5.

MUR 7284 (American Bridge 21st Century)
Factual and Legal Analysis

1 list as part of a \$400,000 payment made at the end of 2015.”³³ Both AB PAC and Correct the
2 Record reported this \$400,000 payment, but neither report stated that the payment was for the
3 email list rental.³⁴

4 **III. ANALYSIS**

5 Political committees such as AB PAC must comply with certain organizational and
6 reporting requirements set forth in the Act. Among other requirements, a political committee
7 must register with the Commission, appoint a treasurer who maintains its records, and file
8 periodic reports for disclosure to the public.³⁵ The periodic disclosure reports committees file
9 with the Commission must disclose all receipts they receive and disbursements they make.³⁶
10 These reports must itemize all contributions received from contributors that aggregate in excess
11 of \$200 per election cycle and must itemize each reportable disbursement with the date, amount,
12 and purpose of the disbursement.³⁷ Political committees must also disclose debts or obligations
13 exceeding \$500 in the report that covers the date in which the debt was incurred and
14 continuously report debts until they are extinguished.³⁸

³³ *Id.*

³⁴ See American Bridge 21st Century Amended 2015 Year-End Report at 17 (Aug. 31, 2016) (reporting a \$400,000 receipt from Correct the Record); Correct the Record 2015 Year-End Report at 41 (Jan. 31, 2016) (reporting a \$400,000 disbursement to AB PAC with a purpose of “Contribution: Non-contribution Account”).

³⁵ See 52 U.S.C. §§ 30102-30104.

³⁶ 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 104.3(a), (b).

³⁷ 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3(a)(4), (b)(3); see also 11 C.F.R. § 104.3(b)(3)(i)B (explaining the specificity required in reporting purposes of disbursements and noting that “statements or descriptions such as *advance*, ... *other expenses*, *expenses*, *expense reimbursement*, *miscellaneous*, *outside services* ... would not meet the requirements”) (emphasis in original).

³⁸ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.11(a), (b).

1 **A. There is No Basis to Conclude AB PAC Generally Misreported Common**
2 **Paymaster Transactions**

3
4 The Complaint alleges that AB PAC's improper use of the common paymaster
5 arrangement resulted in "any number of" reporting violations in the way it reported the transfers
6 from AB Foundation, including that AB PAC should have reported the receipts from AB
7 Foundation as contributions rather than as offsets to operating expenditures. The Response states
8 that all payments from AB Foundation to AB PAC were payments for AB Foundation's own
9 activities and were not contributions to be used for AB PAC's activity (or any political activity);
10 the Response states that AB Foundation's reimbursements to AB PAC for common employees'
11 work complied with IRS regulations and that AB PAC accurately reported all reimbursements.³⁹

12 As a preliminary matter, we address the allegation that AB PAC's reporting of
13 transactions made pursuant to a common paymaster arrangement could, itself, result in reporting
14 violations. Neither the Act nor Commission regulations expressly addresses how a political
15 committee should report receipts, disbursements, or debt obligations relating to a common
16 paymaster agreement as described above. Nonetheless, the Commission has provided guidance
17 to different types of political committees about the variety of methods available to share or
18 allocate costs – such as use of advances or reimbursements for the expenses of staff shared with
19 other entities – and the various methods available for reporting such costs, including through
20 reporting reimbursements for shared costs as offsets to operating expenditures.⁴⁰ Based on this

³⁹ See Joint Resp. at 1-3.

⁴⁰ See, e.g., Advisory Op. 1995-22 (DCCC) at 3 (approving of a particular method of reporting shared employee costs in which one entity reimburses another, while also noting that the approved method "is not the only permissible method" and noting that, "normally," committees would report such reimbursements as "offsets to operating expenditures" like refunds); Advisory Op. 1980-38 (Allen) at 2 (concluding that political committee may receive from non-committee reimbursement payments for shared costs, which should be reported as offsets to operating expenditures); Advisory Op. 1978-67 (Anderson) (superseded in part by AO 1980-38 on other grounds) (concluding that Act and Commission regulations do not prohibit shared use of facilities so long as costs are allocated appropriately and committee reports its own expenditures); see also 11 C.F.R. § 106.1 (setting out

1 guidance and the information available, we conclude that a common paymaster arrangement
2 under which AB PAC paid shared employees' salary on behalf of both of the AB Entities;
3 received reimbursements from AB Foundation for the share of employee costs attributable to
4 those employees' work for AB Foundation; reported the salary payments made by AB PAC for
5 shared employees' work for both AB Entities as disbursements on its regularly scheduled
6 reports; and reported reimbursements from AB Foundation for the share of employee costs
7 attributable to those employees' work for AB Foundation as offsets to operating expenditures is
8 generally permissible and does not, in itself, give rise to unspecified reporting violations.

9 *Inaccurate* reporting of, or failure to report, transactions made pursuant to a common
10 paymaster arrangement would be a violation, however, for the reason that committees must
11 accurately report their activity.⁴¹ Allegations regarding inaccurate reporting by AB PAC are
12 addressed in Sections B and C below.

13 **B. There is No Reason to Believe AB PAC Misreported "Disguised"**
14 **Contributions from AB Foundation**
15

16 The Complaint alleges that AB Foundation disguised contributions through transfers to
17 AB PAC under the common paymaster arrangement.⁴² The Complaint alleges that the amount of
18 the reimbursements by AB Foundation exceeded its share of the costs and, therefore, constituted
19 contributions to AB PAC.⁴³ The Complaint also alleges that AB PAC misreported receipts as

allocation rules); Advisory Op. 1988-24 (Dellums) (approving joint operations account pursuant to joint fundraising agreement between federal- and non-federal committees sharing operational costs, including common staff).

⁴¹ 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 104.3(a), (b).

⁴² Compl. at 5.

⁴³ Compl. at 9-10; *See also* Advisory Op. 2004-37 (Waters) at 4 (concluding that "mere reimbursement of . . . costs . . . would not constitute 'anything of value,'" unless the reimbursement "exceeds the costs"); *see also* 11 C.F.R. § 100.52 (definition of "contribution").

MUR 7284 (American Bridge 21st Century)
Factual and Legal Analysis

1 transfers when they were, in fact, earmarked contributions from unnamed contributors forwarded
2 by AB Foundation as conduits.⁴⁴

3 In support of the allegation that AB Foundation made direct contributions to AB PAC,
4 the Complaint argues that AB Foundation paid a “disproportionate” share of employee expenses
5 for the common employees under the common paymaster arrangement and that, therefore, the
6 payments above AB Foundation’s own costs were contributions. For example, according to the
7 Complainant’s analysis, AB Foundation allegedly paid approximately 73% of the AB
8 Respondents’ employee expenses in 2017 even though most of the common employees’ work
9 was related to AB PAC’s Trump Accountability Project.⁴⁵ The Complaint specifically notes that
10 AB PAC’s reports show that AB Foundation transferred \$2,800,000 to AB PAC during the
11 January 1 – June 30, 2017, reporting period and AB PAC disbursed only \$2,800,838 in employee
12 compensation payments during the same period; the Complaint assumes that the AB Foundation
13 transfers were all for common employee expenses and thus concludes that AB PAC paid only
14 \$838 of expenses for costs it incurred in that period by shared employees.⁴⁶

15 The AB Entities assert that AB Foundation employees’ work on “Trump Accountability”
16 policy briefs was non-political policy and issue research in order to publish briefs to educate
17 people about public policy concerns and otherwise characterizes the Complainant’s allegations
18 as being without merit.⁴⁷

⁴⁴ Compl. at 9.

⁴⁵ *Id.* at 11-12.

⁴⁶ *Id.* at 7-8.

⁴⁷ Joint Resp. at 3.

MUR 7284 (American Bridge 21st Century)
Factual and Legal Analysis

1 While the Complaint alleges that some of AB Foundation’s transfers to AB PAC were
2 “disproportionately high” and, thus, actually contributions to the PAC, the available information
3 provides no evidence that would support a reasonable inference that AB Foundation was making
4 contributions to AB PAC rather than paying its share of expenses handled under the common
5 paymaster arrangement. The Complaint speculates about the relative employee-related costs of
6 the AB Entities, but provides no evidence that AB Foundation paid shared employees for their
7 work on AB PAC activity, except by further speculation that AB Foundation employees’ work
8 on “Trump Accountability” reports was “substantially” for an AB PAC project. Given the lack
9 of specific allegations in the Complaint, and the AB Entities’ assertion that AB Foundation
10 employees produced non-political policy briefs and issue research about public policy concerns,
11 the available information provides no reasonable basis for concluding that AB Foundation
12 reimbursed AB PAC in excess of its own portion of the shared employees’ costs such that AB
13 PAC failed to report contributions from AB Foundation. Nonetheless, as described further
14 below, AB PAC may have inaccurately reported transactions with AB Foundation for shared
15 employee costs via undifferentiated “reconciliations” that obscured both the amounts and dates
16 of those costs.

17 In support of the earmarked contribution allegation, the Complaint notes that AB
18 Foundation’s transfers to AB PAC “sometimes closely correlated with and sometimes were
19 identical to the amounts of donations received by AB Foundation.”⁴⁸ The Complaint does not
20 identify specific donations to AB Foundation that so correlate, cite any sources addressing those
21 purported donors’ intent to contribute to AB PAC, or offer any information regarding AB
22 Foundation’s exercise of direction or control over any alleged earmarked contributions. The

⁴⁸ Compl. at 11.

1 Response denies that any donations made to AB Foundation were earmarked contributions for
2 AB PAC.⁴⁹

3 While the Complaint alleges that AB Foundation received donations earmarked for AB
4 PAC's political activity and masked those earmarked funds when passing them on to AB PAC
5 under the common paymaster arrangement, it does not identify specific donations to AB
6 Foundation that were earmarked for AB PAC or provide a basis for believing those donations
7 were so earmarked. Instead, the Complaint makes general allegations without identifying any
8 particular contributions to AB PAC that were purportedly earmarked or any explicit indicia of
9 earmarking attributable to such contributions. Thus, whether the Complaint is construed as a
10 violation of 52 U.S.C. § 30116(a)(8) and 11 C.F.R. § 110.6 or a violation of 52 U.S.C. § 30122
11 and 11 C.F.R. § 110.4(b), there is no evidence in the record to support a finding that AB
12 Foundation failed to report, as an intermediary, contributions to AB PAC. As such, the
13 Commission finds no reason to believe that AB Foundation violated 52 U.S.C. §§ 30116(a)(8),
14 30122 or 11 C.F.R. §§ 110.6(c), 110.4(b).

15 **C. There is Reason to Believe AB PAC Misreported Debt, List Rental, and**
16 **Other Possible Receipts or Disbursements within "Reconciliation"**
17 **Transactions**

18
19 While the available information does not support the Complaint's allegations that the AB
20 Entities disguised contributions under AB PAC's reporting of common paymaster transactions,
21 the available information does show at least two instances in which AB PAC failed to file
22 accurate reports as a result of what the Response calls the "ongoing reconciliation" between the
23 AB Entities.

⁴⁹ Joint Resp. at 3.

MUR 7284 (American Bridge 21st Century)
Factual and Legal Analysis

1 First, it appears that AB PAC failed to correctly report an email list it received from AB
2 Foundation in 2015. Under Commission regulations, the unpaid receipt of an email list is an in-
3 kind contribution.⁵⁰ However, the Response states that the e-mail list should not be considered
4 an in-kind contribution because AB PAC leased the e-mail list from AB Foundation.⁵¹ The
5 Commission has determined that a mailing list can be leased, without a contribution resulting, if
6 (1) it has an ascertainable fair market value and (2) it is leased at the usual and normal charge in
7 a “bona fide, arm’s length transaction and the list [is] used in a commercially reasonable manner
8 consistent with such an arms-length agreement.”⁵² A review of AB PAC’s Commission filings
9 shows that AB PAC failed to report a disbursement to AB Foundation reflecting a fair market-
10 value payment for the list. Although the Response indicates that AB PAC “accounted for its
11 payment of the fair market value of the list through the ongoing reconciliation” with AB
12 Foundation,⁵³ “list rental” is not fairly included within AB PAC’s reported disbursements for
13 “salary” or “payroll” and receipts for “Overhead & Staff Expenses” or “Overhead Expenses”
14 from AB Foundation.⁵⁴ Because the purported payment was not individually disclosed, the
15 transaction is not evident on the face of AB PAC’s reports, and we are unable to determine
16 whether AB PAC paid fair market value for the email list.

⁵⁰ 11 C.F.R. 100.52(d).

⁵¹ Joint Resp. at 5.

⁵² Advisory Op. 2002-14 (Libertarian National Committee) at 4; *see also* Advisory Op. 2006-34 (Working Assets, Inc.) at 5.

⁵³ Joint Resp. at 5.

⁵⁴ *See, e.g.*, 11 C.F.R. § 104.8 (setting out rules for uniform reporting of receipts); 11 C.F.R. § 104.9 (same, for disbursements); Instructions for FEC Form 3X and Related Schedules at 13 (distinguishing disbursement purpose of “Administrative/Salary/Overhead Expenses” from that for “Solicitation and Fundraising Expenses,” which includes costs for “mailing lists” and “call lists”).

MUR 7284 (American Bridge 21st Century)
Factual and Legal Analysis

1 Additionally, the Response states that Correct the Record obtained the list from AB PAC,
2 reimbursed AB PAC for the value of that list, and reported the reimbursement as part of a larger
3 \$400,000 payment that Correct the Record made to AB PAC at the end of 2015.⁵⁵ Although the
4 Response states that some part of the \$400,000 payment from Correct the Record to AB PAC
5 “accounted for its payment of the fair market value of the list through the ongoing reconciliation
6 between the two organizations,”⁵⁶ neither the reports nor the Response indicates the amount of
7 Correct the Record’s payment for the list so as to determine whether Correct the Record paid fair
8 market value. Because the purported payment was not individually disclosed, the transaction is
9 not evident on the face of either committee’s reports, and we are unable to determine whether
10 AB PAC received fair market value for the email list.

11 Thus, the available information indicates that AB PAC violated the Act’s reporting
12 requirements in connection with reporting its receipt of the email list from the AB Foundation
13 and purported payment for the email list to AB Foundation in 2015 and the purported payment
14 for the email list from Correct the Record.

15 Second, the available information shows that AB PAC did not clearly report the \$610,800
16 that AB Foundation paid to AB PAC as advance payments for payroll expenses in 2015.⁵⁷ AB
17 PAC reported receipts for “Overhead & Staff Expenses” or “Overhead Expenses” from AB
18 Foundation.⁵⁸ The Response asserts that “the amount was not a ‘debt’ to be paid by AB PAC, but
19 the amount of funds held by AB PAC was to be used to pay AB Foundation payroll and

⁵⁵ Joint Resp. at 5.

⁵⁶ *Id.*

⁵⁷ See Joint Resp. at 4; AB 21st Century April 2016 Quarterly Report (Apr. 15, 2016).

⁵⁸ AB 21st Century April 2016 Quarterly Report at 15-16 (Apr. 15, 2016).

MUR 7284 (American Bridge 21st Century)
Factual and Legal Analysis

1 overhead expenses.”⁵⁹ In past matters, the Commission has determined that committees must
2 disclose funds advanced to it.⁶⁰ If, as the Response asserts, the reported amount represents
3 advanced funds, AB PAC should have disclosed those receipts as such. Additionally, the
4 corresponding payments made by AB PAC to cover the shared expenses for payroll and
5 overhead expenses that AB PAC, as the common paymaster, disbursed to pay the salary and
6 overhead expenses of the two organizations’ shared staff and expenses should have been
7 reported and clearly identified as such. Because the receipts from AB Foundation were not
8 specifically labeled as advanced funds, it is not evident on the face of AB PAC’s reports whether
9 these receipts represent advance payments from AB Foundation or were in fact contributions
10 from AB Foundation.

11 Moreover, the two discrete reporting violations identified above, both of which concern
12 the AB Entities’ “ongoing reconciliation” of funds, support an inference that AB PAC may have
13 made similar reporting violations via its undifferentiated “reconciliations” with AB Foundation.

14 Based on the above, the Commission finds reason to believe that American Bridge 21st
15 Century and Rodell Mollineau, in his official capacity as treasurer, violated 52 U.S.C.
16 § 30104(b).

⁵⁹ Joint Response at 4.

⁶⁰ See, e.g., Factual and Legal Analysis at 8-11, MUR 6509 (Friends of Herman Cain) (finding reason to believe the Cain Committee failed to report funds advanced to it by 501(c)(3) non-profit corporation); Factual and Legal Analysis at 5; MUR 4369 (Friends of Jim Inhofe) (finding reason to believe committee failed to report in-kind advances from candidate).