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August 27, 2020

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JBerkon@perkinscoie.comJeff S. Jordan
Assistant General Counsel
Federal Election Commission
Office of Complaints Examination & Legal Administration
cela@fec.gov**VIA EMAIL****Re: MUR 7585 and MUR 7588**

Dear Mr. Jordan:

We write as counsel for Lori Trahan, the Lori Trahan for Congress Committee (the “*Committee*”), and Martha Howe, in her official capacity as Treasurer (collectively, “*Respondents*”), in response to the Complaints filed in Matter Under Review 7585 and 7588 and the Supplemental Complaint filed in Matter Under Review 7588.

We are writing to make the Commission aware of the recent report issued to Representative Trahan by the House Committee on Ethics (the “*Ethics Committee*”), a copy of which is enclosed here. The Ethics Committee, having conducted a review of the allegations that are central to the matters before the Commission, found that Representative Trahan used her personal funds to make loans to her campaign — as was her right.¹ These findings, determined by a bipartisan committee following a thorough investigation, stand in stark contrast to the unfounded claims made by the Complainants.

For all the reasons we’ve outlined to the Commission in prior responses, we respectfully request that the Commission dismiss this matter.

Very Truly Yours,

Kate Sawyer Keane
Jonathan S. Berkon
Counsel for Respondents

¹ See Report of the Committee on Ethics, In the Matter of Allegations Relating to Representative Lori Trahan (July 15, 2020) at 16-17.

House Calendar No. ___

116TH CONGRESS

2nd Session

}

HOUSE OF REPRESENTATIVES {

REPORT

116-__

IN THE MATTER OF ALLEGATIONS
RELATING TO REPRESENTATIVE LORI
TRAHAN

R E P O R T
OF THE
COMMITTEE ON ETHICS



July 15, 2020.—Referred to the House Calendar and ordered to be
printed

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WASHINGTON : 2020

ADOPTED BY THE COMMITTEE ON ETHICS ON JULY 15, 2020

**116TH CONGRESS, 2ND SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE
LORI TRAHAN**

July 15, 2020

Mr. DEUTCH from the Committee on Ethics submitted the following

REPORT

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July 16, 2020

The Honorable Cheryl Johnson
Clerk, House of Representatives
Washington, DC 20515

Dear Ms. Johnson:

Pursuant to clauses 3(a)(2) and 3(b) of Rule XI of the Rules of the House of Representatives, we herewith transmit the attached report, "In the Matter of Allegations Relating to Representative Lori Trahan."

Sincerely,

Theodore E. Deutch
Chairman

Kenny Marchant
Ranking Member

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**116TH CONGRESS, 2ND SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE LORI
TRAHAN**

July 15, 2020

Mr. DEUTCH from the Committee on Ethics submitted the following

R E P O R T

In accordance with House Rule XI, clauses 3(a)(2) and 3(b), the Committee on Ethics (Committee) hereby submits the following Report to the House of Representatives:

I. INTRODUCTION

On September 18, 2019, the Board of the Office of Congressional Ethics (OCE) forwarded to the Committee a Report and Findings (OCE's Referral) regarding Representative Lori Trahan. OCE recommended the Committee review allegations that 1) personal loans Representative Trahan made to her principal campaign committee, Lori Trahan for Congress (Campaign), were excessive contributions from her husband because they were sourced from her husband's personal funds; and 2) Representative Trahan omitted required information related to the personal loans from her congressional candidate Financial Disclosure Statements and from the Campaign's reports to the Federal Election Commission (FEC).

The Committee reviewed the allegations referred by OCE pursuant to Committee Rule 18(a). Following its review, the Committee found that the funds used to source Representative Trahan's personal loans to the Campaign were marital property to which Representative Trahan had a legal right of access and control. Accordingly, the loans were sourced from Representative Trahan's personal funds, not excessive contributions from her husband. For this reason, the Committee did not find that Representative Trahan acted in violation of House Rules, laws, regulations, or other standards of conduct with respect to campaign contribution limits.

As to the alleged disclosure omissions and errors on her Financial Disclosure Statements and the Campaign's FEC reports, the Committee found no evidence that they were knowing and willful. Specifically, the Committee considered allegations that Representative Trahan may not have properly reported a line of credit that she used to make an additional loan to her campaign. Because there was not a clear legal standard articulated by the FEC in their public guidance, the

Committee determined the FEC was best qualified to determine whether Representative Trahan's campaign properly complied with the relevant reporting requirements and directs Representative Trahan to have the Campaign contact the FEC to ensure accurate disclosure.

For these reasons, the Committee did not find that Representative Trahan acted in violation of House Rules, laws, regulations or other standards of conduct. Accordingly, the Committee unanimously voted to dismiss this matter, adopt this Report and take no further action. Upon publication of this report the Committee considers the matter closed.

II. PROCEDURAL BACKGROUND

OCE commenced a preliminary review of this matter on May 11, 2019. On June 10, 2019, OCE initiated a second-phase review. OCE voted on September 13, 2019 to refer this matter to the Committee. On September 18, 2019, the Committee received OCE's Referral recommending further review of allegations that Representative Trahan's Campaign accepted personal loans and contributions that exceeded campaign contribution limits and that Representative Trahan failed to disclose required information on her Financial Disclosure Statements and the Campaign reports to the FEC.

Following OCE's recommendation that the Committee further review the matter, the Committee began an investigation pursuant to Rule 18(a). The Committee reviewed all of the materials provided to it by OCE. The Committee requested and received additional information from Representative Trahan, including statements subject to the penalty of perjury and the False Statements Act. In total, the Committee reviewed more than 12,800 pages of materials.

On July 15, 2020, the Committee unanimously voted to adopt this Report and take no further action with respect to Representative Trahan.

III. HOUSE RULES, LAWS, REGULATIONS, AND OTHER STANDARDS OF CONDUCT

A. EXCESSIVE CONTRIBUTIONS

The Federal Election Campaign Act (FECA) prohibits any person from making, and a candidate and the candidate's authorized campaign committee from accepting, contributions exceeding the contribution limits set by the FEC in an election cycle.¹ In the 2018 election cycle, the limit was \$2,700.² A contribution is any "gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal

¹ 52 U.S.C. §§ 30116(a)(1)(A); 30116(f).

² 82 Fed. Reg. 10904, 10906 (Feb. 16, 2017) (adjusting the contribution limit for the 2018 election cycle to \$2,700 for each election the candidate participates in).

office.”³ Contributions from spouses are subject to the contribution limitations.⁴ Contributions from candidates are not, so long as they are made from a candidate’s personal funds.⁵

FECA and the implementing regulations promulgated by the FEC define what constitutes a candidate’s personal funds.⁶ Personal funds include 1) any asset that the candidate had legal right of access to or control over under applicable State law at the time the individual became a candidate, and with respect to which the candidate had “legal and rightful title” or an “equitable interest”; 2) the candidate’s income received during the current election cycle; and 3) a portion of assets that are jointly owned by the candidate and the candidate’s spouse either “equal to the candidate’s share of the asset under the instrument of conveyance or ownership,” or if nothing is specified, one-half the value of the jointly owned asset.⁷

A candidate may also use funds from a loan drawn on a home equity line of credit in excess of the contribution limits to fund that candidate’s campaign if the loan is 1) obtained in accordance with applicable laws and under commercially reasonable terms, and 2) is made by an entity that provides lines of credit in the normal course of business.⁸ Under FEC regulations, if a candidate’s spouse is the endorser or co-signer for a home equity line of credit, the spouse is not deemed to have made a contribution to the campaign if the value of the candidate’s share of the property used as collateral equals or exceeds the amount of the loan that is used for the candidate’s campaign.⁹

B. DISCLOSURES

1. *House Financial Disclosure Statements*

The Ethics in Government Act (EIGA) provides that candidates for the House must file a public Financial Disclosure Statement with the Clerk of the House.¹⁰ Once elected, Members are required under EIGA and House Rules to file annual Financial Disclosure Statements.¹¹ Financial

³ 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52(a). The term “anything of value” includes all in-kind contributions. 11 C.F.R. § 100.52(d)(1).

⁴ *Buckley v. Valeo*, 424 U.S. 1, 51, n. 59 (1976) (“Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributions.”); see also FEC Campaign Guide, Congressional Candidates and Committees (June 2014) (hereinafter *FEC Campaign Guide*) at 28 (“Contributions from members of the candidate’s family are subject to the same limits that apply to any other individual. For example, a candidate’s parent or spouse may not contribute more than \$2,700, per election to the candidate.”).

⁵ 11 C.F.R. § 110.10.

⁶ 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33(a), (b).

⁷ *Id.*

⁸ 11 C.F.R. § 100.83. Home equity lines of credit are excluded from the definition of contribution. *Id.* § 100.71.

⁹ *Id.* 100.83(b)(1).

¹⁰ 5 U.S.C. app. §§ 101(c), 103(h)(1)(A)(i)(I). An individual becomes a “candidate” for purposes of EIGA when the individual meets the definition of “candidate” as codified in 52 U.S.C. § 30101 (“if such individual has received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000”).

¹¹ 5 U.S.C. app. § 101(f); House Rule XXVI, cl. 2 (EIGA Title I “shall be considered Rules of the House as they pertain to Members, Delegates, the Resident Commissioner, officers, and employees of the House.”).

disclosures summarize financial information concerning the filer, their spouse and dependent children.¹² If a filer knowingly and willfully falsifies or fails to file or to report any required information, the Committee may take appropriate action.¹³ The EIGA also authorizes the Attorney General to seek a civil penalty.¹⁴ Federal criminal law may be implicated.¹⁵

2. *FEC Reports*

FECA requires a campaign committee to disclose all receipts in an election cycle, including any contributions or loans, on the campaign committee's reports to the FEC.¹⁶ The amounts and nature of any outstanding debts and obligations, including loans, must also be disclosed.¹⁷ When a candidate obtains a home equity line of credit to loan funds to the campaign committee, the candidate must also disclose the following on FEC Form 3, Schedule C-1: 1) the date, amount and interest rate of the loan; 2) the name and address of the lending institution; and 3) the types and value of collateral or other sources of repayment that secured the line of credit, if any.¹⁸

A contribution is considered to be received by the campaign committee on the day the contributor relinquishes control, or delivers it to the committee.¹⁹ A campaign committee's treasurer must make all deposits of receipts within ten days of receipt.²⁰ A knowing and willful violation of FECA's reporting provisions also involves criminal penalties.²¹

C. CODES OF CONDUCT

Violations of FECA and the laws governing House Financial Disclosure Statements may also implicate House Rule XXIII, clauses 1 and 2, which state, "[a] Member . . . of the House shall behave at all times in a manner that shall reflect creditably on the House," and "shall adhere to the spirit and the letter of the Rules of the House." FECA violations are also inconsistent with paragraph 2 of the Code of Ethics for Government Service, which provides that government

¹² 5 U.S.C. app. § 102(e)(1); *House Ethics Manual* (2008) at 247 (hereinafter *Ethics Manual*).

¹³ 5 U.S.C. app. § 104(c); *Ethics Manual* at 265.

¹⁴ 5 U.S.C. app. § 104(a); *Ethics Manual* at 265.

¹⁵ 18 U.S.C. § 1001; *Ethics Manual* at 265.

¹⁶ 52 U.S.C. § 30104(b)(2); 11 C.F.R. § 104.3(a)(3). For contributions that exceed \$200 in an election cycle, the campaign must disclose the name of the person who made the contribution, and the date and amount of the contribution. 52 U.S.C. § 30104(b)(3). In-kind contributions from a candidate's personal funds that exceed \$200 in an election cycle must be disclosed as both a contribution and expenditure, and the ultimate payee or vendor must also be disclosed. Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40625, 40627 (July 8, 2013). See also *FEC Campaign Guide* at 95-96.

¹⁷ 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.3(d). See also *FEC Campaign Guide* at 91, 108-109 (providing guidance on reporting loans from a candidate's personal funds).

¹⁸ 11 C.F.R. § 104.3(d)(4)(i)-(iii). See also *FEC Campaign Guide* at 110-111 (providing guidance on reporting a candidate's loan derived from a line of credit).

¹⁹ 11 C.F.R. § 110.1(b)(6).

²⁰ 11 C.F.R. § 103.3. See also *FEC Campaign Guide* at 23 ("While all contributions must be deposited within 10 days, the date of deposit is not used for reporting . . .").

²¹ 52 U.S.C. § 30109(d)(1); *FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (holding that to establish a knowing and willful violation, there must be knowledge that one is violating the law).

officials should uphold the laws and regulations of the United States “and never be a party to their evasion.”²²

IV. BACKGROUND

On September 21, 2017, Representative Trahan became a candidate for the House to represent the Third Congressional District of Massachusetts.²³ Representative Trahan was successful in her candidacy and was sworn in as Member of the House on January 3, 2019.

Representative Trahan has been married to David Trahan since November 17, 2007. Prior to their marriage, Representative Trahan and Mr. Trahan executed a prenuptial agreement to “define their respective rights in the property of the other during marriage.”²⁴ Massachusetts permits couples like the Trahans to enter into prenuptial agreements prior to marriage to define their rights and obligations during their marriage.²⁵ The Trahans’ prenuptial agreement defines “marital property” and “separate property.”²⁶ Per the agreement, marital property is defined as follows:

During the course of the marriage the Parties shall make equal periodic contributions to a fund for the maintenance of their household and the care and support of the children of the marriage, if any. All property purchased with the proceeds of this fund shall be deemed marital property. All wages, salary, and income of each party earned or received during marriage, together with all property purchased with such wages, salary and income, shall also be marital property. Each party shall have equal rights in regard to the management of and disposition of all marital property.²⁷

The prenuptial agreement also provides that any real property purchased in joint title by the Trahans reflects the intent of the parties to have a joint interest in that property.²⁸

²² See *Ethics Manual* at 20.

²³ Lori Trahan, Statement of Candidacy (Sept. 21, 2017).

²⁴ Exhibit 1. On Nov. 16, 2019, Representative Trahan provided the Committee, through counsel, the antenuptial agreement.

²⁵ Mass. Gen. Laws ch. 209, § 25 (2019), (“At any time before marriage, the parties may make a written contract providing that, after the marriage is solemnized, the whole or any designated part of the real or personal property or any right of action, of which either party may be seized or possessed at the time of the marriage, shall remain or become the property of the husband or wife, according to the terms of the contract.”); *Osborne v. Osborne*, 429 N.E.2d 810, 816 (1981) (“[A]n antenuptial contract settling the alimony or property rights of the parties upon divorce is not per se against public policy and may be specifically enforced.”); *DeMatteo v. DeMatteo*, 762 N.E. 2d 797, 809 (2002) (“It is only where the contesting party is essentially stripped of substantially all marital interests that a judge may determine that an antenuptial agreement is not ‘fair and reasonable’ and therefore not valid.”).

²⁶ There is no evidence in the record to suggest that Representative Trahan’s antenuptial agreement did not meet the “fair and reasonable” standard under Massachusetts case law at the time of execution and would be deemed invalid.

²⁷ Exhibit 1 ¶ 11.

²⁸ *Id.* ¶ 10.

The prenuptial agreement states that each party gave the other a full and complete disclosure of the assets, income, and other property of the party or the party's estate.²⁹ A list of those assets, income and property are included in the prenuptial agreement as Exhibits A (Mr. Trahan) and B (Representative Trahan), which are incorporated in the agreement by reference.³⁰ The prenuptial agreement defined separate property as the assets, income and property of the Trahans specifically listed in Exhibits A and B, along with all income and increases in value arising from that separate property during marriage.³¹ Separate property also includes any property acquired by gift or inheritance by either spouse and any bonuses received by either spouse.³²

On July 30, 2008, Representative Trahan and Mr. Trahan established a joint checking account at Enterprise Bank.³³ The Trahans also jointly own a home in Westford, Massachusetts.³⁴

A. LOANS FROM PERSONAL FUNDS

During her candidacy, Representative Trahan loaned funds to the Campaign. In each instance, the Campaign reported those loans as from her personal funds on the Campaign's FEC Reports. Representative Trahan made the loans to the Campaign by check from the Trahans' joint checking account. The joint checking account received funds to cover the loans from Mr. Trahan's business accounts, either directly or through Mr. Trahan's personal account.³⁵ The specific loans are described in further detail below.

1. *March 31, 2018 Loan*

On March 31, 2018, Representative Trahan wrote a \$50,000 check to the Campaign from the joint checking account she holds with Mr. Trahan.³⁶ The memo on the check states, "donation."³⁷ Representative Trahan, through her counsel, explained that she intended the check to be a loan to the Campaign, but at the time she wrote it, she did not know how to properly

²⁹ *Id.* ¶ 6.

³⁰ *Id.* ¶ 6, Exhibits A and B.

³¹ *Id.* ¶ 8, Exhibit A.

³² *Id.* ¶ 8.

³³ Exhibit 2; *see also* Representative Trahan's Financial Disclosure Statement for Jan. 1, 2018–May 15, 2019 (filed May 15, 2019) (hereinafter *New Member FD*) at 1.

³⁴ *New Member FD* at 5 (disclosing the Westford, Massachusetts residential property has a joint mortgage of between \$50,001 and \$100,000). Representative Trahan's counsel confirmed that Representative Trahan owns one-half interest in the home. Representative Trahan's submission to the Committee (Appendix B) at 7.

³⁵ In Representative Trahan's submission to the Committee in response to OCE's Referral, she explained through counsel, "Rather than taking steady salaries, both [Representative Trahan and Mr. Trahan] regularly transferred funds from their respective business accounts into their joint checking account to pay for household expenses. That practice continued after Representative Trahan became a candidate in 2017. In addition, both spouses also had individual checking accounts that were used interchangeably to pay for joint expenses like credit card and tuition payments, as well as health and child care costs." Appendix B at 4.

³⁶ OCE's Referral, Exhibit 1.

³⁷ OCE's Referral, Exhibit 1. Although the memo on the check stated "donation," the Campaign reported the check as a loan from Representative Trahan.

characterize a loan on the memo line of the check.³⁸ On that date, the joint checking account did not have sufficient funds to cover the check.³⁹

On April 2, 2018, Mass Eagle Development, LLC (Eagle Development) deposited \$100,000 into Mr. Trahan's personal checking account.⁴⁰ Eagle Development is a residential property development founded in 2010.⁴¹ Mr. Trahan has a 33 percent ownership interest in the company.⁴² Mr. Trahan deposited checks in varying amounts from Eagle Development in his personal checking account prior to, during and after Representative Trahan's candidacy for the House.⁴³ Representative Trahan reported the funds Mr. Trahan received from Eagle Development as S Corporation income on her Financial Disclosure Statements.⁴⁴ Eagle Development is not listed as separate property in the Trahans' prenuptial agreement.⁴⁵

On April 7, 2018, Mr. Trahan wrote himself a check for \$50,000 from his personal checking account.⁴⁶ On April 9, 2018, Mr. Trahan deposited the check in the couple's joint checking account.⁴⁷ Mr. Trahan's \$50,000 deposit in the joint checking account provided sufficient funds to cover Representative Trahan's March 31, 2018, \$50,000 check to the Campaign.⁴⁸ On April 9, 2018, the Campaign deposited the \$50,000, nine days after it received the check.⁴⁹

The Campaign reported the \$50,000 as a loan from Representative Trahan, received on March 31, 2018, on the last day of the FEC reporting period for the first quarter of 2018.⁵⁰ The loan was reported as from Representative Trahan's personal funds.⁵¹

³⁸ Appendix C at 2.

³⁹ OCE's Referral, Exhibit 2.

⁴⁰ Exhibit 3.

⁴¹ Eagle Development, Certificate of Organization, Commonwealth of Mass. (Oct. 28, 2010) (hereinafter *Eagle Development Certificate*).

⁴² *New Member FD* at 1; *Eagle Development Certificate*.

⁴³ Exhibit 4.

⁴⁴ *New Member FD* at 1.

⁴⁵ See Exhibit 1, Exhibit A (Eagle Development is not listed among the enumerated "separate property" assets in the agreement).

⁴⁶ OCE's Referral, Exhibit 3. When Mr. Trahan wrote himself the \$50,000 check on Apr. 7, 2018, his personal checking account had a balance of over \$250,000. Exhibit 5.

⁴⁷ OCE's Referral, Exhibit 3; see also Exhibit 6.

⁴⁸ Exhibit 6.

⁴⁹ OCE's Referral, Exhibit 1. The check has a date stamp of both Apr. 9, 2018 and Apr. 10, 2018 from Lowell Five Cent Savings Bank where the Campaign cashed the check. The check did not clear until Apr. 11, 2018.

⁵⁰ Lori Trahan for Congress, Amended Apr. 2018 Quarterly Report of Receipts and Disbursements, at 145-146 (May 14, 2018).

⁵¹ *Id.*

2. June 30, 2018 Loan

On June 30, 2018, Representative Trahan wrote another check for \$50,000 from the joint checking account to the Campaign.⁵² The memo on this check states, “loan.”⁵³ Again, the joint checking account did not have sufficient funds to cover her \$50,000 check on the date she wrote it.⁵⁴

On July 9, 2018, Mr. Trahan wrote a check to himself for \$55,000 from DCT Development, Inc. (DCT Development).⁵⁵ DCT Development is a general contracting corporation Mr. Trahan formed in 1992.⁵⁶ Mr. Trahan owns 100 percent of the company.⁵⁷ DCT Development is not listed in the Trahans’ prenuptial agreement, despite being owned by Mr. Trahan at the time of the agreement.⁵⁸ Representative Trahan informed the Committee that DCT Development was not disclosed in the prenuptial agreement because it did not normally have substantial assets besides cash, but instead served as a Subchapter S corporation through which he could receive income in connection with various construction projects.⁵⁹ According to Representative Trahan, she and Mr. Trahan intended DCT Development and income he received from it to be marital property under the agreement, and Mr. Trahan treated the income as such.⁶⁰

Representative Trahan stated that she and Mr. Trahan considered the \$55,000 check from DCT Development on July 9, 2018 to be income Mr. Trahan earned from DCT Development.⁶¹ He treated it as income for tax purposes.⁶² Representative Trahan specifically told the Committee the disbursement was not returned capital.⁶³ On the date of the disbursement, DCT Development had a cash balance of \$112,861.37, which represented DCT Development’s value at that time.⁶⁴ Because Representative Trahan and Mr. Trahan treated the disbursement as Mr. Trahan’s income, they also treated it as marital property under the agreement.⁶⁵

⁵² OCE’s Referral, Exhibit 4.

⁵³ *Id.*

⁵⁴ OCE’s Referral, Exhibit 5.

⁵⁵ OCE’s Referral, Exhibit 6.

⁵⁶ New Bud Builders Inc., Articles of Organization, Commonwealth of Mass. (Mar. 2, 1992); DCT Development, Articles of Amendment, Commonwealth of Mass. (Nov. 15, 2000) (changing the name from New Bud Builders, Inc. to DCT Development, Inc.).

⁵⁷ *New Member FD* at 1; DCT Development, Annual Report, Commonwealth of Mass. (Feb. 24, 2019).

⁵⁸ *See* Exhibit 1, Exhibit A (DCT Development is not listed in Exhibit A, the assets, income, and property disclosed by Mr. Trahan that are “separate property” in the agreement).

⁵⁹ Appendix C at 1.

⁶⁰ *Id.* Representative Trahan informed the Committee that two other assets owned by Mr. Trahan prior to the prenuptial agreement, Granite Rock Management and Granite Rock Construction, were also not listed in Exhibit A because, like DCT Development, they did not normally have substantial assets besides cash. Mr. Trahan also treated those assets and income he received from them as marital property. *Id.*

⁶¹ *Id.* at 1-2.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 2.

⁶⁵ *Id.*

Mr. Trahan frequently deposited checks from DCT Development into his personal account and sometimes into the Trahans' joint checking account in varying amounts, prior to, during and after Representative Trahan's candidacy for the House.⁶⁶ In this instance, on July 9, 2018 when Mr. Trahan wrote the \$55,000 check to himself from DCT Development, Mr. Trahan deposited the check into the couple's joint checking account.⁶⁷ Mr. Trahan's \$55,000 deposit in the joint checking account provided sufficient funds to cover Representative Trahan's June 30, 2018, \$50,000 check to the Campaign. On July 10, 2018, the Campaign deposited Representative Trahan's check for \$50,000, ten days after receipt.⁶⁸

Representative Trahan's Campaign reported the \$50,000 as a loan from Representative Trahan received on June 30, 2018, the last day of the FEC reporting period for the second quarter of 2018.⁶⁹ Like the previous loan, the Campaign reported it as from Representative Trahan's personal funds.⁷⁰

3. *August 22, 2018 Loan*

On August 21, 2018, Mr. Trahan initiated a transfer of funds from his personal checking account to the Trahans' joint checking account for \$200,000.⁷¹ Mr. Trahan had deposited \$180,900 from Middlesex Land Holdings, LLC (Middlesex) and \$110,000 from Poplar Hill Development LLC (Poplar Hill) in his personal checking account on July 31, 2018, which provided sufficient funds to cover the \$200,000 transfer to the Trahans' joint checking account on August 21, 2018.⁷²

Created in 2015, Middlesex is a company that holds vacant land for future development.⁷³ Mr. Trahan and a business partner own the company.⁷⁴ Mr. Trahan made deposits in varying amounts from Middlesex from December 2017 to January 2019 in his personal checking account, totaling \$316,848.⁷⁵ Representative Trahan reported the funds Mr. Trahan received from Middlesex as partnership income on her Financial Disclosure Statements.⁷⁶ Middlesex is not listed in the Trahans' prenuptial agreement as separate property.⁷⁷

⁶⁶ Exhibit 4.

⁶⁷ OCE's Referral, Exhibit 6.

⁶⁸ OCE's Referral, Exhibit 4.

⁶⁹ Lori Trahan for Congress, July 2018 Quarterly Report of Receipts and Disbursements, at 282-283 (July 15, 2018).

⁷⁰ *Id.*

⁷¹ OCE's Referral, Exhibit 8.

⁷² Exhibit 7; Exhibit 8; Exhibit 9.

⁷³ Middlesex, Certificate of Organization, Commonwealth of Mass. (Feb. 26, 2015) (hereinafter *Middlesex Certificate*).

⁷⁴ *Middlesex Certificate*; *New Member FD* at 2.

⁷⁵ Exhibit 4.

⁷⁶ *New Member FD* at 2.

⁷⁷ See Exhibit 1, Exhibit A (providing Middlesex is not listed among the enumerated "separate property" assets in the agreement).

Poplar Hill is a residential home building company created in 2014.⁷⁸ Like Middlesex, Mr. Trahan and a business partner own the company.⁷⁹ Mr. Trahan made deposits in varying amounts from Poplar Hill from March 2018 to July 2018 in his personal checking account, totaling \$295,000.⁸⁰ On her Financial Disclosure Statements, Representative Trahan reported the funds Mr. Trahan received from Poplar Hill as partnership income.⁸¹ Poplar Hill is not listed in the Trahans' prenuptial agreement as separate property.⁸²

Prior to Mr. Trahan's \$200,000 transfer, the Trahans' joint checking account had a balance of \$2,769.54.⁸³ On August 22, 2018, Representative Trahan wrote a check from the joint checking account to her Campaign for \$200,000.⁸⁴ The memo on the check states, "loan."⁸⁵ The same day, the Campaign deposited her \$200,000 check.⁸⁶ The Campaign reported the \$200,000 as a loan from Representative Trahan, received on August 23, 2018 from her personal funds.⁸⁷ Representative Trahan forgave \$50,000 of this loan on September 24, 2018.⁸⁸

B. LOAN FROM REVOLVING LINE OF CREDIT

On October 15, 2010, the Trahans entered into a Revolving Credit Agreement and Note (Credit Agreement) with Washington Savings Bank which allowed them to borrow up to \$200,000 secured by their jointly owned home in Westford, Massachusetts.⁸⁹ The Credit Agreement provides for an adjustable interest rate.⁹⁰

On September 4, 2018, Representative Trahan wrote a check from the Trahans' revolving credit account for \$71,000 to her Campaign.⁹¹ The memo on the check states, "loan."⁹² On October 2, 2018, the Campaign cashed Representative Trahan's \$71,000 check.⁹³ The bank records for the revolving credit account did not reflect a withdrawal of funds to cover the \$71,000 check until October 3, 2018, when the Trahans withdrew \$76,400 from the revolving credit

⁷⁸ Poplar Hill, Certificate of Organization, Commonwealth of Mass. (Mar. 3, 2014) (hereinafter *Poplar Hill Certificate*).

⁷⁹ *Poplar Hill Certificate*; *New Member FD* at 2 (Mr. Trahan owns a 50 percent interest in Poplar Hill).

⁸⁰ Exhibit 4.

⁸¹ *New Member FD* at 2.

⁸² See Exhibit 1, Exhibit A (Poplar Hill is not listed among the enumerated "separate property" assets in the agreement).

⁸³ OCE's Referral, Exhibit 7.

⁸⁴ OCE's Referral, Exhibit 9.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Lori Trahan for Congress, Second Amended Oct. 2018 Quarterly Report of Receipts and Disbursements, at 158 (Dec. 15, 2018).

⁸⁸ *Id.* at 144, 158.

⁸⁹ OCE's Referral, Exhibit 10; *New Member FD* at 5.

⁹⁰ OCE's Referral, Exhibit 10.

⁹¹ OCE's Referral, Exhibit 11.

⁹² *Id.*

⁹³ *Id.*

account.⁹⁴ As discussed further below, Representative Trahan also wrote a check to the Campaign for the remaining \$5,400 withdrawn from the line of credit, for the Campaign's recount fund.⁹⁵

The Campaign initially reported the \$71,000 check as a loan from Representative Trahan's personal funds received on September 4, 2018, but did not complete a Schedule C-1 to disclose that the loan originated with the revolving credit account.⁹⁶ In its second amendment to its FEC report on December 15, 2018, the Campaign completed the Schedule C-1.⁹⁷ It disclosed that the loan was incurred or established on September 4, 2018 and was due on October 20, 2030.⁹⁸ It also disclosed Washington Savings Bank as the lending institution, a 5.25 percent interest rate, and collateral of real property valued at \$950,000.⁹⁹

The Campaign repaid the \$71,000 loan to Representative Trahan on November 20, 2018.¹⁰⁰ Representative Trahan deposited the check into the couple's joint checking account on December 3, 2018.¹⁰¹

C. CONTRIBUTIONS FROM THE TRAHANS

Representative Trahan and Mr. Trahan made several contributions to the Campaign during the 2018 election cycle. Mr. Trahan made a \$2,700 contribution on September 29, 2017, designated for the primary election.¹⁰² The following day, on September 30, 2017, he made a contribution for \$2,700 designated for the general election.¹⁰³ Both of his contributions were made by check from his personal checking account.¹⁰⁴

Representative Trahan and Mr. Trahan also wrote a \$5,400 check on October 2, 2018 to the Campaign.¹⁰⁵ The memo on the check states, "Dave \$2700/Lori \$2700."¹⁰⁶ The Campaign

⁹⁴ OCE's Referral, Exhibit 12.

⁹⁵ OCE's Referral, Exhibit 13.

⁹⁶ Lori Trahan for Congress, Oct. 2018 Quarterly Report of Receipts and Disbursements, at 155 (Oct. 15, 2018).

⁹⁷ Lori Trahan for Congress, Second Amended Oct. 2018 Quarterly Report of Receipts and Disbursements, at 160 (Dec. 15, 2018).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Lori Trahan for Congress, 2018 Amended Post General Report of Receipts and Disbursements, at 279, 289 (Dec. 15, 2018).

¹⁰¹ Exhibit 10. OCE's Referral notes that Mr. Trahan repaid the \$76,400 withdrawn from the Trahans' revolving line of credit plus interest to Washington Savings Bank from his personal bank account on Oct. 11, 2018. OCE's Referral ¶42. The Committee is not aware of any regulations prohibiting Mr. Trahan's repayment from his personal account. Further, the Campaign was not required to report any repayments by Representative Trahan to the lending institution. *FEC Campaign Guide* at 110-111.

¹⁰² Lori Trahan for Congress, Oct. 2017 Quarterly Report of Receipts and Disbursements, at 32 (Oct. 15, 2017). *See also* Exhibit 11.

¹⁰³ *Id.* at 27. *See also* Exhibit 12.

¹⁰⁴ Exhibit 11; Exhibit 12; Exhibit 13.

¹⁰⁵ OCE's Referral, Exhibit 13.

¹⁰⁶ *Id.*

reported the check as a \$2,700 contribution from each of them for the election recount.¹⁰⁷ The Trahans made the contribution from the couple's revolving credit account utilizing the remaining funds from the October 3, 2018 withdrawal that also funded Representative Trahan's \$71,000 loan to the Campaign.¹⁰⁸

In addition to the monetary contributions, Representative Trahan made numerous in-kind contributions to her Campaign throughout the election cycle for items like advertising, ground transportation, lodging, supplies and airfare, among other things.¹⁰⁹ The in-kind contributions were reported by the Campaign on its FEC Reports.¹¹⁰

D. FINANCIAL DISCLOSURE STATEMENTS

Representative Trahan filed Financial Disclosure Statements with the Clerk of the House as a candidate on March 26, 2018 and May 21, 2018 and as a Member on May 15, 2019.¹¹¹ Representative Trahan filed four amendments to each of her candidate financial disclosures on June 4, 2018, November 16, 2018, February 19, 2019 and March 21, 2019.¹¹² While the amendments were made by Representative Trahan on her own initiative, public reporting suggests

¹⁰⁷ Lori Trahan for Congress, Second Amended 2018 Pre-General Report of Receipts and Disbursements, at 123-124 (Dec. 15, 2018).

¹⁰⁸ OCE's Referral, Exhibit 12-13.

¹⁰⁹ See e.g., Lori Trahan for Congress, Second Amended Oct. 2018 Quarterly Report of Receipts and Disbursements, at 98-100, 143-144 (Dec. 15, 2018).

¹¹⁰ *Id.* The Campaign reported the in-kind contributions as both receipts and disbursements on Schedules A and B of FEC form. The Campaign did not include information about the ultimate payees, such as the vendor that Representative Trahan paid, in a memo entry.

¹¹¹ Representative Trahan's Financial Disclosure Statement for Jan. 1, 2016 – Dec. 31, 2017 (filed Mar. 26, 2018) (hereinafter *2017 FD*); Representative Trahan's Financial Disclosure Statement for Jan. 1, 2017 – May 15, 2018 (filed May 21, 2018) (hereinafter *2018 FD*); *New Member FD*. If an individual qualifies as a candidate during a non-election year, they must file a Financial Disclosure Statement within 30 days of becoming a candidate or May 15 of that year, whichever is later. Candidates must then file a second statement on May 15 of the following year. See 5 U.S.C. app. § 101(c). Representative Trahan's 2017 FD was due on Oct. 23, 2017. She requested and received an extension from the Committee. Representative Trahan's 2018 FD was due on May 15, 2018. She filed it on May 21, 2018, within the 30-day grace period afforded to all filers.

¹¹² Representative Trahan's Amended Financial Disclosure Statement for Jan. 1, 2016 – Dec. 31, 2017 (filed June 4, 2018) (hereinafter *First Amended 2017 FD*); Representative Trahan's Amended Financial Disclosure Statement for Jan. 1, 2016 – Dec. 31, 2017 (filed Nov. 16, 2017) (hereinafter *Second Amended 2017 FD*); Representative Trahan's Amended Financial Disclosure Statement for Jan. 1, 2016 – Dec. 31, 2017 (filed Feb. 19, 2019) (hereinafter *Third Amended 2017 FD*); Representative Trahan's Amended Financial Disclosure Statement for Jan. 1, 2016 – Dec. 31, 2017 (filed Mar. 21, 2019) (hereinafter *Fourth Amended 2017 FD*); Representative Trahan's Amended Financial Disclosure Statement for Jan. 1, 2017 – May 15, 2018 (filed June 4, 2018) (hereinafter *First Amended 2018 FD*); Representative Trahan's Amended Financial Disclosure Statement for Jan. 1, 2017 – May 15, 2018 (filed Nov. 16, 2018) (hereinafter *Second Amended 2018 FD*); Representative Trahan's Amended Financial Disclosure Statement for Jan. 1, 2017 – May 15, 2018 (filed Feb. 19, 2019) (hereinafter *Third Amended 2018 FD*); Representative Trahan's Amended Financial Disclosure Statement for Jan. 1, 2017 – May 15, 2018 (filed Mar. 21, 2019) (hereinafter *Fourth Amended 2018 FD*).

that least some of the amendments may have been prompted by questions from the media.¹¹³ The amendments included:

- Adding Representative Trahan’s ownership of and unearned income from Concire LLC to Schedule A: Assets and “Unearned” Income;¹¹⁴
- Adding Representative Trahan’s joint bank account she holds with Mr. Trahan at Enterprise Bank to Schedule A: Assets and “Unearned” Income;¹¹⁵
- Adding Representative Trahan’s ownership interest in Stella Connect to Schedule A: Assets and “Unearned” Income;¹¹⁶
- Updating Representative Trahan’s earned income from Concire LLC on Schedule C: Earned Income;¹¹⁷ and
- Adding “confidential” clients to Schedule J: Compensation in Excess of \$5,000 Paid by One Source.¹¹⁸

V. FINDINGS

A. EXCESSIVE CONTRIBUTIONS

1. *Loans from Personal Funds*

Contributions, including loans, made from a candidate’s personal funds are not subject to the contribution limits in FECA.¹¹⁹ A candidate’s “personal funds” are any asset that, under applicable State law, the candidate had legal right of access to or control over, and with respect to which the candidate had “legal and rightful title” or an “equitable interest,” at the time the individual became a candidate.¹²⁰ Personal funds also include a portion of assets that are jointly owned by the candidate and the candidate’s spouse either “equal to the candidate’s share of the asset under the instrument of conveyance or ownership,” or if nothing is specified, one-half the value of the jointly owned asset.¹²¹ Unlike a candidate, a candidate’s spouse is subject to FECA’s contribution limits, which in the 2018 election cycle were \$2,700 per election.¹²²

¹¹³ See Andrea Estes, *Questions raised about source of late funds that helped carry Rep. Lori Trahan to victory*, Boston Globe (Mar. 3, 2019), <https://www.bostonglobe.com/metro/2019/03/03/questions-raised-about-source-late-funds-that-helped-carry-rep-lori-trahan-victory/oGjvhDF9tbmV9FWt5zgQfJ/story.html> (“After the November election, when the Globe began asking questions, [Representative Trahan] amended her financial reports four times . . .”) (hereinafter *Boston Globe Article*).

¹¹⁴ *First Amended 2017 FD* at 1; *First Amended 2018 FD* at 1.

¹¹⁵ *Second Amended 2017 FD* at 1; *Second Amended 2018 FD* at 1.

¹¹⁶ *Third Amended 2017 FD* at 3; *Third Amended 2018 FD* at 3.

¹¹⁷ *Second Amended 2017 FD* at 4; *Second Amended 2018 FD* at 3.

¹¹⁸ *Fourth Amended 2017 FD* at 5; *Fourth Amended 2018 FD* at 5.

¹¹⁹ 11 C.F.R. § 110.10.

¹²⁰ 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33(a), (b).

¹²¹ *Id.*

¹²² See *FEC Campaign Guide* at 28.

The Committee considered whether three loans Representative Trahan made to the Campaign, totaling \$300,000, were excessive contributions from Mr. Trahan. In doing so, the Committee reviewed the Trahans' prenuptial agreement and the transactions through which Mr. Trahan deposited funds into the Trahans' joint checking account which were then used for Representative Trahan's loans to the Campaign. The prenuptial agreement went into effect on November 17, 2007 in accordance with Massachusetts law, long before Representative Trahan became a candidate for the House.¹²³ The prenuptial agreement defines marital property as "all wages, salary and income" of Representative Trahan and Mr. Trahan during their marriage.¹²⁴ It provides the Trahans' with "equal rights in regard to the management of and disposition of all marital property."¹²⁵ The agreement carves out certain specific assets disclosed in Exhibit A (and resulting income) that are designated as "separate property," and therefore not considered marital property.¹²⁶ Mr. Trahan's assets listed in the agreement as separate property (Exhibit A) are not owned by Representative Trahan.

As described in detail above, the funds Mr. Trahan transferred to the Trahans' joint checking account originated from businesses Mr. Trahan owns and that provide Mr. Trahan with a salary, investment income or both. None of the businesses are included in the list of assets in Exhibit A that were deemed separate property in the prenuptial agreement. Three of the businesses—Eagle Development, Poplar Hill and Middlesex—were created after the Trahans entered into the prenuptial agreement and thus, were not and could not have been disclosed on Exhibit A. As a result, the funds from these businesses that were the source for Representative Trahan's loans were not separate property, but instead considered to be the Trahans' joint marital property under the agreement.

Unlike the other businesses, DCT Development did exist prior to the Trahans' prenuptial agreement. Paragraph six of the prenuptial agreement states that Representative Trahan and Mr. Trahan had given each other a "full and complete disclosure of the assets, income, and other property" which were listed in the exhibits to the prenuptial agreement.¹²⁷ However, Mr. Trahan's disclosures on Exhibit A did not include DCT Development.¹²⁸ This omission is notable because it appears to be inconsistent with the disclosure requirements in paragraph six of the agreement.

Representative Trahan was able to address the omission of DCT Development from the agreement. She informed the Committee that Mr. Trahan did not include DCT Development because "it did not normally have substantial assets besides cash, but instead served as a Subchapter S corporation through which he could receive income in connection with various construction projects."¹²⁹ Representative Trahan also said that two other businesses owned by Mr. Trahan at the time they entered into the agreement—Granite Rock Management and Granite Rock

¹²³ Exhibit 1 at 1.

¹²⁴ *Id.* ¶ 11.

¹²⁵ *Id.*

¹²⁶ *Id.* ¶ 8.

¹²⁷ *Id.* ¶ 6.

¹²⁸ *Id.*, Exhibit A.

¹²⁹ Appendix C at 1.

Construction (collectively Granite Rock Businesses)—were similarly excluded from the agreement for the same reason.¹³⁰ According to Representative Trahan, she and Mr. Trahan intended DCT Development, Granite Rock Businesses and the income he received from those entities to be marital property under the agreement.¹³¹ Representative Trahan did not provide the Committee with any documentary evidence to support her explanation. While the Committee questions whether the omission of DCT Development and Granite Rock Businesses was in accordance with accounting principles at the time the Trahans entered into the agreement, it did not find evidence to contradict Representative Trahan’s explanation that the Trahans *intended* DCT Development and Granite Rock Businesses to be marital property under the agreement, and therefore all resulting income to be marital property. As such, DCT Development and any income from it was joint marital property under the agreement.

As to the \$55,000 disbursement on July 9, 2018 from DCT Development to Mr. Trahan at issue here, Representative Trahan specifically asserted that she and Mr. Trahan considered it income earned or received by Mr. Trahan during their marriage, and thus marital property under the agreement.¹³² Likewise, it was treated as income for tax purposes.¹³³ Representative Trahan also told the Committee the disbursement was not returned capital from DCT Development.¹³⁴ On the date of the disbursement, DCT Development had a cash balance of \$112,861.37, which represented DCT Development’s value at that time.¹³⁵ Her assertions are in accordance with her previous representations to the Committee in her Financial Disclosure Statements and in her submission in response to OCE’s Referral, that funds Mr. Trahan received from DCT Development were his salary or income.¹³⁶ Based on Representative Trahan’s assertions to the Committee, the \$55,000 disbursement was marital property.

As discussed above, Mr. Trahan deposited his salary and income from Eagle Development, Poplar Hill and Middlesex exclusively in his personal checking account and his income from DCT Development into his personal account and the couple’s joint account—all of which was marital property under the prenuptial agreement.¹³⁷ Paragraph eleven of the prenuptial agreement, which discusses the couple’s marital property, does not specify any particular bank account where the Trahans would deposit their “wages, salary, and income” that constitute marital property, but it does contemplate the couple making periodic contributions to a fund for the maintenance of their household.¹³⁸ Representative Trahan explained to the Committee the couple’s practices with their incomes from their businesses:

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 2.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *New Member FD* at 1-2; Appendix B at 4.

¹³⁷ Exhibit 4.

¹³⁸ Exhibit 1 ¶ 11.

Rather than taking steady salaries, both [Representative Trahan and Mr. Trahan] regularly transferred funds from their respective business accounts into their joint checking account to pay for household expenses. That practice continued after Representative Trahan became a candidate in 2017. In addition, both spouses also had individual checking accounts that were used interchangeably to pay for joint expenses like credit card and tuition payments, as well as health and child care costs. While Mr. Trahan has historically had a larger income and has thus historically contributed more to the joint checking account and paid for more expenses than Representative Trahan has done, that practice, too, both preceded and post-dated Representative Trahan's candidacy.¹³⁹

It appears that, in accordance with the agreement, the Trahans' incomes that were marital property were held in their personal and joint checking accounts, which were used interchangeably by the couple. The prenuptial agreement allows Representative Trahan to manage and dispose of all marital property, regardless of the bank account it was held in.¹⁴⁰ In this instance, Representative Trahan exercised her right to manage and dispose of her marital property by loaning the funds from the couple's joint account to the Campaign. Moreover, Massachusetts Law allows either party to a joint account to withdraw, assign or transfer "any part or all of the deposits and interest" in a joint account.¹⁴¹ As such, Representative Trahan was able to execute her transaction under the relevant Massachusetts law.

Because Massachusetts law allows for prenuptial agreements like the Trahans', and the prenuptial agreement provided Representative Trahan, long before she was a candidate, equal rights to manage and dispose of Mr. Trahan's salary and income, the Committee found Mr. Trahan's salary and income satisfied the definition of a candidate's personal funds under FECA. As such, the loans Representative Trahan made using Mr. Trahan's salary and income were her personal funds and not excessive contributions from Mr. Trahan. As a candidate, Representative Trahan was allowed to use her personal funds, irrespective of contribution limits, for the

¹³⁹ Appendix B at 4.

¹⁴⁰ The FEC has been inconsistent on whether it deems funds from a candidate's joint checking account shared with a spouse as "personal funds" of the candidate. *See e.g.*, FEC Matter Under Review (MUR) Jim Huffman for Senate, *et al.* (MUR 6417) (finding reason to believe the spouse's funds from a trust account transferred to a joint account and subsequently loaned to the candidate's campaign were excessive contributions from the candidate's spouse); Terri Lynn Land for Senate, *et al.* (MUR 6860) (deadlocking on finding a reason to believe spouse's income transferred to a joint checking account and subsequently loaned to the candidate's campaign were excessive contributions from the candidate's spouse). Because of the Trahans' antenuptial agreement, the Committee need not make a determination regarding funds in the Trahans' joint checking account.

¹⁴¹ Mass. Gen. Laws ch. 167D § 3(a) (2015) ("Any bank or federally-chartered bank may receive deposits in the name of 2 or more persons as joint tenants, payable to 2 or more persons or the survivor or survivors of them, and any part or all of the deposits and interest represented by joint accounts may be withdrawn, assigned or transferred in whole or in part by any of the individual parties. Payments to any of the parties to a joint account while all of them are living shall discharge the liability of the bank or federally chartered bank to all persons and, in the event of the death of any of them, the bank or federally chartered bank shall be liable only to the survivor or survivors and the payment to any of the survivors shall discharge the liability of the bank or federally chartered bank to all persons.").

Campaign.¹⁴² Therefore, the Committee found the three loans Representative Trahan made to the Campaign from funds transferred to her joint checking account by her husband, totaling \$300,000, did not violate any House Rules, laws, regulations or other standards of conduct.¹⁴³

2. *Loan from Revolving Line of Credit*

A candidate may use funds from a home equity line of credit to make loans to the candidate's own campaign as long as the loan was obtained in accordance with all laws and under commercially reasonable terms.¹⁴⁴ Under FEC regulations, if a candidate's spouse is an endorser or co-signer for a home equity line of credit, the spouse is not deemed to have made a contribution to the campaign if the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan that is used for the candidate's campaign.¹⁴⁵ A candidate's share of a jointly owned asset is either the share of the asset under an instrument of ownership or, if no share is indicated, the value of one-half the property.¹⁴⁶

The Committee considered whether the \$71,000 loan from the revolving line of credit established under the Credit Agreement with Washington Savings Bank resulted in an excessive contribution from Mr. Trahan to the Campaign.¹⁴⁷ As discussed above, Representative Trahan and Mr. Trahan executed the Credit Agreement with Washington Savings Bank on October 15, 2010, many years before Representative Trahan's candidacy.¹⁴⁸ The Credit Agreement allowed the Trahans to borrow up to \$200,000 secured by their home in Westford, Massachusetts.¹⁴⁹

In 2018, the Trahans' Westford home was valued at \$1,242,800.¹⁵⁰ On her New Member Financial Disclosure Statement, Representative Trahan disclosed the couple has a mortgage on their Westford home valued at between \$50,001 and \$100,000.¹⁵¹ Subtracted from the value of the home, the Trahans' equity in their home in 2018 was between \$1,142,800 and \$1,192,799. Representative Trahan owns a one-half interest in the Westford home.¹⁵² Representative Trahan's

¹⁴² 11 C.F.R. § 110.10.

¹⁴³ OCE's Referral states that Representative Trahan and Mr. Trahan did not cooperate with OCE's review and OCE does not cite to the Trahans' prenuptial agreement. OCE was not provided with a copy of that agreement and therefore could not analyze its impact on the allegations.

¹⁴⁴ 11 C.F.R. § 100.83. Home equity lines of credit are excluded from the definition of contribution. 11 C.F.R. § 100.71.

¹⁴⁵ 11 C.F.R. § 100.83(b)(1). *See also* FEC Advisory Opinion (AO) Hochberg (AO 1991-10) (finding the candidate's equity in a home owned with spouse is calculated as one half the tax valuation of the home minus outstanding mortgage).

¹⁴⁶ 11 C.F.R. § 100.33(c).

¹⁴⁷ While not at issue in this matter, the Committee found the Credit Agreement was obtained in accordance with all laws and under commercially reasonable terms, as required under 11 C.F.R. § 100.83.

¹⁴⁸ OCE's Referral, Exhibit 10.

¹⁴⁹ *Id.*; *New Member FD* at 5.

¹⁵⁰ Town of Westford, Massachusetts, *Property Assessment for 9 Weetamoo Way*, <http://westford.patriotproperties.com/Summary.asp?AccountNumber=10321> (follow "previous assessment" hyperlink) (last visited July 10, 2020); Appendix B at 7.

¹⁵¹ *New Member FD* at 5.

¹⁵² Appendix B at 7. Exhibit 1 ¶ 10 (providing that any real property purchased in joint title by the Trahans reflects the intent of the parties to have a joint interest in that property).

share of their home is one half the value of the equity, totaling between \$571,400 and \$596,399.50 in 2018.

While Mr. Trahan was jointly liable for the funds borrowed under the Credit Agreement, Representative Trahan's \$71,000 loan to her Campaign funded by the revolving line of credit was well below her share in the collateral (between \$571,400 and \$596,399.50). In fact, the \$71,000 loan is less than half the \$200,000 available to the couple through the line of credit. Because Representative Trahan's share of the property used as collateral equaled or exceeded the amount of the loan, Mr. Trahan did not make a contribution to the Campaign as the co-signer of the Credit Agreement. Therefore, the Committee found the \$71,000 loan did not result in an excessive contribution from Mr. Trahan to the Campaign. As such, Representative Trahan's loan to the Campaign from her home equity line of credit did not violate any House Rules, laws, regulations or other standards of conduct.

B. DISCLOSURES

1. *Financial Disclosure Statements*

Candidates for the House and Members are required to file Financial Disclosure Statements with the Clerk of the House under the EIGA and House Rules.¹⁵³ If a filer knowingly and willfully falsifies or fails to file or to report any required information, the Committee may take action or the filer may be subject to civil and criminal penalties.¹⁵⁴ Absent evidence that errors or omissions on financial disclosures are knowing and willful, the Committee's general practice is to notify the filer of the error and require that the filer submit an amendment.¹⁵⁵ Once the amendment is properly submitted, the Committee typically takes no further action.¹⁵⁶ A filer may also amend a Financial Disclosure Statement on the filer's own initiative. Such amendments are normally given a presumption of good faith by the Committee if submitted before the end of the year in which the report was originally filed.¹⁵⁷

Representative Trahan filed Financial Disclosure Statements as a candidate and as new Member. As discussed above, Representative Trahan voluntarily amended her candidate Financial Disclosure Statements on four occasions to include previously omitted and additional information about her ownership, unearned income, earned income and client payments from Concire LLC, her joint bank account at Enterprise Bank with Mr. Trahan and her ownership interest in Stella Connect.¹⁵⁸ Each of those amendments was made within a year of the Statement's original filing.

¹⁵³ 5 U.S.C. app. §§ 101(c), (f), 103(h)(1)(A)(i)(I); House Rule XXVI, cl. 2.

¹⁵⁴ 5 U.S.C. app. § 104(a)(1), (2) and (c); *see also Ethics Manual* at 265.

¹⁵⁵ Comm. on Ethics Instruction Guide: Financial Disclosure Statements and Periodic Transaction Reports at 8; *see also* Comm. on Ethics, *In the Matter of Allegations Relating to Representative Vernon G. Buchanan*, H. Rept. 112-588, 112th Cong. 2d Sess. 5 (2012) (hereinafter *Buchanan*).

¹⁵⁶ *Id.*

¹⁵⁷ *Ethics Manual* at 264.

¹⁵⁸ *First Amended 2017 FD; First Amended 2018 FD; Second Amended 2017 FD; Second Amended 2018 FD; Third Amended 2017 FD; Third Amended 2018 FD.*

Representative Trahan's amendments to her Financial Disclosure Statements are not uncommon. In fact, between 20 percent and 30 percent of all Financial Disclosure Statements reviewed by the Committee each year contain errors or require a corrected statement. It is also not uncommon for filers to become aware of errors in their Financial Disclosure Statements by members of the media or outside groups who review the statements and other public records.¹⁵⁹ The Committee found no evidence that Representative Trahan's omissions on her Financial Disclosure Statements were knowing or willful. To the contrary, her amendments show her good faith effort to comply with the disclosure requirements. The Committee has previously encouraged filers to promptly file amendments whenever they learn of errors or omissions to avoid a knowing and willful violation, which is what Representative Trahan did.¹⁶⁰ Because Representative Trahan has already amended her Financial Disclosure Statements to provide corrected information, the Committee concluded that no further action is necessary.

2. *FEC Reports*

Campaigns must disclose all receipts, including any contributions, in-kind contributions, or loans, on reports to the FEC.¹⁶¹ For reporting purposes, a receipt is recorded by a campaign when it is actually received by the campaign.¹⁶² A campaign has ten days after receiving funds to deposit them.¹⁶³ Loans are also reported as an outstanding debt.¹⁶⁴ Certain loans, like a home equity line of credit, require additional reporting on Schedule C-1, including disclosing 1) the date, amount and interest rate of the loan; 2) the name and address of the lending institution; and 3) the types and value of collateral.¹⁶⁵ If a campaign intentionally misreports information to the FEC, it may be subject to criminal penalties.¹⁶⁶

i.) *Personal Loans*

The Campaign reported to the FEC each of the personal loans Representative Trahan made to her Campaign by check on March 31, 2018, June 30, 2018, and August 22, 2018. As discussed above, the Committee found those loans were made with her personal funds and thus, the

¹⁵⁹ *Buchanan* at 5.

¹⁶⁰ *See Id.* at 5, 6.

¹⁶¹ 52 U.S.C. § 30104(b)(2), 11 C.F.R. § 104.3(a)(3). For contributions that exceed \$200 in an election cycle, the campaign committee must disclose the name of the person who made the contribution, the date and amount of the contribution. 52 U.S.C. § 30104(b)(3). In-kind contributions from a candidate's personal funds that exceed \$200 in an election cycle must also be disclosed. *FEC Campaign Guide* at 95-96.

¹⁶² 11 C.F.R. § 110.1(b)(6).

¹⁶³ *Id.* § 103.3. *See also FEC Campaign Guide* at 23 ("While all contributions must be deposited within 10 days, the date of deposit is not used for reporting . . .").

¹⁶⁴ 52 U.S.C. § 30104(b)(8), 11 C.F.R. § 104.3(d). *See also FEC Campaign Guide* at 91, 108-109 (reporting guidance for loans from a candidate's personal funds).

¹⁶⁵ 11 C.F.R. § 104.3(d)(4)(i)-(iii). *See also FEC Campaign Guide* at 110-111 (reporting guidance for a candidate's loan derived from a line of credit).

¹⁶⁶ 52 U.S.C. § 30109(d)(1).

Committee did not find the Campaign misreported the source of the funds.¹⁶⁷ The Committee also examined whether the Campaign misreported the date it received the March 31, 2018 and June 30, 2018 loans. As to the March 31, 2018 loan, the Campaign reported it received the loan on the date of the check, but did not cash the check until April 9, 2018, nine days later. For the June 30, 2018 loan, the Campaign also reported it was received on the date of the check, but did not cash the check until July 10, 2018, ten days later. As discussed above, the date Representative Trahan wrote each of the checks coincided with the last day of the FEC reporting period for that quarter. The date the Campaign deposited each of the checks corresponded with the date Mr. Trahan transferred funds to the couple's joint checking account to provide sufficient funds for the loan checks. Both checks were cashed within 10 days of receipt, as is required under FEC regulations.¹⁶⁸ Thus, it does not appear the Campaign's reporting of the loans violated any House Rules, laws, regulations or other standards of conduct.

The Committee notes, however, the dates of receipt and deposit raise questions about whether Representative Trahan intentionally reported the loans in advance of making the transfers in order to increase her cash-on-hand numbers at the close of the relevant quarterly reporting periods. Even though such conduct may be permissible under FEC regulations, the Committee cautions Representative Trahan that, as a Member of the House, she is expected to act in a manner that reflects creditably upon the House and should ensure accuracy and transparency in her campaign activities.¹⁶⁹

ii.) Loan from Revolving Line of Credit

The Campaign first reported the \$71,000 loan from Representative Trahan's revolving line of credit on its October 2018 Quarterly Report, filed on October 15, 2018. At that time, it disclosed the loan was made on September 4, 2018, from Representative Trahan's personal funds, but did not disclose that it was a line of credit. Further, the Campaign did not file a Schedule C-1 to disclose additional requisite information about the date "incurred or established," the due date, the source, and collateral for the revolving line of credit. On December 15, 2018, the Campaign

¹⁶⁷ The FEC sent the Campaign a Request for Additional Information (RAI) following the Campaign's submission of its Apr. 2018 Quarterly Report of Receipts and Disbursements where the Campaign first disclosed Representative Trahan's Mar. 31, 2018 loan. The RAI requested additional information about the source of the funds for the loan and referenced the FEC's definition of "personal funds." Letter from FEC Analyst Chris Jones to Martha Howe, Treasurer, Lori Trahan for Congress Committee (May 7, 2018). Following receipt of the RAI, on May 15, 2018 the Campaign amended its Apr. 2018 Quarterly Report to include additional notations that Representative Trahan's loan was from personal funds. Lori Trahan for Congress, Amended Apr. 2018 Quarterly Report of Receipts and Disbursements, at 145-146 (May 14, 2018).

¹⁶⁸ 11 C.F.R. § 103.3. *See also* *FEC Campaign Guide* at 23 ("While all contributions must be deposited within 10 days, the date of deposit is not used for reporting. . .").

¹⁶⁹ While Representative Trahan was not a Member of the House at the time the loans were made and reported, the Committee has long held it has jurisdiction over misconduct relating to a successful campaign for the House. Comm. on Ethics, *In the Matter of Allegations Relating to Representative Ruben Kihuen*, H. Rept. 115-1041, 115th Cong. 2d Sess. 5 (2018); Comm. on Standards of Official Conduct, *In the Matter of Representative Jay Kim*, H. Rept. 105-797, 105th Cong. 2d Sess. 6 (1998).

amended its October 2018 Quarterly Report, including filing Schedule C-1 for the \$71,000 loan which disclosed additional information about the line of credit.¹⁷⁰

The Committee encourages Members' campaigns to voluntarily amend FEC Reports to comply with FEC reporting regulations. Voluntarily amending FEC Reports, like voluntarily amending Financial Disclosure Reports, shows a good faith effort to comply with disclosure requirements. However, it is not clear that the line of credit was properly reported on the amended filing. For example, in its December 15, 2018 amended Report on Schedule C-1, the Campaign reported the line of credit was "incurred or established" on September 4, 2018, the date Representative Trahan wrote the check from the line of credit account to the Campaign. But, the line of credit was originally established on October 15, 2010. Further, the Trahans did not withdraw funds from the line of credit to cover Representative Trahan's check to the Campaign until October 3, 2018. It is not clear from available FEC guidance which date should have been disclosed as the date "incurred or established."¹⁷¹ Additionally, the Campaign reported the valuation of the collateral as \$950,000, even though it appears that the total value of Representative Trahan's home at the time of the draw for the Campaign was more than that amount (between \$1,142,800 and \$1,192,799), and her share would have been less than that amount (between \$571,400 and \$596,399.50). FEC guidance also does not address valuation of a home used as collateral for a line of credit, which was initially established prior to candidacy.¹⁷²

The Committee has a long history of undertaking investigations and, when appropriate, imposing sanctions or directing remedial measures where a Member or candidate in a successful election to the House is found by the Committee to have violated a clear standard of campaign finance laws or regulations. The Committee notes, however, that publicly available FEC guidance regarding reporting home equity lines of credit under these circumstances—where a candidate and spouse establish a line of credit prior to candidacy—is limited.¹⁷³ Given the lack of a clear legal

¹⁷⁰ The Campaign did not receive an RFAI from the FEC related to the \$71,000 loan, which would have required a response from the Campaign on the public record. The Campaign's amendment may have been prompted by media inquiries. *See also Boston Globe Article.*

¹⁷¹ Instructions for Schedule C-1, Loans and Lines of Credit from Lending Institutions (FEC Form 3) at 17 (May 2016) (no discussion of lines of credit established prior to candidacy); *FEC Campaign Guide* at 111 (no discussion of lines of credit established prior to candidacy); *cf.* Cunningham (AO 1994-26) (advising a candidate that lines of credit not obtained for campaign purposes need not be disclosed until the first draw for campaign purposes; after a draw for the campaign, candidate must disclose the source of the line of credit and information, including date of the granting of the line and first campaign draw and "explain that this line was taken out well in advance of the campaign (as is evidenced by the date of the granting of the line) and was not granted or altered in anticipation of its use for or during any political campaign").

¹⁷² *Id.*

¹⁷³ *See e.g.*, Instructions for Schedule C-1, Loans and Lines of Credit from Lending Institutions (FEC Form 3) at 17 (May 2016) (no discussion of lines of credit established prior to candidacy); *FEC Campaign Guide* at 111 (no discussion of lines of credit established prior to candidacy); *cf.* AO 1994-26 (advising a candidate that lines of credit not obtained for campaign purposes need not be disclosed until the first draw for campaign purposes; after a draw for the campaign, candidate must disclose the source of the line of credit and information, including date of the granting of the line and first campaign draw and "explain that this line was taken out well in advance of the campaign (as is evidenced by the date of the granting of the line) and was not granted or altered in anticipation of its use for or during any political campaign").

standard on the relevant reporting requirements and the Campaign's efforts to amend its disclosures, there is no evidence that any omissions or errors were knowing and willful. To the extent that the Campaign did not properly report information, the FEC (not the Committee) is best suited to make that determination. As such, the Committee directs Representative Trahan and the Campaign to contact the FEC to ensure they have properly disclosed the details of the revolving line of credit.¹⁷⁴

VI. CONCLUSION

Representative Trahan's prenuptial agreement with her husband established clear delineations as to the couple's income and assets and rights to their income and assets during their marriage. Based on the prenuptial agreement, the Committee found that Representative Trahan's loans to the Campaign were from her personal funds, not excessive contributions from her husband, and therefore did not violate House Rules, laws, regulations or other standards of conduct. The Committee also found no evidence that Representative Trahan's omissions of required information or errors on her Financial Disclosure Statements and FEC reports were knowing and willful, and accordingly, did not merit further action. In fact, Representative Trahan's amendments to her disclosures on her own initiative show her good faith effort to comply with the relevant disclosure requirements.

To the extent that there may have been errors in reporting information to the FEC, the Committee found that the FEC was best qualified to make that determination and directs Representative Trahan and the Campaign to contact the FEC to ensure accurate disclosure.

The Committee notes that the disclosure requirements in FECA were created to provide voters with information about where political campaign money comes from and how it is spent so they may adequately evaluate those who seek federal office.¹⁷⁵ Similarly, the public disclosure of assets, financial interests, and investments required under EIGA and House Rule XXVI are intended to provide the information necessary to allow Members' constituencies to judge their official conduct in light of possible financial conflicts of interest.¹⁷⁶ Members should strive to ensure accuracy and transparency in their campaigns and Financial Disclosure Statements in furtherance of these objectives.

¹⁷⁴ Similarly, the Committee directs the Campaign to consult the FEC regarding its disclosure of Representative Trahan's in-kind contributions. The Campaign appears to have appropriately reported the in-kind contributions as both receipts and disbursements, as is required to avoid inflating cash on hand. However, based on the FEC's Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements, unreimbursed disbursements by a candidate for that candidate's own campaign also require an additional memo entry itemizing the ultimate payee if the aggregate amount to that vendor exceeds \$200 for the election cycle. Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40625, 40627 (July 8, 2013). *See also FEC Campaign Guide* at 95-96.

¹⁷⁵ *Buckley v. Valeo*, 424 U.S. 66-67 (citing H.R. Rept. No. 92-564, p. 4 (1971)).

¹⁷⁶ *Ethics Manual* at 251.

VI. STATEMENT UNDER HOUSE RULE XIII, CLAUSE 3(C)

The Committee made no special oversight findings in this Report. No budget statement is submitted. No funding is authorized by any measure in this Report.