FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR: 7585
DATE COMPLAINT FILED: Mar. 3, 2019
DATE OF NOTIFICATION: Mar. 21, 2019
DATE SUPP. COMPL. FILED: May 6, 2019
DATE OF SUPP. NOTIFICATION: May 8, 2019
DATE 2ND SUPP. COMPL. FILED: July 11, 2019
DATE OF 2ND SUPP. NOTIFICATION: July 15, 2019
DATE OF LAST RESPONSE: Aug. 27, 2020
DATE ACTIVATED: Apr. 2, 2020

EXPIRATION OF SOL: Mar. 31 – Sept. 14, 2023
ELECTION CYCLE: 2018

COMPLAINANT: Gene Blake

RESPONDENTS: Lori Trahan for Congress Committee and Maria Cunha in her official capacity as treasurer
Lori Trahan
Concire, LLC

MUR: 7588
DATE COMPLAINT FILED: Mar. 28, 2019
DATE OF NOTIFICATION: Apr. 3, 2019
DATE SUPP. COMPL. FILED: Jan. 16, 2020
DATE OF SUPP. NOTIFICATION: Jan. 23, 2020
DATE OF LAST RESPONSE: Aug. 27, 2020
DATE ACTIVATED: Apr. 2, 2020

EXPIRATION OF SOL: Mar. 31 – Sept. 14, 2023
ELECTION CYCLE: 2018

COMPLAINANTS: Campaign Legal Center
Richard A. Graham

RESPONDENTS: Lori Trahan for Congress Committee and Maria Cunha in her official capacity as treasurer
Lori Trahan
David Trahan

RELEVANT STATUTES AND REGULATIONS:
52 U.S.C. § 30101(26)
52 U.S.C. § 30102(b), (h)
52 U.S.C. § 30104(a), (b)(3)(E)
52 U.S.C. § 30116(a)(1)(A), (f)
11 C.F.R. § 100.52

11 C.F.R. § 100.83
11 C.F.R. § 101.33(a)-(c)
11 C.F.R. § 102.8(a)
11 C.F.R. § 103.3(a)
11 C.F.R. § 104.3(d)(4)
11 C.F.R. § 110.9
11 C.F.R. § 113.1(g)(6)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED:

I. INTRODUCTION

This matter involves four loans reportedly made by Representative Lori Trahan, a 2018 congressional candidate, to her authorized committee, Lori Trahan for Congress Committee and Maria Cunha[1] in her official capacity as treasurer (the "Committee"), totaling $371,000. The Committee reported that Rep. Trahan made three of the loans using her "personal funds" and made the fourth loan using funds that she obtained from a home equity line of credit.

Regarding the first three loans, the Complaints allege that Rep. Trahan did not have sufficient personal funds to make the loans. While the MUR 7585 Complaint alleged that Concire, LLC ("Concire"), a company owned by Rep. Trahan, was the source of the funds used to make the loans, in a Supplemental Complaint, filed after new information was released by the Office of Congressional Ethics ("OCE"), the MUR 7588 Complainants specifically allege that Rep. Trahan received the funds to make the loans from her spouse, David Trahan, resulting in an

[1] At the time the Complaints in these matters were received, Martha E. Howe was the Committee's treasurer; thus, she was named and notified in her official capacity. On October 15, 2021, the Committee updated its statement of organization with the Commission, naming Maria Cunha as treasurer and the caption in this matter has been adjusted accordingly. *See* Lori Trahan for Congress Committee, Amended Statement of Organization at 1 (Oct. 15, 2021).

excessive contribution by Mr. Trahan to Rep. Trahan and the Committee, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Supplemental Complaint further alleges that the Committee failed to report that Mr. Trahan was the true source of the loans. Additionally, the Supplemental Complaint alleges that the Committee knowingly and willfully misreported the dates on which two of the loans were received. Regarding the fourth loan, the Complaints allege that the Committee failed to timely disclose that the true source was a home equity line of credit.

Respondents deny that Mr. Trahan made, or Rep. Trahan and the Committee knowingly accepted, excessive contributions in connection with the first three loans. They argue that the funds used to make the loans were Rep. Trahan's "personal funds" as defined by the Act and Commission regulations, and thus that Mr. Trahan did not make a contribution in connection with the loans. Respondents assert that Rep. Trahan used a joint bank account shared with her spouse and that she was entitled to the funds because under Massachusetts law and pursuant to a prenuptial agreement, the Trahans both had equal rights in regard to the management and disposition of all marital property, including Mr. Trahan's income earned during the campaign. The Committee disputes that it misreported the dates of two of the loans, stating that the loans were correctly reported at the time they were received. With respect to the fourth loan, the Committee acknowledges that it failed to timely report that Rep. Trahan used funds obtained from a home equity line of credit but argues that the Commission should take no action because the Committee's initial disclosures, which reported that Rep. Trahan used her personal funds, were substantially correct and any violation was merely technical.

As set forth below, it appears that Mr. Trahan's income was the true source of the funds used to finance the first three loans and, therefore in accordance with relevant Commission

precedent, he made excessive contributions to the Committee. According to bank records obtained by OCE, Mr. Trahan transferred income he received during the period of Rep. Trahan's campaign to a joint bank account shared with Rep. Trahan shortly before or after Rep. Trahan wrote checks from the joint account to the Committee. These funds originated from Mr. Trahan's personal or business accounts to which Rep. Trahan had no access. Without Mr. Trahan's deposits, the joint account did not have sufficient funds to cover the checks written to make the loans.

Mr. Trahan also appears to have made an excessive contribution in connection with the fourth loan. Though Rep. Trahan initially made that loan using her personal funds permissibly obtained through a home equity line of credit, Mr. Trahan subsequently repaid the bank with funds from his personal account before the Committee repaid Rep. Trahan. According to bank records, it also appears that the Committee and its treasurer failed to deposit the check for the fourth loan within the ten days provided by Commission regulations.

The available information indicates that the Committee misreported the source of these loans as coming from Rep. Trahan's personal funds. Further, the Committee's reporting of the fourth loan was not substantially correct because, until after the election, the Committee's reports reflected that the funds for that loan were derived from Rep. Trahan's personal funds without any indication that she had obtained the funds through a home equity line of credit; to date, the Committee's reports continue to misstate other aspects of that loan. The Committee also appears to have misreported the date on which two of the loans were received to coincide with the last day of the respective reporting periods rather than the date the funds were actually relinquished to the Committee.

Accordingly, we recommend that the Commission find reason to believe that David Trahan violated 52 U.S.C. § 30116(a)(1)(A) by making excessive contributions in the form of loans to the Committee and that Lori Trahan and the Committee violated 52 U.S.C. § 30116(f) by knowingly accepting those excessive contributions. Correspondingly, we recommend that the Commission find no reason to believe that Concire, LLC violated 52 U.S.C. § 30116(a)(1)(A) by making excessive contributions to the Committee. We further recommend that the Commission find reason to believe the Committee violated 52 U.S.C. § 30104(b) by inaccurately reporting the dates of loans to the Committee and the Committee's cash on hand, and violated 52 U.S.C. § 30104(b)(3) and 11 C.F.R. § 104.3(d)(4) by failing to report, or timely report, the sources of loans. We also recommend that the Commission find reason to believe that the Committee violated 52 U.S.C. § 30102(h) and 11 C.F.R. § 103.3(a) by failing to timely deposit receipts. Finally, because an investigation has already been conducted by OCE providing information, including financial records substantiating the violations, we recommend that the Commission enter into pre-probable cause conciliation ("PPCC") with Lori Trahan, the Committee, and David Trahan.

II. FACTUAL BACKGROUND

Congresswoman Lori Trahan was a candidate in the 2018 election for the Third Congressional District in Massachusetts, and Lori Trahan for Congress Committee was her authorized committee.[2] In the months leading up to the primary election, and on the day of the primary election, September 4, 2018, the Committee reported receiving four loans made by Rep. Trahan to the Committee totaling $371,000.

[2] Lori Trahan, Statement of Candidacy (Sept. 21, 2017) (initial filing); Lori Trahan for Congress Committee ("LTCC"), Statement of Org. (Sept. 17, 2017) (initial filing).

Figure 1. Candidate Loans to Lori Trahan for Congress

Reported Date of Receipt	Amount	Reported Loan Source
March 31, 2018	$50,000	Personal Funds of the Candidate
June 30, 2018	$50,000	Personal Funds of the Candidate
August 23, 2018	$200,000	Personal Funds of the Candidate
September 4, 2018	$71,000	Personal Funds of the Candidate (initial reporting); Loan from Washington Savings Bank (amended reporting)

The first three candidate loans, reportedly received on March 31, June 30, and August 23, 2018, were disclosed by the Committee on Schedule A (Itemized Receipts) with "Personal loan from Candidate" written on the memo line and on Schedule C (Loans) with "Personal Funds of the Candidate" identified as the loan source.[3] The fourth loan, reportedly received on September 4, 2018, was initially disclosed as a "Personal loan from Candidate" on Schedule A.[4] After the election, on December 6, 2018, the Committee filed an amendment to disclose that the loan source was the "Personal Funds of the Candidate."[5] Then, on December 15, 2018, the Committee filed a second amendment that removed the "Personal Funds of the Candidate" designation and included a Schedule C-1 (Loans and Lines of Credit from Lending Institutions) to disclose that Rep. Trahan had obtained a loan from Washington Savings Bank secured by real

[3] LTCC, 2018 April Quarterly Report at 98, 144 (Apr. 15, 2018) (initial reporting of March 31 loan, which identified Lori Trahan as the source on Schedule C but did not check the "Personal Funds of the Candidate" box); LTCC, Amended 2018 April Quarterly Report at 99, 145 (May 14, 2018) (amended reporting of March 31 loan, which identified "Personal Funds of the Candidate" as the loan source); LTCC, 2018 July Quarterly Report at 235, 282 (July 15, 2018) (identifying the personal funds of the candidate as the source of the June 30 loan); LTCC, 2018 October Quarterly Report at 100, 154 (Oct. 15, 2018) (initial reporting of August 23 loan, which identified Lori Trahan as the source on Schedule C but did not check the "Personal Funds of the Candidate" box); LTCC, Amended 2018 October Quarterly Report at 102, 158 (Dec. 6, 2018) (amended reporting of August 23 loan, which identified "Personal Funds of the Candidate" as the loan source).

[4] LTCC, 2018 October Quarterly Report at 100, 155 (Oct. 15, 2018).

[5] LTCC, Amended 2018 October Quarterly Report at 102, 159 (Dec. 6, 2018).

estate valued at $950,000 with a 5.25% interest rate, and with no other parties secondarily liable.[6]

On October 30, 2019, in response to media reports questioning the loans, Rep. Trahan published a piece entitled "Setting the Record Straight" on the website *Medium* providing the following statement about how the loans were financed:

> We considered all of the income that Dave and I earned to be ours, and I had the same right as Dave did to manage and spend it. So, over the course of the campaign, we decided to move $300,000 from income Dave had earned to our joint checking account; Dave deposited $50,000 and $55,000 into our joint checking account before I filed my first and second quarterly reports in 2018, and in August, he deposited an additional $200,000. I loaned money to my campaign in similar amounts from that joint checking account — $50,000 on March 31st, $50,000 on June 30th, and $200,000 on August 22nd. Later in the campaign, I used a home equity line of credit to loan my campaign an additional $71,000.[7]

On December 17, 2019, the U.S. House of Representatives Committee on Ethics made public a referral from OCE regarding these loans, which the Committee on Ethics adopted into its own report issued in July 2020.[8] According to bank records, Rep. Trahan made the first three loans using checks drawn on a joint bank account at Enterprise Bank that she shared with her spouse.[9] This joint account generally maintained a balance far below the amounts of the loans

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6 LTCC, Second Amended 2018 October Quarterly Report at 102, 159, 160 (Dec. 15, 2018).

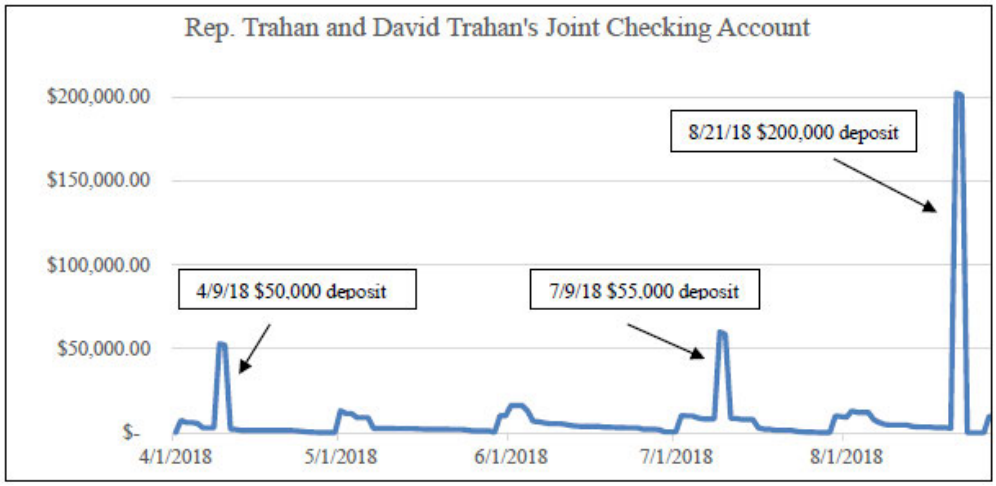
7 Lori Trahan, *Setting the Record Straight*, MEDIUM (Oct. 30, 2019), https://medium.com/@adminlt/setting-the-record-straight-4bed62080117 ("Setting the Record Straight").

8 Office of Congressional Ethics, United States House of Representatives, Report No. 19-5449 (Sept. 13, 2019) ("OCE Referral"), https://oce.house.gov/sites/congressionalethics.house.gov/files/documents/Review%20No.%2019-5449_Referral.pdf; *see also* Committee on Ethics, United States House of Representatives, Report In the Matter of Allegations Relating to Representative Lori Trahan at 2, 18 (July 15, 2020) (incorporating OCE Referral and attaching it as Appendix A) ("Committee on Ethics Report"), https://www.congress.gov/116/crpt/hrpt451/CRPT-116hrpt451.pdf.

9 OCE Referral ¶ 24 (image of $50,000 check signed by Rep. Trahan to the Committee, dated March 31, 2018); *id.* ¶ 28 (image of $50,000 check dated June 30, 2018); *id.* ¶ 33 (image of $200,000 check dated August 22, 2018).

(as low as $55.13) but, on all three occasions, days before or after Rep. Trahan wrote checks to the Committee, Mr. Trahan made large deposits of funds drawn from his personal or business accounts sufficient to cover the loans.[10] The below chart from the OCE Referral shows the balance of funds in the joint account during the period of April through August 2018, including the three deposits made by Mr. Trahan and the immediate withdrawals to fund loans to the Committee, which stand out from the general activity in the account at the time.[11]

Figure 2. Joint Bank Account Balances



With respect to the first two loans, Rep. Trahan wrote checks to the Committee on March 31 and June 30, 2018, before Mr. Trahan had deposited funds into the joint account and at a time when there were insufficient funds in the joint account to cover the loans.[12] The Committee did

[10] *Id.* ¶¶ 22-34; *see id.* ¶ 26 (image of $50,000 check dated April 7, 2018, that Mr. Trahan wrote to himself from his personal bank account at Enterprise Bank, and image of April 9, 2018, deposit slip showing that he deposited the funds into the joint account); *id.* ¶ 30 (image of $55,000 check dated July 9, 2018, that Mr. Trahan wrote to himself from the account of DCT Development, Inc., at Enterprise Bank, and image of July 9, 2018, deposit slip showing that he deposited the funds into the joint account); *id.* ¶ 32 (image of bank record showing internal bank transfer of $200,000 on August 21, 2018, from Mr. Trahan's personal account at Enterprise Bank to the joint account); *see also* Lori Trahan, Amended 2018 Personal Financial Disclosure ("PFD") at 1-2 (Nov. 16, 2018) (indicating that the "owner" of the personal and business accounts in question was the candidate's spouse rather than being a joint account).

[11] OCE Referral ¶ 22.

[12] *Id.* ¶¶ 25, 28.

not deposit Rep. Trahan's checks until after Mr. Trahan moved funds into the joint account.[13] In the case of the March 31 loan, the Committee waited nine days to deposit the check, and in the case of the June 30 loan, it waited ten days.[14] In both instances, Rep. Trahan dated her checks on the last day of the relevant FEC reporting period and the Committee reported the loans as received on that date, and thus the loans were included in the Committee's reported cash on hand even though the funds had not been deposited (and could not have been deposited because of insufficient funds in the Trahans' joint bank account).[15]

Bank records indicate that the fourth loan in the amount of $71,000, reportedly received on September 4, 2018, was funded by a home equity line of credit from Washington Savings Bank.[16] The line of credit was opened on October 15, 2010, with a limit of $200,000, and was secured by a property located in Westford, Massachusetts.[17] The Committee's amended reports with the Commission state that no other parties were liable for the loan, but records from the OCE Referral reflect that Mr. Trahan was a co-signor to that line of credit.[18] Further, the bank records indicate that Mr. Trahan repaid the line of credit with a check from his personal account nine days after the Committee cashed Rep. Trahan's check drawn on the home equity line of credit, and more than a month prior to the Committee issuing a check to repay her for the loan.[19]

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13 *Id.* ¶¶ 27, 31.

14 *Id.*

15 *Id*. ¶¶ 19, 27, 31.

16 *Id.*, Ex. 11 (image of $71,000 check signed by Rep. Trahan to Committee, dated September 4, 2018, from revolving line of credit at Washington Savings Bank).

17 OCE Referral, Ex. 10 (Revolving Credit Agreement and Note).

18 *Id.*

19 *Id*. ¶¶ 39-43, Exs. 12-15.

The Complaints in these matters were initially filed in March 2019, prior to the publication of the OCE Referral in September 2019, based on news reports and Rep. Trahan's Personal Financial Disclosures ("PFDs") filed with the House of Representatives. They alleged that it did not appear that Rep. Trahan had sufficient personal funds to support the first three loans, totaling $300,000.[20] Specifically, the MUR 7585 Complaint alleged that Rep. Trahan used her consulting company, Concire, "to channel illegal contributions into her campaign," and therefore, that Concire might have been the true source of the funds.[21] After the OCE Referral was publicly released, the MUR 7588 Complainants filed the Supplemental Complaint in that MUR, citing to the new details suggesting that Mr. Trahan was the true source of the funds and alleging that Rep. Trahan and the Committee knowingly and willfully misreported the dates of loans to "misl[ead] voters about her campaign financing at the height of the election."[22] Based on the new allegations, Mr. Trahan was notified as a Respondent. He submitted a brief response, adopting by reference the Response of Rep. Trahan and the Committee.[23]

In response to the original Complaints, Rep. Trahan and the Committee argue broadly, referencing Rep. Trahan's $274,535 in income for 2018, that "there were sufficient funds in the joint account throughout the calendar year to finance the $300,000 loan."[24] In response to the more detailed allegations in the MUR 7588 Supplemental Complaint based on the OCE Referral, Rep. Trahan, the Committee, and Mr. Trahan (the "Trahan Respondents") state that the entirety

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[20] *See* MUR 7588 Compl. ¶¶ 30-33 (Mar. 28, 2019); MUR 7585 Compl. at 4 (Mar. 15, 2019); *see also* MUR 7585 Supp. Compl. (May 6, 2019); MUR 7585 Second Supp. Compl. (July 11, 2019).

[21] MUR 7585 Compl. at 4-5; MUR 7585 Second Supp. Compl. at 2.

[22] MUR 7588 Supp. Compl. at 6-7 (Jan. 16, 2020).

[23] David Trahan Resp. (Apr. 1, 2020) (enclosing copy of Trahan and Committee Supplemental Response).

[24] Trahan and Committee Resp. at 2-4 (May 9, 2019) (responding to the allegations in MURs 7585 & 7888); *see also* Concire, LLC Resp. at 2 (May 9, 2019) (stating that Concire's payments to Rep. Trahan were compensation for bona fide employment as CEO of Concire).

of the funds used to finance the loans, including the funds obtained from Mr. Trahan's personal and business accounts, were Rep. Trahan's "personal funds."[25] Specifically, they quote from the Trahans' prenuptial agreement, which states that "[e]ach party shall have equal rights in regard to the management of and disposition of all marital property," and submit a letter authored by a Massachusetts family law attorney providing a written interpretation of the agreement to mean that Rep. Trahan "had (and continues to have) an equitable interest in the wages, salary, and income earned and received by her husband during their marriage."[26] Moreover, the Trahan Respondents assert that even in the absence of the prenuptial agreement, "the movement of funds through the joint account was sufficient" to make the funds Rep. Trahan's personal funds for purposes of the Act.[27]

Regarding the alleged knowing and willful misreporting of the loan dates, the Committee asserts that it correctly reported the loans using the dates the checks were "received" rather than the date the funds were deposited in the campaign account.[28] Further, as to the delayed reporting of the source of the September 4, 2018, loan, the Committee argues that the initial reporting, which disclosed that Rep. Trahan was the source of the funds, was "substantially correct" and "simply a technical violation" that does not warrant seeking a civil penalty.[29]

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[25] Trahan and Committee Supp. Resp. at 2-6 (Mar. 13, 2020) (responding to the Supplemental Complaint in MUR 7588).

[26] *Id.* at 4; *id.*, Ex. A (letter from Catharine V. Blake, Esq., to Committee on Ethics, U.S. House of Representatives, dated October 28, 2019).

[27] Trahan and Committee Supp. Resp. at 6-7.

[28] *Id*., Ex. A, n.39.

[29] Trahan and Committee Resp. at 8-10; *see also* Trahan and Committee Supp. Resp., Ex. A at 7-8 (asserting that "[w]hile the initial reporting was incomplete, it was a *de minimis* mistake of the sort common among first-time campaigns").

On July 15, 2020, the House Committee on Ethics reviewed the issues raised by the OCE Referral and issued its conclusions, stating that "the Committee did not find that Representative Trahan acted in violation of House Rules, laws, regulations or other standards of conduct," and dismissed the matter while leaving questions regarding possible reporting errors to the Commission.[30] The House Committee on Ethics' Report concluded that "[b]ased 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" and that Rep. Trahan's "amendments to her disclosures on her own initiative show her good faith effort to comply with the relevant disclosure requirements."[31] The House Committee on Ethics also observed irregularities and noted that "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" and that "[t]o 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."[32] On August 27, 2020, Respondents provided a copy of the report issued by the House Committee on Ethics to the Commission in support of their previous responses.[33]

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30 Committee on Ethics Report at 2, 18.

31 *Id.* at 20.

32 *Id*. at 18, 20.

33 Trahan and Committee Second Supp. Resp. MURs 7585 & 7588 (Aug. 27, 2020).

III. LEGAL ANALYSIS

A. The Commission Should Find Reason to Believe that David Trahan Made, and Rep. Trahan and the Committee Knowingly Accepted, Excessive Contributions

The term "contribution" includes "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 office."[34] No person, including a candidate's family members, shall make contributions to any candidate, his or her authorized committee, or their agents with respect to any election for federal office which, in the aggregate, are in excess of applicable contribution limits.[35] The individual contribution limit was $2,700 per election during the 2018 election cycle.[36] Further, no candidate or political committee shall knowingly accept a contribution that exceeds the applicable contribution limit.[37]

Candidates, however, "may make unlimited expenditures from personal funds."[38] The Act and Commission regulations provide that "personal funds of a candidate" means the sum of: (a) Assets – amounts derived from any asset that, "under applicable State law, at the time the individual became a candidate, 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"; (b) Income – the candidate's income received during the current election cycle, including a salary and other earned income from bona fide employment; dividends and proceeds from the sale of

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34 52 U.S.C. § 30101(8)(A)(i). *But see* 11 C.F.R. §§ 100.52, 82, 83 (excepting from the definition of loans that are contributions qualifying "Bank loans" and "Brokerage loans and lines of credit to candidates").

35 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

36 Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 82 Fed. Reg. 10,904, 10,906 (Feb. 16, 2017).

37 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

38 11 C.F.R. § 110.10.

the candidate's stocks or other investments; and gifts of a personal nature that had been customarily received by the candidate prior to the election cycle; and (c) Jointly Owned Assets – amounts derived from a portion of assets that are owned jointly by the candidate and the candidate's spouse; the amount is limited to "the candidate's share of the asset under the instrument of conveyance or ownership," but if the instrument is silent, the Commission will presume that the candidate holds a one-half ownership interest.[39]

The requirement that the candidate must have a legal right of access to or control over an asset in order for it to be considered personal funds is underscored by the legislative history of the Act and Commission precedent. In the 1983 Explanation & Justification ("E&J") accompanying regulatory changes clarifying the definition of personal funds set forth in 11 C.F.R. § 100.33, the Commission stated that the reordering of the terms in the definition "made clear that the criteria of 'legal and rightful title' and 'equitable interest' must each be linked with 'legal right of access to or control over.'"[40] Earlier, in connection with the 1974 amendments to the Act, the Committee of Conference wrote:

> It is the intent of the conferees that members of the immediate family of any candidate shall be subject to the contribution limitations established by this legislation. If a candidate for the office of Senator, for example, already is in a position to exercise control over funds of a member of his immediate family before he becomes a candidate, then he could draw upon these funds up to the limit . . . . If, however, the candidate did not have access to or control over such funds at the time he became a candidate, the immediate family member would not be permitted to grant access or control to the candidate . . . if the immediate family member intends that such amounts are to be used in the campaign of the

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[39] 52 U.S.C. § 30101(26)(A)-(C); 11 C.F.R. § 100.33(a)-(c).

[40] Candidate's Use of Property in Which Spouse Has an Interest, 48 Fed. Reg. 19,019, 19,020 (Apr. 27, 1983) (citing legislative history of the 1974 Amendments to 18 U.S.C. § 608 pertaining to the limitations of expenditures of personal funds by a candidate and *Buckley v. Valeo*, 424 U.S. 1, 51, 52, & n.57 (1976)).

> candidate. The immediate family member would be permitted merely to make contributions to the candidate in amounts not greater than [the limit] for each election involved.[41]

The statements by the Commission and the Senate Committee on Conference appear to emphasize the concept of pre-candidacy control over funds or assets by the candidate, and distinguish such control from circumstances where access or control is later granted by a spouse or other family member.[42]

With regard to jointly owned assets, in some past matters, the Commission has determined that joint bank accounts are not subject to the one-half ownership presumption and the candidate may use the entire amount as "personal funds" because each account holder of the joint bank account had access to and control over the whole account under applicable state law.[43] Similarly, in some past Commission audits, the Commission has determined the portion of a joint bank account that constitutes the personal funds of the candidate by considering whether "state law gives each party access to and control over the whole."[44]

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41 *FECA Amendments of 1974, Joint Explanatory Statement of the Committee of Conference*, Sen. Conf. Rpt. 93-1237 (Oct. 7, 1974), 1974 U.S.C.C.A.N. 5618, 5627.

42 *Cf.* Advisory Opinion 1991-10 at 3 (Guernsey) (considering a circumstance in which both spouses' signatures were required to make a withdrawal and concluding that the account was not the candidate's asset but a joint asset as "it appears that the candidate does not have legal right of access to or control over the account, without the benefit of a spousal signature").

43 *See, e.g.*, MUR 2754 (Lowey); MUR 2292 (Stein); MUR 3505 (Klink); *see also* Office of General Counsel Comments to Resubmitted Draft Final Audit Report – Ted Cruz for Senate (LRA # 976) at 6 (Jan. 10, 2017) ("In the context of a joint bank account, however, the Commission deems all of the funds in an account held jointly with a spouse to be the candidate's personal funds if the state law governing such accounts provides that both spouses owning the account have equal and complete access to its funds."); Office of General Counsel Comments on Bauer for President 2000, Proposed Audit Report (LRA #543), May 6, 2002, at 6 (discussing history of joint bank account exception to the one-half ownership presumption).

44 *See* Office of General Counsel Addendum to Legal Analysis to Proposed Interim Audit Report on Friends for Menor (LRA 732), Contributions from Personal Funds in Jointly Held Bank Accounts at 2 (July 2, 2008) (determining that 100% the funds in a joint account were the personal funds of the candidate under Hawaii state law, which stated that "[a]ny deposit account held in the names of two or more persons may be paid, on request and according to its terms, to any one or more of the persons"). In the instant matter, Massachusetts law appears to govern and it permits joint accounts where "any part or all of the deposits and interest represented by joint accounts may be withdrawn, assigned or transferred in whole or part by any of the individual parties." Mass. Gen. Laws Ann. Ch. 167D, § 3(a).

Separate from the issue of how the one-half ownership presumption should apply to joint bank accounts, is how the Commission treats funds that have been moved by a spouse into a joint bank account for the purpose of financing the candidate's election. In prior matters concerning such situations, this Office has recommended that the Commission conclude that the candidate's personal funds do not include funds that a spouse transferred from individually held assets into a joint account for the purpose of financing the candidate's own contributions to a campaign.[45] In MUR 6417 (Huffman), the Commission concluded that a transfer by the spouse from a personal account to a joint account shared with the candidate, which the candidate then used to make a contribution, resulted in an excessive contribution by the spouse, but the Commission split on the same issue in MUR 6860 (Terri Lynn Land), where there was information that the joint account may have historically maintained funds from both the candidate's and her spouse's incomes.[46] Instead, the Commission pursued separate allegations in MUR 6860 involving excessive contributions that took place when the candidate's spouse transferred funds from his personal account to the candidate's individually held account to cover contribution checks the candidate had drawn to her campaign that lacked sufficient funds.[47] More recently, in MUR 6848 (Demos), the Commission found reason to believe on the question of an excessive contribution

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[45] *See* First Gen. Counsel's Rpt. at 6-7, MUR 6417 (Huffman) (describing transfers from the spouse's individually held account to a joint account and then loaned on to the candidate's Committee); First Gen. Counsel's Rpt. at 9-11, MUR 6860 (Terry Lynn Land) (reasoning that joint account funds used for the campaign consisted primarily of the spouse's income and only a small portion was derived from the candidate's own income); *see also* Second Gen. Counsel's Rpt. at 12-13, MUR 6848 (Demos) (describing transfers from spouse's individually held account to a joint account just after the termination of the candidate's 2012 committee, and less than a month prior to the declaration of his candidacy in 2014, and reasoning that "the fact that the disbursements themselves originated from a joint bank account is not dispositive").

[46] *See* Factual & Legal Analysis ("F&LA") at 3-4, MUR 6417 (Huffman); Amended Cert. ¶ 1-3 (Aug. 10, 2011), MUR 6417; First Gen. Counsel's Rpt. at 9-11, MUR 6860 (Terry Lynn Land); Cert. ¶ 1 (June 17, 2016), MUR 6860.

[47] F&LA at 7-9, MUR 6860 (Terry Lynn Land) (finding that the transferred funds did not qualify as assets under 11 C.F.R. § 100.33(a), income under 11 C.F.R. § 100.33(b), or jointly owned assets under 11 C.F.R. § 100.33(c)).

because the candidate's spouse provided the vast majority of the funds in the joint account shortly before the Statement of Candidacy was filed and the majority of the deposits appeared on the then-existing record to have been made for the purpose of funding the candidate's campaign.[48] The Commission did not pursue the matter further at the probable cause stage.[49]

1. The First Three Loans were Funded by Mr. Trahan's Income Over Which Rep. Trahan Did Not Have Access or Control

The sources of the March 31, June 30, and August 23, 2018, loans do not appear to fall into any of the Commission's three defined categories of "personal funds" in 11 C.F.R. § 100.33: (1) assets controlled by the candidate prior to candidacy; (2) the candidate's income; or (3) the candidate's portion of joint assets.[50] These three loans, totaling $300,000, were each drawn on a joint bank account held by Rep. Trahan and her spouse using funds that had originated from Mr. Trahan's personal and business accounts for the purpose of funding Rep. Trahan's candidacy. In the first instance, the joint account had a balance of $55.13 on the day when Rep. Trahan wrote a check to the Committee for $50,000; Mr. Trahan wrote a check from a personal bank account one week later for $50,000 to cover the check to the Committee.[51] In the second instance, the

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48 *See* F&LA at 9*,* MUR 6848 (Demos) (July 25, 2018).

49 After the Commission found reason to believe that Demos's spouse made an excessive contribution by depositing $3 million into a joint account shortly before Demos became a candidate, it split 2-2 at the probable cause stage over the record's factual support for the premise that Demos had decided to become a candidate prior to the transfer and thus that the transfer occurred specifically for the purpose of funding Demos's campaign. *See id*.; Statement of Reasons, Comm'rs. Hunter & Petersen at 3-4, MUR 6848 (Demos); Statement of Reasons, Comm'r. Weintraub at 1-2, MUR 6848 (Demos).

50 11 C.F.R. § 100.33(a)-(c).

51 *See* Committee on Ethics Report at 6-7; OCE Referral ¶¶ 24-27. Mr. Trahan's check was deposited into the joint account two days afterwards and the Committee cashed the check from Rep. Trahan the same day as his deposit — as soon as there was a balance sufficient to cover the check. The Committee on Ethics Report notes that shortly before these transactions, Mr. Trahan deposited into this personal account $100,000 in income from Mass. Eagle Development, LLC, an S corporation of which Mr. Trahan is a one-third owner. Committee on Ethics Report at 6. While the Committee on Ethics seems to draw a connection between this particular income and the loan, Mr. Trahan's personal account received multiple deposits around this time increasing the balance of the account such that it was sufficient to cover the $50,000 loan. Therefore, while it is undisputed that Mr. Trahan received

joint checking account had a balance of $625.59 on the day when Rep. Trahan wrote a check to the Committee for $50,000; nine days later Mr. Trahan wrote a check to himself for $55,000 from DCT Development, Inc., an S corporation, that, according to Rep. Trahan's PFD, Mr. Trahan individually owned, and then deposited the check into the Trahans' joint account to cover the check to the Committee.[52] In the third instance, the joint account had a balance of $2,769.54 on the day when Mr. Trahan initiated a transfer from his personal bank account in the amount of $200,000; the next day Rep. Trahan wrote a check to the Committee for the same amount.[53] Rep. Trahan asserts that these funds were derived "from income [Mr. Trahan] had earned," a statement that is supported by the bank records discussed above.[54] In sum, each of the three loans were made with income from Mr. Trahan that he moved into the joint account for the

income that was used to make the loan, the link to income from any particular entity appears to be somewhat ambiguous to us based on the information that is publicly available. *Id*. at 7, Appendix D, Ex. 5.

[52] *See* Committee on Ethics Report at 8-9; OCE Referral ¶¶ 28-31; Lori Trahan, Amended 2018 PFD at 1 (Nov. 16, 2018). The involvement of a corporate account in this chain of events raises the question as to whether this transaction constituted a prohibited corporate contribution under 52 U.S.C. § 30118. This allegation was not specifically raised by the Complaints, nor addressed by Respondents. Based on these circumstances, and given that the funds appeared to have been Mr. Trahan's "income," we make no recommendations regarding such potential violations. Committee on Ethics Report, Appendix C, ¶ 2(a)-(c) (Rep. Trahan responding to question from the Committee on Ethics regarding the status of the $55,000 disbursement that Mr. Trahan received from DCT as income rather than returned capital); *see* Statement of Reasons, Comm'rs. Petersen, Bauerly, Hunter, and McGahn, MUR 6102 (Oliver) at 5-6 (explaining the Commission's dismissal of allegations of a prohibited corporate contribution, where the candidate received distributions from an S Corporation of which she was the sole shareholder and member and where she attested under oath that the distribution was "proper and in accordance with the [corporation's] Bylaws"); *cf.* F&LA , MUR 3191 (Friends of Bill Zeliff) (finding reason to believe that the candidate used corporate funds to make loans to his committee where the candidate's draw on equity of a S corporation in which he was a shareholder had the effect of a loan rather than income).

[53] *See* Committee on Ethics Report at 9-10; OCE Referral ¶¶ 32-37. On July 31, Mr. Trahan's account contained less than $5,000 when he deposited checks from Middlesex Land Holdings, LLC, and Poplar Hill Development, LLC, totaling $380,900. Both entities are organized as partnerships, which Mr. Trahan co-owns (with outside business partners) and the funds from these entities were considered partnership income. Committee on Ethics Report at 8-9.

[54] Setting the Record Straight; *see supra* notes 51-53.

apparent purpose of funding the loans that the Committee then reported as having been made by Rep. Trahan using her personal funds.[55]

Respondents argue that, pursuant to language in the Trahans' prenuptial agreement, all assets owned by Mr. Trahan, as well as his income, were "marital property" and thus, should be treated as "personal funds of the candidate."[56] Respondents assert that the prenuptial agreement provides that "[e]ach party shall have equal rights in regard to the management of and disposition of all marital property" and defines "marital property" to mean: (1) "All property purchased with proceeds of" a fund "for the maintenance of their household and care of their children," to which each spouse "shall make equal periodic contributions"; and (2) "All wages, salary, and income of each party earned or received during marriage, together with property purchased with these funds."[57] Given this text and the cited authorities supporting their claim that Massachusetts law generally recognizes and enforces prenuptial agreements, Respondents contend that Rep. Trahan therefore had "an equitable interest in and a legal right to access her husband's income."[58]

While Respondents' argument that Rep. Trahan had an equitable interest in Mr. Trahan's income earned following their 2008 marriage seems well founded, it is less clear whether Rep. Trahan also had the requisite legal right to access Mr. Trahan's income such that this income constitutes Rep. Trahan's "personal funds" as defined by the Act and Commission regulations.[59]

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55 *Supra* pages 7-9.

56 Trahan and Committee Supp. Resp. at 2-6.

57 Committee on Ethics Report, Appendix D, Ex. 1 (Trahan's Prenuptial Agreement), ¶ 11; Trahan and Committee Supp. Resp. at 4.

58 Trahan and Committee Supp. Resp. at 4-5; *see also id*., Ex. A (citing *Osborne v. Osborne*, 384 Mass. 591 (1981) for the premise that "Massachusetts has a strong policy in favor of enforcing prenuptial agreements."); M.G.L.A. 209 §§ 25, 26.

59 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33.

Under Massachusetts law, the Trahans' prenuptial agreement appears to give broad property rights to Rep. Trahan over marital property, including Mr. Trahan's income earned during the marriage, but the Act and Commission regulations do not treat spousal income in the same fashion. Regarding income received during the election cycle, the Act and regulations specify that the candidate's income is considered to be personal funds but include no analogous provision deeming spousal income received during the election cycle to be the candidate's personal funds.[60]

The Trahan Respondents appear to consider Mr. Trahan's income, regardless of whether it is past or future income, to be a present asset of Rep. Trahan, on the basis that it is marital property under the prenuptial agreement.[61] Respondents' conceptualization of future income as personal funds of a candidate by virtue of being an asset under the candidate's control seems to be in tension with the Act and Commission regulations. While "personal funds" includes assets that the candidate had legal title or an equitable interest in and had legal right of access to or control over, that definition also appears to require that the access or control by the candidate exist "at the time the individual became a candidate."[62] Rep. Trahan does not appear to have had access to or control over either Mr. Trahan's future income or even the underlying entities that paid the income — which were titled in his name (and presumably those of his partners) but not hers — when Rep. Trahan became a candidate.[63] Even crediting Respondents' contentions

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[60] *See* 11 C.F.R. § 100.33(b) (defining "income" as "[i]ncome received during the current election cycle, *of the candidate* . . ." (emphasis added)).

[61] Trahan and Committee Supp. Resp. at 4.

[62] 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33.

[63] To the contrary, here there is specific information showing that Rep. Trahan lacked a legal right to access or control over Mr. Trahan's personal and business accounts. The checks from those accounts only had Mr. Trahan's name on them and, indeed, the fact that Mr. Trahan wrote checks to himself from those accounts and then deposited the funds into the joint account, rather than Rep. Trahan herself accessing the accounts and directly obtaining the funds, is consistent with other information in the record indicating that she would not have been

regarding the breadth of the rights granted under the prenuptial agreement, it appears that (absent some type of legal proceeding) Rep. Trahan could only access the accounts and entities in Mr. Trahan's name through Mr. Trahan's actions.

A scenario provided in the legislative history and relied upon in *Buckley v. Valeo*,[64] that "[i]f . . . the candidate did not have access to or control over such funds at the time he became a candidate," then "the immediate family member would not be permitted to grant access or control to the candidate . . . if the immediate family member intends that such amounts are to be used in the campaign of the candidate,"[65] emphasizes the timing and the logistics of the candidate's control, or lack thereof, over the funds. It also precisely describes the situation at hand whereby Mr. Trahan provided Rep. Trahan with access to funds in order to finance her campaign from his income and held in accounts controlled by him, that she could not have accessed unilaterally.[66] Consistent with this notion of contemporaneously existing control, in considering a similar set of matters, MURs 5334, 5341, & 5524 (O'Grady), the Commission explained that even if funds constitute "marital property" under the applicable state law, this does not necessarily mean that the candidate would "have any *vested* right to such property, if it

permitted to take control of the accounts. Rep. Trahan reported in her PFDs to Congress that Mr. Trahan's personal accounts and DCT Development, Inc. were owned by her husband alone and were not a joint asset. *See* F&LA at 3, 6, MUR 6417 (Huffman) (recognizing that a spouse's account, "which was solely in her name" and over which the candidate "had no independent access" did not constitute the candidate's personal funds); *see also* Mass. Gen. Laws Ann. Ch. 167D, § 4 (stating that in the case of personal accounts "[t]he deposits, interest and other credits represented by the account may be withdrawn, assigned or transferred in whole or in part by the account holder only" and allowing for an exception only where the accountholder has filed a declaration meeting statutory requirements with the depository allowing another to act "on behalf of the account holder").

[64] *See Buckley v. Valeo*, 424 U.S 1, 51 n.57 (1976) (quoting S. Conf. Rep. No. 93-1237, p. 58 (1974), which describes the "intent of the conferees," in upholding spousal contribution limits).

[65] *FECA Amendments of 1974, Joint Explanatory Statement of the Committee of Conference*, Sen. Conf. Rpt. 93-1237 (Oct. 7, 1974), 1974 U.S.C.C.A.N. 5618, 5627.

[66] *Id.*

were titled in her husband's name, until the marriage is legally dissolved."[67] As the Commission noted, even if this interest satisfied the equitable interest prong in the definition of personal funds, it did not demonstrate the required "immediate legal right of access to or control over those funds."[68]

MUR 149 (Fonda), the lead precedent cited by Respondents, involved a facially similar set of facts whereby a spouse moved funds from a bank account maintained solely in her name and advances she secured from her employers to her spouse's committee.[69] The Commission determined that there was no reason to believe in MUR 149 based, among other things, on a review of California's community property law which, at the time, stated that either spouse has "management and control of the community personal property, with the absolute power of disposition, . . . as he has of his separate estate."[70] By contrast, Massachusetts, the state at issue here, is not a community property state and appears to have no similar provision in its laws. Indeed, the Commission included a footnote in MUR 149 specifically to note that "[b]ecause this matter appears to be tied to applicable state law, a different result would very likely apply in the 42 states which do not have communal property laws."[71]

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67 F&LA at 15 n.14, MURs 5334, 5341, & 5524 (O'Grady).

68 *Id.* at 15 n.15.

69 *See* Trahan and Committee Supp. Resp. at 3.

70 *See* Interim Conciliation Report at 3, MUR 149 (Fonda, *et al.*) (citing Cal. Civ. Code § 5125 (1977)).

71 *Id.* at 5 n.2, MUR 149 (Fonda, *et al.*). Nor is Respondents' reliance on MUR 1257 (Dole) persuasive. *See* Trahan and Committee Supp. Resp. at 3-4. In MUR 1257, Dole's committee received a loan derived from a bank loan secured by a certificate of deposit in Dole's spouse's name that was received as a death benefit from her father's pension plan. The matter turned on the candidate's rights to the certificate of deposit under Kansas law, which was in a state of flux as the matter was reviewed by the Commission. After the Commission's original finding of reason to believe, the Office of General Counsel recommended that the Commission "take no further action in this matter due to the unique nature of Kansas law at the time of the transaction in issue in this matter." General Counsel's Report, MUR 1257 (Oct. 26, 1981). The Commission thereafter voted 5-0 to take no further action and close the file. Cert., MUR 1257 (Nov. 13, 1981).

Finally, the Trahan Respondents argue that the funds at issue should be considered Rep. Trahan's personal funds, because, regardless of the source of the funds, the checks to the Committee were drawn on the Trahans' joint bank account.[72] But the Commission's precedents in similar circumstances indicates that the movement of funds through a joint account is not sufficient to convert funds of the spouse into personal funds of the candidate.[73] For each of the three loans, Mr. Trahan deposited the necessary funds into the joint account shortly before or after Rep. Trahan wrote a check to the Committee from the joint account and, in each case, the joint account had insufficient funds and thus could not cover the loan absent the timely deposit from Mr. Trahan's individually- held and business accounts. Further, both the deposits into and the contributions made from the joint account do not appear to be ordinary transactions made using the account.[74] Rep. Trahan's statement in *Medium* appears to acknowledge that her spouse's deposits were made specifically for the purpose of funding contributions, rather than as part of an ordinary pattern of deposits to fund family expenses.[75]

Therefore, due to the apparent lack of legal right of access to Mr. Trahan's income by Rep. Trahan, as required by the Act and Commission regulations, the funds that Mr. Trahan deposited into the joint account, which were then used to finance the reported loans, appear to constitute contributions by Mr. Trahan to the Committee. Accordingly, we recommend that the

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[72] *See* Trahan and Committee Supp. Resp. at 6-7. The Trahan Respondents' Supplemental Response also argues that under Massachusetts law both parties have the right to withdraw the full amount of a joint account, the full amount should be considered her personal funds. *Id*. at 7 (citing Gen Counsel's Rpt. at 23, MUR 3505/3560/3569 (Klink)). Because, as explained herein, we conclude that the funds which were otherwise not personal funds do not become so merely by being deposited in a joint account during the campaign, it is unnecessary for us to make any recommendation as to the status of a joint account generally under Massachusetts law.

[73] *See* F&LA at 3, 6, MUR 6417 (Huffman) (concluding that a transfer from the spouse's individually held account to a joint account shared with the candidate and then passed on to the committee was an excessive contribution).

[74] *See supra* Figure 2 at 8.

[75] Setting the Record Straight.

Commission find reason to believe that David Trahan made excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A), totaling $300,000 in connection with the first three loans, and that Lori Trahan and the Committee knowingly accepted the excessive contributions in violation of 52 U.S.C. § 30116(f).[76]

2. The Fourth Loan was Funded with a Home Equity Line of Credit and Repaid by Mr. Trahan Using a Personal Account

In addition to the three loans discussed above, on September 4, 2018, Rep. Trahan loaned the campaign $71,000 using funds obtained through a home equity line of credit. It appears that Mr. Trahan also made an excessive contribution in connection with this loan.

The line of credit was held by Rep. Trahan and Mr. Trahan, jointly, and it was secured by $950,000 in real estate jointly owned by the Trahans.[77] The instrument of conveyance did not indicate a specific share attributed to Rep. Trahan or Mr. Trahan. Thus, under the one-half presumption set forth in the Commission's regulation, Rep. Trahan was entitled to use a one-half portion of the jointly owned asset, or $475,000.[78] Therefore, it appears that no contributions resulted from the initial loan to the Committee because the amount of Rep. Trahan's loan was $71,000, far below her share of the jointly-owned asset.[79]

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[76] Mr. Trahan separately made a maximum $2,700 contribution to the Committee for the primary election and an additional $2,700 for the general election, meaning that the entirety of the loans was an excessive contribution in violation of the Act and Commission regulations. *See* LTCC, 2017 October Quarterly Report at 27, 32 (Oct. 15, 2017).

[77] LTCC, Second Amended 2018 October Quarterly Report at 160 (Dec. 15, 2018); *see also* Trahan and Committee Resp. at 2 (stating that Trahan and her spouse jointly own two homes valued at $1.4 million and $1.5 million, that they have two home equity lines of credit collectively worth $700,000, and that the only mortgage on the homes is a $100,000 mortgage on the house valued at $1.4 million).

[78] *See* 11 C.F.R. §§ 100.33 (c)(2), 100.52 (b)(4).

[79] A spouse is not considered a contributor to the candidate's 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. *See* 11 C.F.R. § 100.52 (b)(4); F&LA at 8-9, MURs 4830/4845 (Udall) (finding no reason to believe where loans were "based entirely on [the candidate's] half of the assets jointly controlled with" his spouse). While Respondents' arguments regarding the candidate's claim of marital property on the basis of the prenuptial agreement could indicate that she could borrow against more than half of the value of the house and nonetheless consider the loan

However, on October 11, 2018, approximately one month after the reported date of the loan and just nine days after the Committee deposited Rep. Trahan's check, Mr. Trahan repaid the line of credit with a check from his personal bank account using funds from his income.[80] The Committee did not issue a check to Rep. Trahan to pay back the loan to the Committee until November 20, 2018, which she deposited on December 3, 2018. From the time Mr. Trahan paid back the line of credit, and for over a month until the Committee repaid Rep. Trahan, the bank did not remain the creditor because it was owed no funds. In view of the actual circumstances, it appears that Mr. Trahan became the creditor who provided a loan and thus made the contribution.[81]

Alternatively, Mr. Trahan's payment of Rep. Trahan's debt constituted a third-party payment of a candidate's expense. Commission regulations provide that a third party's payment of a candidate's personal expense shall be a contribution "unless the payment would have been made irrespective of the candidacy."[82] Here, Rep. Trahan's draw on the home equity line of credit was for the purpose of her candidacy, thus paying it back inextricably linked the payment of the expense to Rep. Trahan's candidacy. In either case, Mr. Trahan's act of paying back the

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personal funds, because we conclude that these are personal funds even under the potentially more stringent 50% rule, it is unnecessary to make recommendations on that issue.

[80] OCE Referral ¶ 42, Exs. 12, 14-15.

[81] While loans from home equity lines of credit are not considered contributions under 11 C.F.R. § 100.83(a), once Mr. Trahan assumed the loan, it became a contribution by him. *See* 11 C.F.R. § 100.52(a), (b) (providing that a loan not issued in accordance with the provisions of 11 C.F.R. § 100.83 is considered a contribution at the time that it is made, remains a contribution to the extent that it remains unpaid, and shall not exceed the contribution limits when aggregated with that donor's other contributions); *see also* 11 C.F.R. § 113.1(g)(6) (prohibiting third party payments of candidate expenses).

[82] 11 C.F.R. § 113.1(g)(6); *see* Explanation and Justification, Third Party Payments of Personal Use Expenses, 60 Fed. Reg. 7,862, 7,871 (Feb. 9, 1995) ("If a third party pays for the candidate's personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy.").

draw on the line of credit, which the candidate used to fund her campaign, constituted a contribution to Rep. Trahan and the Committee.[83]

Therefore, we recommend that the Commission find reason to believe that David Trahan made an excessive contribution in violation of 52 U.S.C. § 30116(a)(1)(A) in connection with the fourth loan in the amount of $71,000, and that Lori Trahan and the Committee knowingly accepted the excessive contribution in violation of 52 U.S.C. § 30116(f).

B. The Commission Should Find No Reason to Believe that Concire, LLC Made an Excessive Contribution to Lori Trahan or the Committee

The MUR 7585 Complaint, which pre-dated the public release of the OCE Referral, alleges that Concire, a company owned by Rep. Trahan, may have been the true source of the funds used to finance the loans.[84] Based on a review of Rep. Trahan's PFDs filed with Congress, the Complaint surmised that Rep. Trahan used funds from Concire.[85] However, the available information demonstrates that this theory is contradicted by the bank records which trace the flow of funds from personal and business accounts controlled by Mr. Trahan to the joint account and then to the Committee. Accordingly, we recommend that the Commission find no reason to believe that Concire violated 52 U.S.C. § 30116(a)(1)(A) by making excessive contributions and close the file as to Concire.

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[83] The Committee on Ethics reached the opposite conclusion, stating that "[t]he Committee is not aware of any regulations prohibiting Mr. Trahan's repayment from his personal account." Committee on Ethics Report at 10, n.101.

[84] MUR 7585 Compl. at 4-5.

[85] *Id.*

C. Reporting Violations

1. With Respect to the First Three Loans, the Commission Should Find Reason to Believe that the Committee Misreported the Source and Dates of the Loans and, Relatedly, that it Misreported Total Cash on Hand

As described above, it appears that the Committee failed to accurately report the source of the loans, by disclosing the loans as being made with the "personal funds of the candidate," whereas the true source appears to have been Mr. Trahan. Moreover, not only were the loans apparently inaccurately reported in this respect, but bank records suggest that the Committee misreported the date on which two of the loans/contributions were received in order to inflate the amount of the Committee's cash on hand at the end of the relevant FEC reporting periods.[86]

The Act requires committee treasurers to file reports of receipts and disbursements.[87] These reports must include, *inter alia*, the identification of each person who makes a contribution or contributions (including a loan or loans) that have an aggregate amount or value in excess of $200 during an election cycle, in the case of an authorized committee of a federal candidate, together with the date and amount of any such contribution.[88]

Commission regulations provide that a contribution "shall be considered to be made when the contributor relinquishes control over the contribution" and that "[a] contributor shall be considered to relinquish control over the contribution when it is delivered by the contributor to the candidate, to the political committee, or to an agent of the political committee."[89] Every person who receives a contribution for an authorized committee shall, no later than ten days after

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86 OCE Referral ¶¶ 27, 31 (stating that Rep. Trahan and the Committee "may have intentionally misreported the date on which" the March 31, 2018, and June 30, 2018 loans were obtained); Committee on Ethics Report at 20.

87 52 U.S.C. § 30104(a).

88 *Id*. § 30104(b)(3)(A); *see id*. § 30101(8)(A)(i).

89 11 C.F.R. § 110.1(b)(6).

receipt, forward such contribution to the treasurer.[90] All receipts by a political committee shall be deposited into a designated campaign depository; the treasurer shall be responsible for making such deposits, and all deposits shall be made within ten days of the treasurer's receipt.[91] The date of receipt to be reported "shall be the date such person obtains possession of the contribution."[92]

Political committees shall disclose the amount of cash on hand at the beginning of the reporting period, including: currency; balance on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks owned by the committee; certificates of deposit, treasury bills and any other committee investments valued at cost.[93]

According to bank records concerning the activities at issue here, on two occasions involving the loans reported as being received on March 31 and June 30, 2018, Rep. Trahan wrote a check from the joint account to the Committee before Mr. Trahan had deposited funds to cover the checks.[94] As such, when Rep. Trahan wrote the checks, there were insufficient funds in the joint account to cover the amounts the checks indicated. In apparent recognition of this fact, the Committee did not cash the first check for nine days, until the same day Mr. Trahan deposited sufficient funds into the joint account.[95] Similarly, the Committee did not cash the

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90 52 U.S.C. § 30102(b); 11 C.F.R. § 102.8(a).

91 11 C.F.R. § 103.3(a); *see* 52 U.S.C. § 30102(h)(1); Advisory Opinion 1992-29 at 2 (Holtzman) ("[P]revious advisory opinions have recognized that committees will have agents whose receipt of contributions is considered the equivalent of the treasurer's receipt and begins the running of the 10 day deposit period.").

92 11 C.F.R. § 102.8(a).

93 *Id.* § 104.3(a)(1); *see* 52 U.S.C. § 30104(b)(1).

94 OCE Referral ¶¶ 24-32.

95 *Id.* ¶¶ 24-27.

second check for ten days, until the day after Mr. Trahan deposited sufficient funds into the joint account.[96]

However, the loans were reported on the dates the checks were written. In both cases, this resulted in the contributions having been reported as received on the last day of an FEC reporting period and thus were included in the Committee's disclosed cash on hand for that reporting period even though the Committee had not yet received the actual funds.

In order to determine whether the reported dates of the loans — and thereby contributions — are correct, the question is when the contributions are considered to have been "received." Commission regulations provide that contributions are made when the contributor "relinquishes control" of the contribution and shall be reported as received when the Committee (in this case via the candidate) takes "possession of the contribution."[97] Unlike the ordinary situation in which a person's conveyance of a check to a committee treasurer effectuates the requisite relinquishment, making the date of conveyance the date of receipt, here, the candidate, and thereby the Committee, appear to have had knowledge that there were insufficient funds in the account to cover the check and thus that the funds were not yet actually relinquished. This knowledge is demonstrated by the apparent decision to hold the checks until after sufficient funds were deposited by Mr. Trahan. As a result, while the Committee had received a check that ordinarily it could properly report as having been received, here Committee personnel had actual

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96 *Id.* ¶¶ 28-31.

97 *See* 11 C.F.R. §§ 110.1(b)(6), 102.8(a); *see also* 11 C.F.R. § 104.3(a)(4)(i) (requiring that political committees report the "date of receipt and amount of any such contributions"), 104.3(a)(4)(iv) (requiring that political committees report the "date such loan was made and the amount or value of such loan"); 2021 Campaign Guide: Congressional Candidates and Committees, FEC at 25; ("The date of receipt is the date the campaign (or a person acting on the campaign's behalf) actually receives the contribution. . . . This is the date used by the campaign for reporting purposes . . ."). *Id*. at 26 ("While all contributions must be deposited within 10 days, the date of deposit is not used for reporting or contribution limit purposes.").

knowledge that funds indicated by the check had not been "relinquished." Accordingly, reporting the funds constituting the contributions as received on the dates the checks were received, with knowledge that the funds were not being relinquished at that time, appears to constitute misreporting under the Act and Commission regulations.[98]

The MUR 7588 Complaint alleges that this misreporting of the dates when the loans were received, and the Committee's corresponding inaccurate reporting of its cash on hand that resulted, may have been done knowingly and willfully.[99] We do not recommend that the Commission pursue these allegations on a knowing and willful basis. While an investigation may allow us to ascertain further details concerning the possible knowing and willful nature of the reporting, we note that committees normally may permissibly report receipt of undeposited checks and that the potential knowing and willful conduct, if any, appears to have been limited to the reporting of the dates of these two loans. Considering that there is already a record of these transactions on the public record in connection with the OCE investigation, we recommend proceeding directly into pre-probable cause conciliation with an agreement that will appropriately address the Respondents' conduct.

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[98] The date that the contributor "relinquish[ed] control over the contribution" was some later date, either the date when sufficient funds were placed into the account, or, if not the same date, when the Committee was informed that sufficient funds were in the account and that the Committee could therefore deposit the check.

[99] MUR 7588 Supp. Compl. at 6-7; *see also* 52 U.S.C. § 30109(a)(5)(B), (d). A violation is knowing and willful if the acts were committed with "full knowledge of all the relevant facts and a recognition that the action is prohibited by law." 122 Cong. Rec. 12,197, 12,199 (May 3, 1976) (statement of Rep. Hays); *see, e.g.*, F&LA at 3-4, MUR 6920 (Now or Never PAC, et al.) (applying "knowing and willful" standard); F&LA at 17-18, MUR 6766 (Jesse Jackson, Jr., et al.) (same).

Accordingly, we recommend that the Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(b) by misreporting the source of the loans, the dates on which the loans were received, and the Committee's cash on hand.

2. With Respect to the Fourth Loan, the Commission Should Find Reason to Believe that the Committee Failed to Timely Report that the Source was a Home Equity Line of Credit

A candidate's principal campaign committee must report all loans derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate.[100] The report must identify the person who makes a loan to the committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loans.[101] Commission regulations provide that a committee must disclose information about loans from the candidate to the campaign on Schedules C and C-1.[102] If the candidate finances a loan to the campaign with an underlying loan or line of credit, section 104.3(d)(4) of the Commission's regulations requires the committee to disclose on Schedule C-1, among other things: (1) date, amount, and interest rate of the loan or line of credit; (2) name and address of the lending institution; and (3) types and value of collateral or other sources of repayment that secured the loan.[103]

The Committee failed to timely disclose that a home equity line of credit obtained by the candidate was the source of the $71,000 candidate loan reportedly received on September 4, 2018 (though not deposited until October 2, 2018). On its initial 2018 October Quarterly Report, the Committee disclosed the loan as a "Personal loan from Candidate" on Schedule A without

100 11 C.F.R. § 100.83(e).

101 *See* 52 U.S.C. § 30104(b)(3)(E); 11 C.F.R. § 104.3(a)(4)(iv).

102 11 C.F.R. § 104.3(d).

103 *Id.* § 104.3(d)(4).

any loan source other than Rep. Trahan identified on Schedule C (it stated that the loan was unsecured, had no due date, and was subject to a 0.00% interest rate).[104] However, after the election, on December 15, 2018, the Committee filed an amendment which included a Schedule C-1 to disclose that Rep. Trahan had obtained a loan from Washington Savings Bank secured by real estate valued at $950,000 with a 5.25% interest rate, due October 20, 2030, and with no other parties secondarily liable.[105]

The Committee failed to timely disclose information about the loan, and the amendment it filed incorrectly, reported that no other party was secondarily liable. The bank records attached to the OCE Referral indicate that the revolving credit agreement was signed by both Mr. Trahan and Rep. Trahan, with Mr. Trahan specifically listed as a "borrower."[106] Indeed, as discussed above, Mr. Trahan repaid the loan himself using his personal funds.[107] The Committee's reports to the Commission, however, do not further disclose Mr. Trahan's repayment of the debts and thereby his assumption as creditor of the loan.[108]

The Committee acknowledges that it improperly reported the source of the fourth loan, but contends that it "did not understand that it also had to file the Schedule C-1 disclosing the bank as the source of the loan and the loan terms," and asserts that "the Committee's new law firm identified the omission" and the Committee immediately filed the amendments properly

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104 LTCC, 2018 October Quarterly Report at 100, 155 (Oct. 15, 2018).

105 LTCC, Second Amended 2018 October Quarterly Report at 102, 159, 160 (Dec. 15, 2018).

106 *Id*. at 160; OCE Referral, Ex. 11.

107 *Supra* page 9.

108 *See supra* pages 25-26 (discussing Mr. Trahan's repayment of the loan).

disclosing the loan.[109] As a result, the Committee argues that the report was "substantially correct" and requests that the Commission dismiss the violation and not assess a civil penalty.[110]

In past matters, the Commission has decided not to take further action where "reporting was substantially correct in that its 'overall reporting of the loans otherwise accurately disclosed the precise flow of money' from the bank to the campaign."[111] In the present matter, by contrast, the flow of money, from Washington Savings Bank to Rep. Trahan and then to the Committee, was not disclosed until after the election. Moreover, even the most recent amendment to the report incorrectly states that no other party is secondarily liable and makes no disclosure of the payment of the debt by Mr. Trahan or his assumption as creditor of the loan.[112]

Accordingly, we recommend that the Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4) by failing to timely report the source of the $71,000 loan.

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109 Trahan and Committee Resp. at 9.

110 *Id*. at 8-10.

111 *See* F&LA at 8, MURs 7001, 7002, 7003, 7009, and 7455 (Ted Cruz for Senate) (citing Second General Counsel's Rpt. at 11, MUR 5421 (John Kerry for President); Cert., MUR 5421 (Dec. 12, 2005) (following OGC's recommendation to take no further action with regard to the Kerry for President committee).

112 *See* F&LA at 8-9, MURs 7001, 7002, 7003, 7009, and 7455 (Ted Cruz for Senate) (rejecting Cruz's claim that reports were substantially correct where, among other issues, the committee had failed to amend reports). Respondents' reliance on MUR 5198 (Cantwell) and MUR 6368 (Fincher) is unpersuasive. In MUR 5198 (Cantwell) the Commission did not pursue a civil penalty relating to similar reporting violations citing among other factors the no reason to believe finding regarding the "core allegations . . . that the loans were prohibited corporate contributions." First Gen. Counsel's Rpt. at 15, MUR 5198 (Cantwell); Cert., MUR 5198 (Jan. 13, 2004). In MUR 6368 (Fincher), the Commission was equally divided over whether to seek a civil penalty and closed the file. Three Commissioners found the matter analogous to MUR 5198 (Cantwell) and similarly voted not to pursue a civil penalty; the other three found the matters distinct and sought to pursue a civil penalty through pre-probable cause conciliation. Here, we recommend finding reason to believe on the "core allegations" that the loans were excessive contributions. For at least that reason, MURs 5198 and 6368 are distinguishable.

D. The Commission Should Find Reason to Believe that the Committee Failed to Timely Deposit the Check Reflecting the Fourth Loan

Commission regulations provide that all receipts by a political committee shall be deposited into a designated campaign depository; the treasurer shall be responsible for making such deposits, and all deposits shall be made within ten days of the treasurer's receipt.[113] Rep. Trahan's check for the $71,000 loan drawn from the home equity line of credit was dated, and reported as received, on September 4, 2018. Bank records indicated that the check was not deposited until October 2, 2018, well beyond the ten-day period within which the treasurer is required to deposit it.[114] Accordingly, we recommend that the Commission find reason to believe that the Committee violated 52 U.SC. § 30102(h) and 11 C.F.R. § 103.3(a) by failing to timely deposit receipts.

[113] 11 C.F.R. § 103.3(a); *see* 52 U.S.C. § 30102(h)(1).

[114] OCE Referral, Ex. 11.

V. RECOMMENDATIONS

MURs 7585 and 7588

1. Find reason to believe that Lori Trahan and Lori Trahan for Congress Committee and Maria Cunha in her official capacity as treasurer violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions in the form of loans made by David Trahan;

2. Find reason to believe that Lori Trahan for Congress Committee and Maria Cunha in her official capacity as treasurer violated 52 U.S.C. § 30104(b) by inaccurately reporting the dates loans were received and the Committee's cash on hand on its 2018 April and July Quarterly Reports;

3. Find reason to believe that Lori Trahan for Congress Committee and Maria Cunha in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(3)(E) by failing to report the source of the loans reported to have been made on March 31, June 30, and August 23, 2018;

4. Find reason to believe that Lori Trahan for Congress Committee and Maria Cunha in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4) by failing to timely report the source of the loan reported on September 4, 2018;

5. Find reason to believe that Lori Trahan for Congress Committee and Maria Cunha in her official capacity as treasurer, violated 52 U.SC. § 30102(h) and 11 C.F.R. § 103.3(a) by failing to timely deposit receipts;

6. Approve the Factual and Legal Analysis;

7. Enter into Conciliation with Lori Trahan, and Lori Trahan for Congress Committee and Maria Cunha in her official capacity as treasurer prior to a finding of probable cause to believe;

8. Approve the attached conciliation agreement;

9. Approve the appropriate letter.

MUR 7585

1. Find no reason to believe that Concire, LLC violated 52 U.S.C. § 30116(a)(1)(A) by making excessive contributions in the form of loans to the Lori Trahan for Congress Committee;

2. Approve the Factual and Legal Analysis;

3. Approve the appropriate letter; and

4. Close the file as to Concire, LLC.

MUR 7588

1. Find reason to believe that David Trahan violated 52 U.S.C. § 30116(a)(1)(A) by making excessive contributions in the form of loans to Lori Trahan and Lori Trahan for Congress Committee and Maria Cunha in her official capacity as treasurer;

2. Approve the Factual and Legal Analysis;

3. Enter into Conciliation with David Trahan prior to a finding of probable cause to believe;

4. Approve the attached conciliation agreement;

5. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

November 17, 2022
Date

Charles Kitcher
Charles Kitcher
Associate General Counsel
for Enforcement

Ana J. Peña-Wallace
Ana J. Peña-Wallace
Assistant General Counsel

Nicholas Mueller /by APW
Nicholas O. Mueller
Attorney

Attachments:
1- Factual and Legal Analysis for Lori Trahan and Lori Trahan for Congress Committee
2- Factual and Legal Analysis for Concire, LLC
3- Factual and Legal Analysis for David Trahan

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Lori Trahan **MURs** 7585, 7588
Lori Trahan for Congress Committee
and Maria Cunha in her official capacity as treasurer

I. INTRODUCTION

These matters arise from Complaints regarding four loans reportedly made by Representative Lori Trahan, a 2018 congressional candidate, to her authorized committee, Lori Trahan for Congress Committee and Maria Cunha in her official capacity as treasurer (the "Committee"), totaling $371,000. The Committee reported that Rep. Trahan made three of the loans using her "personal funds" and made the fourth loan using funds that she obtained from a home equity line of credit.

Regarding the first three loans, the Complaints allege that Rep. Trahan did not have sufficient personal funds to make the loans. While the MUR 7585 Complaint alleged that Concire, LLC, a company owned by Rep. Trahan, was the source of the funds used to make the loans, in a Supplemental Complaint, filed after new information was released by the Office of Congressional Ethics ("OCE"), the MUR 7588 Complainants specifically allege that Rep. Trahan received the funds to make the loans from her spouse, David Trahan, resulting in an excessive contribution by Mr. Trahan to Rep. Trahan and the Committee, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Supplemental Complaint further alleges that the Committee failed to report that Mr. Trahan was the true source of the loans. Additionally, the Supplemental Complaint alleges that the Committee knowingly and willfully misreported the dates on which two of the loans were received. Regarding the fourth

loan, the Complaints allege that the Committee failed to timely disclose that the true source was a home equity line of credit.

Respondents deny that Mr. Trahan made, or Rep. Trahan and the Committee knowingly accepted, excessive contributions in connection with the first three loans. They argue that the funds used to make the loans were Rep. Trahan's "personal funds" as defined by the Act and Commission regulations, and thus that Mr. Trahan did not make a contribution in connection with the loans. Respondents assert that Rep. Trahan used a joint bank account shared with her spouse and that she was entitled to the funds because under Massachusetts law and pursuant to a prenuptial agreement, the Trahans both had equal rights in regard to the management and disposition of all marital property, including Mr. Trahan's income earned during the campaign. The Committee disputes that it misreported the dates of two of the loans, stating that the loans were correctly reported at the time they were received. With respect to the fourth loan, the Committee acknowledges that it failed to timely report that Rep. Trahan used funds obtained from a home equity line of credit but argues that the Commission should take no action because the Committee's initial disclosures, which reported that Rep. Trahan used her personal funds, were substantially correct and any violation was merely technical.

As set forth below, it appears that Mr. Trahan's income was the true source of the funds used to finance the first three loans and, therefore in accordance with relevant Commission precedent, he made excessive contributions to the Committee. According to bank records obtained by OCE, Mr. Trahan transferred income he received during the period of Rep. Trahan's campaign to a joint bank account shared with Rep. Trahan shortly before or after Rep. Trahan wrote checks from the joint account to the Committee. These funds originated from Mr. Trahan's personal or business accounts to which Rep. Trahan had no access. Without

Mr. Trahan's deposits, the joint account did not have sufficient funds to cover the checks written to make the loans.

Mr. Trahan also appears to have made an excessive contribution in connection with the fourth loan. Though Rep. Trahan initially made that loan using her personal funds permissibly obtained through a home equity line of credit, Mr. Trahan subsequently repaid the bank with funds from his personal account before the Committee repaid Rep. Trahan. According to bank records, it also appears that the Committee and its treasurer failed to deposit the check for the fourth loan within the ten days provided by Commission regulations.

The available information indicates that the Committee misreported the source of these loans as coming from Rep. Trahan's personal funds. Further, the Committee's reporting of the fourth loan was not substantially correct because, until after the election, the Committee's reports reflected that the funds for that loan were derived from Rep. Trahan's personal funds without any indication that she had obtained the funds through a home equity line of credit; to date, the Committee's reports continue to misstate other aspects of that loan. The Committee also appears to have misreported the date on which two of the loans were received to coincide with the last day of the respective reporting periods rather than the date the funds were actually relinquished to the Committee.

Accordingly, the Commission finds reason to believe that Lori Trahan and the Committee violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions in the form of loans from David Trahan. The Commission also finds reason to believe the Committee violated 52 U.S.C. § 30104(b) by inaccurately reporting the dates of loans to the Committee and the Committee's cash on hand, and violated 52 U.S.C. § 30104(b)(3) and 11 C.F.R. § 104.3(d)(4) by failing to report, or timely report, the sources of loans. Finally, the Commission finds reason to

believe that the Committee violated 52 U.S.C. § 30102(h) and 11 C.F.R. § 103.3(a) by failing to timely deposit receipts.

II. FACTUAL BACKGROUND

Congresswoman Lori Trahan was a candidate in the 2018 election for the Third Congressional District in Massachusetts, and Lori Trahan for Congress Committee was her authorized committee.[1] In the months leading up to the primary election, and on the day of the primary election, September 4, 2018, the Committee reported receiving four loans made by Rep. Trahan to the Committee totaling $371,000.

Figure 1. Candidate Loans to Lori Trahan for Congress

Reported Date of Receipt	Amount	Reported Loan Source
March 31, 2018	$50,000	Personal Funds of the Candidate
June 30, 2018	$50,000	Personal Funds of the Candidate
August 23, 2018	$200,000	Personal Funds of the Candidate
September 4, 2018	$71,000	Personal Funds of the Candidate (initial reporting); Loan from Washington Savings Bank (amended reporting)

The first three candidate loans, reportedly received on March 31, June 30, and August 23, 2018, were disclosed by the Committee on Schedule A (Itemized Receipts) with "Personal loan from Candidate" written on the memo line and on Schedule C (Loans) with "Personal Funds of the Candidate" identified as the loan source.[2] The fourth loan, reportedly received on

[1] Lori Trahan, Statement of Candidacy (Sept. 21, 2017) (initial filing); Lori Trahan for Congress Committee ("LTCC"), Statement of Org. (Sept. 17, 2017) (initial filing).

[2] LTCC, 2018 April Quarterly Report at 98, 144 (Apr. 15, 2018) (initial reporting of March 31 loan, which identified Lori Trahan as the source on Schedule C but did not check the "Personal Funds of the Candidate" box); LTCC, Amended 2018 April Quarterly Report at 99, 145 (May 14, 2018) (amended reporting of March 31 loan, which identified "Personal Funds of the Candidate" as the loan source); LTCC, 2018 July Quarterly Report at 235, 282 (July 15, 2018) (identifying the personal funds of the candidate as the source of the June 30 loan); LTCC, 2018 October Quarterly Report at 100, 154 (Oct. 15, 2018) (initial reporting of August 23 loan, which identified Lori

September 4, 2018, was initially disclosed as a "Personal loan from Candidate" on Schedule A.[3] After the election, on December 6, 2018, the Committee filed an amendment to disclose that the loan source was the "Personal Funds of the Candidate."[4] Then, on December 15, 2018, the Committee filed a second amendment that removed the "Personal Funds of the Candidate" designation and included a Schedule C-1 (Loans and Lines of Credit from Lending Institutions) to disclose that Rep. Trahan had obtained a loan from Washington Savings Bank secured by real estate valued at $950,000 with a 5.25% interest rate, and with no other parties secondarily liable.[5]

On October 30, 2019, in response to media reports questioning the loans, Rep. Trahan published a piece entitled "Setting the Record Straight" on the website *Medium* providing the following statement about how the loans were financed:

> We considered all of the income that Dave and I earned to be ours, and I had the same right as Dave did to manage and spend it. So, over the course of the campaign, we decided to move $300,000 from income Dave had earned to our joint checking account; Dave deposited $50,000 and $55,000 into our joint checking account before I filed my first and second quarterly reports in 2018, and in August, he deposited an additional $200,000. I loaned money to my campaign in similar amounts from that joint checking account — $50,000 on March 31st, $50,000 on June 30th, and $200,000 on August 22nd. Later in the campaign, I used a home equity line of credit to loan my campaign an additional $71,000.[6]

Trahan as the source on Schedule C but did not check the "Personal Funds of the Candidate" box); LTCC, Amended 2018 October Quarterly Report at 102, 158 (Dec. 6, 2018) (amended reporting of August 23 loan, which identified "Personal Funds of the Candidate" as the loan source).

3 LTCC, 2018 October Quarterly Report at 100, 155 (Oct. 15, 2018).

4 LTCC, Amended 2018 October Quarterly Report at 102, 159 (Dec. 6, 2018).

5 LTCC, Second Amended 2018 October Quarterly Report at 102, 159, 160 (Dec. 15, 2018).

6 Lori Trahan, *Setting the Record Straigh,* MEDIUM (Oct. 30, 2019), https://medium.com/@adminlt/setting-the-record-straight-4bed62080117 ("Setting the Record Straight").

On December 17, 2019, the U.S. House of Representatives Committee on Ethics made public a referral from OCE regarding these loans, which the Committee on Ethics adopted into its own report issued in July 2020.[7] According to bank records, Rep. Trahan made the first three loans using checks drawn on a joint bank account at Enterprise Bank that she shared with her spouse.[8] This joint account generally maintained a balance far below the amounts of the loans (as low as $55.13) but, on all three occasions, days before or after Rep. Trahan wrote checks to the Committee, Mr. Trahan made large deposits of funds drawn from his personal or business accounts sufficient to cover the loans.[9] The below chart from the OCE Referral shows the balance of funds in the joint account during the period of April through August 2018, including the three deposits made by Mr. Trahan and the immediate withdrawals to fund loans to the Committee, which stand out from the general activity in the account at the time.[10]

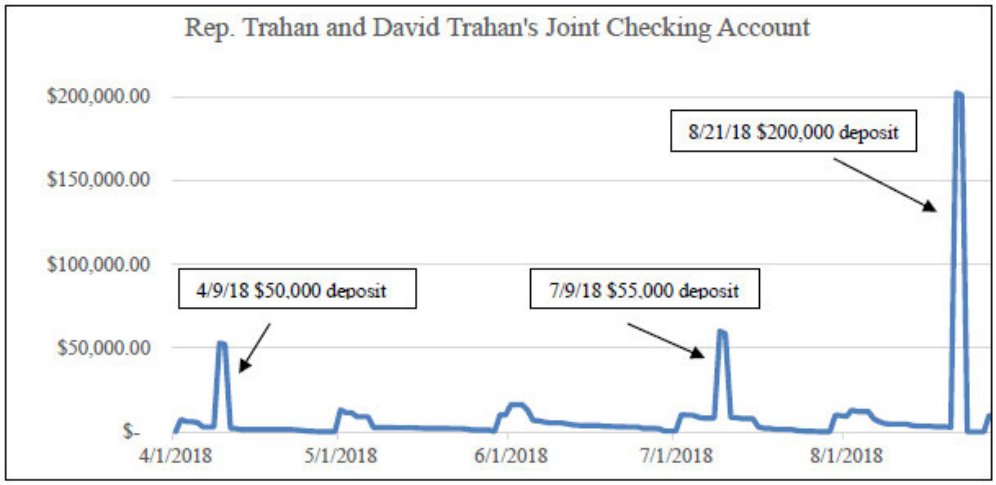
[7] Office of Congressional Ethics, United States House of Representatives, Report No. 19-5449 (Sept. 13, 2019) ("OCE Referral"), https://oce.house.gov/sites/congressionalethics.house.gov/files/documents/Review%20No.%2019-5449_Referral.pdf; *see also* Committee on Ethics, United States House of Representatives, Report In the Matter of Allegations Relating to Representative Lori Trahan at 2, 18 (July 15, 2020) (incorporating OCE Referral and attaching it as Appendix A) ("Committee on Ethics Report"), https://www.congress.gov/116/crpt/hrpt451/CRPT-116hrpt451.pdf.

[8] OCE Referral ¶ 24 (image of $50,000 check signed by Rep. Trahan to the Committee, dated March 31, 2018); *id.* ¶ 28 (image of $50,000 check dated June 30, 2018); *id.* ¶ 33 (image of $200,000 check dated August 22, 2018).

[9] *Id.* ¶¶ 22-34; *see id.* ¶ 26 (image of $50,000 check dated April 7, 2018, that Mr. Trahan wrote to himself from his personal bank account at Enterprise Bank, and image of April 9, 2018, deposit slip showing that he deposited the funds into the joint account); *id.* ¶ 30 (image of $55,000 check dated July 9, 2018, that Mr. Trahan wrote to himself from the account of DCT Development, Inc., at Enterprise Bank, and image of July 9, 2018, deposit slip showing that he deposited the funds into the joint account); *id.* ¶ 32 (image of bank record showing internal bank transfer of $200,000 on August 21, 2018, from Mr. Trahan's personal account at Enterprise Bank to the joint account); *see also* Lori Trahan, Amended 2018 Personal Financial Disclosure ("PFD") at 1-2 (Nov. 16, 2018) (indicating that the "owner" of the personal and business accounts in question was the candidate's spouse rather than being a joint account).

[10] OCE Referral ¶ 22.

Figure 2. Joint Bank Account Balances



With respect to the first two loans, Rep. Trahan wrote checks to the Committee on March 31 and June 30, 2018, before Mr. Trahan had deposited funds into the joint account and at a time when there were insufficient funds in the joint account to cover the loans.[11] The Committee did not deposit Rep. Trahan's checks until after Mr. Trahan moved funds into the joint account.[12] In the case of the March 31 loan, the Committee waited nine days to deposit the check, and in the case of the June 30 loan, it waited ten days.[13] In both instances, Rep. Trahan dated her checks on the last day of the relevant FEC reporting period and the Committee reported the loans as received on that date, and thus the loans were included in the Committee's reported cash on hand even though the funds had not been deposited (and could not have been deposited because of insufficient funds in the Trahans' joint bank account).[14]

11 *Id.* ¶¶ 25, 28.

12 *Id.* ¶¶ 27, 31.

13 *Id.*

14 *Id.* ¶¶ 19, 27, 31.

Bank records indicate that the fourth loan in the amount of $71,000, reportedly received on September 4, 2018, was funded by a home equity line of credit from Washington Savings Bank.[15] The line of credit was opened on October 15, 2010, with a limit of $200,000, and was secured by a property located in Westford, Massachusetts.[16] The Committee's amended reports with the Commission state that no other parties were liable for the loan, but records from the OCE Referral reflect that Mr. Trahan was a co-signor to that line of credit.[17] Further, the bank records indicate that Mr. Trahan repaid the line of credit with a check from his personal account nine days after the Committee cashed Rep. Trahan's check drawn on the home equity line of credit, and more than a month prior to the Committee issuing a check to repay her for the loan.[18]

The Complaints in these matters were initially filed in March 2019, prior to the publication of the OCE Referral in September 2019, based on news reports and Rep. Trahan's Personal Financial Disclosures ("PFDs") filed with the House of Representatives. They alleged that it did not appear that Rep. Trahan had sufficient personal funds to support the first three loans, totaling $300,000.[19] Specifically, the MUR 7585 Complaint alleged that Rep. Trahan used her consulting company, Concire, LLC ("Concire"), "to channel illegal contributions into her campaign," and therefore, that Concire might have been the true source of the funds.[20] After the OCE Referral was publicly released, the MUR 7588 Complainants filed the Supplemental

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15 *Id.*, Ex. 11 (image of $71,000 check signed by Rep. Trahan to Committee, dated September 4, 2018, from revolving line of credit at Washington Savings Bank).

16 OCE Referral, Ex. 10 (Revolving Credit Agreement and Note).

17 *Id.*

18 *Id*. ¶¶ 39-43, Exs. 12-15.

19 *See* MUR 7588 Compl. ¶¶ 30-33 (Mar. 28, 2019); MUR 7585 Compl. at 4 (Mar. 15, 2019); *see also* MUR 7585 Supp. Compl. (May 6, 2019); MUR 7585 Second Supp. Compl. (July 11, 2019).

20 MUR 7585 Compl. at 4-5; MUR 7585 Second Supp. Compl. at 2.

Complaint in that MUR, citing to the new details suggesting that Mr. Trahan was the true source of the funds and alleging that Rep. Trahan and the Committee knowingly and willfully misreported the dates of loans to "misl[ead] voters about her campaign financing at the height of the election."[21]

In response to the original Complaints, Rep. Trahan and the Committee argue broadly, referencing Rep. Trahan's $274,535 in income for 2018, that "there were sufficient funds in the joint account throughout the calendar year to finance the $300,000 loan."[22] In response to the more detailed allegations in the MUR 7588 Supplemental Complaint based on the OCE Referral, the Trahan Respondents state that the entirety of the funds used to finance the loans, including the funds obtained from Mr. Trahan's personal and business accounts, were Rep. Trahan's "personal funds."[23] Specifically, they quote from the Trahans' prenuptial agreement, which states that "[e]ach party shall have equal rights in regard to the management of and disposition of all marital property," and submit a letter authored by a Massachusetts family law attorney providing a written interpretation of the agreement to mean that Rep. Trahan "had (and continues to have) an equitable interest in the wages, salary, and income earned and received by her husband during their marriage."[24] Moreover, the Trahan Respondents assert that even in the absence of the prenuptial agreement, "the movement of funds through the joint account was sufficient" to make the funds Rep. Trahan's personal funds for purposes of the Act.[25]

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21 MUR 7588 Supp. Compl. at 6-7 (Jan. 16, 2020).

22 Trahan & Committee Resp. at 2-4 (May 9, 2019) (responding to the allegations in MURs 7585 & 7888);.

23 Trahan and Committee Supp. Resp. at 2-6 (Mar. 13, 2020) (responding to the Supplemental Complaint in MUR 7588).

24 *Id.* at 4; *id.*, Ex. A (letter from Catharine V. Blake, Esq., to Committee on Ethics, U.S. House of Representatives, dated October 28, 2019).

25 Trahan and Committee Supp. Resp. at 6-7.

Regarding the alleged knowing and willful misreporting of the loan dates, the Committee asserts that it correctly reported the loans using the dates the checks were "received" rather than the date the funds were deposited in the campaign account.[26] Further, as to the delayed reporting of the source of the September 4, 2018, loan, the Committee argues that the initial reporting, which disclosed that Rep. Trahan was the source of the funds, was "substantially correct" and "simply a technical violation" that does not warrant seeking a civil penalty.[27]

On July 15, 2020, the House Committee on Ethics reviewed the issues raised by the OCE Referral and issued its conclusions, stating that "the Committee did not find that Representative Trahan acted in violation of House Rules, laws, regulations or other standards of conduct," and dismissed the matter while leaving questions regarding possible reporting errors to the Commission.[28] The House Committee on Ethics Report concluded that "[b]ased 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" and that Rep. Trahan's "amendments to her disclosures on her own initiative show her good faith effort to comply with the relevant disclosure requirements."[29] The House Committee on Ethics also observed irregularities and noted that "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

[26] *Id*., Ex. A, n.39.

[27] Trahan and Committee Resp. at 8-10; *see also* Trahan and Committee Supp. Resp., Ex. A at 7-8 (asserting that "[w]hile the initial reporting was incomplete, it was a *de minimis* mistake of the sort common among first-time campaigns").

[28] Committee on Ethics Report at 2, 18.

[29] *Id.* at 20.

periods" and that "[t]o 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."[30] On August 27, 2020, Respondents provided a copy of the report issued by the House Committee on Ethics to the Commission in support of their previous responses.[31]

III. LEGAL ANALYSIS

A. The Commission Finds Reason to Believe that Rep. Trahan and the Committee Knowingly Accepted Excessive Contributions from David Trahan

The term "contribution" includes "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 office."[32] No person, including a candidate's family members, shall make contributions to any candidate, his or her authorized committee, or their agents with respect to any election for federal office which, in the aggregate, are in excess of applicable contribution limits.[33] The individual contribution limit was $2,700 per election during the 2018 election cycle.[34] Further, no candidate or political committee shall knowingly accept a contribution that exceeds the applicable contribution limit.[35]

30 *Id*. at 18, 20.

31 Trahan and Committee Second Supp. Resp. MURs 7585 & 7588 (Aug. 27, 2020).

32 52 U.S.C. § 30101(8)(A)(i). *But see* 11 C.F.R. §§ 100.52, 82, 83 (excepting from the definition of loans that are contributions qualifying "Bank loans" and "Brokerage loans and lines of credit to candidates").

33 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

34 Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 82 Fed. Reg. 10,904, 10,906 (Feb. 16, 2017).

35 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

Candidates, however, "may make unlimited expenditures from personal funds."[36] The Act and Commission regulations provide that "personal funds of a candidate" means the sum of: (a) Assets – amounts derived from any asset that, "under applicable State law, at the time the individual became a candidate, 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"; (b) Income – the candidate's income received during the current election cycle, including a salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; and gifts of a personal nature that had been customarily received by the candidate prior to the election cycle; and (c) Jointly Owned Assets – amounts derived from a portion of assets that are owned jointly by the candidate and the candidate's spouse; the amount is limited to "the candidate's share of the asset under the instrument of conveyance or ownership," but if the instrument is silent, the Commission will presume that the candidate holds a one-half ownership interest.[37]

The requirement that the candidate must have a legal right of access to or control over an asset in order for it to be considered personal funds is underscored by the legislative history of the Act and Commission precedent. In the 1983 Explanation & Justification ("E&J") accompanying regulatory changes clarifying the definition of personal funds set forth in 11 C.F.R. § 100.33, the Commission stated that the reordering of the terms in the definition "made clear that the criteria of 'legal and rightful title' and 'equitable interest' must each be

[36] 11 C.F.R. § 110.10.

[37] 52 U.S.C. § 30101(26)(A)-(C); 11 C.F.R. § 100.33(a)-(c).

linked with 'legal right of access to or control over.'"[38] Earlier, in connection with the 1974 amendments to the Act, the Committee of Conference wrote:

> It is the intent of the conferees that members of the immediate family of any candidate shall be subject to the contribution limitations established by this legislation. If a candidate for the office of Senator, for example, already is in a position to exercise control over funds of a member of his immediate family before he becomes a candidate, then he could draw upon these funds up to the limit . . . . If, however, the candidate did not have access to or control over such funds at the time he became a candidate, the immediate family member would not be permitted to grant access or control to the candidate . . . if the immediate family member intends that such amounts are to be used in the campaign of the candidate. The immediate family member would be permitted merely to make contributions to the candidate in amounts not greater than [the limit] for each election involved.[39]

The statements by the Commission and the Senate Committee on Conference appear to emphasize the concept of pre-candidacy control over funds or assets by the candidate, and distinguish such control from circumstances where access or control is later granted by a spouse or other family member.[40]

With regard to jointly owned assets, in some past matters, the Commission has determined that joint bank accounts are not subject to the one-half ownership presumption and the candidate may use the entire amount as "personal funds" because each account holder of the

[38] Candidate's Use of Property in Which Spouse Has an Interest, 48 Fed. Reg. 19,019, 190,20 (Apr. 27, 1983) (citing legislative history of the 1974 Amendments to 18 U.S.C. § 608 pertaining to the limitations of expenditures of personal funds by a candidate and *Buckley v. Valeo*, 424 U.S. 1, 51, 52 & n.57 (1976)).

[39] *FECA Amendments of 1974, Joint Explanatory Statement of the Committee of Conference*, Sen. Conf. Rpt. 93-1237 (Oct. 7, 1974), 1974 U.S.C.C.A.N. 5618, 5627.

[40] *Cf.* Advisory Opinion 1991-10 at 3 (Guernsey) (considering a circumstance in which both spouses' signatures were required to make a withdrawal and concluding that the account was not the candidate's asset but a joint asset as "it appears that the candidate does not have legal right of access to or control over the account, without the benefit of a spousal signature").

joint bank account had access to and control over the whole account under applicable state law.[41] Similarly, in some past Commission audits, the Commission has determined the portion of a joint bank account that constitutes the personal funds of the candidate by considering whether "state law gives each party access to and control over the whole."[42]

Separate from the issue of how the one-half ownership presumption should apply to joint bank accounts, is how the Commission treats funds that have been moved by a spouse into a joint bank account for the purpose of financing the candidate's election. In MUR 6417 (Huffman), the Commission concluded that a transfer by the spouse from a personal account to a joint account shared with the candidate, which the candidate then used to make a contribution, resulted in an excessive contribution by the spouse, but the Commission split on the same issue in MUR 6860 (Terri Lynn Land), where there was information that the joint account may have historically maintained funds from both the candidate's and her spouse's incomes.[43] Instead, the Commission pursued separate allegations in MUR 6860 involving excessive contributions that took place when the candidate's spouse transferred funds from his personal account to the

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[41] *See, e.g.*, MUR 2754 (Lowey); MUR 2292 (Stein); MUR 3505 (Klink); *see also* Office of General Counsel Comments to Resubmitted Draft Final Audit Report – Ted Cruz for Senate (LRA # 976) at 6 (Jan. 10, 2017) ("In the context of a joint bank account, however, the Commission deems all of the funds in an account held jointly with a spouse to be the candidate's personal funds if the state law governing such accounts provides that both spouses owning the account have equal and complete access to its funds."); Office of General Counsel Comments on Bauer for President 2000, Proposed Audit Report (LRA #543), May 6, 2002, at 6 (discussing history of joint bank account exception to the one-half ownership presumption).

[42] *See* Office of General Counsel Addendum to Legal Analysis to Proposed Interim Audit Report on Friends for Menor (LRA 732), Contributions from Personal Funds in Jointly Held Bank Accounts at 2 (July 2, 2008) (determining that 100% the funds in a joint account were the personal funds of the candidate under Hawaii state law, which stated that "[a]ny deposit account held in the names of two or more persons may be paid, on request and according to its terms, to any one or more of the persons"). In the instant matter, Massachusetts law appears to govern and it permits joint accounts where "any part or all of the deposits and interest represented by joint accounts may be withdrawn, assigned or transferred in whole or part by any of the individual parties." Mass. Gen. Laws Ann. Ch. 167D, § 3(a).

[43] *See* Factual & Legal Analysis ("F&LA") at 3-4, MUR 6417 (Huffman); Amended Cert. ¶ 1-3 (Aug. 10, 2011), MUR 6417; First Gen. Counsel's Rpt. at 9-11, MUR 6860 (Terry Lynn Land); Cert. ¶ 1 (June 17, 2016), MUR 6860.

candidate's individually held account to cover contribution checks the candidate had drawn to her campaign that lacked sufficient funds.[44] More recently, in MUR 6848 (Demos), the Commission found reason to believe on the question of an excessive contribution because the candidate's spouse provided the vast majority of the funds in the joint account shortly before the Statement of Candidacy was filed and the majority of the deposits appeared on the then-existing record to have been made for the purpose of funding the candidate's campaign.[45] The Commission did not pursue the matter further at the probable cause stage.[46]

1. The First Three Loans were Funded by Mr. Trahan's Income Over Which Rep. Trahan Did Not Have Access or Control

The sources of the March 31, June 30, and August 23, 2018, loans do not appear to fall into any of the Commission's three defined categories of "personal funds" in 11 C.F.R. § 100.33: (1) assets controlled by the candidate prior to candidacy; (2) the candidate's income; or (3) the candidate's portion of joint assets.[47] These three loans, totaling $300,000, were each drawn on a joint bank account held by Rep. Trahan and her spouse using funds that had originated from Mr. Trahan's personal and business accounts for the purpose of funding Rep. Trahan's candidacy. In the first instance, the joint account had a balance of $55.13 on the day when Rep. Trahan wrote a check to the Committee for $50,000; Mr. Trahan wrote a check from a personal

[44] F&LA at 7-9, MUR 6860 (Terry Lynn Land) (finding that the transferred funds did not qualify as assets under 11 C.F.R. § 100.33(a), income under 11 C.F.R. § 100.33(b), or jointly owned assets under 11 C.F.R. § 100.33(c)).

[45] *See* F&LA at 9*,* MUR 6848 (Demos) (July 25, 2018).

[46] After the Commission found reason to believe that Demos's spouse made an excessive contribution by depositing $3 million into a joint account shortly before Demos became a candidate, it split 2-2 at the probable cause stage over the record's factual support for the premise that Demos had decided to become a candidate prior to the transfer and thus that the transfer occurred specifically for the purpose of funding Demos's campaign. *See id*.; Statement of Reasons, Comm'rs. Hunter & Petersen at 3-4, MUR 6848 (Demos); Statement of Reasons, Comm'r. Weintraub at 1-2, MUR 6848 (Demos).

[47] 11 C.F.R. § 100.33(a)-(c).

bank account one week later for $50,000 to cover the check to the Committee.[48] In the second instance, the joint checking account had a balance of $625.59 on the day when Rep. Trahan wrote a check to the Committee for $50,000; nine days later Mr. Trahan wrote a check to himself for $55,000 from DCT Development, Inc., an S corporation, that, according to Rep. Trahan's PFD, Mr. Trahan individually owned, and then deposited the check into the Trahans' joint account to cover the check to the Committee.[49] In the third instance, the joint account had a balance of $2,769.54 on the day when Mr. Trahan initiated a transfer from his personal bank account in the amount of $200,000; the next day Rep. Trahan wrote a check to the Committee for the same amount.[50] Rep. Trahan asserts that these funds were derived "from income [Mr.

[48] *See* Committee on Ethics Report at 6-7; OCE Referral ¶¶ 24-27. Mr. Trahan's check was deposited into the joint account two days afterwards and the Committee cashed the check from Rep. Trahan the same day as his deposit — as soon as there was a balance sufficient to cover the check. The Committee on Ethics Report notes that shortly before these transactions, Mr. Trahan deposited into this personal account $100,000 in income from Mass. Eagle Development, LLC, an S corporation of which Mr. Trahan is a one-third owner. Committee on Ethics Report at 6. While the Committee on Ethics seems to draw a connection between this particular income and the loan, Mr. Trahan's personal account received multiple deposits around this time increasing the balance of the account such that it was sufficient to cover the $50,000 loan. Therefore, while it is undisputed that Mr. Trahan received income that was used to make the loan, the link to income from any particular entity appears to be somewhat ambiguous to the Commission based on the information that is publicly available. *Id*. at 7, Appendix D, Ex. 5.

[49] *See* Committee on Ethics Report at 8-9; OCE Referral ¶¶ 28-31; Lori Trahan, Amended 2018 PFD at 1 (Nov. 16, 2018). The involvement of a corporate account in this chain of events raises the question as to whether this transaction constituted a prohibited corporate contribution under 52 U.S.C. § 30118. This allegation was not specifically raised by the Complaints, nor addressed by Respondents. Based on these circumstances, and given that the funds appeared to have been Mr. Trahan's "income," the Commission is not making findings regarding such potential violations. Committee on Ethics Report, Appendix C, ¶ 2(a)-(c) (Rep. Trahan responding to question from the Committee on Ethics regarding the status of the $55,000 disbursement that Mr. Trahan received from DCT as income rather than returned capital); *see* Statement of Reasons, Comm'rs. Petersen, Bauerly, Hunter, and McGahn, MUR 6102 (Oliver) at 5-6 (explaining the Commission's dismissal of allegations of a prohibited corporate contribution, where the candidate received distributions from an S Corporation of which she was the sole shareholder and member and where she attested under oath that the distribution was "proper and in accordance with the [corporation's] Bylaws"); *cf.* F&LA, MUR 3191 (Friends of Bill Zeliff) (finding reason to believe that the candidate used corporate funds to make loans to his committee where the candidate's draw on equity of a S corporation in which he was a shareholder had the effect of a loan rather than income).

[50] *See* Committee on Ethics Report at 9-10; OCE Referral ¶¶ 32-37. On July 31, Mr. Trahan's account contained less than $5,000 when he deposited checks from Middlesex Land Holdings, LLC, and Poplar Hill Development, LLC, totaling $380,900. Both entities are organized as partnerships, which Mr. Trahan co-owns (with outside business partners) and the funds from these entities were considered partnership income. Committee on Ethics Report at 8-9.

Trahan] had earned," a statement that is supported by the bank records discussed above.[51] In sum, each of the three loans were made with income from Mr. Trahan that he moved into the joint account for the apparent purpose of funding the loans that the Committee then reported as having been made by Rep. Trahan using her personal funds.

Respondents argue that, pursuant to language in the Trahans' prenuptial agreement, all assets owned by Mr. Trahan, as well as his income, were "marital property" and thus, should be treated as "personal funds of the candidate."[52] Respondents assert that the prenuptial agreement provides that "[e]ach party shall have equal rights in regard to the management of and disposition of all marital property" and defines "marital property" to mean: (1) "All property purchased with proceeds of" a fund "for the maintenance of their household and care of their children," to which each spouse "shall make equal periodic contributions"; and (2) "All wages, salary, and income of each party earned or received during marriage, together with property purchased with these funds."[53] Given this text and the cited authorities supporting their claim that Massachusetts law generally recognizes and enforces prenuptial agreements, Respondents contend that Rep. Trahan therefore had "an equitable interest in and a legal right to access her husband's income."[54]

While Respondents' argument that Rep. Trahan had an equitable interest in Mr. Trahan's income earned following their 2008 marriage seems well founded, it is less clear whether Rep.

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51 Setting the Record Straight; *see supra* notes 48-50.

52 Trahan and Committee Supp. Resp. at 2-6.

53 Committee on Ethics Report, Appendix D, Ex. 1 (Trahan's Prenuptial Agreement), ¶ 11; Trahan and Committee Supp. Resp. at 4.

54 Trahan and Committee Supp. Resp. at 4-5; *see also id*., Ex. A (citing *Osborne v. Osborne*, 384 Mass. 591 (1981) for the premise that "Massachusetts has a strong policy in favor of enforcing prenuptial agreements."); M.G.L.A. 209 §§ 25, 26.

Trahan also had the requisite legal right to access Mr. Trahan's income such that this income constitutes Rep. Trahan's "personal funds" as defined by the Act and Commission regulations.[55] Under Massachusetts law, the Trahans' prenuptial agreement appears to give broad property rights to Rep. Trahan over marital property, including Mr. Trahan's income earned during the marriage, but the Act and Commission regulations do not treat spousal income in the same fashion. Regarding income received during the election cycle, the Act and regulations specify that the candidate's income is considered to be personal funds but include no analogous provision deeming spousal income received during the election cycle to be the candidate's personal funds.[56]

The Trahan Respondents appear to consider Mr. Trahan's income, regardless of whether it is past or future income, to be a present asset of Rep. Trahan, on the basis that it is marital property under the prenuptial agreement.[57] Respondents' conceptualization of future income as personal funds of a candidate by virtue of being an asset under the candidate's control seems to be in tension with the Act and Commission regulations. While "personal funds" includes assets that the candidate had legal title or an equitable interest in and had legal right of access to or control over, that definition also appears to require that the access or control by the candidate exist "at the time the individual became a candidate."[58] Rep. Trahan does not appear to have had access to or control over either Mr. Trahan's future income or even the underlying entities that paid the income — which were titled in his name (and presumably those of his partners) but not

55 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33.

56 *See* 11 C.F.R. § 100.33(b) (defining "income" as "[i]ncome received during the current election cycle, *of the candidate* . . ." (emphasis added)).

57 Trahan and Committee Supp. Resp. at 4.

58 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33.

hers — when Rep. Trahan became a candidate.[59] Even crediting Respondents' contentions regarding the breadth of the rights granted under the prenuptial agreement, it appears that (absent some type of legal proceeding) Rep. Trahan could only access the accounts and entities in Mr. Trahan's name through Mr. Trahan's actions.

A scenario provided in the legislative history and relied upon in *Buckley v. Valeo*,[60] that "[i]f . . . the candidate did not have access to or control over such funds at the time he became a candidate," then "the immediate family member would not be permitted to grant access or control to the candidate . . . if the immediate family member intends that such amounts are to be used in the campaign of the candidate,"[61] emphasizes the timing and the logistics of the candidate's control, or lack thereof, over the funds. It also precisely describes the situation at hand whereby Mr. Trahan provided Rep. Trahan with access to funds in order to finance her campaign from his income and held in accounts controlled by him, that she could not have accessed unilaterally.[62] Consistent with this notion of contemporaneously existing control, in considering a similar set of matters, MURs 5334, 5341, & 5524 (O'Grady), the Commission

[59] To the contrary, here there is specific information showing that Rep. Trahan lacked a legal right to access or control over Mr. Trahan's personal and business accounts. The checks from those accounts only had Mr. Trahan's name on them and, indeed, the fact that Mr. Trahan wrote checks to himself from those accounts and then deposited the funds into the joint account, rather than Rep. Trahan herself accessing the accounts and directly obtaining the funds, is consistent with other information in the record indicating that she would not have been permitted to take control of the accounts. Rep. Trahan reported in her PFDs to Congress that Mr. Trahan's personal accounts and DCT Development, Inc. were owned by her husband alone and were not a joint asset. *See* F&LA at 3, 6, MUR 6417 (Huffman) (recognizing that a spouse's account, "which was solely in her name" and over which the candidate "had no independent access" did not constitute the candidate's personal funds); *see also* Mass. Gen. Laws Ann. Ch. 167D, § 4 (stating that in the case of personal accounts "[t]he deposits, interest and other credits represented by the account may be withdrawn, assigned or transferred in whole or in part by the account holder only" and allowing for an exception only where the accountholder has filed a declaration meeting statutory requirements with the depository allowing another to act "on behalf of the account holder").

[60] *See Buckley v. Valeo*, 424 U.S 1, 51 n.57 (1976) (quoting S. Conf. Rep. No. 93-1237, p. 58 (1974), which describes the "intent of the conferees," in upholding spousal contribution limits).

[61] *FECA Amendments of 1974, Joint Explanatory Statement of the Committee of Conference*, Sen. Conf. Rpt. 93-1237 (Oct. 7, 1974), 1974 U.S.C.C.A.N. 5618, 5627.

[62] *Id.*

explained that even if funds constitute "marital property" under the applicable state law, this does not necessarily mean that the candidate would "have any *vested* right to such property, if it were titled in her husband's name, until the marriage is legally dissolved."[63] As the Commission noted, even if this interest satisfied the equitable interest prong in the definition of personal funds, it did not demonstrate the required "immediate legal right of access to or control over those funds."[64]

MUR 149 (Fonda), the lead precedent cited by Respondents, involved a facially similar set of facts whereby a spouse moved funds from a bank account maintained solely in her name and advances she secured from her employers to her spouse's committee.[65] The Commission determined that there was no reason to believe in MUR 149 based, among other things, on a review of California's community property law which, at the time, stated that either spouse has "management and control of the community personal property, with the absolute power of disposition, . . . as he has of his separate estate."[66] By contrast, Massachusetts, the state at issue here, is not a community property state and appears to have no similar provision in its laws. Indeed, the Commission included a footnote in MUR 149 specifically to note that "[b]ecause this

63 F&LA at 15 n.14, MURs 5334, 5341, & 5524 (O'Grady).

64 *Id.* at 15 n.15.

65 *See* Trahan and Committee Supp. Resp. at 3.

66 *See* Interim Conciliation Report at 3, MUR 149 (Fonda, *et al.*) (citing Cal. Civ. Code § 5125 (1977)).

matter appears to be tied to applicable state law, a different result would very likely apply in the 42 states which do not have communal property laws."[67]

Finally, the Trahan Respondents argue that the funds at issue should be considered Rep. Trahan's personal funds, because, regardless of the source of the funds, the checks to the Committee were drawn on the Trahans' joint bank account.[68] But the Commission's precedents in similar circumstances indicates that the movement of funds through a joint account is not sufficient to convert funds of the spouse into personal funds of the candidate.[69] For each of the three loans, Mr. Trahan deposited the necessary funds into the joint account shortly before or after Rep. Trahan wrote a check to the Committee from the joint account and, in each case, the joint account had insufficient funds and thus could not cover the loan absent the timely deposit from Mr. Trahan's individually- held and business accounts. Further, both the deposits into and the contributions made from the joint account do not appear to be ordinary transactions made using the account.[70] Rep. Trahan's statement in *Medium* appears to acknowledge that her

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[67] *Id.* at 5 n.2, MUR 149 (Fonda, *et al.*). Nor is Respondents' reliance on MUR 1257 (Dole) persuasive. *See* Trahan and Committee Supp. Resp. at 3-4. In MUR 1257, Dole's committee received a loan derived from a bank loan secured by a certificate of deposit in Dole's spouse's name that was received as a death benefit from her father's pension plan. The matter turned on the candidate's rights to the certificate of deposit under Kansas law, which was in a state of flux as the matter was reviewed by the Commission. After the Commission's original finding of reason to believe, the Office of General Counsel recommended that the Commission "take no further action in this matter due to the unique nature of Kansas law at the time of the transaction in issue in this matter." General Counsel's Report, MUR 1257 (Oct. 26, 1981). The Commission thereafter voted 5-0 to take no further action and close the file. Cert., MUR 1257 (Nov. 13, 1981).

[68] *See* Trahan and Committee Supp. Resp. at 6-7. The Trahan Respondents' Supplemental Response also argues that under Massachusetts law both parties have the right to withdraw the full amount of a joint account, the full amount should be considered her personal funds. *Id*. at 7 (citing Gen Counsel's Rpt. at 23, MUR 3505/3560/3569 (Klink)). Because, as explained herein, we conclude that the funds which were otherwise not personal funds do not become so merely by being deposited in a joint account during the campaign, it is unnecessary for us to make any recommendation as to the status of a joint account generally under Massachusetts law.

[69] *See* F&LA at 3, 6, MUR 6417 (Huffman) (concluding that a transfer from the spouse's individually held account to a joint account shared with the candidate and then passed on to the committee was an excessive contribution).

[70] *See supra* Figure 2 at 7.

spouse's deposits were made specifically for the purpose of funding contributions, rather than as part of an ordinary pattern of deposits to fund family expenses.[71]

Therefore, due to the apparent lack of legal right of access to Mr. Trahan's income by Rep. Trahan, as required by the Act and Commission regulations, the funds that Mr. Trahan deposited into the joint account, which were then used to finance the reported loans, appear to constitute contributions by Mr. Trahan to the Committee. Accordingly, the Commission finds reason to believe that Lori Trahan and the Committee knowingly accepted excessive contributions from David Trahan totaling $300,000 in connection with the first three loans, in violation of 52 U.S.C. § 30116(f).[72]

2. The Fourth Loan was Funded with a Home Equity Line of Credit and Repaid by Mr. Trahan Using a Personal Account

In addition to the three loans discussed above, on September 4, 2018, Rep. Trahan loaned the campaign $71,000 using funds obtained through a home equity line of credit. It appears that Mr. Trahan also made an excessive contribution in connection with this loan.

The line of credit was held by Rep. Trahan and Mr. Trahan, jointly, and it was secured by $950,000 in real estate jointly owned by the Trahans.[73] The instrument of conveyance did not indicate a specific share attributed to Rep. Trahan or Mr. Trahan. Thus, under the one-half presumption set forth in the Commission's regulation, Rep. Trahan was entitled to use a one-half

[71] Setting the Record Straight.

[72] Mr. Trahan separately made a maximum $2,700 contribution to the Committee for the primary election and an additional $2,700 for the general election, meaning that the entirety of the loans was an excessive contribution in violation of the Act and Commission regulations. *See* LTCC, 2017 October Quarterly Report at 27, 32 (Oct. 15, 2017).

[73] LTCC, Second Amended 2018 October Quarterly Report at 160 (Dec. 15, 2018); *see also* Trahan and Committee Resp. at 2 (stating that Trahan and her spouse jointly own two homes valued at $1.4 million and $1.5 million, that they have two home equity lines of credit collectively worth $700,000, and that the only mortgage on the homes is a $100,000 mortgage on the house valued at $1.4 million).

portion of the jointly owned asset, or $475,000.[74] Therefore, it appears that no contributions resulted from the initial loan to the Committee because the amount of Rep. Trahan's loan was $71,000, far below her share of the jointly-owned asset.[75]

However, on October 11, 2018, approximately one month after the reported date of the loan and just nine days after the Committee deposited Rep. Trahan's check, Mr. Trahan repaid the line of credit with a check from his personal bank account using funds from his income.[76] The Committee did not issue a check to Rep. Trahan to pay back the loan to the Committee until November 20, 2018, which she deposited on December 3, 2018. From the time Mr. Trahan paid back the line of credit, and for over a month until the Committee repaid Rep. Trahan, the bank did not remain the creditor because it was owed no funds. In view of the actual circumstances, it appears that Mr. Trahan became the creditor who provided a loan and thus made the contribution.[77]

Alternatively, Mr. Trahan's payment of Rep. Trahan's debt constituted a third-party payment of a candidate's expense. Commission regulations provide that a third- party's payment of a candidate's personal expense shall be a contribution "unless the payment would have been

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74 *See* 11 C.F.R. §§ 100.33 (c)(2), 100.52 (b)(4).

75 A spouse is not considered a contributor to the candidate's 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. *See* 11 C.F.R. § 100.52 (b)(4); F&LA at 8-9, MURs 4830/4845 (Udall) (finding no reason to believe where loans were "based entirely on [the candidate's] half of the assets jointly controlled with" his spouse). While Respondents' arguments regarding the candidate's claim of marital property on the basis of the prenuptial agreement could indicate that she could borrow against more than half of the value of the house and nonetheless consider the loan personal funds, because the Commission concludes that these are personal funds even under the potentially more stringent 50% rule, it is unnecessary for the Commission to consider that issue.

76 OCE Referral ¶ 42, Exs. 12, 14-15.

77 While loans from home equity lines of credit are not considered contributions under 11 C.F.R. § 100.83(a), once Mr. Trahan assumed the loan, it became a contribution by him. *See* 11 C.F.R. § 100.52(a), (b) (providing that a loan not issued in accordance with the provisions of 11 C.F.R. § 100.83 is considered a contribution at the time that it is made, remains a contribution to the extent that it remains unpaid, and shall not exceed the contribution limits when aggregated with that donor's other contributions); *see also* 11 C.F.R. § 113.1(g)(6) (prohibiting third party payments of candidate expenses).

made irrespective of the candidacy."[78] Here, Rep. Trahan's draw on the home equity line of credit was for the purpose of her candidacy, thus paying it back inextricably linked the payment of the expense to Rep. Trahan's candidacy. In either case, Mr. Trahan's act of paying back the draw on the line of credit, which the candidate used to fund her campaign, constituted a contribution to Rep. Trahan and the Committee.[79]

Therefore, the Commission finds reason to believe that Lori Trahan and the Committee knowingly accepted an excessive contribution from David Trahan in connection with the fourth loan in the amount of $71,000, in violation of 52 U.S.C. § 30116(f).

B. Reporting Violations

1. With Respect to the First Three Loans, the Commission Finds Reason to Believe that the Committee Misreported the Source and Dates of the Loans and, Relatedly, that it Misreported Total Cash on Hand

As described above, it appears that the Committee failed to accurately report the source of the loans, by disclosing the loans as being made with the "personal funds of the candidate," whereas the true source appears to have been Mr. Trahan. Moreover, not only were the loans apparently inaccurately reported in this respect, but bank records suggest that the Committee misreported the date on which two of the loans/contributions were received in order to inflate the amount of the Committee's cash on hand at the end of the relevant FEC reporting periods.[80]

[78] 11 C.F.R. § 113.1(g)(6); *see* Explanation and Justification, Third Party Payments of Personal Use Expenses, 60 Fed. Reg. 7,862, 7,871 (Feb. 9, 1995) ("If a third party pays for the candidate's personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy.").

[79] The Committee on Ethics reached the opposite conclusion, stating that "[t]he Committee is not aware of any regulations prohibiting Mr. Trahan's repayment from his personal account." Committee on Ethics Report at 10, n.101.

[80] OCE Referral ¶¶ 27, 31 (stating that Rep. Trahan and the Committee "may have intentionally misreported the date on which" the March 31, 2018, and June 30, 2018 loans were obtained); Committee on Ethics Report at 20.

The Act requires committee treasurers to file reports of receipts and disbursements.[81] These reports must include, *inter alia*, the identification of each person who makes a contribution or contributions (including a loan or loans) that have an aggregate amount or value in excess of $200 during an election cycle, in the case of an authorized committee of a federal candidate, together with the date and amount of any such contribution.[82]

Commission regulations provide that a contribution "shall be considered to be made when the contributor relinquishes control over the contribution" and that "[a] contributor shall be considered to relinquish control over the contribution when it is delivered by the contributor to the candidate, to the political committee, or to an agent of the political committee."[83] Every person who receives a contribution for an authorized committee shall, no later than ten days after receipt, forward such contribution to the treasurer.[84] All receipts by a political committee shall be deposited into a designated campaign depository; the treasurer shall be responsible for making such deposits, and all deposits shall be made within ten days of the treasurer's receipt.[85] The date of receipt to be reported "shall be the date such person obtains possession of the contribution."[86]

Political committees shall disclose the amount of cash on hand at the beginning of the reporting period, including: currency; balance on deposit in banks, savings and loan institutions,

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81 52 U.S.C. § 30104(a).

82 *Id*. § 30104(b)(3)(A); *see id*. § 30101(8)(A)(i).

83 11 C.F.R. § 110.1(b)(6).

84 52 U.S.C. § 30102(b); 11 C.F.R. § 102.8(a).

85 11 C.F.R. § 103.3(a); *see* 52 U.S.C. § 30102(h)(1); Advisory Opinion 1992-29 at 2 (Holtzman) ("[P]revious advisory opinions have recognized that committees will have agents whose receipt of contributions is considered the equivalent of the treasurer's receipt and begins the running of the 10 day deposit period.").

86 11 C.F.R. § 102.8(a).

and other depository institutions; traveler's checks owned by the committee; certificates of deposit, treasury bills and any other committee investments valued at cost.[87]

According to bank records concerning the activities at issue here, on two occasions involving the loans reported as being received on March 31 and June 30, 2018, Rep. Trahan wrote a check from the joint account to the Committee before Mr. Trahan had deposited funds to cover the checks.[88] As such, when Rep. Trahan wrote the checks, there were insufficient funds in the joint account to cover the amounts the checks indicated. In apparent recognition of this fact, the Committee did not cash the first check for nine days, until the same day Mr. Trahan deposited sufficient funds into the joint account.[89] Similarly, the Committee did not cash the second check for ten days, until the day after Mr. Trahan deposited sufficient funds into the joint account.[90]

However, the loans were reported on the dates the checks were written. In both cases, this resulted in the contributions having been reported as received on the last day of an FEC reporting period and thus were included in the Committee's disclosed cash on hand for that reporting period even though the Committee had not yet received the actual funds.

In order to determine whether the reported dates of the loans — and thereby contributions — are correct, the question is when the contributions are considered to have been "received." Commission regulations provide that contributions are made when the contributor "relinquishes control" of the contribution and shall be reported as received when the Committee (in this case

87 *Id.* § 104.3(a)(1); *see* 52 U.S.C. § 30104(b)(1).

88 OCE Referral ¶¶ 24-32.

89 *Id.* ¶¶ 24-27.

90 *Id.* ¶¶ 28-31.

via the candidate) takes "possession of the contribution."[91] Unlike the ordinary situation in which a person's conveyance of a check to a committee treasurer effectuates the requisite relinquishment, making the date of conveyance the date of receipt, here, the candidate, and thereby the Committee, appear to have had knowledge that there were insufficient funds in the account to cover the check and thus that the funds were not yet actually relinquished. This knowledge is demonstrated by the apparent decision to hold the checks until after sufficient funds were deposited by Mr. Trahan. As a result, while the Committee had received a check that ordinarily it could properly report as having been received, here Committee personnel had actual knowledge that funds indicated by the check had not been "relinquished." Accordingly, reporting the funds constituting the contributions as received on the dates the checks were received, with knowledge that the funds were not being relinquished at that time, appears to constitute misreporting under the Act and Commission regulations.[92]

[91] *See* 11 C.F.R. §§ 110.1(b)(6), 102.8(a); *see also* 11 C.F.R. § 104.3(a)(4)(i) (requiring that political committees report the "date of receipt and amount of any such contributions"), 104.3(a)(4)(iv) (requiring that political committees report the "date such loan was made and the amount or value of such loan"); 2021 Campaign Guide: Congressional Candidates and Committees, FEC at 25; ("The date of receipt is the date the campaign (or a person acting on the campaign's behalf) actually receives the contribution. . . . This is the date used by the campaign for reporting purposes . . ."). *Id*. at 26 ("While all contributions must be deposited within 10 days, the date of deposit is not used for reporting or contribution limit purposes.").

[92] The date that the contributor "relinquish[ed] control over the contribution" was some later date, either the date when sufficient funds were placed into the account, or, if not the same date, when the Committee was informed that sufficient funds were in the account and that the Committee could therefore deposit the check.

Accordingly, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(b) by misreporting the source of the loans, the dates on which the loans were received, and the Committee's cash on hand.

2. With Respect to the Fourth Loan, the Commission Finds Reason to Believe that the Committee Failed to Timely Report that the Source was a Home Equity Line of Credit

A candidate's principal campaign committee must report all loans derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate.[93] The report must identify the person who makes a loan to the committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loans.[94] Commission regulations provide that a committee must disclose information about loans from the candidate to the campaign on Schedules C and C-1.[95] If the candidate finances a loan to the campaign with an underlying loan or line of credit, section 104.3(d)(4) of the Commission's regulations requires the committee to disclose on Schedule C-1, among other things: (1) date, amount, and interest rate of the loan or line of credit; (2) name and address of the lending institution; and (3) types and value of collateral or other sources of repayment that secured the loan.[96]

The Committee failed to timely disclose that a home equity line of credit obtained by the candidate was the source of the $71,000 candidate loan reportedly received on September 4, 2018 (though not deposited until October 2, 2018). On its initial 2018 October Quarterly Report, the Committee disclosed the loan as a "Personal loan from Candidate" on Schedule A without

93 11 C.F.R. § 100.83(e).

94 *See* 52 U.S.C. § 30104(b)(3)(E); 11 C.F.R. § 104.3(a)(4)(iv).

95 11 C.F.R. § 104.3(d).

96 *Id.* § 104.3(d)(4).

any loan source other than Rep. Trahan identified on Schedule C (it stated that the loan was unsecured, had no due date, and was subject to a 0.00% interest rate).[97] However, after the election, on December 15, 2018, the Committee filed an amendment which included a Schedule C-1 to disclose that Rep. Trahan had obtained a loan from Washington Savings Bank secured by real estate valued at $950,000 with a 5.25% interest rate, due October 20, 2030, and with no other parties secondarily liable.[98]

The Committee failed to timely disclose information about the loan, and the amendment it filed incorrectly, reported that no other party was secondarily liable. The bank records attached to the OCE Referral indicate that the revolving credit agreement was signed by both Mr. Trahan and Rep. Trahan, with Mr. Trahan specifically listed as a "borrower."[99] Indeed, as discussed above, Mr. Trahan repaid the loan himself using his personal funds.[100] The Committee's reports to the Commission, however, do not further disclose Mr. Trahan's repayment of the debts and thereby his assumption as creditor of the loan.[101]

The Committee acknowledges that it improperly reported the source of the fourth loan, but contends that it "did not understand that it also had to file the Schedule C-1 disclosing the bank as the source of the loan and the loan terms," and asserts that "the Committee's new law firm identified the omission" and the Committee immediately filed the amendments properly

97 LTCC, 2018 October Quarterly Report at 100, 155 (Oct. 15, 2018).

98 LTCC, Second Amended 2018 October Quarterly Report at 102, 159, 160 (Dec. 15, 2018).

99 *Id*. at 160; OCE Referral, Ex. 11.

100 *Supra* page 8.

101 *See supra* pages 23-24 (discussing Mr. Trahan's repayment of the loan).

disclosing the loan.[102] As a result, the Committee argues that the report was "substantially correct" and requests that the Commission dismiss the violation and not assess a civil penalty.[103]

In past matters, the Commission has decided not to take further action where "reporting was substantially correct in that its 'overall reporting of the loans otherwise accurately disclosed the precise flow of money' from the bank to the campaign."[104] In the present matter, by contrast, the flow of money, from Washington Savings Bank to Rep. Trahan and then to the Committee, was not disclosed until after the election. Moreover, even the most recent amendment to the report incorrectly states that no other party is secondarily liable and makes no disclosure of the payment of the debt by Mr. Trahan or his assumption as creditor of the loan.[105]

Accordingly, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(d)(4) by failing to timely report the source of the $71,000 loan.

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[102] Trahan and Committee Resp. at 9.

[103] *Id*. at 8-10.

[104] *See* F&LA at 8, MURs 7001, 7002, 7003, 7009, and 7455 (Ted Cruz for Senate) (citing Second General Counsel's Rpt. at 11, MUR 5421 (John Kerry for President); Cert., MUR 5421 (Dec. 12, 2005) (following OGC's recommendation to take no further action with regard to the Kerry for President committee).

[105] *See* F&LA at 8-9, MURs 7001, 7002, 7003, 7009, and 7455 (Ted Cruz for Senate) (rejecting Cruz's claim that reports were substantially correct where, among other issues, the committee had failed to amend reports). Respondents' reliance on MUR 5198 (Cantwell) and MUR 6368 (Fincher) is unpersuasive. In MUR 5198 (Cantwell) the Commission did not pursue a civil penalty relating to similar reporting violations citing among other factors the no reason to believe finding regarding the "core allegations . . . that the loans were prohibited corporate contributions." First Gen. Counsel's Rpt. at 15, MUR 5198 (Cantwell); Cert., MUR 5198 (Jan. 13, 2004). In MUR 6368 (Fincher), the Commission was equally divided over whether to seek a civil penalty and closed the file. Three Commissioners found the matter analogous to MUR 5198 (Cantwell) and similarly voted not to pursue a civil penalty; the other three found the matters distinct and sought to pursue a civil penalty through pre-probable cause conciliation. Here, we recommend finding reason to believe on the "core allegations" that the loans were excessive contributions. For at least that reason, MURs 5198 and 6368 are distinguishable.

D. The Commission Finds Reason to Believe that the Committee Failed to Timely Deposit the Check Reflecting the Fourth Loan

Commission regulations provide that all receipts by a political committee shall be deposited into a designated campaign depository; the treasurer shall be responsible for making such deposits, and all deposits shall be made within ten days of the treasurer's receipt.[106] Rep. Trahan's check for the $71,000 loan drawn from the home equity line of credit was dated, and reported as received, on September 4, 2018. Bank records indicated that the check was not deposited until October 2, 2018, well beyond the ten-day period within which the treasurer is required to deposit it.[107] Accordingly, the Commission finds reason to believe that the Committee violated 52 U.SC. § 30102(h) and 11 C.F.R. § 103.3(a) by failing to timely deposit receipts.

[106] 11 C.F.R. § 103.3(a); *see* 52 U.S.C. § 30102(h)(1).

[107] OCE Referral, Ex. 11.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Concire, LLC **MUR** 7585

I. INTRODUCTION

This matter arises from a Complaint regarding four loans reportedly made by Representative Lori Trahan, a 2018 congressional candidate, to her authorized committee, Lori Trahan for Congress Committee and Maria Cunha in her official capacity as treasurer (the "Committee"), totaling $371,000. The Committee reported that Rep. Trahan made three of the loans using her "personal funds" and made the fourth loan using funds that she obtained from a home equity line of credit.

Regarding the first three loans, the Complaint alleges that Rep. Trahan did not have sufficient personal funds to make the loans. While the Complaint alleged that Concire, LLC ("Concire"), a company owned by Rep. Trahan, was the source of the funds used to make the loans and therefore made excessive contributions to the Committee in violation of the Federal Election Campaign Act of 1971, as amended (the "Act), new information released by the Office of Congressional Ethics ("OCE") of the U.S. House of Representatives indicates instead that Rep. Trahan received the funds to make the loans from her spouse, David Trahan. Accordingly, the Commission finds no reason to believe that Concire violated 52 U.S.C. § 30116(a)(1)(A) by making excessive contributions to the Committee.

II. FACTUAL BACKGROUND

Congresswoman Lori Trahan was a candidate in the 2018 election for the Third Congressional District in Massachusetts, and Lori Trahan for Congress Committee was her

authorized committee.[1] In the months leading up to the primary election, and on the day of the primary election, September 4, 2018, the Committee reported receiving four loans made by Rep. Trahan to the Committee totaling $371,000.

Figure 1. Candidate Loans to Lori Trahan for Congress

Reported Date of Receipt	Amount	Reported Loan Source
March 31, 2018	$50,000	Personal Funds of the Candidate
June 30, 2018	$50,000	Personal Funds of the Candidate
August 23, 2018	$200,000	Personal Funds of the Candidate
September 4, 2018	$71,000	Personal Funds of the Candidate (initial reporting); Loan from Washington Savings Bank (amended reporting)

The first three candidate loans, reportedly received on March 31, June 30, and August 23, 2018, were disclosed by the Committee on Schedule A (Itemized Receipts) with "Personal loan from Candidate" written on the memo line and on Schedule C (Loans) with "Personal Funds of the Candidate" identified as the loan source.[2] The fourth loan, reportedly received on September 4, 2018, was initially disclosed as a "Personal loan from Candidate" on Schedule A.[3] After the election, on December 6, 2018, the Committee filed an amendment to disclose that the loan source was the "Personal Funds of the Candidate."[4] Then, on December 15, 2018, the

[1] Lori Trahan, Statement of Candidacy (Sept. 21, 2017) (initial filing); Lori Trahan for Congress Committee ("LTCC"), Statement of Org. (Sept. 17, 2017) (initial filing).

[2] LTCC, 2018 April Quarterly Report at 98, 144 (Apr. 15, 2018) (initial reporting of March 31 loan, which identified Lori Trahan as the source on Schedule C but did not check the "Personal Funds of the Candidate" box); LTCC, Amended 2018 April Quarterly Report at 99, 145 (May 14, 2018) (amended reporting of March 31 loan, which identified "Personal Funds of the Candidate" as the loan source); LTCC, 2018 July Quarterly Report at 235, 282 (July 15, 2018) (identifying the personal funds of the candidate as the source of the June 30 loan); LTCC, 2018 October Quarterly Report at 100, 154 (Oct. 15, 2018) (initial reporting of August 23 loan, which identified Lori Trahan as the source on Schedule C but did not check the "Personal Funds of the Candidate" box); LTCC, Amended 2018 October Quarterly Report at 102, 158 (Dec. 6, 2018) (amended reporting of August 23 loan, which identified "Personal Funds of the Candidate" as the loan source).

[3] LTCC, 2018 October Quarterly Report at 100, 155 (Oct. 15, 2018).

[4] LTCC, Amended 2018 October Quarterly Report at 102, 159 (Dec. 6, 2018).

Committee filed a second amendment that removed the "Personal Funds of the Candidate" designation and included a Schedule C-1 (Loans and Lines of Credit from Lending Institutions) to disclose that Rep. Trahan had obtained a loan from Washington Savings Bank secured by real estate valued at $950,000 with a 5.25% interest rate, and with no other parties secondarily liable.[5]

On October 30, 2019, in response to media reports questioning the loans, Rep. Trahan published a piece entitled "Setting the Record Straight" on the website *Medium* providing the following statement about how the loans were financed:

> We considered all of the income that Dave and I earned to be ours, and I had the same right as Dave did to manage and spend it. So, over the course of the campaign, we decided to move $300,000 from income Dave had earned to our joint checking account; Dave deposited $50,000 and $55,000 into our joint checking account before I filed my first and second quarterly reports in 2018, and in August, he deposited an additional $200,000. I loaned money to my campaign in similar amounts from that joint checking account — $50,000 on March 31st, $50,000 on June 30th, and $200,000 on August 22nd. Later in the campaign, I used a home equity line of credit to loan my campaign an additional $71,000.[6]

On December 17, 2019, the U.S. House of Representatives Committee on Ethics made public a referral from OCE regarding these loans, which the Committee on Ethics adopted into its own report issued in July 2020.[7] According to bank records, Rep. Trahan made the first three loans using checks drawn on a joint bank account at Enterprise Bank that she shared with her

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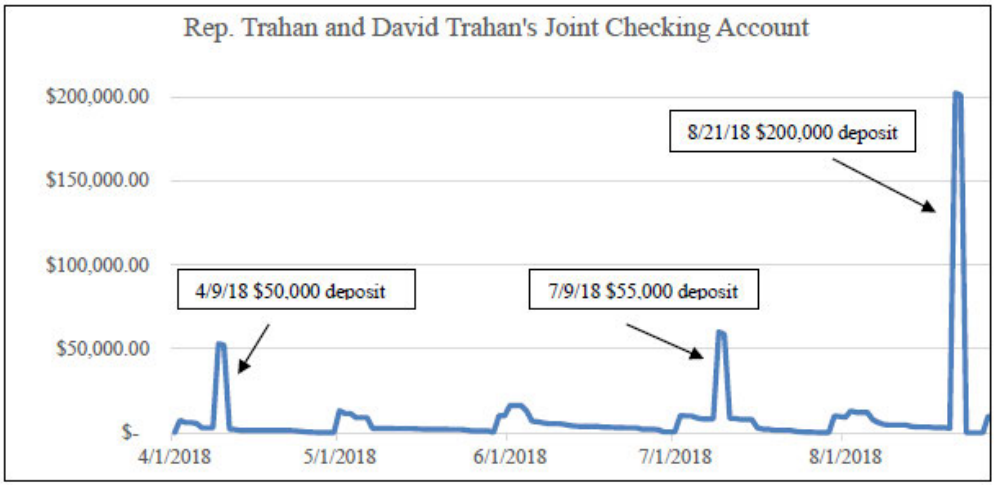
5 LTCC, Second Amended 2018 October Quarterly Report at 102, 159, 160 (Dec. 15, 2018).

6 Lori Trahan, *Setting the Record Straight*, MEDIUM (Oct. 30, 2019), https://medium.com/@adminlt/setting-the-record-straight-4bed62080117.

7 Office of Congressional Ethics, United States House of Representatives, Report No. 19-5449 (Sept. 13, 2019) ("OCE Referral"), https://oce.house.gov/sites/congressionalethics.house.gov/files/documents/Review%20No.%2019-5449_Referral.pdf; *see also* Committee on Ethics, United States House of Representatives, Report In the Matter of Allegations Relating to Representative Lori Trahan at 2, 18 (July 15, 2020) (incorporating OCE Referral and attaching it as Appendix A) ("Committee on Ethics Report"), https://www.congress.gov/116/crpt/hrpt451/CRPT-116hrpt451.pdf.

spouse.[8] This joint account generally maintained a balance far below the amounts of the loans (as low as $55.13) but, on all three occasions, days before or after Rep. Trahan wrote checks to the Committee, Mr. Trahan made large deposits of funds drawn from his personal or business accounts sufficient to cover the loans.[9] The below chart from the OCE Referral shows the balance of funds in the joint account during the period of April through August 2018, including the three deposits made by Mr. Trahan and the immediate withdrawals to fund loans to the Committee, which stand out from the general activity in the account at the time.[10]

Figure 2. Joint Bank Account Balances



[8] OCE Referral ¶ 24 (image of $50,000 check signed by Rep. Trahan to the Committee, dated March 31, 2018); *id.* ¶ 28 (image of $50,000 check dated June 30, 2018); *id.* ¶ 33 (image of $200,000 check dated August 22, 2018).

[9] *Id.* ¶¶ 22-34; *see id.* ¶ 26 (image of $50,000 check dated April 7, 2018, that Mr. Trahan wrote to himself from his personal bank account at Enterprise Bank, and image of April 9, 2018, deposit slip showing that he deposited the funds into the joint account); *id.* ¶ 30 (image of $55,000 check dated July 9, 2018, that Mr. Trahan wrote to himself from the account of DCT Development, Inc., at Enterprise Bank, and image of July 9, 2018, deposit slip showing that he deposited the funds into the joint account); *id.* ¶ 32 (image of bank record showing internal bank transfer of $200,000 on August 21, 2018, from Mr. Trahan's personal account at Enterprise Bank to the joint account); *see also* Lori Trahan, Amended 2018 Personal Financial Disclosure ("PFD") at 1-2 (Nov. 16, 2018) (indicating that the "owner" of the personal and business accounts in question was the candidate's spouse rather than being a joint account).

[10] OCE Referral ¶ 22.

With respect to the first two loans, Rep. Trahan wrote checks to the Committee on March 31 and June 30, 2018, before Mr. Trahan had deposited funds into the joint account and at a time when there were insufficient funds in the joint account to cover the loans.[11] The Committee did not deposit Rep. Trahan's checks until after Mr. Trahan moved funds into the joint account.[12] In the case of the March 31 loan, the Committee waited nine days to deposit the check, and in the case of the June 30 loan, it waited ten days.[13] In both instances, Rep. Trahan dated her checks on the last day of the relevant FEC reporting period and the Committee reported the loans as received on that date, and thus the loans were included in the Committee's reported cash on hand even though the funds had not been deposited (and could not have been deposited because of insufficient funds in the Trahans' joint bank account).[14]

Bank records indicate that the fourth loan, in the amount of $71,000, reportedly received on September 4, 2018, was funded by a home equity line of credit from Washington Savings Bank.[15] The line of credit was opened on October 15, 2010, with a limit of $200,000, and was secured by a property located in Westford, Massachusetts.[16] The Committee's amended reports with the Commission state that no other parties were liable for the loan, but records from the OCE Referral reflect that Mr. Trahan was a co-signor to that line of credit.[17] Further, the bank records indicate that Mr. Trahan repaid the line of credit with a check from his personal account

[11] *Id.* ¶¶ 25, 28.

[12] *Id.* ¶¶ 27, 31.

[13] *Id.*

[14] *Id.* ¶¶ 19, 27, 31.

[15] *Id.*, Ex. 11 (image of $71,000 check signed by Rep. Trahan to Committee, dated September 4, 2018, from revolving line of credit at Washington Savings Bank).

[16] *Id.*, Ex. 10 (Revolving Credit Agreement and Note).

[17] *Id.*

nine days after the Committee cashed Rep. Trahan's check drawn on the home equity line of credit, and more than a month prior to the Committee issuing a check to repay her for the loan.[18]

The Complaint in this matter was initially filed in March 2019, prior to the publication of the OCE Referral in September 2019, based on news reports and Rep. Trahan's Personal Financial Disclosures ("PFDs") filed with the House of Representatives. It alleged that it did not appear that Rep. Trahan had sufficient personal funds to support the first three loans, totaling $300,000.[19] Specifically, the Complaint alleged that Rep. Trahan used her consulting company, Concire, "to channel illegal contributions into her campaign," and therefore, that Concire might have been the true source of the funds.[20] The OCE Referral cites new details suggesting that Mr. Trahan was the true source of the funds.

II. LEGAL ANALYSIS

The term "contribution" includes "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 office."[21] No person, including a candidate's family members, shall make contributions to any candidate, his or her authorized committee, or their agents with respect to any election for federal office which, in the aggregate, are in excess of applicable contribution limits.[22] The individual contribution limit was $2,700 per election during the 2018 election cycle.[23] Further,

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18 *Id*. ¶¶ 39-43, Exs. 12-15.

19 *See* Compl. at 4 (Mar. 15, 2019); *see also* Supp. Compl. (May 6, 2019); Second Supp. Compl. (July 11, 2019).

20 Compl. at 4-5; Second Supp. Compl. at 2.

21 52 U.S.C. § 30101(8)(A)(i). *But see* 11 C.F.R. §§ 100.52, 82, 83 (excepting from the definition of loans that are contributions qualifying "Bank loans" and "Brokerage loans and lines of credit to candidates").

22 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

23 Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 82 Fed. Reg. 10,904, 10,906 (Feb. 16, 2017).

no candidate or political committee shall knowingly accept a contribution that exceeds the applicable contribution limit.[24] Candidates, however, "may make unlimited expenditures from personal funds."[25]

The Complaint, which pre-dated the public release of the OCE Referral, alleges that Concire, a company owned by Rep. Trahan, may have been the true source of the funds used to finance the loans.[26] Based on a review of Rep. Trahan's PFDs filed with Congress, the Complaint surmised that Rep. Trahan used funds from Concire.[27] However, the available information demonstrates that this theory is contradicted by the bank records, which trace the flow of funds from personal and business accounts controlled by Mr. Trahan to the joint account and then to the Committee. Accordingly, the Commission finds no reason to believe that Concire, LLC, violated 52 U.S.C. § 30116(a)(1)(A) by making excessive contributions in the form of loans to the Lori Trahan for Congress Committee.

[24] 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

[25] 11 C.F.R. § 110.10. The Act and Commission regulations provide that "personal funds of a candidate" means the sum of: (a) Assets – amounts derived from any asset that, "under applicable State law, at the time the individual became a candidate, 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"; (b) Income – the candidate's income received during the current election cycle, including a salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; and gifts of a personal nature that had been customarily received by the candidate prior to the election cycle; and (c) Jointly Owned Assets – amounts derived from a portion of assets that are owned jointly by the candidate and the candidate's spouse; the amount is limited to "the candidate's share of the asset under the instrument of conveyance or ownership," but if the instrument is silent, the Commission will presume that the candidate holds a one-half ownership interest. 52 U.S.C. § 30101(26)(A)-(C); 11 C.F.R. § 100.33(a)-(c).

[26] Compl. at 4-5.

[27] *Id.*

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: David Trahan **MUR** 7588

I. INTRODUCTION

This matter arises from a Complaint regarding four loans reportedly made by Representative Lori Trahan, a 2018 congressional candidate, to her authorized committee, Lori Trahan for Congress Committee and Maria Cunha in her official capacity as treasurer (the "Committee"), totaling $371,000. The Committee reported that Rep. Trahan made three of the loans using her "personal funds" and made the fourth loan using funds that she obtained from a home equity line of credit.

Regarding the first three loans, the Complaint alleges that Rep. Trahan did not have sufficient personal funds to make the loans. A Supplemental Complaint, filed after new information was released by the Office of Congressional Ethics ("OCE"), specifically alleges that Rep. Trahan received the funds to make the loans from her spouse, David Trahan, resulting in an excessive contribution by Mr. Trahan to Rep. Trahan and the Committee, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").

Respondent denies that he made excessive contributions in connection with the first three loans. Respondent argues that the funds used to make the loans were Rep. Trahan's "personal funds" as defined by the Act and Commission regulations, and thus that he did not make a contribution in connection with the loans. Respondent asserts that Rep. Trahan used their joint bank account and that she was entitled to the funds because under Massachusetts law and pursuant to a prenuptial agreement, the Trahans both had equal rights in regard to the

management and disposition of all marital property, including Respondent's income earned during the campaign.

As set forth below, it appears that Mr. Trahan's income was the true source of the funds used to finance the first three loans and, therefore in accordance with relevant Commission precedent, he made excessive contributions to the Committee. According to bank records obtained by OCE, Mr. Trahan transferred income he received during the period of Rep. Trahan's campaign to a joint bank account shared with Rep. Trahan shortly before or after Rep. Trahan wrote checks from the joint account to the Committee. These funds originated from Mr. Trahan's personal or business accounts, to which Rep. Trahan had no access. Without Mr. Trahan's deposits, the joint account did not have sufficient funds to cover the checks written to make the loans.

Mr. Trahan also appears to have made an excessive contribution in connection with the fourth loan. Though Rep. Trahan initially made that loan using her personal funds permissibly obtained through a home equity line of credit, Mr. Trahan subsequently repaid the bank with funds from his personal account before the Committee repaid Rep. Trahan.

Accordingly, the Commission finds reason to believe that David Trahan violated 52 U.S.C. § 30116(a)(1)(A) by making excessive contributions in the form of loans to Rep. Trahan and Committee.

II. FACTUAL BACKGROUND

Congresswoman Lori Trahan was a candidate in the 2018 election for the Third Congressional District in Massachusetts, and Lori Trahan for Congress Committee was her

authorized committee.[1] In the months leading up to the primary election, and on the day of the primary election, September 4, 2018, the Committee reported receiving four loans made by Rep. Trahan to the Committee totaling $371,000.

Figure 1. Candidate Loans to Lori Trahan for Congress

Reported Date of Receipt	Amount	Reported Loan Source
March 31, 2018	$50,000	Personal Funds of the Candidate
June 30, 2018	$50,000	Personal Funds of the Candidate
August 23, 2018	$200,000	Personal Funds of the Candidate
September 4, 2018	$71,000	Personal Funds of the Candidate (initial reporting); Loan from Washington Savings Bank (amended reporting)

The first three candidate loans, reportedly received on March 31, June 30, and August 23, 2018, were disclosed by the Committee on Schedule A (Itemized Receipts) with "Personal loan from Candidate" written on the memo line and on Schedule C (Loans) with "Personal Funds of the Candidate" identified as the loan source.[2] The fourth loan, reportedly received on September 4, 2018, was initially disclosed as a "Personal loan from Candidate" on Schedule A.[3] After the election, on December 6, 2018, the Committee filed an amendment to disclose that the loan source was the "Personal Funds of the Candidate."[4] Then, on December 15, 2018, the

[1] Lori Trahan, Statement of Candidacy (Sept. 21, 2017) (initial filing); Lori Trahan for Congress Committee ("LTCC"), Statement of Org. (Sept. 17, 2017) (initial filing).

[2] LTCC, 2018 April Quarterly Report at 98, 144 (Apr. 15, 2018) (initial reporting of March 31 loan, which identified Lori Trahan as the source on Schedule C but did not check the "Personal Funds of the Candidate" box); LTCC, Amended 2018 April Quarterly Report at 99, 145 (May 14, 2018) (amended reporting of March 31 loan, which identified "Personal Funds of the Candidate" as the loan source); LTCC, 2018 July Quarterly Report at 235, 282 (July 15, 2018) (identifying the personal funds of the candidate as the source of the June 30 loan); LTCC, 2018 October Quarterly Report at 100, 154 (Oct. 15, 2018) (initial reporting of August 23 loan, which identified Lori Trahan as the source on Schedule C but did not check the "Personal Funds of the Candidate" box); LTCC, Amended 2018 October Quarterly Report at 102, 158 (Dec. 6, 2018) (amended reporting of August 23 loan, which identified "Personal Funds of the Candidate" as the loan source).

[3] LTCC, 2018 October Quarterly Report at 100, 155 (Oct. 15, 2018).

[4] LTCC, Amended 2018 October Quarterly Report at 102, 159 (Dec. 6, 2018).

Committee filed a second amendment that removed the "Personal Funds of the Candidate" designation and included a Schedule C-1 (Loans and Lines of Credit from Lending Institutions) to disclose that Rep. Trahan had obtained a loan from Washington Savings Bank secured by real estate valued at $950,000 with a 5.25% interest rate, and with no other parties secondarily liable.[5]

On October 30, 2019, in response to media reports questioning the loans, Rep. Trahan published a piece entitled "Setting the Record Straight" on the website *Medium* providing the following statement about how the loans were financed:

> We considered all of the income that Dave and I earned to be ours, and I had the same right as Dave did to manage and spend it. So, over the course of the campaign, we decided to move $300,000 from income Dave had earned to our joint checking account; Dave deposited $50,000 and $55,000 into our joint checking account before I filed my first and second quarterly reports in 2018, and in August, he deposited an additional $200,000. I loaned money to my campaign in similar amounts from that joint checking account — $50,000 on March 31st, $50,000 on June 30th, and $200,000 on August 22nd. Later in the campaign, I used a home equity line of credit to loan my campaign an additional $71,000.[6]

On December 17, 2019, the U.S. House of Representatives Committee on Ethics made public a referral from OCE regarding these loans, which the Committee on Ethics adopted into its own report issued in July 2020.[7] According to bank records, Rep. Trahan made the first three loans using checks drawn on a joint bank account at Enterprise Bank that she shared with her

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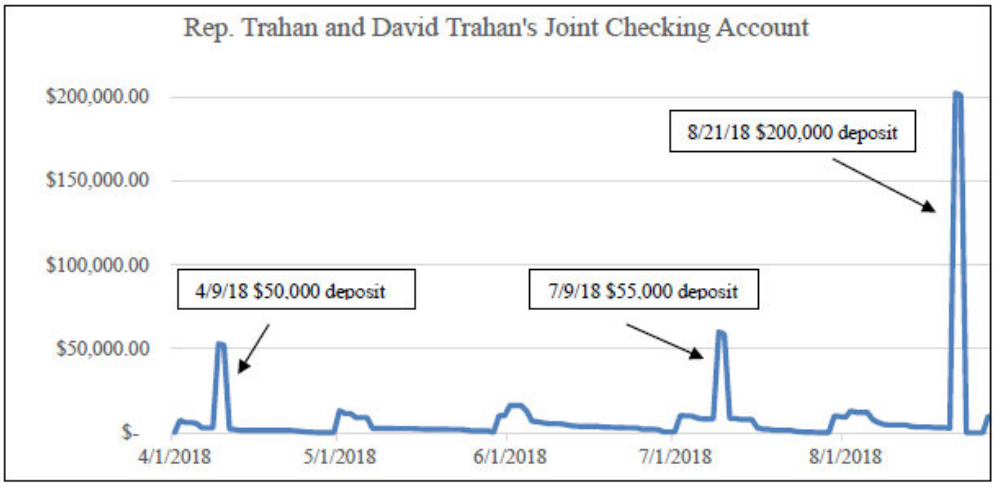
[5] LTCC, Second Amended 2018 October Quarterly Report at 102, 159, 160 (Dec. 15, 2018).

[6] Lori Trahan, *Setting the Record Straight*, MEDIUM (Oct. 30, 2019), https://medium.com/@adminlt/setting-the-record-straight-4bed62080117 ("Setting the Record Straight").

[7] Office of Congressional Ethics, United States House of Representatives, Report No. 19-5449 (Sept. 13, 2019) ("OCE Referral"), https://oce.house.gov/sites/congressionalethics.house.gov/files/documents/Review%20No.%2019-5449_Referral.pdf; *see also* Committee on Ethics, United States House of Representatives, Report In the Matter of Allegations Relating to Representative Lori Trahan at 2, 18 (July 15, 2020) (incorporating OCE Referral and attaching it as Appendix A) ("Committee on Ethics Report"), https://www.congress.gov/116/crpt/hrpt451/CRPT-116hrpt451.pdf.

spouse.[8] This joint account generally maintained a balance far below the amounts of the loans (as low as $55.13) but, on all three occasions, days before or after Rep. Trahan wrote checks to the Committee, Mr. Trahan made large deposits of funds drawn from his personal or business accounts sufficient to cover the loans.[9] The below chart from the OCE Referral shows the balance of funds in the joint account during the period of April through August 2018, including the three deposits made by Mr. Trahan and the immediate withdrawals to fund loans to the Committee, which stand out from the general activity in the account at the time.[10]

Figure 2. Joint Bank Account Balances



[8] OCE Referral ¶ 24 (image of $50,000 check signed by Rep. Trahan to the Committee, dated March 31, 2018); *id.* ¶ 28 (image of $50,000 check dated June 30, 2018); *id.* ¶ 33 (image of $200,000 check dated August 22, 2018).

[9] *Id.* ¶¶ 22-34; *see id.* ¶ 26 (image of $50,000 check dated April 7, 2018, that Mr. Trahan wrote to himself from his personal bank account at Enterprise Bank, and image of April 9, 2018, deposit slip showing that he deposited the funds into the joint account); *id.* ¶ 30 (image of $55,000 check dated July 9, 2018, that Mr. Trahan wrote to himself from the account of DCT Development, Inc., at Enterprise Bank, and image of July 9, 2018, deposit slip showing that he deposited the funds into the joint account); *id.* ¶ 32 (image of bank record showing internal bank transfer of $200,000 on August 21, 2018, from Mr. Trahan's personal account at Enterprise Bank to the joint account); *see also* Lori Trahan, Amended 2018 Personal Financial Disclosure ("PFD") at 1-2 (Nov. 16, 2018) (indicating that the "owner" of the personal and business accounts in question was the candidate's spouse rather than being a joint account).

[10] OCE Referral ¶ 22.

With respect to the first two loans, Rep. Trahan wrote checks to the Committee on March 31 and June 30, 2018, before Mr. Trahan had deposited funds into the joint account and at a time when there were insufficient funds in the joint account to cover the loans.[11] The Committee did not deposit Rep. Trahan's checks until after Mr. Trahan moved funds into the joint account.[12] In the case of the March 31 loan, the Committee waited nine days to deposit the check, and in the case of the June 30 loan, it waited ten days.[13] In both instances, Rep. Trahan dated her checks on the last day of the relevant FEC reporting period and the Committee reported the loans as received on that date, and thus the loans were included in the Committee's reported cash on hand even though the funds had not been deposited (and could not have been deposited because of insufficient funds in the Trahans' joint bank account).[14]

Bank records indicate that the fourth loan, in the amount of $71,000, reportedly received on September 4, 2018, was funded by a home equity line of credit from Washington Savings Bank.[15] The line of credit was opened on October 15, 2010, with a limit of $200,000, and was secured by a property located in Westford, Massachusetts.[16] The Committee's amended reports with the Commission state that no other parties were liable for the loan, but records from the OCE Referral reflect that Mr. Trahan was a co-signor to that line of credit.[17] Further, the bank records indicate that Mr. Trahan repaid the line of credit with a check from his personal account

[11] *Id.* ¶¶ 25, 28.

[12] *Id.* ¶¶ 27, 31.

[13] *Id.*

[14] *Id.* ¶¶ 19, 27, 31.

[15] *Id.*, Ex. 11 (image of $71,000 check signed by Rep. Trahan to Committee, dated September 4, 2018, from revolving line of credit at Washington Savings Bank).

[16] *Id.*, Ex. 10 (Revolving Credit Agreement and Note).

[17] *Id.*

nine days after the Committee cashed Rep. Trahan's check drawn on the home equity line of credit, and more than a month prior to the Committee issuing a check to repay her for the loan.[18]

The Complaint in this matters was initially filed in March 2019, prior to the publication of the OCE Referral in September 2019, based on news reports and Rep. Trahan's Personal Financial Disclosures ("PFDs") filed with the House of Representatives, alleging that it did not appear that Rep. Trahan had sufficient personal funds to support the first three loans, totaling $300,000.[19] After the OCE Referral was publicly released, the Complainant filed the Supplemental Complaint, citing to the new details suggesting that Mr. Trahan was the true source of the funds and alleging that Rep. Trahan and the Committee knowingly and willfully misreported the dates of loans to "misl[ead] voters about her campaign financing at the height of the election."[20] Mr. Trahan was notified as a Respondent. He submitted a brief response, adopting by reference a response from Rep. Trahan and the Committee.[21]

Rep. Trahan and the Committee argue broadly, referencing Rep. Trahan's $274,535 in income for 2018, that there were sufficient funds in the joint account throughout the calendar year to finance the $300,000 loan. Respondent states that the entirety of the funds used to finance the loans, including the funds obtained from Mr. Trahan's personal and business accounts, were Rep. Trahan's "personal funds."[22] Specifically, he quotes from the Trahans' prenuptial agreement, which states that "[e]ach party shall have equal rights in regard to the management of and disposition of all marital property," and submits a letter authored by a Massachusetts family

18 *Id*. ¶¶ 39-43, Exs. 12-15.

19 *See* MUR 7588 Compl. ¶¶ 30-33 (Mar. 28, 2019).

20 MUR 7588 Supp. Compl. at 6-7 (Jan. 16, 2020).

21 David Trahan Resp. (Apr. 1, 2020) (enclosing copy of Trahan and Committee Supplemental Response).

22 Trahan and Committee Supp. Resp. at 2-6 (Mar. 13, 2020).

law attorney providing a written interpretation of the agreement to mean that Rep. Trahan "had (and continues to have) an equitable interest in the wages, salary, and income earned and received by her husband during their marriage."[23] Moreover, Respondent asserts that even in the absence of the prenuptial agreement, "the movement of funds through the joint account was sufficient" to make the funds Rep. Trahan's personal funds for purposes of the Act.[24]

On July 15, 2020, the House Committee on Ethics reviewed the issues raised by the OCE Referral and issued its conclusions, stating that "the Committee did not find that Representative Trahan acted in violation of House Rules, laws, regulations or other standards of conduct," and dismissed the matter while leaving questions regarding possible reporting errors to the Commission.[25] The House Committee on Ethics Report concluded that "[b]ased 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" and that Rep. Trahan's "amendments to her disclosures on her own initiative show her good faith effort to comply with the relevant disclosure requirements."[26]

III. LEGAL ANALYSIS

A. The Commission Finds Reason to Believe that David Trahan made Excessive Contributions to Rep. Trahan and the Committee

The term "contribution" includes "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

[23] *Id.* at 4; *id.*, Ex. A (letter from Catharine V. Blake, Esq., to Committee on Ethics, U.S. House of Representatives, dated October 28, 2019).

[24] Trahan and Committee Supp. Resp. at 6-7.

[25] Committee on Ethics Report at 2, 18.

[26] *Id.* at 20.

Federal office."[27] No person, including a candidate's family members, shall make contributions to any candidate, his or her authorized committee, or their agents with respect to any election for federal office which, in the aggregate, are in excess of applicable contribution limits.[28] The individual contribution limit was $2,700 per election during the 2018 election cycle.[29] Further, no candidate or political committee shall knowingly accept a contribution that exceeds the applicable contribution limit.[30]

Candidates, however, "may make unlimited expenditures from personal funds."[31] The Act and Commission regulations provide that "personal funds of a candidate" means the sum of: (a) Assets – amounts derived from any asset that, "under applicable State law, at the time the individual became a candidate, 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"; (b) Income – the candidate's income received during the current election cycle, including a salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; and gifts of a personal nature that had been customarily received by the candidate prior to the election cycle; and (c) Jointly Owned Assets – amounts derived from a portion of assets that are owned jointly by the candidate and the candidate's spouse; the amount is limited to "the candidate's share of the asset under the

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[27] 52 U.S.C. § 30101(8)(A)(i). *But see* 11 C.F.R. §§ 100.52, 82, 83 (excepting from the definition of loans that are contributions qualifying "Bank loans" and "Brokerage loans and lines of credit to candidates").

[28] 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

[29] Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 82 Fed. Reg. 10,904, 10,906 (Feb. 16, 2017).

[30] 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

[31] 11 C.F.R. § 110.10.

instrument of conveyance or ownership," but if the instrument is silent, the Commission will presume that the candidate holds a one-half ownership interest.[32]

The requirement that the candidate must have a legal right of access to or control over an asset in order for it to be considered personal funds is underscored by the legislative history of the Act and Commission precedent. In the 1983 Explanation & Justification ("E&J") accompanying regulatory changes clarifying the definition of personal funds set forth in 11 C.F.R. § 100.33, the Commission stated that the reordering of the terms in the definition "made clear that the criteria of 'legal and rightful title' and 'equitable interest' must each be linked with 'legal right of access to or control over.'"[33] Earlier, in connection with the 1974 amendments to the Act, the Committee of Conference wrote:

> It is the intent of the conferees that members of the immediate family of any candidate shall be subject to the contribution limitations established by this legislation. If a candidate for the office of Senator, for example, already is in a position to exercise control over funds of a member of his immediate family before he becomes a candidate, then he could draw upon these funds up to the limit . . . . If, however, the candidate did not have access to or control over such funds at the time he became a candidate, the immediate family member would not be permitted to grant access or control to the candidate . . . if the immediate family member intends that such amounts are to be used in the campaign of the candidate. The immediate family member would be permitted merely to make contributions to the candidate in amounts not greater than [the limit] for each election involved.[34]

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[32] 52 U.S.C. § 30101(26)(A)-(C); 11 C.F.R. § 100.33(a)-(c).

[33] Candidate's Use of Property in Which Spouse Has an Interest, 48 Fed. Reg. 19,019, 19,020 (Apr. 27, 1983) (citing legislative history of the 1974 Amendments to 18 U.S.C. § 608 pertaining to the limitations of expenditures of personal funds by a candidate and *Buckley v. Valeo*, 424 U.S. 1, 51, 52, & n.57 (1976)).

[34] *FECA Amendments of 1974, Joint Explanatory Statement of the Committee of Conference*, Sen. Conf. Rpt. 93-1237 (Oct. 7, 1974), 1974 U.S.C.C.A.N. 5618, 5627.

The statements by the Commission and the Senate Committee on Conference appear to emphasize the concept of pre-candidacy control over funds or assets by the candidate, and distinguish such control from circumstances where access or control is later granted by a spouse or other family member.[35]

With regard to jointly owned assets, in some past matters, the Commission has determined that joint bank accounts are not subject to the one-half ownership presumption and the candidate may use the entire amount as "personal funds" because each account holder of the joint bank account had access to and control over the whole account under applicable state law.[36] Similarly, in some past Commission audits, the Commission has determined the portion of a joint bank account that constitutes the personal funds of the candidate by considering whether "state law gives each party access to and control over the whole."[37]

Separate from the issue of how the one-half ownership presumption should apply to joint bank accounts, is how the Commission treats funds that have been moved by a spouse into a joint

[35] *Cf.* Advisory Opinion 1991-10 at 3 (Guernsey) (considering a circumstance in which both spouses' signatures were required to make a withdrawal and concluding that the account was not the candidate's asset but a joint asset as "it appears that the candidate does not have legal right of access to or control over the account, without the benefit of a spousal signature").

[36] *See, e.g.*, MUR 2754 (Lowey); MUR 2292 (Stein); MUR 3505 (Klink); *see also* Office of General Counsel Comments to Resubmitted Draft Final Audit Report – Ted Cruz for Senate (LRA # 976) at 6 (Jan. 10, 2017) ("In the context of a joint bank account, however, the Commission deems all of the funds in an account held jointly with a spouse to be the candidate's personal funds if the state law governing such accounts provides that both spouses owning the account have equal and complete access to its funds."); Office of General Counsel Comments on Bauer for President 2000, Proposed Audit Report (LRA #543), May 6, 2002, at 6 (discussing history of joint bank account exception to the one-half ownership presumption).

[37] *See* Office of General Counsel Addendum to Legal Analysis to Proposed Interim Audit Report on Friends for Menor (LRA 732), Contributions from Personal Funds in Jointly Held Bank Accounts at 2 (July 2, 2008) (determining that 100% the funds in a joint account were the personal funds of the candidate under Hawaii state law, which stated that "[a]ny deposit account held in the names of two or more persons may be paid, on request and according to its terms, to any one or more of the persons"). In the instant matter, Massachusetts law appears to govern, and it permits joint accounts where "any part or all of the deposits and interest represented by joint accounts may be withdrawn, assigned or transferred in whole or part by any of the individual parties." Mass. Gen. Laws Ann. Ch. 167D, § 3(a).

bank account for the purpose of financing the candidate's election. In MUR 6417 (Huffman), the Commission concluded that a transfer by the spouse from a personal account to a joint account shared with the candidate, which the candidate then used to make a contribution, resulted in an excessive contribution by the spouse, but the Commission split on the same issue in MUR 6860 (Terri Lynn Land), where there was information that the joint account may have historically maintained funds from both the candidate's and her spouse's incomes.[38] Instead, the Commission pursued separate allegations in MUR 6860 involving excessive contributions that took place when the candidate's spouse transferred funds from his personal account to the candidate's individually held account to cover contribution checks the candidate had drawn to her campaign that lacked sufficient funds.[39] More recently, in MUR 6848 (Demos), the Commission found reason to believe on the question of an excessive contribution because the candidate's spouse provided the vast majority of the funds in the joint account shortly before the Statement of Candidacy was filed and the majority of the deposits appeared on the then-existing record to have been made for the purpose of funding the candidate's campaign.[40] The Commission did not pursue the matter further at the probable cause stage.[41]

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[38] *See* Factual & Legal Analysis ("F&LA") at 3-4, MUR 6417 (Huffman); Amended Cert. ¶ 1-3 (Aug. 10, 2011), MUR 6417; First Gen. Counsel's Rpt. at 9-11, MUR 6860 (Terry Lynn Land); Cert. ¶ 1 (June 17, 2016), MUR 6860.

[39] F&LA at 7-9, MUR 6860 (Terry Lynn Land) (finding that the transferred funds did not qualify as assets under 11 C.F.R. § 100.33(a), income under 11 C.F.R. § 100.33(b), or jointly owned assets under 11 C.F.R. § 100.33(c)).

[40] *See* F&LA at 9*,* MUR 6848 (Demos) (July 25, 2018).

[41] After the Commission found reason to believe that Demos's spouse made an excessive contribution by depositing $3 million into a joint account shortly before Demos became a candidate, it split 2-2 at the probable cause stage over the record's factual support for the premise that Demos had decided to become a candidate prior to the transfer and thus that the transfer occurred specifically for the purpose of funding Demos's campaign. *See id.*; Statement of Reasons, Comm'rs. Hunter & Petersen at 3-4, MUR 6848 (Demos); Statement of Reasons, Comm'r. Weintraub at 1-2, MUR 6848 (Demos).

1. The First Three Loans were Funded by Mr. Trahan's Income Over Which Rep. Trahan Did Not Have Access or Control

The sources of the March 31, June 30, and August 23, 2018, loans do not appear to fall into any of the Commission's three defined categories of "personal funds" in 11 C.F.R. § 100.33: (1) assets controlled by the candidate prior to candidacy; (2) the candidate's income; or (3) the candidate's portion of joint assets.[42] These three loans, totaling $300,000, were each drawn on a joint bank account held by Rep. Trahan and her spouse using funds that had originated from Mr. Trahan's personal and business accounts for the purpose of funding Rep. Trahan's candidacy. In the first instance, the joint account had a balance of $55.13 on the day when Rep. Trahan wrote a check to the Committee for $50,000; Mr. Trahan wrote a check from a personal bank account one week later for $50,000 to cover the check to the Committee.[43] In the second instance, the joint checking account had a balance of $625.59 on the day when Rep. Trahan wrote a check to the Committee for $50,000; nine days later Mr. Trahan wrote a check to himself for $55,000 from DCT Development, Inc., an S corporation, that, according to Rep. Trahan's PFD, Mr. Trahan individually owned, and then deposited the check into the Trahans' joint account to cover

[42] 11 C.F.R. § 100.33(a)-(c).

[43] *See* Committee on Ethics Report at 6-7; OCE Referral ¶¶ 24-27. Mr. Trahan's check was deposited into the joint account two days afterwards and the Committee cashed the check from Rep. Trahan the same day as his deposit — as soon as there was a balance sufficient to cover the check. The Committee on Ethics Report notes that shortly before these transactions, Mr. Trahan deposited into this personal account $100,000 in income from Mass. Eagle Development, LLC, an S corporation of which Mr. Trahan is a one-third owner. Committee on Ethics Report at 6. While the Committee on Ethics seems to draw a connection between this particular income and the loan, Mr. Trahan's personal account received multiple deposits around this time increasing the balance of the account such that it was sufficient to cover the $50,000 loan. Therefore, while it is undisputed that Mr. Trahan received income that was used to make the loan, the link to income from any particular entity appears to be somewhat ambiguous to the Commission based on the information that is publicly available. *Id*. at 7, Appendix D, Ex. 5.

the check to the Committee.[44] In the third instance, the joint account had a balance of $2,769.54 on the day when Mr. Trahan initiated a transfer from his personal bank account in the amount of $200,000; the next day Rep. Trahan wrote a check to the Committee for the same amount.[45] Rep. Trahan asserts that these funds were derived "from income [Mr. Trahan] had earned," a statement that is supported by the bank records discussed above.[46] In sum, each of the three loans were made with income from Mr. Trahan that he moved into the joint account for the apparent purpose of funding the loans that the Committee then reported as having been made by Rep. Trahan using her personal funds.

Respondent argues that, pursuant to language in the Trahans' prenuptial agreement, all assets he owned, as well as his income, were "marital property" and thus, should be treated as "personal funds of the candidate."[47] Respondent asserts that the prenuptial agreement provides that "[e]ach party shall have equal rights in regard to the management of and disposition of all

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[44] *See* Committee on Ethics Report at 8-9; OCE Referral ¶¶ 28-31; Lori Trahan, Amended 2018 PFD at 1 (Nov. 16, 2018). The involvement of a corporate account in this chain of events raises the question as to whether this transaction constituted a prohibited corporate contribution under 52 U.S.C. § 30118. This allegation was not specifically raised by the Complaint, nor addressed by Respondent. Based on these circumstances, and given that the funds appeared to have been Mr. Trahan's "income," the Commission is not making findings regarding such potential violations. Committee on Ethics Report, Appendix C, ¶ 2(a)-(c) (Rep. Trahan responding to question from the Committee on Ethics regarding the status of the $55,000 disbursement that Mr. Trahan received from DCT as income rather than returned capital); *see* Statement of Reasons, Comm'rs. Petersen, Bauerly, Hunter, and McGahn, MUR 6102 (Oliver) at 5-6 (explaining the Commission's dismissal of allegations of a prohibited corporate contribution, where the candidate received distributions from an S Corporation of which she was the sole shareholder and member and where she attested under oath that the distribution was "proper and in accordance with the [corporation's] Bylaws"); *cf.* F&LA, MUR 3191 (Friends of Bill Zeliff) (finding reason to believe that the candidate used corporate funds to make loans to his committee where the candidate's draw on equity of a S corporation in which he was a shareholder had the effect of a loan rather than income).

[45] *See* Committee on Ethics Report at 9-10; OCE Referral ¶¶ 32-37. On July 31, Mr. Trahan's account contained less than $5,000 when he deposited checks from Middlesex Land Holdings, LLC, and Poplar Hill Development, LLC, totaling $380,900. Both entities are organized as partnerships, which Mr. Trahan co-owns (with outside business partners) and the funds from these entities were considered partnership income. Committee on Ethics Report at 8-9.

[46] Setting the Record Straight; *see supra* notes 43-45.

[47] Trahan and Committee Supp. Resp. at 2-6.

marital property" and defines "marital property" to mean: (1) "All property purchased with proceeds of" a fund "for the maintenance of their household and care of their children," to which each spouse "shall make equal periodic contributions"; and (2) "All wages, salary, and income of each party earned or received during marriage, together with property purchased with these funds."[48] Given this text and the cited authorities supporting his claim that Massachusetts law generally recognizes and enforces prenuptial agreements, Respondent contends that Rep. Trahan therefore had "an equitable interest in and a legal right to access her husband's income."[49]

While Respondent's argument that Rep. Trahan had an equitable interest in his income earned following their 2008 marriage seems well founded, it is less clear whether Rep. Trahan also had the requisite legal right to access Mr. Trahan's income such that this income constitutes Rep. Trahan's "personal funds" as defined by the Act and Commission regulations.[50] Under Massachusetts law, the Trahans' prenuptial agreement appears to give broad property rights to Rep. Trahan over marital property, including Mr. Trahan's income earned during the marriage, but the Act and Commission regulations do not treat spousal income in the same fashion. Regarding income received during the election cycle, the Act and regulations specify that the candidate's income is considered to be personal funds but include no analogous provision deeming spousal income received during the election cycle to be the candidate's personal funds.[51]

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[48] Committee on Ethics Report, Appendix D, Ex. 1 (Trahan's Prenuptial Agreement), ¶ 11; Trahan and Committee Supp. Resp. at 4.

[49] Trahan and Committee Supp. Resp. at 4-5; *see also id*., Ex. A (citing *Osborne v. Osborne*, 384 Mass. 591 (1981) for the premise that "Massachusetts has a strong policy in favor of enforcing prenuptial agreements."); M.G.L.A. 209 §§ 25, 26.

[50] 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33.

[51] *See* 11 C.F.R. § 100.33(b) (defining "income" as "[i]ncome received during the current election cycle, *of the candidate* . . ." (emphasis added)).

Respondent appears to consider his income, regardless of whether it is past or future income, to be a present asset of Rep. Trahan, on the basis that it is marital property under the prenuptial agreement.[52] Respondent's conceptualization of future income as personal funds of a candidate by virtue of being an asset under the candidate's control seems to be in tension with the Act and Commission regulations. While "personal funds" includes assets that the candidate had legal title or an equitable interest in and had legal right of access to or control over, that definition also appears to require that the access or control by the candidate exist "at the time the individual became a candidate."[53] Rep. Trahan does not appear to have had access to or control over either Mr. Trahan's future income or even the underlying entities that paid the income — which were titled in his name (and presumably those of his partners) but not hers — when Rep. Trahan became a candidate.[54] Even crediting Respondent's contentions regarding the breadth of the rights granted under the prenuptial agreement, it appears that (absent some type of legal proceeding) Rep. Trahan could only access the accounts and entities in Mr. Trahan's name through Mr. Trahan's actions.

[52] Trahan and Committee Supp. Resp. at 4.

[53] 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33.

[54] To the contrary, here there is specific information showing that Rep. Trahan lacked a legal right to access or control over Mr. Trahan's personal and business accounts. The checks from those accounts only had Mr. Trahan's name on them and, indeed, the fact that Mr. Trahan wrote checks to himself from those accounts and then deposited the funds into the joint account, rather than Rep. Trahan herself accessing the accounts and directly obtaining the funds, is consistent with other information in the record indicating that she would not have been permitted to take control of the accounts. Rep. Trahan reported in her PFDs to Congress that Mr. Trahan's personal accounts and DCT Development, Inc., were owned by her husband alone and were not a joint asset. *See* F&LA at 3, 6, MUR 6417 (Huffman) (recognizing that a spouse's account, "which was solely in her name" and over which the candidate "had no independent access" did not constitute the candidate's personal funds); *see also* Mass. Gen. Laws Ann. Ch. 167D, § 4 (stating that in the case of personal accounts "[t]he deposits, interest and other credits represented by the account may be withdrawn, assigned or transferred in whole or in part by the account holder only" and allowing for an exception only where the accountholder has filed a declaration meeting statutory requirements with the depository allowing another to act "on behalf of the account holder").

A scenario provided in the legislative history and relied upon in *Buckley v. Valeo*,[55] that "[i]f . . . the candidate did not have access to or control over such funds at the time he became a candidate," then "the immediate family member would not be permitted to grant access or control to the candidate . . . if the immediate family member intends that such amounts are to be used in the campaign of the candidate,"[56] emphasizes the timing and the logistics of the candidate's control, or lack thereof, over the funds. It also precisely describes the situation at hand whereby Mr. Trahan provided Rep. Trahan with access to funds in order to finance her campaign from his income and held in accounts controlled by him, that she could not have accessed unilaterally.[57] Consistent with this notion of contemporaneously existing control, in considering a similar set of matters, MURs 5334, 5341, & 5524 (O'Grady), the Commission explained that even if funds constitute "marital property" under the applicable state law, this does not necessarily mean that the candidate would "have any *vested* right to such property, if it were titled in her husband's name, until the marriage is legally dissolved."[58] As the Commission noted, even if this interest satisfied the equitable interest prong in the definition of personal funds, it did not demonstrate the required "immediate legal right of access to or control over those funds."[59]

MUR 149 (Fonda), the lead precedent cited by Respondent, involved a facially similar set of facts whereby a spouse moved funds from a bank account maintained solely in her name and

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[55] *See Buckley v. Valeo*, 424 U.S 1, 51 n.57 (1976) (quoting S. Conf. Rep. No. 93-1237, p. 58 (1974), which describes the "intent of the conferees," in upholding spousal contribution limits).

[56] *FECA Amendments of 1974, Joint Explanatory Statement of the Committee of Conference*, Sen. Conf. Rpt. 93-1237 (Oct. 7, 1974), 1974 U.S.C.C.A.N. 5618, 5627.

[57] *Id.*

[58] F&LA at 15 n.14, MURs 5334, 5341, & 5524 (O'Grady).

[59] *Id.* at 15 n.15.

advances she secured from her employers to her spouse's committee.[60] The Commission determined that there was no reason to believe in MUR 149 based, among other things, on a review of California's community property law which, at the time, stated that either spouse has "management and control of the community personal property, with the absolute power of disposition, . . . as he has of his separate estate."[61] By contrast, Massachusetts, the state at issue here, is not a community property state and appears to have no similar provision in its laws. Indeed, the Commission included a footnote in MUR 149 specifically to note that "[b]ecause this matter appears to be tied to applicable state law, a different result would very likely apply in the 42 states which do not have communal property laws."[62]

Finally, Respondent argues that the funds at issue should be considered Rep. Trahan's personal funds, because, regardless of the source of the funds, the checks to the Committee were drawn on the Trahans' joint bank account.[63] But the Commission's precedents in similar circumstances indicates that the movement of funds through a joint account is not sufficient to

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60 *See* Trahan and Committee Supp. Resp. at 3.

61 *See* Interim Conciliation Report at 3, MUR 149 (Fonda, *et al.*) (citing Cal. Civ. Code § 5125 (1977)).

62 *Id.* at 5 n.2, MUR 149 (Fonda, *et al.*). Nor is Respondent's reliance on MUR 1257 (Dole) persuasive. *See* Trahan and Committee Supp. Resp. at 3-4. In MUR 1257, Dole's committee received a loan derived from a bank loan secured by a certificate of deposit in Dole's spouse's name that was received as a death benefit from her father's pension plan. The matter turned on the candidate's rights to the certificate of deposit under Kansas law, which was in a state of flux as the matter was reviewed by the Commission. After the Commission's original finding of reason to believe, the Office of General Counsel recommended that the Commission "take no further action in this matter due to the unique nature of Kansas law at the time of the transaction in issue in this matter." General Counsel's Report, MUR 1257 (Oct. 26, 1981). The Commission thereafter voted 5-0 to take no further action and close the file. Cert., MUR 1257 (Nov. 13, 1981).

63 *See* Trahan and Committee Supp. Resp. at 6-7. Respondent also argues that under Massachusetts law both parties have the right to withdraw the full amount of a joint account, and therefore the full amount should be considered Rep. Trahan's personal funds. *Id*. at 7 (citing Gen Counsel's Rpt. at 23, MUR 3505/3560/3569 (Klink)). Because, as explained herein, the Commission concludes that funds which were otherwise not personal funds do not become so merely by being deposited in a joint account during the campaign, it is unnecessary for the Commission to consider the status of a joint account generally under Massachusetts law.

convert funds of the spouse into personal funds of the candidate.[64] For each of the three loans, Mr. Trahan deposited the necessary funds into the joint account shortly before or after Rep. Trahan wrote a check to the Committee from the joint account and, in each case, the joint account had insufficient funds and thus could not cover the loan absent the timely deposit from Mr. Trahan's individually held and business accounts. Further, both the deposits into and the contributions made from the joint account do not appear to be ordinary transactions made using the account.[65] Rep. Trahan's statement in *Medium* appears to acknowledge that her spouse's deposits were made specifically for the purpose of funding contributions, rather than as part of an ordinary pattern of deposits to fund family expenses.[66]

Therefore, due to the apparent lack of legal right of access to Mr. Trahan's income by Rep. Trahan, as required by the Act and Commission regulations, the funds that Mr. Trahan deposited into the joint account, which were then used to finance the reported loans, appear to constitute contributions by Mr. Trahan to the Committee. Accordingly, the Commission finds reason to believe that David Trahan made excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A), totaling $300,000 in connection with the first three loans.[67]

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64 *See* F&LA at 3, 6, MUR 6417 (Huffman) (concluding that a transfer from the spouse's individually held account to a joint account shared with the candidate and then passed on to the committee was an excessive contribution).

65 *See supra* Figure 2 at 5.

66 Setting the Record Straight.

67 Mr. Trahan separately made a maximum $2,700 contribution to the Committee for the primary election and an additional $2,700 for the general election, meaning that the entirety of the loans was an excessive contribution in violation of the Act and Commission regulations. *See* LTCC, 2017 October Quarterly Report at 27, 32 (Oct. 15, 2017).

2. The Fourth Loan was Funded with a Home Equity Line of Credit and Repaid by Mr. Trahan Using a Personal Account

In addition to the three loans discussed above, on September 4, 2018, Rep. Trahan loaned the campaign $71,000 using funds obtained through a home equity line of credit. It appears that Mr. Trahan also made an excessive contribution in connection with this loan.

The line of credit was held by Rep. Trahan and Mr. Trahan, jointly, and it was secured by $950,000 in real estate jointly owned by the Trahans.[68] The instrument of conveyance did not indicate a specific share attributed to Rep. Trahan or Mr. Trahan. Thus, under the one-half presumption set forth in the Commission's regulation, Rep. Trahan was entitled to use a one-half portion of the jointly owned asset, or $475,000.[69] Therefore, it appears that no contributions resulted from the initial loan to the Committee because the amount of Rep. Trahan's loan was $71,000, far below her share of the jointly-owned asset.[70]

However, on October 11, 2018, approximately one month after the reported date of the loan and just nine days after the Committee deposited Rep. Trahan's check, Mr. Trahan repaid the line of credit with a check from his personal bank account using funds from his income.[71] The Committee did not issue a check to Rep. Trahan to pay back the loan to the Committee until

[68] LTCC, Second Amended 2018 October Quarterly Report at 160 (Dec. 15, 2018). Available information indicates that Trahan and her spouse jointly own two homes valued at $1.4 million and $1.5 million, that they have two home equity lines of credit collectively worth $700,000, and that the only mortgage on the homes is a $100,000 mortgage on the house valued at $1.4 million.

[69] *See* 11 C.F.R. §§ 100.33 (c)(2), 100.52 (b)(4).

[70] A spouse is not considered a contributor to the candidate's 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. *See* 11 C.F.R. § 100.52 (b)(4); F&LA at 8-9, MURs 4830/4845 (Udall) (finding no reason to believe where loans were "based entirely on [the candidate's] half of the assets jointly controlled with" his spouse). While Respondent's arguments regarding the candidate's claim of marital property on the basis of the prenuptial agreement could indicate that she could borrow against more than half of the value of the house and nonetheless consider the loan personal funds, because the Commission concludes that these are personal funds even under the potentially more stringent 50% rule, it is unnecessary for the Commission to consider that issue.

[71] OCE Referral ¶ 42, Exs. 12, 14-15.

November 20, 2018, which she deposited on December 3, 2018. From the time Mr. Trahan paid back the line of credit, and for over a month until the Committee repaid Rep. Trahan, the bank did not remain the creditor because it was owed no funds. In view of the actual circumstances, it appears that Mr. Trahan became the creditor who provided a loan and thus made the contribution.[72]

Alternatively, Mr. Trahan's payment of Rep. Trahan's debt constituted a third-party payment of a candidate's expense. Commission regulations provide that a third party's payment of a candidate's personal expense shall be a contribution "unless the payment would have been made irrespective of the candidacy."[73] Here, Rep. Trahan's draw on the home equity line of credit was for the purpose of her candidacy, thus paying it back inextricably linked the payment of the expense to Rep. Trahan's candidacy. In either case, Mr. Trahan's act of paying back the draw on the line of credit, which the candidate obtained to fund her campaign, constituted a contribution to Rep. Trahan and the Committee.[74]

Therefore, the Commission finds reason to believe that David Trahan made an excessive contribution in violation of 52 U.S.C. § 30116(a)(1)(A) in connection with the fourth loan in the amount of $71,000.

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[72] While loans from home equity lines of credit are not considered contributions under 11 C.F.R. § 100.83(a), once Mr. Trahan assumed the loan, it became a contribution by him. *See* 11 C.F.R. § 100.52(a), (b) (providing that a loan not issued in accordance with the provisions of 11 C.F.R. § 100.83 is considered a contribution at the time that it is made, remains a contribution to the extent that it remains unpaid, and shall not exceed the contribution limits when aggregated with that donor's other contributions); *see also* 11 C.F.R. § 113.1(g)(6) (prohibiting third party payments of candidate expenses).

[73] 11 C.F.R. § 113.1(g)(6); *see* Explanation and Justification, Third Party Payments of Personal Use Expenses, 60 Fed. Reg. 7,862, 7,871 (Feb. 9, 1995) ("If a third party pays for the candidate's personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy.").

[74] The Committee on Ethics reached the opposite conclusion, stating that "[t]he Committee is not aware of any regulations prohibiting Mr. Trahan's repayment from his personal account." Committee on Ethics Report at 10, n.101.