

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 MUR: 7745

6 DATE COMPLAINT FILED: June 11, 2020

7 DATE OF NOTIFICATION: June 18, 2020 –
8 September 2, 2020

9 LAST RESPONSE RECEIVED: July 29, 2020

10 DATE ACTIVATED: August 26, 2020

11
12 ELECTION CYCLE: 2020

13 EXPIRATION OF SOL: January 15, 2025 –
14 October 15, 2025

15
16 **COMPLAINANT:**

Stanley Carter

17
18 **RESPONDENTS:**

Casey Askar

Casey Askar for Congress and Rob Phillips III in
his official capacity as Treasurer

Northern Bank & Trust Company

AFNC, LLC

6619 SW 14th St Company, LLC

Garfield Management, LLC

Garfield Property Management, LLC

James Mawn

Bassam Askar

Alexander Askar

29
30 **RELEVANT STATUTES**
31 **AND REGULATIONS:**

52 U.S.C. § 30104(b)(3)(E)

52 U.S.C. § 30116(a)(1)(A), (f)

52 U.S.C. § 30118(a)

11 C.F.R. § 101.1(a)

11 C.F.R. § 104.3(a)(4)(iv), (d)(4)

11 C.F.R. § 110.1(b)(1)

11 C.F.R. § 110.9

11 C.F.R. § 114.2(b), (d), (e)

39 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

40
41 **FEDERAL AGENCIES CHECKED:**

None

1 **I. INTRODUCTION**

2 In January 2020, six weeks before announcing his candidacy for Florida's 19th
3 Congressional District, Casey Askar obtained a \$5,000,000 line of credit from Northern Bank &
4 Trust Company ("Northern Bank"). After his announcement of candidacy, Askar withdrew
5 \$3,000,000 on the line of credit and loaned it to his campaign committee, Casey Askar for
6 Congress and Rob Phillips III in his official capacity as Treasurer ("Casey Askar for Congress"
7 or the "Committee"). The Complaint alleges that Northern Bank's involvement in the loan to the
8 Committee violated the Federal Election Campaign Act, as amended, (the "Act") and
9 Commission regulations because: (1) the loan, as reported by the Committee, did not bear the
10 bank's usual and customary interest rate; and (2) Askar collateralized the line of credit with
11 property of insufficient worth.¹ The Complaint further alleges that Askar "conspired" with
12 Northern Bank's CEO, James Mawn, to secure the improper loan.²

13 Respondents Askar and the Committee contend that: (1) the interest rate charged by
14 Northern Bank is reasonable; (2) loan documents establish that the value of the collateral
15 exceeded the total amount of the line of credit; (3) there is no information suggesting impropriety
16 by Mawn; (4) guarantors of the underlying line of credit, who were not initially disclosed in the
17 Committee's filings, did not make excessive contributions to Askar's campaign; and (5) the loan
18 was properly disclosed in the Committee's filings with the Commission.³ Respondents Northern
19 Bank and Mawn contend that: (1) Northern Bank "has never made a loan to Casey Askar for
20 Congress" and instead "made loans to businesses controlled by Mr. Askar" that were on market

¹ Compl. at 1-2 (June 11, 2020).

² *Id.*

³ Askar & Comm. Resp. at 4-9 (July 29, 2020) ("Askar Resp.").

1 terms; (2) Northern Bank obtained appraisals for the property pledged as collateral, which show
2 that the total value of the properties exceeded the value of the line of credit; and (3) there are no
3 allegations in the complaint that suggest impropriety on the part of Mawn.⁴

4 The available information indicates that the Committee incorrectly reported information
5 about the transaction, such as failing to provide the interest rate Northern Bank charged on the
6 line of credit or report that other persons acted as guarantors for the transaction. The available
7 information also indicates that the line of credit from Northern Bank may not have been made in
8 the ordinary course of business, as required under Commission regulations, and Northern Bank
9 therefore may have made a prohibited corporate contribution to Askar's campaign. Further, four
10 LLCs, which acted as guarantors on the line of credit, and the LLCs' minority partners appear to
11 have made excessive contributions to Askar's campaign.

12 Because the available information indicates that the Committee misreported the
13 transaction and there are significant discrepancies surrounding the line of credit's origination, we
14 recommend that the Commission find reason to believe that the Committee inaccurately reported
15 the line of credit in violation of 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(a)(4)(iv),
16 (d)(4). We also recommend that the Commission find reason to believe that the line of credit
17 from Northern Bank to Askar was not made in the ordinary course of business and was therefore
18 a prohibited corporate contribution in violation of 52 U.S.C. § 30118(a) and 11 C.F.R.
19 § 114.2(b), (d). We further recommend that the Commission find reason to believe that the
20 LLCs and their minority partners made excessive contributions to Askar's campaign in violation

⁴ Mawn & Northern Bank Resp. at 1-2 (June 26, 2020) ("Northern Bank Resp."). The other respondents — AFNC, LLC, 6619 SW 14th St Company, LLC, Garfield Management, LLC, Garfield Property Management, LLC, Bassam Askar, and Alexander Askar — did not submit responses after receiving notification of the Complaint.

1 of 52 U.S.C. § 30116(a)(1)(A), (f) and 11 C.F.R. §§ 110.9, 110.1(b)(1). We also recommend
2 that the Commission take no action at this time regarding the allegations that Mawn consented to
3 Northern Bank making an impermissible corporate contribution or the issue of whether Askar
4 was untimely in filing his statement of candidacy.

5 **II. FACTUAL BACKGROUND**

6 On January 15, 2020, Askar and four LLCs⁵ secured a \$5,000,000 line of credit at
7 Northern Bank at an interest rate that was the greater of 6.5% or the Wall Street Journal Prime
8 Rate plus 1.5%.⁶ Mortgages on four parcels of land — each owned by one of the four LLCs —
9 served as collateral for the line of credit.⁷ The loan documents also contained the following
10 relevant provisions: (1) the line of credit was “to be used to assist with remodels for a network
11 of Dunkin’ locations in Florida;”⁸ (2) the borrowers could not “loan, invest in or advance money
12 or assets to any other person, enterprise or entity” during the year-long life of the line of credit;⁹
13 (3) the LLCs could not sell or assign “any security interest in any ownership or beneficial
14 interests in” the LLCs and were required to seek Northern Bank’s written consent before making

⁵ 6619 SW 14th St Company, LLC; AFNC, LLC; Garfield Management, LLC; and Garfield Property Management, LLC.

⁶ Askar Resp. Ex. A at 1, 8 (“Promissory Note”).

⁷ Askar Resp. Ex. B (“Mortgage Loan Agreement”).

⁸ Mortgage Loan Agreement § 1.4.

⁹ *Id.* § 9.8.

1 a change to the composition of their general partners;¹⁰ and (4) Askar and the LLCs were jointly
2 and severally liable for any amounts withdrawn under the line of credit.¹¹

3 Askar held a 99% ownership interest in each of the four LLCs when they established the
4 line of credit, while the remaining 1% of the LLCs were held by Alexander Askar and Bassam
5 Askar (the “minority partners”).¹² The minority partners then sold their shares of the LLCs to
6 Askar for \$10 per LLC on February 1, 2020.¹³

7 On March 19, 2020, Askar announced his candidacy for Florida’s 19th Congressional
8 District, designating Casey Askar for Congress as his principal campaign committee. Askar then
9 withdrew \$3,000,000 on the line of credit, which he loaned to the Committee on March 30, 2020
10 at no interest.¹⁴ Neither Askar nor the LLCs had drawn on the line of credit before then.¹⁵

11 In June 2020, the Committee disclosed the loan and line of credit in Schedules C and C-1
12 in its first disclosure report filed with the Commission.¹⁶ The information in the C-1 appears to
13 relate to the line of credit in some instances and the loan from Askar to the Committee in others.
14 The Committee lists the amount of the loan as \$3,000,000 and the interest rate as 0%, and it

¹⁰ *Id.* § 9.7.1(b), (c). The Mortgage Loan Agreement also defines “Permitted Transfers” to include “transfer or assignment of any beneficial interest in [the LLCs] to a member of the family of a current beneficiary of the [LLCs], provided that Lender’s prior written consent has been obtained . . . and provided further that such transfer does not result in a change in beneficial interests of the [LLCs] of 50% or more of the current beneficial interests.” *Id.* at 34.

¹¹ Promissory Note § 9.6.

¹² Askar Resp. Exs. C, D. Specifically, Bassam Askar owned 1% of Garfield Management, LLC, and Garfield Property Management, LLC, while Alexander Askar owned 1% of AFNC, LLC, and 6619 SW 14th St Company, LLC. Askar Resp. Ex. D (“Assignments of Membership Interest”).

¹³ *Id.*

¹⁴ Askar Resp. at 3 & fn. 3; *Id.* Ex. E § 2, 4 (“Loan Agreement”).

¹⁵ Askar Resp. at 3.

¹⁶ Amended Apr. 2020 Quarterly Rpt. at 98 (June 8, 2020).

1 represents that no other party is secondarily liable for the loan.¹⁷ But it also lists the lender as
2 Northern Bank and the date of the loan as January 15, 2020, and it represents that the loan was
3 collateralized by real property.¹⁸ Also of relevance, the C-1 indicates that the lender's interest in
4 the collateral was not perfected.¹⁹ A representative of Northern Bank certified that the
5 information in the C-1 was accurate and that the loan was made in a manner that complies with
6 certain specified Commission regulations.²⁰ And although the C-1 was not submitted until April
7 15, 2020, the signature of Northern Bank's representative is dated January 15, 2020.²¹

8 There is also conflicting information regarding whether the purpose of the line of credit
9 was to further Askar's campaign. The Mortgage Loan Agreement indicates that the purpose of
10 the line of credit was "to assist with remodels for a network of Dunkin' locations in Florida" and
11 prohibited Askar and the LLCs from loaning or advancing money "to any other person,
12 enterprise or entity" during the life of the mortgage loan agreement.²² Northern Bank represents
13 that it "has never made a loan to Casey Askar for Congress" and that it instead "made loans to
14 businesses controlled by Mr. Askar."²³ And the loan was secured six weeks before Askar
15 announced his campaign.²⁴ However, Askar and the Committee's Response evaluates the line of

¹⁷ *Id.* at 95, 98.

¹⁸ *Id.* at 98.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Mortgage Loan Agreement §§ 1.4, 9.8.

²³ Northern Bank Resp. at 1.

²⁴ Section III.D, *infra*, addresses whether the loan is evidence that Askar was untimely in filing his statement of candidacy.

1 credit as “a commercial loan received by a candidate for use in his campaign.”²⁵ Askar did not
2 withdraw funds on the line of credit until after establishing his campaign, and no funds were
3 withdrawn under the line of credit for any purpose other than financing Askar’s campaign.²⁶ The
4 Committee’s initial disclosure report also represents the date of the loan received by the
5 Committee to be January 15, 2020,²⁷ which is the date the line of credit was established. There
6 is also some information that Northern Bank knew of Askar’s intent to loan funds withdrawn
7 from the line of credit to the Committee, as evidenced by the Bank’s representative certifying the
8 accuracy of the information in the Committee’s C-1.²⁸

9 **III. LEGAL ANALYSIS**

10 **A. The Commission Should Find Reason to Believe that the Committee** 11 **Improperly Reported the Line of Credit**

12 Under the Act, an authorized committee of a federal candidate must report the total
13 amount of loans made by or guaranteed by the candidate as well as all other loans.²⁹
14 Commission regulations further provide that a candidate’s principal campaign committee must
15 report all loans derived from an advance on the candidate’s brokerage account, credit card, home
16 equity line of credit, or other line of credit available to the candidate.³⁰ If the candidate finances
17 a loan to the campaign with an underlying loan or line of credit, Section 104.3(d)(4) of the
18 Commission’s regulations requires the committee to disclose on Schedule C-1, among other

²⁵ Askar Resp. at 8.

²⁶ *Id.* at 3; Loan Agreement.

²⁷ Amended Apr. 2020 Quarterly Rpt. at 98.

²⁸ *Id.*

²⁹ 52 U.S.C. § 30104(b)(2)(G), (H).

³⁰ 11 C.F.R. § 100.83(e).

1 things: (1) date, amount, and interest rate of the loan or line of credit; (2) name and address of
2 the lending institution; and (3) types and value of collateral or other sources of repayment that
3 secured the loan.³¹ In addition, in conjunction with the reporting of receipts, Section
4 104.3(a)(4)(iv) requires reporting committees to disclose the identification of any endorser or
5 guarantor of a loan.³²

6 Askar secured the line of credit with Northern Bank and funded his campaign through a
7 loan from him to the Committee with funds withdrawn on that line of credit.³³ Accordingly, in
8 its first report, the Committee was required to provide the information required by Sections
9 104.3(d)(4) and 104.3(a)(4)(iv).³⁴ While the Committee reported some of the required
10 information, its filing failed to disclose the interest rate Northern Bank charged for withdrawals
11 on the line of credit, failed to list the LLCs as co-borrowers or guarantors, and incorrectly
12 represented that no other party was secondarily liable for the amount of the loan, despite the fact
13 that the LLCs were jointly and severally liable for any amounts withdrawn on the line of credit.³⁵
14 Moreover, as discussed below, there are open questions regarding the accuracy of the

³¹ 11 C.F.R. § 104.3(d)(4); *see* Factual & Legal Analysis at 6-9, MURs 7001, 7002, 7003, and 7009 (Ted Cruz for Senate, *et al.*) (finding reason to believe committee misreported the source of funds received to be the candidate's personal funds rather than bank loans); Factual & Legal Analysis at 5-7, MUR 6556 (Broun) (finding same but dismissing matter as outside statute of limitations).

³² 11 C.F.R. § 104.3(a)(4)(iv).

³³ *See supra* fn. 5-7, 14 and accompanying text.

³⁴ *See* Askar Resp. at 8-9 & n.1 (acknowledging obligation to disclose information described in these sections).

³⁵ *See* Amended Apr. 2020 Quarterly Rpt. at 95, 98. It is also unclear whether the Committee accurately reported the amount of the loan to be \$3,000,000. As noted, the available information indicates that Askar may have established the line of credit for use in his campaign. *See supra* fn. 22-28 and accompanying text. If the entire \$5,000,000 line of credit was established for campaign-related purposes, rather than only the \$3,000,000 that was withdrawn, then the Committee should have reported the full amount of the line of credit in its filings.

1 Committee's representation that the collateral for the line of credit was not perfected as well as
2 the certification of the information provided in the C-1 by Northern Bank.³⁶

3 We therefore recommend that the Commission find reason to believe that the Committee
4 violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R. § 104.3(a)(4)(iv), (d)(4) by failing to disclose
5 complete and accurate information regarding the line of credit from Northern Bank in the
6 Committee's reports.

7 **B. The Commission Should Find Reason to Believe that Northern Bank May**
8 **Have Made a Prohibited Contribution to Askar**

9 The Act prohibits national banks and corporations from making contributions in
10 connection with any federal election and prohibits candidates from knowingly accepting or
11 receiving such contributions.³⁷ A loan to a candidate for use in connection with the candidate's
12 campaign is ordinarily considered a loan to the candidate as an agent of the campaign's
13 authorized committee.³⁸ However, bank loans that are extended in "accordance with applicable
14 banking laws and regulations" and "in the ordinary course of business" are excluded from the
15 definition of "contributions" under the Act.³⁹ The Commission has also made clear that "[l]ines
16 of credit are considered bank loans, to be treated in the same manner as other loans from lending
17 institutions."⁴⁰

³⁶ See *infra* § III.B.

³⁷ 52 U.S.C. § 30118(a).

³⁸ 52 U.S.C. § 30102(e)(2).

³⁹ 52 U.S.C. § 30101(8)(B)(vii).

⁴⁰ Explanations and Justifications, Loans from Lending Institutions to Candidates and Political Committees, 56 Fed. Reg. 67,118, 67,119 (Dec. 27, 1991) ("1991 E&J"); see also Factual & Legal Analysis at 7-8, MUR 6417 (James Huffman for Senate, *et al.*) (loans from candidate to campaign derived from home equity line of credit must be reported as loan from lending institution to campaign); Factual & Legal Analysis at 3-5, MUR 5840 (Ellen Simon for Congress, *et al.*) (Aug. 13, 2007) (candidate contributions to campaign funded by draws on a line of credit secured by candidate's residence is loan from bank to campaign and must be reported as such) (subsequently dismissed as a matter of prosecutorial discretion); Factual & Legal Analysis at 9-10, MUR 5322 (Gordon Smith for

1 A loan is made in the ordinary course of business if it: (1) bears the usual and customary
2 interest rate of the lending institution for the category of loan involved; (2) is made on a basis
3 that assures repayment; (3) is evidenced by a written instrument; and (4) is subject to a due date
4 or amortization schedule.⁴¹ A loan is considered to be made on a basis that reassures payment
5 under a number of circumstances, including, as relevant here, where the lending institution
6 making the loan has perfected a security interest in collateral owned by the candidate, the fair
7 market value of the collateral is equal to or greater than the loan amount, the candidate provides
8 documentation to show that the lending institution has a perfected security interest in the
9 collateral, and the amounts guaranteed by any cosigners do not exceed contribution limits set
10 forth in Commission regulations and the Act.⁴² Alternatively, if the specific circumstances
11 described in Commission regulations that ensure repayment are not met, the Commission
12 considers “the totality of the circumstances on a case-by-case basis in determining whether a
13 loan was made on a basis that assures repayment.”⁴³

14 The available information suggests that the line of credit may not have been “made on a
15 basis that assures repayment.”⁴⁴ Askar and the LLCs collateralized the line of credit through
16 mortgages on four properties, which Northern Bank represents were appraised at \$8,400,000 at

U.S. Senate, Inc., *et al.*) (loan from candidate to campaign from line of credit is loan from lender to committee); Conciliation Agreement ¶ 6, MUR 4803 (John Tierney for Congress Comm., *et al.*) (“Tierney obtained the line of credit from Eastern Bank for use in his campaign. Therefore, by operation of the provisions of 2 U.S.C. 432(e)(2), Tierney obtained the line of credit as an agent of his committee and the line of credit was, for purposes of the Act, reportable as made directly from Eastern Bank to the first committee.”).

⁴¹ 11 C.F.R. § 100.82(a).

⁴² *Id.* § 100.82(e)(1).

⁴³ *Id.* § 100.82(e)(3).

⁴⁴ *Id.* § 100.82(a)(2).

1 the time.⁴⁵ However, for collateral to be considered sufficient assurance of repayment under
2 Commission regulations, the lender's security interest must be perfected.⁴⁶ The Committee
3 represented in its disclosure report that the lender did not have a perfected security interest in the
4 collateral, and Northern Bank's representative certified that this was accurate.⁴⁷ In addition, as
5 described below, it appears that the guarantors of the line of credit exceeded the applicable
6 contribution limits, which prevents collateral from being deemed sufficient assurance of
7 repayment under Commission regulations.⁴⁸

8 Where the terms of a loan do not meet the requirements to be deemed adequate assurance
9 of repayment, the Commission will nevertheless find this element met where the totality of the
10 circumstances evidences sufficient guarantees of repayment.⁴⁹ In other matters, the Commission
11 has found lenders to have ensured there was an adequate basis for repayment when they, for
12 example, conducted a detailed inquiry into the candidate's assets and revenue streams or relied
13 on a history of dealings with the candidate.⁵⁰ Here, though, there is no information indicating
14 that Northern Bank conducted such an inquiry into, or had a similar history with, Askar. And

⁴⁵ Northern Bank Resp. at 2.

⁴⁶ 11 C.F.R. § 100.82(e)(1); *see also* Factual & Legal Analysis at 6-7, MUR 5421 (Mellon Trust of New England, N.A.) (finding reason to believe loan was not made in ordinary course of business where public information indicated other liens on property collateralizing loan may have been senior to lender's security interest).

⁴⁷ Amended Apr. 2020 Quarterly Rpt. at 98.

⁴⁸ 11 C.F.R. § 100.82(e)(1); *see infra* § III.C.

⁴⁹ 11 C.F.R. § 100.82(e)(3).

⁵⁰ *Compare* Advisory Op. 1994-26 (Scott Douglas Cunningham Campaign Comm.) at 2 ("AO 1994-26") (finding sufficient that bank relied on a "longstanding relationship between the lending entities" and the candidate and was based on the candidate's "personal financial status" as well as the fact that the lines of credit were established years before the candidate's campaign); *with* Factual & Legal analysis at 4, MUR 5496 (People's State Bank) (finding reason to believe loan renewal was not made on basis that assured repayment where loan collateral had expired and there was "no other information indicating how or whether the renewal was made on a basis that assured repayment").

1 although the loan documents required Askar and the LLCs to maintain accounts with the Bank,
2 there was no requirement that these accounts contain sufficient funds to provide Northern Bank
3 with assurance of repayment.⁵¹

4 It is also not clear that the interest rate Northern Bank charged was its “usual and
5 customary rate . . . for the category of loan involved.”⁵² The loan documents demonstrate that
6 Northern Bank did not charge Askar 0% interest. However, it is not clear that the interest rate
7 Northern Bank charged — the greater of 6.5% or the Wall Street Journal Prime Rate plus 1.5%
8 — is Northern Bank’s usual and customary rate for this *category* of loan — a loan to a campaign
9 — rather than for a loan or line of credit to a business for the purpose of conducting
10 improvements. The loan documents and Northern Bank’s Response indicate that the line of
11 credit was for a business purpose,⁵³ while Askar and the Committee’s Response and the
12 Committee’s C-1, which a representative of Northern Bank certified, indicates that the line of
13 credit was for use in the campaign.⁵⁴ The Wall Street Journal Prime Rate is tied to the base rate
14 that the largest U.S. banks use for their most credit-worthy corporate borrowers,⁵⁵ and it is
15 unclear whether Northern Bank would charge a higher interest rate for a personal loan to Askar
16 or a loan to a campaign committee.

17 In sum, there are significant inconsistencies between the Responses, the transaction
18 documents, and the information the Committee reported in its Schedule C-1, which Northern

⁵¹ Demand Promissory Note § 7.

⁵² 11 C.F.R. § 100.82(a)(1).

⁵³ Northern Bank Resp. at 1-2; Mortgage Loan Agreement § 1.4.

⁵⁴ Askar Resp. at 4-7; Amended Apr. 2020 Quarterly Rpt. at 98.

⁵⁵ See WALL STREET J., Bonds & Rates, <https://www.wsj.com/market-data/bonds> (last visited Nov. 10, 2020); Demand Promissory Note § 10.

1 Bank certified as accurate. Consequently, the available information supports a reasonable
 2 inference that Northern Bank's loan to the Committee was not made in the ordinary course of
 3 business, and an investigation is needed to examine the origination of the line of credit.⁵⁶
 4 Accordingly, we recommend that the Commission find reason to believe that Northern Bank
 5 made, and Askar and the Committee accepted, a prohibited corporate contribution in violation of
 6 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b), (d).

7 **C. The Commission Should Find Reason to Believe that the LLCs and Minority**
 8 **Partners Made Excessive Contributions to Askar**

9 The Act provides that no person shall make contributions to any candidate or authorized
 10 committee with respect to any election which, in the aggregate, exceed the Act's contribution
 11 limit, which was \$2,800 during the 2020 election cycle.⁵⁷ Moreover, no candidate or political
 12 committee shall "knowingly accept" a contribution that exceeds the applicable contribution
 13 limit.⁵⁸ Each guarantor of a loan is "deemed to have contributed that portion of the total amount
 14 of the loan for which he or she agreed to be liable."⁵⁹ "A loan is a contribution at the time it is
 15 made and is a contribution to the extent that it remains unpaid."⁶⁰ Contributions by an LLC that

⁵⁶ Cf. Factual & Legal Analysis at 9-10, MUR 7465 (Freedom Vote, Inc.) (finding reason to believe entity failed to register as a political committee and authorizing investigation based, in part, on irregularities and conflicting information in materials respondent provided regarding proportion of spending on federal campaign activity)

⁵⁷ 52 U.S.C. § 30116(a)(1)(A); Contribution Limits, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/>. The same contribution limits apply to family members. *See Buckley v. Valeo*, 424 U.S. 1, 51 n.57, 53 n.59 (1976) (upholding the constitutionality of contribution limits as to family members, reasoning that, "[a]lthough the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributors").

⁵⁸ 52 U.S.C. § 30116(f).

⁵⁹ 11 C.F.R. § 100.52(b)(3).

⁶⁰ *Id.* § 100.52(b)(2).

1 is taxed as a partnership are treated as partnership contributions.⁶¹ Partnership contributions are
2 attributed to the partnership itself and to each partner in direct proportion to the partner's share of
3 the entity's profits unless otherwise agreed to among the partners.⁶² A contribution by a
4 partnership cannot exceed the aggregate limits on an individual's contributions to a candidate.⁶³

5 Askar appears to have initially obtained the line of credit for use in his campaign, as
6 evidenced by his and the Committee's representations in their Response, Northern Bank's
7 representations in certifying the Schedule C-1, and the fact that Askar did not use the line of
8 credit for any other purpose.⁶⁴ As a result, Askar is considered to have acted as an agent for his
9 campaign in securing the line of credit, which is considered a loan from Northern Bank to the
10 campaign.⁶⁵ Askar secured the line of credit through an agreement that bound the LLCs as co-
11 borrowers, who were jointly and severally liable for the entire amount withdrawn under the line
12 of credit.⁶⁶ At the time the line of credit was secured, the LLCs were taxed as partnerships and

⁶¹ *Id.* § 110.1(g)(2), (4).

⁶² *Id.* § 110.1(e). Furthermore, an LLC that makes a contribution must affirm to the recipient committee that it is eligible to make such a contribution, and must indicate how the contribution is to be attributed. *Id.* § 110.1(g)(5).

⁶³ *Id.* § 110.1(b); Factual & Legal Analysis at 5, MUR 6853 (Weston Wamp for Congress 2014).

⁶⁴ *See supra* fn. 22-28 and accompanying text; *see also* Askar Resp. at 8 (acknowledging that Askar received the line of credit "for use in his campaign" and thus that the line of credit is considered a loan "from the lender to the candidate's committee" (emphasis in original)).

⁶⁵ *See* 52 U.S.C. § 30102(e)(2) ("Any candidate described in paragraph (1) who receives a contribution, or any loan for use in connection with the campaign of such candidate for election, or makes a disbursement in connection with such campaign, shall be considered, for purposes of this Act, as having received the contribution or loan, or as having made the disbursement, as the case may be, as an agent of the authorized committee or committees of such candidate."); Conciliation Agreement ¶ 6, MUR 4803, *supra* fn. 40. By contrast, in AO 1994-26, the Commission addressed a candidate's proposal to make loans to his campaign derived from funds withdrawn from a revolving line of credit that the candidate had maintained for years prior to his candidacy. The Commission explained that the candidate was only obligated to make a disclosure once funds were withdrawn for campaign purposes, rather than requiring the committee to disclose the line of credit earlier: Because "the lines of credit at issue were not obtained for campaign purposes, your committee need not disclose the foregoing information for a line until the reporting period during which the line is first drawn upon for campaign purposes." AO 1994-26 at 3.

⁶⁶ Demand Promissory Note § 9.6.

1 were jointly owned between Askar and the minority partners.⁶⁷ Although Askar appears to have
2 become the sole owner of the LLCs on February 1, 2020,⁶⁸ this was 17 days after the date on
3 which the line of credit was secured.⁶⁹

4 Loans are considered contributions from each guarantor equal to the portion of the loan
5 for which the guarantor agreed to be liable.⁷⁰ The LLCs are jointly and severally liable for any
6 amounts withdrawn under the line of credit, however, and it is unclear whether Askar secured the
7 entirety of the line of credit for a campaign-related purpose, or only the portion of the line of
8 credit that he ultimately withdrew.⁷¹ Because the LLCs were multi-member partnerships at the
9 time the line of credit was secured, the contribution is considered a contribution from each
10 partner as well as the partnership itself.⁷² Each LLC is thus considered to have made at least a
11 \$3,000,000 contribution to the campaign. Under Commission regulations, unless otherwise
12 arranged between the partners, a contribution by a partnership is attributed to each partner
13 according to his or her share of the profits of the partnership.⁷³ Thus, the minority partners are

⁶⁷ Bassam Askar held 1% interests in Garfield Management, LLC, and Garfield Property Management, LLC, while Alexander Askar held 1% interests in AFNC, LLC, and 6619 SW 14th St Company, LLC. Assignments of Membership Interest.

⁶⁸ *Id.*

⁶⁹ Moreover, because the Mortgage Loan Agreement prohibits the LLCs from making a change to their general partners without permission of the bank, Mortgage Loan Agreement § 9.7.1(c), Bassam Askar and Alexander Askar may still be liable for any default even after they assigned their membership interests to Casey Askar.

⁷⁰ 11 C.F.R. § 100.82(c) (“[e]ach endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement”).

⁷¹ Because “[l]ines of credit are considered bank loans, to be treated in the same manner as other loans from lending institutions,” 1991 E&J, and because the LLCs and their partners are liable for any amounts withdrawn under the line of credit, it is appropriate to consider the full amount of the line of credit that was established for use in Askar’s campaign to be the contribution by the co-borrowers pursuant to Section 100.82.

⁷² 11 C.F.R. § 110.1(e).

⁷³ *Id.*

1 each considered to have made a \$60,000 contribution to Askar's campaign (1% of \$3,000,000 is
2 \$30,000, and each minority partner owned 1% of two of the four LLCs).⁷⁴ While Askar can
3 make unlimited contributions to his own campaign,⁷⁵ the LLCs and the minority owners were
4 each limited to a maximum aggregate contribution of \$2,800 per election for the 2020 election
5 cycle.⁷⁶ Accordingly, we recommend the Commission find reason to believe that the LLCs and
6 the minority partners made excessive contributions to Askar's campaign in violation of
7 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1), and that Askar and the Committee
8 accepted excessive contributions in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9.

9 **D. The Commission Should Take No Action at this Time Regarding the**
10 **Allegation that Northern Bank's CEO Consented to an Excessive**
11 **Contribution**

12 The Act prohibits "any officer or any director of any corporation . . . to consent to any
13 contribution or expenditure by the corporation" that is otherwise prohibited.⁷⁷ The Complaint
14 alleges that Askar "conspired with [Mawn] to receive the fraudulent loan" based solely on the
15 fact that Mawn and his spouse contributed the maximum allowable amounts to Askar's
16 campaign.⁷⁸ This information, standing alone, does not suggest that Mawn was personally
17 involved in the decision to make the loan at issue in this matter. However, due to the outstanding
18 questions regarding Northern Bank's conflicting representations about the nature of the loan, we

⁷⁴ In addition, both Bassam and Alexander appear to have separately contributed the maximum amount to Askar's campaign for the primary and general elections. Amended Apr. 2020 Quarterly Rpt. at 8-9, 11.

⁷⁵ 11 C.F.R. § 110.10; *see also Buckley*, 424 U.S. at 54.

⁷⁶ 52 U.S.C. § 30116(a)(1)(A); Contribution Limits, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/>.

⁷⁷ 52 U.S.C. § 30118(a); *accord* 11 C.F.R. § 114.2(e) ("No officer or director of any corporation or any national bank, and no officer of any labor organization shall consent to any contribution or expenditure by the corporation, national bank, or labor organization prohibited by this section.").

⁷⁸ Compl. at 2.

1 recommend that the Commission take no action at this time regarding the allegation that Mawn
2 consented to National Bank's contribution to Askar in violation of 52 U.S.C. § 30118(a) and 11
3 C.F.R. § 114.2(e) pending the results of an investigation into the origination of the line of credit.

4 **E. The Commission Should Take No Action at this Time Regarding Whether**
5 **Askar Filed His Statement of Candidacy Late**

6 An individual becomes a candidate if he or she receives contributions or makes
7 expenditures in excess of \$5,000 or consents to another person doing so on his or her behalf.⁷⁹
8 The Commission, however, has established a limited exception whereby an individual may
9 engage in certain testing-the-waters activities to evaluate the feasibility of a campaign for federal
10 office without becoming a candidate under the Act.⁸⁰ Testing-the-waters activities "include, but
11 are not limited to, conducting a poll, telephone calls, and travel."⁸¹ The testing-the-waters
12 exemption is not available to individuals who have made a decision to become a candidate.⁸²
13 Once an individual decides to become a candidate, he or she must file a Statement of Candidacy
14 designating a principal campaign committee within 15 days.⁸³

15 Here, the available information raises a question as to whether Askar's obtaining a line of
16 credit for use in his campaign suggests that he had made the decision to become a candidate in
17 January 2020, such that, if Northern Bank made a contribution by establishing the line of

⁷⁹ See 52 U.S.C. § 30101(2).

⁸⁰ 11 C.F.R. §§ 100.72 and 100.131; Factual & Legal Analysis at 8, MUR 6776 (Niger Innis, *et al.*); Factual & Legal Analysis at 7, MUR 6775 (Hillary Clinton, *et al.*); Factual & Legal Analysis at 6, MUR 6735 (Joseph A. Sestak, *et al.*).

⁸¹ 11 C.F.R. §§ 100.72(a); 100.131(a).

⁸² See Advisory Op. 2015-09 at 5 (Senate Majority PAC); see also Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985) (exemption "explicitly limited 'solely' to activities designed to evaluate a potential candidacy").

⁸³ 11 C.F.R. § 101.1(a).

1 credit,⁸⁴ he was late in filing his statement of candidacy. Securing a line of credit worth millions
2 of dollars appears to be a significant undertaking and could reflect that Askar had already made a
3 decision to run.⁸⁵ On the other hand, establishing a line of credit could be consistent with testing
4 the waters for an individual evaluating the feasibility of a possible candidacy by helping the
5 individual determine if funding for the future campaign is available without exposing him to
6 significant financial cost or liability should he ultimately decide not to withdraw funds under the
7 line of credit. Because the proposed investigation would include evaluating the circumstances
8 under which Askar established the line of credit, including the purpose of the line of credit, we
9 recommend that the Commission take no action at this time as to the allegation that Askar filed
10 his statement of candidacy late in violation of 11 C.F.R. § 101.1(a). If we discover any relevant
11 information, we will make the appropriate recommendation.

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⁸⁴ *See supra* § III.B.

⁸⁵ And, as noted above, Askar and the Committee's Response evaluates the line of credit as "a commercial loan received by a candidate for use in his campaign." Askar Resp. at 8.

1 **V. RECOMMENDATIONS**

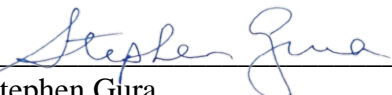
- 2 1. Find reason to believe Casey Askar for Congress and Rob Phillips III in his
3 official capacity as Treasurer violated 52 U.S.C. § 30104(b)(3)(E) and 11 C.F.R.
4 § 104.3(a)(4)(iv), (d)(4) by failing to file complete and accurate reports regarding
5 the line of credit from Northern Bank;
- 6 2. Find reason to believe that Northern Bank made prohibited corporate
7 contributions in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b) and
8 Casey Askar and Casey Askar for Congress and Rob Phillips III in his official
9 capacity as Treasurer accepted prohibited corporate contributions in violation of
10 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d);
- 11 3. Find reason to believe that 6619 SW 14th St Company, LLC, AFNC, LLC,
12 Garfield Management, LLC, Garfield Property Management, LLC, Bassam
13 Askar, and Alexander Askar made excessive contributions in violation of
14 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1), and Casey Askar and
15 Casey Askar for Congress and Rob Phillips III in his official capacity as Treasurer
16 accepted excessive contributions in violation of 52 U.S.C. § 30116(f) and
17 11 C.F.R. § 110.9;
- 18 4. Take no action at this time regarding whether James Mawn consented to a
19 prohibited corporate contribution by Northern Bank and Trust in violation of
20 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(e);
- 21 5. Take no action at this time regarding whether Casey Askar filed his statement of
22 candidacy late in violation of 11 C.F.R. § 101.1(a);
- 23 6. Authorize the use of compulsory process;
- 24 7. Approve the attached Factual and Legal Analyses; and
- 25 8. Approve the appropriate letters.
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Date: 12.07.20

Lisa J. Stevenson
Acting General Counsel

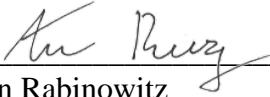
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