

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

Pre-MUR 614

DATES SUBMITTED: July 24, 2018
December 13, 2018
(Supplement)

DATE ACTIVATED: March 27, 2019

ELECTION CYCLES: 2014, 2016, 2018

EXPIRATION OF STATUTE OF LIMITATIONS:

Earliest: August 8, 2019

Latest: July 1, 2023¹

SOURCE:**RESPONDENTS:**

United Services Automobile Association Employee
PAC and Laura Bishop in her official capacity as
treasurer

**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30118(b)(4)(A)(i)
11 C.F.R. § 114.5(g)(1)
11 C.F.R. § 114.6(a), (c)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The United Services Automobile Association Employee PAC (“USAA PAC” or
“Respondent”) submitted a *sua sponte* submission (“Submission”) acknowledging that it
impermissibly collected employee contributions using payroll deductions.² For the reasons set
forth below, we recommend that the Commission: (1) open a MUR; (2) find reason to believe

¹ Respondents agreed to toll the statute of limitations (“SOL”) for a total of 360 days.

² See generally Submission (July 24, 2018); see also Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695 (Apr. 5, 2007) (“*Sua Sponte* Policy”).

1 that Respondent violated 52 U.S.C. § 30118(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1); and
2 (3) authorize pre-probable cause conciliation and approve the attached conciliation agreement.

3 **II. FACTUAL BACKGROUND**

4
5 USAA PAC is the separate segregated fund (“SSF”) of USAA, a Texas-based insurance
6 provider to members of the military and their families.³ In its Submission, USAA PAC states
7 that during an internal review of its government affairs function in 2018, outside consultants
8 discovered that “a number of employees” who were not executive or administrative personnel
9 were contributing to USAA PAC via payroll deduction.⁴ After the discovery, USAA PAC
10 reviewed the job classifications for all current employees and PAC members and found that
11 1,358 current employees had impermissibly contributed to USAA PAC through payroll
12 deductions, totaling \$165,476.06 going back five years.⁵ According to USAA PAC, that amount
13 represents approximately 2.5 percent of all contributions in that time period.⁶

14 The internal review led to USAA PAC stopping payroll deductions for ineligible
15 employees, and in August 2018, it refunded all the contributions to the 1,358 affected
16 employees.⁷ USAA PAC states that it also revised internal controls to prevent employees who
17 are not within the restricted class from contributing to the PAC via payroll deduction.⁸

³ See <https://www.usaa.com/?akredirect=true>.

⁴ Submission at 2.

⁵ *Id.* at 3. In a follow-up email, counsel for USAA PAC stated that the five-year period went from July 12, 2013 – July 12, 2018. See E-mail from Carol Laham to Elena Paoli (July 8, 2019, 3:12 p.m.).

⁶ *Id.*

⁷ *Id.*; see also USAA PAC September 2018 Monthly Report (Sept.19, 2018), available at <http://docquery.fec.gov/cgi-bin/forms/C00164145/1262187/>. This report shows \$165,301 in contribution refunds to individuals, \$35,979 of which were itemized. An additional refund of \$210 was disclosed in the October 2018 Monthly Report.

⁸ Submission at 3-4.

1 In its Supplemental Submission, USAA PAC states that the 1,358 employees at issue had
2 asked to join the PAC “as a show of unity at the company.”⁹ Respondent explains that USAA
3 held “community-building” days at its headquarters at which PAC members were encouraged to
4 wear PAC T-shirts that had been given to them.¹⁰ If an employee requested to join the USAA
5 PAC while at one of these events, he or she would be handed a membership form, which
6 included a payroll deduction authorization.¹¹ USAA PAC then accepted the employees’ requests
7 to contribute via payroll deduction.¹²

8 The USAA PAC membership form, which appears to be a two-sided pamphlet with folds,
9 is titled, “USAA’s Future. It’s Your Business.”¹³ Below the fold of the title page is the
10 membership application, which states, “Please check the appropriate box.”¹⁴ New members can
11 check one of three levels of membership, all of which authorize the deduction of a dollar amount
12 or percentage of salary per pay period. Current members may use the form to change their
13 contribution level. Below this area is a disclaimer in smaller type, stating, “Participation in the
14 USAA Employee PAC is voluntary and will not affect your standing with the company.”¹⁵ The
15 disclaimer also describes FEC and Texas requirements regarding contributor information that
16 must be obtained and that contributions to the PAC are not tax deductible. Lastly, it directs
17 readers with questions about the form or PAC to email the PAC at a noted address.

⁹ Supplemental Submission at 1 (Dec. 13, 2018) (“Supp. Submission”).

¹⁰ *Id.*

¹¹ *Id.*, Attachment (USAA PAC membership form).

¹² Submission at 2; Supp. Submission at 1.

¹³ *See* Supp. Submission, Attachment.

¹⁴ *Id.*

¹⁵ *Id.*

The opposite side of the pamphlet lists “Top 5 Reasons to Join the USAA Employee PAC.”¹⁶ The pamphlet concludes with the message: “Invest in USAA’s Future. Join the USAA Employee PAC.”¹⁷

III. LEGAL ANALYSIS

Under the Federal Election Campaign Act of 1971, as amended (the “Act”), corporations may establish political committees known as separate segregated funds (“SSFs”) for political purposes,¹⁸ but neither the corporation nor SSF may solicit contributions to the SSF from persons outside the corporation’s restricted class, namely, the corporation’s executive and administrative personnel and families of such personnel.¹⁹ Commission regulations permit a corporation to use a payroll deduction program to facilitate the making of voluntary contributions, but participation in such program is limited to the restricted class.²⁰

Here, USAA PAC acknowledges that it impermissibly deducted \$165,476.06 in contributions over a five-year period from the paychecks of 1,358 employees who were not in its restricted class. When those employees sought to join the PAC, USAA PAC did not verify their

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 52 U.S.C. § 30118(b)(2)(C).

¹⁹ *Id.* § 30118(b)(4)(A). We note that an SSF may solicit employees who are not within the restricted class two times a year in writing, but such solicitations may be made only by mail addressed to the employees at their residences and must use a custodial arrangement that ensures the anonymity of those wishing to contribute less than \$50 in any single contribution, or those not wishing to contribute at all. *See* 52 U.S.C. § 30118(4)(B); 11 C.F.R. § 114.6(a), (c). When soliciting contributions outside the restricted class under section 114.6, an SSF is prohibited from using payroll deduction as a method to obtain contributions. 11 C.F.R. § 114.6(e)(1). We are unaware of any facts suggesting that USAA PAC received the contributions at issue pursuant to the rules governing twice-yearly solicitations.

²⁰ 11 C.F.R. § 114.1(f); 114.2(f)(4)(i), 114.5(k)(1); Advisory Op. 2014-04 (Enterprise Holdings, Inc.) at 2. In MUR 1144 (ADEPT), the Commission found that continuous payroll deductions from a non-eligible employee’s paycheck constitutes solicitation in violation of 2 U.S.C. § 441b(b)(4) (now 52 U.S.C. § 30118(b)(4)) and 11 C.F.R. § 114.6(e). *See* Conciliation Agreement, MUR 1144, available at <https://www.fec.gov/files/legal/murs/1144.pdf> at pp. 5-8.

1 eligibility, but provided them with a form soliciting contributions to the PAC and authorizing
2 payroll deductions. Accordingly, USAA PAC improperly solicited contributions from
3 employees outside the restricted class in violation of 52 U.S.C. § 30118(b)(4)(i) and 11 C.F.R.
4 § 114.5(g)(1).

5 USAA requests that this matter either be dismissed or handled by the Alternative Dispute
6 Resolution Office (“ADRO”).²¹ It cites to ADR 710, where a *sua sponte* submission involving
7 improper payroll deductions was transferred to ADRO. That matter, however, did not involve
8 the solicitation of employees outside the restricted class. Rather, due to a clerical error, the
9 respondent’s payroll department deducted a greater amount than authorized, and the error was
10 rectified within seven months.²² In contrast, USAA PAC solicited almost 1,400 employees who
11 were not in the restricted class and had their paychecks improperly deducted; this practice
12 continued for five years or more.²³

13 This matter is more akin to MUR 7410 (Wine and Spirits Wholesalers), a *sua sponte*
14 matter where the Commission found reason to believe the respondent violated 52 U.S.C.
15 § 30118(b)(4)(i) and authorized pre-probable cause conciliation. There, the respondent
16 improperly solicited 437 unionized personnel who were outside the restricted class for nine
17 years.²⁴ The contributions within the statute of limitations in MUR 7410 were \$145,306.88, an

²¹ Submission at 5.

²² See PMUR 571/ADR 710 (Proliance Surgeons) Submission (Feb. 18, 2014).

²³ We note that in PMUR 590/ADR 801 (Home Depot), a *sua sponte* submission matter involving similar payroll deductions outside the restricted class, the Office of General Counsel transferred the matter to ADRO. However, the amount in violation there was substantially less (about \$40,000) and only 244 employees were involved. In addition, the total amount of prohibited contributions constituted only .36% of the total contributions collected in the relevant timeframe whereas the prohibited contributions in this matter constitute 2.5% of the total contributions collected.

²⁴ See Factual & Legal Analysis at 2, MUR 7410(Wine and Spirits Wholesalers).

1 amount similar to the amount here.²⁵ Like USAA PAC, the respondent in MUR 7410 had
2 refunded the prohibited contributions and taken other remedial measures to prevent future
3 violations before filing its submission.²⁶

4 Given the nature of the violation, along with the large number of employees and the
5 protracted amount of time involved, we believe that the Commission should pursue enforcement
6 action as to USAA PAC. Accordingly, we recommend that the Commission find reason to
7 believe that USAA PAC violated 52 U.S.C. § 30118(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1).

25 *See id.*

26 *Id.*

1
2
3
4
5
6
7
8
9
10

11 **IV. RECOMMENDATIONS**

12
13
14
15
16
17
18
19
20

1. Open a MUR;
2. Find reason to believe that United Services Automobile Association Employee Political Action Committee and Laura Bishop in her official capacity as treasurer violated 52 U.S.C. § 30118(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1);
3. Enter into pre-probable cause conciliation with United Services Automobile Association Employee Political Action Committee and Laura Bishop in her official capacity as treasurer, prior to a finding of probable cause;
4. Approve the attached Factual and Legal Analysis;

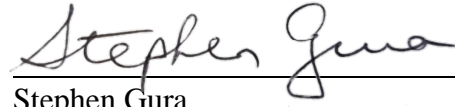
- 1 5. Approve the attached Conciliation Agreement; and
2 6. Approve the appropriate letter.

3
4 Lisa J. Stevenson
5 Acting General Counsel
6
7

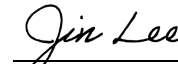
8 Charles Kitcher
9 Acting Associate General Counsel for
10 Enforcement
11

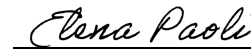
12
13
14 Dated: 7.15.19

BY:



Stephen Gura
Deputy Associate General Counsel for
Enforcement

15
16
17
18
19
20 
21 _____
22 Jin Lee
23 Acting Assistant General Counsel
24

25
26 
27 _____
28 Elena Paoli
29 Attorney

30 Attachments:

- 31 1. Factual and Legal Analysis
32

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: United Services Automobile Association MUR
Employee PAC and Laura Bishop
in her official capacity as treasurer

I. INTRODUCTION

The United Services Automobile Association Employee Political Action Committee (“USAA PAC” or “Respondent”) submitted a *sua sponte* submission (“Submission”) acknowledging that it impermissibly collected employee contributions using payroll deductions.¹ As set forth below, the Federal Election Commission (“Commission”) finds reason to believe that Respondent violated 52 U.S.C. § 30118(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1).

II. FACTUAL BACKGROUND

USAA PAC is the separate segregated fund (“SSF”) of USAA, a Texas-based insurance provider to members of the military and their families.² In the Submission, USAA PAC states that during an internal review of its government affairs function in 2018, outside consultants discovered that “a number of employees” who were not executive or administrative personnel were contributing to USAA PAC via payroll deduction.³ After the discovery, USAA PAC reviewed the job classifications for all current employees and PAC members and found that 1,358 current employees had impermissibly contributed to USAA PAC through payroll

¹ See generally *Sua Sponte* Submission of USAA PAC (July 24, 2018). See also Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695 (Apr. 5, 2007) (“*Sua Sponte* Policy”).

² See <https://www.usaa.com/?akredirect=true>.

³ Submission at 2.

deductions, totaling \$165,476.06 going back five years.⁴ According to USAA PAC, that amount represents approximately 2.5 percent of all contributions in that time period.⁵

The internal review led to USAA PAC stopping payroll deductions for ineligible employees, and in August 2018, it refunded all the contributions to the 1,358 affected employees.⁶ USAA PAC states that it also revised internal controls to prevent employees who are not within the restricted class from contributing to the PAC via payroll deduction.⁷

In its Supplemental Submission, USAA PAC states that the 1,358 employees at issue had asked to join the PAC “as a show of unity at the company.”⁸ Respondent explains that USAA held “community-building” days at its headquarters at which PAC members were encouraged to wear PAC T-shirts that had been given to them.⁹ If an employee requested to join the USAA PAC while at one of these events, he or she would be handed a membership form, which included a payroll deduction authorization.¹⁰ USAA PAC then accepted the employees’ requests to contribute via payroll deduction.¹¹

⁴ *Id.* at 3. In a follow-up email, counsel for USAA stated that the five-year period went from July 12, 2013 – July 12, 2018. *See* E-mail from Carol Laham to Elena Paoli (July 8, 2019, 3:12 p.m.).

⁵ *Id.*

⁶ *Id.*; *see* USAA PAC September 2018 Monthly Report (Sept.19, 2018), available at <http://docquery.fec.gov/cgi-bin/forms/C00164145/1262187/>. This report shows \$165,301 in contribution refunds to individuals, \$35,979 of which were itemized. An additional refund of \$210 was disclosed in the October 2018 Monthly Report.

⁷ Submission at 3-4.

⁸ Supplemental Submission at 1 (Dec. 13, 2018) (“Supp. Submission”).

⁹ *Id.*

¹⁰ *Id.*, Attachment (USAA PAC membership form).

¹¹ Submission at 2; Supp. Submission at 1.

The USAA PAC membership form, which appears to be a two-sided pamphlet with folds, is titled, “USAA’s Future. It’s Your Business.”¹² Below the fold of the title page is the membership application, which states, “Please check the appropriate box.” New members can check one of three levels of membership, all of which authorize the deduction of a dollar amount or percentage of salary per pay period.¹³ Current members may use the form to change their contribution level.¹⁴ Below this area is a disclaimer in smaller type, stating, “Participation in the USAA Employee PAC is voluntary and will not affect your standing with the company.”¹⁵ The disclaimer also describes FEC and Texas requirements regarding contributor information that must be obtained and that contributions to the PAC are not tax deductible. Lastly, it directs readers with questions about the form or PAC to email the PAC at a noted address.

The opposite side of the pamphlet lists “Top 5 Reasons to Join the USAA Employee PAC.”¹⁶ The pamphlet concludes with the message: “Invest in USAA’s Future. Join the USAA Employee PAC.”¹⁷

III. LEGAL ANALYSIS

Under the Federal Election Campaign Act of 1971, as amended (the “Act”), corporations may establish political committees known as separate segregated funds (“SSFs”) for political purposes,¹⁸ but neither the corporation nor SSF may solicit contributions to the SSF from

¹² See Supp. Submission, Attachment.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 52 U.S.C. § 30118(b)(2)(C).

persons outside the corporation's restricted class, namely, the corporation's executive and administrative personnel and families of such personnel.¹⁹ Commission regulations permit a corporation to use a payroll deduction program to facilitate the making of voluntary contributions, but participation in such program is limited to the restricted class.²⁰

Here, USAA PAC acknowledges that it impermissibly deducted \$165,476.06 in contributions over a five-year period from the paychecks of 1,358 employees who were not in its restricted class. When those employees sought to join the PAC, the PAC did not verify their eligibility but provided them with a form soliciting contributions to the PAC and authorizing payroll deductions. Accordingly, USAA PAC improperly solicited contributions from employees outside the restricted class in violation of 52 U.S.C. § 30118(b)(4)(i) and 11 C.F.R. § 114.5(g)(1).

USAA requests that this matter either be dismissed or handled by the Alternative Dispute Resolution Office ("ADRO").²¹ It cites to ADR 710, where a *sua sponte* submission involving improper payroll deductions was transferred to ADRO. That matter, however, did not involve the solicitation of employees outside the restricted class. Rather, due to a clerical error, the

¹⁹ *Id.* § 30118(b)(4)(A). We note that an SSF may solicit employees who are not within the restricted class two times a year in writing, but such solicitations may be made only by mail addressed to the employees at their residences and must use a custodial arrangement that ensures the anonymity of those wishing to contribute less than \$50 in any single contribution, or those not wishing to contribute at all. *See* 52 U.S.C. § 30118(4)(B); 11 C.F.R. § 114.6(a), (c). When soliciting contributions outside the restricted class under section 114.6, an SSF is prohibited from using payroll deduction as a method to obtain contributions. 11 C.F.R. § 114.6(e)(1). We are unaware of any facts suggesting that USAA PAC received the contributions at issue pursuant to the rules governing twice-yearly solicitations.

²⁰ 11 C.F.R. § 114.1(f); 114.2(f)(4)(i), 114.5(k)(1); Advisory Op. 2014-04 (Enterprise Holdings, Inc.) at 2. In MUR 1144 (ADEPT), the Commission found that continuous payroll deductions from a non-eligible employee's paycheck constitutes solicitation in violation of 2 U.S.C. § 441b(b)(4) (now 52 U.S.C. § 30118(b)(4)) and 11 C.F.R. § 114.6(e). *See* Conciliation Agreement, MUR 1144, available at <https://www.fec.gov/files/legal/murs/1144.pdf> at pp. 5-8.

²¹ Submission at 5.

respondent's payroll department deducted a greater amount than authorized, and the error was rectified within seven months.²² In contrast, USAA PAC solicited almost 1,400 employees who were not in the restricted class and had their paychecks improperly deducted; this practice continued for five years or more.²³

This matter is more akin to MUR 7410 (Wine and Spirits Wholesalers), a *sua sponte* matter where the Commission found reason to believe the respondent violated 52 U.S.C. § 30118(b)(4)(i) and authorized pre-probable cause conciliation. There, the respondent improperly solicited 437 unionized personnel who were outside the restricted class for nine years.²⁴ The contributions within the statute of limitations in MUR 7410 were \$145,306.88, an amount similar to the amount here.²⁵ Like USAA PAC, the respondent in MUR 7410 had refunded the prohibited contributions and taken other remedial measures to prevent future violations before filing its submission.²⁶

Given the nature of the violation, along with the large number of employees and the protracted amount of time involved, an enforcement action is warranted. Accordingly, the Commission finds reason to believe that USAA PAC violated 52 U.S.C. § 30118(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1).

²² See PMUR 571/ADR 710 (Proliance Surgeons) Submission (Feb. 18, 2014).

²³ We note that in PMUR 590/ADR 801 (Home Depot), a *sua sponte* submission matter involving similar payroll deductions outside the restricted class, the Office of General Counsel transferred the matter to ADRO. However, the amount in violation there was substantially less (about \$40,000) and only 244 employees were involved. In addition, the total amount of prohibited contributions constituted only .36% of the total contributions collected in the relevant timeframe whereas the prohibited contributions in this matter constitute 2.5% of the total contributions collected.

²⁴ See Factual & Legal Analysis at 2, MUR 7410 (Wine and Spirits Wholesalers).

²⁵ See *id.*

²⁶ *Id.*