FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 10, 2021

Carol A. Laham, Esq.
Wiley Rein, LLP
1776 K Street, N.W.
Washington, D.C. 20006
claham@wiley.law

RE: MUR 7875
USAA PAC and Jeff Wallace in his official capacity as treasurer[1]

Dear Ms. Laham:

On July 24, 2018, you notified the Federal Election Commission (the "Commission"), in a *sua sponte* submission, of the possibility that your client, USAA PAC (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). After reviewing your submission and a December 13, 2018, supplement, on January 28, 2021, the Commission found reason to believe that the Committee and Laura Bishop in her official capacity as treasurer violated 52 U.S.C. § 30118(b)(4)(A)(i), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

Please note that you have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.[2]

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a

[1] In an amended Statement of Organization dated October 2, 2020, USAA PAC disclosed Jeff Wallace as treasurer.

[2] The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in engaging in pre-probable cause conciliation, please contact Elena Paoli, the attorney assigned to this matter, at epaoli@fec.gov, (202) 694-1548, or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

We look forward to your response.

On behalf of the Commission,

Shana M. Broussard
Chair

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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

MUR 7875

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

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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]

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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

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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

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[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).

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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*.